

Brain death and its impact on inheritance rulings

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Abstract:

One of the modern medical issues that has sparked widespread debate among scholars, jurists and doctors is brain death, with differing opinions on how to define it. Some consider it to be true death if all functions cease, including those of the brain stem, leading to the loss of the ability to breathe naturally and unresponsiveness to any medical attempts. Others consider it to be true death as soon as the brain ceases to function completely, without requiring the other organs to cease functioning. Based on this dispute, the implications of brain death have varied, especially in rulings related to inheritance. There has been a clear difference of opinion as to whether it is considered effective or judgemental death, which has been reflected in issues such as the distribution of the estate, the inheritance rights of a person who is considered brain dead, or the transfer of inheritance from them to others.

Key words: brain death, medical issues, inheritance, death, estate.

INTRODUCTION

It is well known that humans may suffer from incurable diseases that prevent their organs from performing their natural functions. For this reason, our benevolent Charia law urges us to preserve life and make every effort to seek medical treatment and cure by all lawful means available. Hence, the noble profession of medicine is associated with protecting human life and preventing all diseases and ailments.

With the continuous medical advances witnessed by the world, many countries have adopted a new concept of death known as brain death, with differences among them regarding the conditions necessary to determine it. Some countries consider brain death alone to be sufficient to declare a person dead, while others require, in addition to complete brain death, the cessation of heartbeat and breathing to confirm death.

The new concept of brain death, as a recent development in the field of medicine, has raised many legal and ethical issues. These issues relate to the difference in determining the time of death according to the perception adopted by the doctor and the state. Other challenges include the legal and religious implications of this type of death, the most prominent of which is the issue of inheritance.

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The differences between jurists, scholars and doctors regarding whether a person who is brain dead is truly dead, both from a religious and legal perspective, have led to differences in the implications of this ruling. This is evident in the possibility of dividing his estate and his right to inheritance, whether he is an heir or a legatee, and in considering him alive, in which case his estate will not be divided and issues of inheritance and bequests will not arise.

The problem: What is brain death? What consequences can it have on inheritance rulings?

Topic objectives :-Identifying a new issue and knowing its rulings and how to act in the event of its occurrence.

-Discovering the jurisprudential opinions on brain death, which helps in knowing the ruling on removing life support from a brain-dead person.

-Knowing the consequences of brain death, especially with regard to inheritance and related issues.

1. Concept of brain death

Old jurists did not discuss the concept of brain death because it did not exist in their time, prompting contemporary jurists to attempt to formulate a comprehensive definition. However, differences arose among them as to whether it could be considered true death or merely a medical condition requiring attention and care.

This has prompted us to examine the various definitions that have addressed this issue in order to understand its origins and development, in addition to reviewing the legal rulings that have been issued regarding its various cases.

This is what we will see through the definition of brain death and its origins (1.1) and its ruling (1.2).

1.1 Definition of brain death and its origins

There have been differing views among doctors and jurists regarding the criteria that can be used to determine brain death. This controversy has arisen as a result of recent medical developments, particularly those related to resuscitation devices that enable brain-dead individuals to continue performing some other vital functions.

This is what we will see in the definition of brain death (1.1.1) and the origin of brain death (1.1.2).

1.1.1 Definition of brain death

In this section, we will discuss the various medical, jurisprudential and legal definitions of brain death, as follows:

1.1.1.1 the medical definition:

Brain death is a modern term that was not known in the past. The following are the definitions given by doctors:

Before defining brain death, it is necessary to understand the scientific composition of the brain so that we can identify the part responsible for brain death. The brain consists of three parts, which are:

- The cerebrum: The cerebrum is the largest part of the brain and is responsible for thinking, feeling, and memory....
- The cerebellum: The cerebellum is responsible for maintaining the body's balance.
- The brain stem: The brain stem plays a key role in regulating vital functions such as controlling the heart, blood circulation, and breathing¹

The Islamic Organisation for Medical Sciences defines brain death as the complete and irreversible cessation of all brain functions, including the brain stem²

- The Jordanian Medical Association Committee has defined brain death as a state in which all brain functions cease permanently and irreversibly, as confirmed by doctors³.

- The US Presidential Commission has defined brain death as the complete cessation of all brain functions, including those of the brain stem⁴.

-According to the American school of thought, death in humans is not a process that occurs in a single moment, but rather over a period of time. However, this view has been criticised by the British school of thought, which considers that death is only confirmed when the brain stem dies, given its essential role in managing the heart, respiratory system and other vital organs in the body⁵.

Based on the various definitions of brain death mentioned above, brain death can be defined as the complete and permanent cessation of all brain functions.

1.1.1.2 its definition from the Islamic jurisprudential perspective:

The phenomenon of brain death is a recent development, so its definition is based on Islamic fatwas and the decisions of jurisprudential councils:

The Islamic Fiqh Council defined brain death as follows: A person is considered dead if one of the following two conditions is met:

- Complete cessation of all parts of the brain from performing their vital functions without return⁶.

Therefore, the Islamic Fiqh Council recognises that a person's death occurs either through the complete cessation of brain function or through the cessation of the heart and breathing. They also consider brain death to be a recognised cause of death in humans.

- The Islamic Research Academy of Al-Azhar defined death as a state that is the opposite of life. It does not recognise brain death, but rather considers any vital signs in the body of a patient who is considered brain dead to be evidence that they are still alive⁷.

1.1.1.3 Legal definition

German law defines brain death as the permanent and irreversible cessation of brain function, based on the results of electroencephalography and angiography⁸

Several laws have been enacted that address brain death. In 1970, the US state of Kansas passed the first law dealing with the concept of brain death, followed by another law

in Finland in 1971. Later, the British Royal Colleges of Physicians formed specialised committees to study this phenomenon and issued a statement in 1979 clarifying that death is confirmed when brain functions cease completely, without the need to wait for cardiac arrest. Since then, the concept of brain death has gradually spread and become more widespread⁹

Algerian lawmakers have not addressed the definition of brain death, and rightly so, so that the law does not interfere with the medical and scientific aspects associated with scientific development.

However, the legislator has relied on brain death as a medical reason for declaring a person dead, and has made brain death a legal criterion for allowing the transplantation of organs from a brain-dead person to another patient, in accordance with the provisions of Article 362 of Health Law 18-11¹⁰

1.1.2 The emergence of brain death

The concept of brain death first emerged when a case was brought before a US court in Kentucky, and the court agreed to hear it. The case concerned a person whose heart was still beating, but whose brain had completely stopped functioning. In this case, the court adopted the criterion of brain death to rule that the person was dead, thereby abandoning the traditional criterion of stopping the pulse and breathing to determine death in 1953.¹¹

In 1959, two French doctors conducted a study on a group of patients suffering from coma and apnoea, a condition known as terminal coma. Through this study, they began to uncover the characteristics of brain death, which can occur even though the heart continues to beat and breathing continues normally. The researchers concluded that death is not necessarily linked to the heart stopping or a person stopping breathing, but rather that the complete cessation of all brain function may be the actual indicator of death. Subsequently, American academia took an interest in this topic, with a special committee at Harvard University studying brain death and issuing a set of specific criteria for it.

In 1971, a group from the University of Minnesota developed criteria similar to those approved by Harvard University, with minor changes to the details of the diagnosis of brain death. Later, between 1976 and 1979, the British Royal Colleges of Physicians presented their recommendations, highlighting the concept of brain death. In 1981, a committee of physicians and legal experts was formed to study the phenomenon of brain death, based on a directive issued by US President Ronald Reagan.

Over time, studies and research on brain death expanded and spread significantly, sparking debates and disagreements among doctors about accepting brain death as a criterion for determining the death of a person. In this context, numerous meetings and conferences were held to discuss this issue. Over time, most countries gradually began to recognise this phenomenon, with specialist doctors being tasked with diagnosing cases. Thus, the end of life was no longer limited to the cessation of breathing and heartbeat, but could also be considered to have occurred in the event of brain death or permanent cessation of brain function¹².

1.2 the ruling on brain death

Scholars have differed among themselves as to whether brain death without the death of other organs, with breathing and heartbeat remaining intact with the help of resuscitation equipment, is considered true death or not, with two opinions. Each opinion has its own arguments and evidence, which we will discuss below. Brain death is true death (1.2.1) Brain death is not true death (1.2.2)

1.2.1 Brain death is true death

Proponents of this view believe that a person's death is confirmed as soon as their brain stops functioning, without the need to wait for their heart to stop or their breathing to cease. This concept has been adopted by the majority of doctors and jurists in the modern era, in addition to the Islamic Fiqh Council in 1407 AH, alongside prominent figures such as Dr. Omar Suleiman Al-Ashqar, Dr. Muhammad Suleiman Al-Ashqar, Dr. Muhammad Naim Yassin, and Dr. Muhammad Ali Al-Bar...¹³

Those who hold this opinion base their argument on a number of points, the most prominent of which are as follows:

1- If a newborn does not cry at birth, it is considered dead even if it is breathing or its heart is beating, because it has not shown the basic signs of life. According to this logic, a brain-dead person is also not considered alive, even if some involuntary physical actions continue. A connection is made here between the case of a newborn who did not cry and a person suffering from brain death.

This view has been countered by the argument that a newborn in this situation may not have been born alive in the first place, whereas a brain-dead person was originally alive, making it difficult to compare their possible death to that of a foetus that may be born without signs of life¹⁴.

2- When the brain stops functioning, the functions of the other organs cease, indicating that the soul has left the body, as the organs are completely connected to the brain, which is their control centre. If some organs move involuntarily, such as opening the eyes or moving the hand, this has nothing to do with the soul. In this case, the organs function involuntarily without responding to the actions of the soul.¹⁵

Imam Al-Ghazali, may Allah have mercy on him, says that when the soul leaves the human body, the organs of the body lose their ability to obey or respond to commands. In other words, these organs become incapable of performing their functions in the service of the soul, which used them as tools within the human body. This separation between the soul and the body is clear evidence of a person's death. It is the soul that enables a person to use their hands to touch, their eyes to see, and their ears to hear, but once the brain dies and the soul separates from the body, these organs become incapable of functioning under the will of the person. Even if some organs continue to function involuntarily, this does not reflect the existence of real life in a person¹⁶

This evidence was discussed on the basis that as long as some organs are still functioning, it means that brain death does not invalidate the functioning of all organs, which is sufficient evidence to refute this hypothesis. On the other hand, the functioning of some organs in a brain-dead person, even if involuntary, is considered an indication of the continued existence of the soul and its non-separation from the body¹⁷.

3-Doctors have concluded that the brain's refusal of food inevitably leads to human death. In this case, complete brain failure is considered evidence of death, so they see the need to adopt their opinion and believe their findings in this area.

-This opinion has been debated, as it has been emphasised that the knowledge of doctors cannot match that of God, and that death remains one of the unseen matters that no one can be certain of as long as a person is still breathing and their heart is still beating¹⁸.

-If you ask a doctor about the departure of the soul of a person whose brain has died, he will not be able to answer that question. Similarly, if you ask a question about the application of Shariah rulings to such a case, the matter remains complex. Death, in a sense that leaves no room for doubt, is the departure of the soul from the human body according to clear signs and indications. Therefore, doctors cannot conclusively determine that a person is dead based solely on brain death¹⁹.

1.2.2 Brain death is not true death

Those who hold this view believe that a person is not considered dead simply because their brain has died, but rather because they have stopped breathing and their heart has stopped beating. This opinion has been adopted by a number of scholars and researchers, such as Dr. Al-Buti, may Allah have mercy on him, Sheikh Al-Salamy Muhammad Al-Mukhtar, and others, as well as the Islamic Fiqh Council of the Muslim World League in 1408 AH²⁰. They based their view on a set of evidence, the most important of which we will mention below:

1- They cited the story of the people of the cave who lived for three hundred and nine years without sensation or feeling, yet they were turned over from side to side and were not considered dead. Based on this, if we judge someone who has lost consciousness and sensation due to brain death to be dead, on the grounds that their soul has left their body, it can be said that it is preferable not to consider them dead, by analogy with the story of the people of the cave²¹.

This opinion has been discussed from several angles, the most important of which is that the people of the cave were not dead in the first place, but were asleep without losing consciousness, and then woke up after a long period of time.

-The minds of the people of the cave were not dead; rather, they were in perfect health. This is unlike someone who suffers from brain death, who enters into a complete coma due to the failure of their brain functions.

-In the case of the people of the cave, they lost their senses only as a result of sleep, and when they woke up, they regained their awareness and senses naturally. As for those who are brain dead, their loss of sensation is the result of permanent damage to their brains, which has led to a state of continuous coma.

From a jurisprudential perspective, a person is considered alive if they are able to breathe, which applies to a brain-dead person, as they continue to breathe despite their brain malfunction.

However, this evidence has been debated on the grounds that this breathing is not the result of free will, but depends entirely on life support equipment, without which the person would cease to breathe²².

3-It is not permissible to declare a person dead if there is any doubt about their death. Therefore, a person who is brain dead is considered alive until evidence proves otherwise, as long as some of their organs are still functioning, their heart is beating, and their body responds to receiving food. It is necessary to wait until the heart stops completely and brain function ceases to confirm death²³.

Preponderance: After reviewing the statements, evidence and discussions related to this topic, I am inclined to agree with the opinion that brain death is not considered true death until all the organs of the body have completely stopped functioning and the body refuses to receive food. This is because science is constantly evolving, and it is possible that future solutions will be discovered for what seems impossible at present. Furthermore, it is not possible to say with certainty that the soul has left the body of a person suffering from brain death without confirming this conclusively.

2. The legal implications of brain death on inheritance rights

The issue of brain death and whether it is considered true death or not has a number of implications related to inheritance and the distribution of the estate, and the extent to which the heirs are entitled to divide the estate after all debts have been paid, if the brain-dead person is considered truly dead. The question also arises as to whether a brain-dead person has the right to inherit from another person if that person died before or during the period of brain death, or whether others have the right to inherit from them, with the share of the heir being determined in each case, as this varies depending on whether the deceased is considered truly dead or legally dead. This is what we will see through the division of the brain-dead person's estate (2.1) and the effects of the brain-dead person on the inheritance of others (2.2).

2.1 division of the estate of a brain-dead person

Before we discuss how to divide the estate of a brain-dead person, we must first understand what is meant by an estate, what its components are, what can be considered an estate in law, and what cannot be considered as such, so that we can determine the estate to which the heirs are entitled upon the death of a brain-dead person and understand the relevant provisions. This is what we will address through **the definition of inheritance and its components in (2.1.1) and the ruling on the division of the inheritance of a brain-dead person (2.1.2).**

2.1.1 Definition of inheritance and its components

We will address the definition of inheritance linguistically and then terminologically as follows:

2.1.1.1 Definition of inheritance

2.1.1.1.1- Linguistically

The term inheritance refers to something that has been abandoned and left behind, meaning the money, property or legacy left behind by the deceased²⁴. When it is said that a person has left his house, it means that he has departed from it. Similarly, someone who leaves prayer means that he has not performed it, and someone who waives one of his rights is considered to have relinquished that right. .²⁵

2.1.1.1.2- Terminology

The estate is defined as everything that the deceased leaves behind (in terms of assets) of various kinds, whether movable or immovable, in addition to the rights associated with it. It is derived from the act of abandonment and relinquishment, and it does not matter whether the deceased had debts or not²⁶.

The opinions of the jurists of the four schools of thought differed in defining the concept of inheritance, with some expressing a broad view, while others tended to narrow its meaning. The majority of Maliki, Shafi'i, and Hanbali jurists believe that inheritance includes all financial rights, rights related to liabilities, benefits, and others, regardless of whether the deceased (brain dead) had debts or not. As for the Shafiiya, they tend to narrow the concept of inheritance to include only financial rights and funds for which the deceased (brain dead) had no debts²⁷.

2.1.1.2 Components of inheritance

The estate consists of elements and components, some of which are inheritable and others are not. We will review this matter in detail below.

2.1.1.2.1-Inheritable assets include the following:

Real estate such as houses, factories, companies, shops, and land, **and movable assets** such as equipment, jewellery, and clothing... These assets can be inherited by the deceased's heirs²⁸, and their ownership of these assets may be full ownership, including both ownership of the asset and the right to use it, or it may be limited to ownership of the asset without the right to use it. In the latter case, the heirs may not dispose of these assets until the specified period of use has expired.

-Usufruct is linked to ownership, as some consider that usufruct is not considered money because it cannot be directly possessed, while others consider it money due to the possibility of possessing the object from which usufruct is derived and relying on it in the valuation of money. Thus, the usufruct is transferred from the deceased (brain dead) to the heirs, making it part of the estate²⁹.

-Real rights are subordinate to original rights and cannot be independent in themselves, such as easement rights and rights of way. They are financial in nature and are transferred from one person to another.

-Fixed rights of the deceased in the debt of others, whereby the deceased (brain dead) owes a sum of money to another person, these rights are transferred from the deceased (brain dead) to the heirs.

As for the position of the Algerian legislator regarding what constitutes part of the estate, referring to the Civil Code as the primary reference for all matters relating to financial transactions, particularly Articles 682 and 510, we find that the assets transferred to the heirs consist of real estate of various types, movable property, rights in rem valued in money, as well as moral, artistic and industrial rights. Furthermore, the death of the tenant does not terminate the lease, which remains in force, but rather the benefit is transferred to the tenant's heirs³⁰.

2.1.1.2.2- Non-heritable assets

Scholars agree that personal rights are not inheritable, as they are closely linked to the person of the deceased (brain dead) and their characteristics and abilities. Therefore, these rights are not considered property or financial assets that can be inherited. Examples of such rights include the brain-dead person's right to divorce his wife, his guardianship over himself, his custody of his children, his work, etc.³¹

With regard to the Algerian legislator's position on what is not included in the estate, we note that the Family Law does not address this issue. However, the Supreme Court has issued a ruling that excludes compensation from the contents of the estate and does not allow it to be inherited by the heirs. This ruling is based on the provisions of Islamic law, which considers inheritance to be everything that the deceased (the person who died brain dead) left behind in terms of money and financial rights during his lifetime. Compensation, on the other hand, includes heirs and others, and is assessed based on the extent of the damage incurred and not according to the heirs' shares in the inheritance. Even non-heirs are entitled to compensation³².

Furthermore, the debts left by the deceased (the person who has died) are not transferred to the heirs, but are paid from the estate before it is distributed. If the value of the debts exceeds the value of the estate, the heirs will not be held liable for them³³.

As for controversial issues such as the question of usufruct, the heirs only obtain the right of ownership, while the usufruct does not pass to them. Rather, it remains with the usufructuary until the end of the specified period of usufruct.³⁴

2.1.2 Ruling on the division of the estate of a brain-dead person

One of the most important conditions for the systematic division of the estate of a brain-dead person is the death of the testator, whereby the estate, consisting of money and rights, is transferred to the legal heirs. Therefore, one of the conditions of inheritance is the death of the testator and the survival of the heirs. Allah, the Almighty, has linked the issue of inheritance to the death of the testator and the survival of the heir, as stated in verse 176 of Surat An-Nisaa.

The Family Law is the primary reference for regulating the conditions of inheritance and determining the legal heirs and the share of each of them, as well as the rights related to

the estate and how its funds are transferred. If a specific issue related to inheritance is not stipulated in the Family Law, reference is made to the provisions of Islamic law, in accordance with Article 333 of the Family Law³⁵.

I have previously presented the jurisprudential and medical differences of opinion on whether brain death should be considered true death. From the point of view of those who consider brain death to be true death, a person's estate is divided as soon as brain death is confirmed, without the need to wait for the cessation of breathing or heartbeat, which may continue as long as resuscitation equipment is connected to the person. However, once these devices are disconnected, the heart will definitely stop beating and breathing. In this context, Sheikh Muhammad al-Salamy believes that brain death is sufficient to declare a person dead, with legal consequences arising from the date of this event, such as inheritance and waiting periods³⁶.

As for those who do not consider brain death to be true death, a person suffering from brain death is considered alive as long as their heart is still beating and some of their organs are functioning, whether with the help of life support equipment or naturally. As long as they are breathing, they are not considered dead as long as their soul has not yet left their body. Consequently, their estate cannot be divided or inherited, because in their view they are still alive, and it cannot be determined with certainty that their soul has left their body, which prevents the taking of measures related to inheritance.

Another view holds that a person who is brain dead does not inherit or have their estate distributed, due to uncertainty about their status, which is somewhere between life and death. Among those who support this view is Sheikh Abdul Basit Badr Al-Mutawali, may Allah have mercy on him, who pointed out that a brain-dead person only inherits after their death has been confirmed beyond any doubt³⁷.

2.2 inheritance from a brain-dead person by others and inheritance by others

Brain death is a thorny issue in inheritance, as the opinions of jurists and researchers differ between his inheriting from others and others inheriting from him, depending on whether the brain-dead person is considered truly dead or not. If he is considered truly dead, he may or may not inherit from others, depending on the circumstances. If he is not considered to be truly dead, he may inherit from others and may deprive others of their share or nullify it, as we will see in his inheritance from others (2.2.1) and the inheritance of others (2.2.2).

2.2.1 Inheritance from others

This scenario arises when a person dies brain death at the same time that another person from their family or relatives dies a true death. The question here is to what extent is the brain-dead person entitled to inherit from their relatives who died a true death?

Those who consider brain death not to be true death believe that a person is still alive as long as their heart is beating and they are breathing, even if this is with the help of life support machines. Based on this belief, their life is considered to be like that of any other healthy person, and therefore the rules of inheritance and other rights apply to them.

Those who believe that brain death is real death do not inherit for two reasons:

- Because they died before their inheritor and therefore do not inherit from them.
- Because they have reached a stage where they cannot live, like a slaughtered animal that opens and closes its hand.

And if, for example, the mother of a slaughtered animal dies, it cannot inherit from her because it is considered dead, and its movements during that time are irrelevant³⁸. Sheikh Badr al-Mutawalli Abd al-Basit believes that a person whose brain is dead is like a slaughtered animal that cannot inherit from others because it is dead, and because one of the conditions of inheritance is that the heir must be alive after the death of the deceased, which is not the case here, as the life of the heir (the brain-dead person) is in doubt³⁹.

There is another contemporary jurisprudential opinion that does not allow inheritance from a brain-dead person due to the doubt and uncertainty surrounding their death, and their estate is not divided and no one inherits it because their life and death are uncertain.

2.2.2 Inheritance of Others

Here we ask whether a brain-dead person can affect the rights of the other heirs to the inheritance, either by depriving them or reducing their share of the inheritance. We also ask about the possibility of his inheritance to others in the event that the reason that prevented him from doing so, such as apostasy, emancipation, or other reasons, is removed. This is what we will see below:

2.2.2.1 The brain-dead person deprives others of their inheritance:

The brain-dead person may deprive others of a reduction, i.e. make their share less than it was, or deprive them of their inheritance completely⁴⁰, as we will see below:

2.2.2.1.1 With regard to his exclusion of others by reduction:

We will discuss the various scenarios in which the brain-dead person excludes other heirs by reduction, i.e. he reduces their share of the inheritance, as well as the scenarios in which he does not exclude them by reduction, as follows:

Example: In the case of the death of a brain-dead person who leaves his brother who has died, and leaves another brother and mother.

*If we consider the brain-dead person to be deceased here, the inheritance is calculated as follows: The mother takes one-third (1/3) because there are no descendants and no siblings, and the remaining brother takes the rest. The matter is divided into three parts, so the mother takes one part and the brother takes two parts out of three.

*If we consider the brain-dead person to be not actually deceased, the inheritance is calculated as follows:

The mother takes one-sixth (1/6) because there are siblings, and the remaining brother shares the rest with his brain-dead brother as a group. ⁴¹The matter is settled from twelve parts, so the mother takes two parts, and the brother takes ten parts of the twelve parts with his brain-dead brother, i.e. each of them takes five parts of the twelve parts.

2.2.2.1.2 With regard to his exclusion of others, it is exclusion by deprivation:

In this case, the brain-dead person completely deprives the other heirs of their inheritance. An example of this is when a person dies of brain death and his father dies, leaving behind the son of the brain-dead person. If we consider the brain-dead person to be truly deceased, his son takes the entire inheritance. However, if we consider him to be alive, his son is deprived of inheritance and takes the entire estate⁴².

2.2.2.2 Removal of the impediment to inheritance

The impediment to inheritance may be removed from the heir or the testator for several reasons. Here we will see what the heir's share will be. There are two cases in this matter:

2.2.2.2.1 Removal of impediments to inheritance:

This situation can be imagined if the heir declares his conversion to Islam or is freed from slavery during the death of the testator, who is brain dead. It is well known in matters of inheritance that one of the impediments to inheritance is a difference in religion between the testator and the heir, as scholars agree that a non-Muslim cannot inherit from a Muslim. If a person dies brain dead and leaves behind a wife, son, daughter or father who is a non-Muslim, and one of them converts to Islam during the period of brain death, the analysis of inheritance entitlement is linked to the interpretation of brain death. If the deceased person is considered to have actually died at that moment, the non-Muslim heir is not entitled to inheritance because there is an impediment to inheritance at the moment of death. However, if brain death is not considered to be actual death, then the heir who converted to Islam before the actual death of the deceased is entitled to inheritance because the impediment related to difference in religion has been removed⁴³.

2.2.2.2.2 Removal of the impediment to inheritance:

This situation can only be expected in the case of the emancipation of the brain-dead person, not his conversion to Islam, because that is impossible to achieve. If we consider the brain-dead person here to be alive and not deceased, then the emancipation is valid and he inherits from others if he dies while remaining in his condition, just as others inherit from him if his death is confirmed with certainty and without doubt⁴⁴.

However, if we consider the brain-dead person to be truly dead and a slave, then emancipation is not valid in this case, and he does not inherit from others or be inherited by them.

Conclusion:

In the end, we conclude that the issue of death in the past did not raise any problems or controversy because as soon as the patient stopped breathing or his blood circulation stopped, he was declared dead. However, with modern scientific developments, what is known as brain death has emerged, which is diagnosed with specialised equipment, while breathing and the

heart continue for long periods thanks to resuscitation equipment. This has raised the issue of whether a brain-dead person should be considered truly dead and treated as such in all matters relating to death, such as inheritance, divorce, etc., or whether they should not be considered dead and therefore still be considered alive, meaning that their brain death has no effect until their actual death.

The Algerian legislature has adopted the concept of brain death and set specific criteria for doctors to declare the death of a person whose organs are to be removed for transplantation. However, the legislator has only addressed these criteria in the context of organ transplantation, considering that a brain-dead person is dead and their organs can be used for this purpose, without delving into the concept in detail or specifying its conditions.

I will highlight the most important findings of this research as well as recommendations that complement the topic:

Regarding the results: We mention the most important ones

- Doctors belonging to the American school consider irreversible brain death, as well as cardiac and respiratory arrest, to be signs of brain death.

- Doctors belonging to the British school consider brain failure to be true death without the need for other organs to stop functioning.

- There is no comprehensive definition of brain death, as each school has its own view on the matter. This is because a brain-dead person possesses many characteristics of life, which has had a significant impact on the emergence of several definitions of brain death, as well as differences in whether to consider the person alive or dead.

- For those who consider brain death to be true death, it entails many legal rulings related to death as defined by Islamic law, whether these rulings relate to legal costs, inheritance, marriage, divorce, or other rights.

- The difference in considering the brain-dead person to be alive or dead will create many practical problems in matters of inheritance.

- There is no unified jurisprudential opinion on whether to consider the brain-dead person to be alive or dead, as each has its own view, argument, and evidence in this regard. -

Recommendations:

- It is imperative to intensify research and studies on this medical issue from medical, jurisprudential, and legal perspectives.

- It is necessary to find a comprehensive definition of brain death that includes clear standardisation of diagnostic criteria by doctors, given the legal implications and multiple effects that this entails.

- Study and standardise the implications of brain death, particularly with regard to the removal of life support from the brain-dead.

- A brain-dead person should not be declared dead until doctors have given up hope of saving their life after a thorough and accurate medical examination.

- The Algerian legislature must take action to comprehensively cover the issue of brain death in domestic laws and precisely define its conditions and governing regulations.

Footnotes:

- ¹ Mohamed Ibrahim Saad Al-Nadi, Brain Death and the Position of Islamic Jurisprudence on it, Dar Al-Fikr Al-Jami'i, Alexandria, 2010, p. 20
 - ² Symposium on the Medical Definition of Death, held in Kuwait on 07/08/1417 AH, p. 915.
 - ³ Al-Batrawi, Abdul Wahab Omar, Collection of Modern Criminal Research, Law Magazine, Al-Muqaran, University of Baghdad, 1990, p. 28.
 - ⁴ Nada Mohamed Naim, Brain Death, Vol. 1, Dar Al-Fikr Al-Ma'asir, Beirut, 1998, pp. 47-52.
 - ⁵ Samar Al-Ashqar, The Legal Status of the Brain Dead, research presented to the Jordanian Bar Association, 2004, p. 32. Published on the website www. Nashiri.net
 - ⁶ Al-Bar Mohamed Ali, Clinical Death and Legal Death, research paper presented to the Islamic Fiqh Academy Conference, Islamic Fiqh Academy Journal, Issue 2, p. 349.
 - ⁷ Khader Mohamed Adam Ahmed Al-Zaki, The Impact of Brain Death on Rights and Obligations (A Comparative Study), Faculty of Sharia and Law, University of Sennar, no year, p. 11.
 - ⁸ Ahmed Abdel Dayem, Human Body Parts in Legal Dealings, 1st edition, Al-Halabi Legal Publications, Beirut, 1999, p. 1999.
 - ⁹ Al-Saadi Ali Hamoud, Fundamentals of Forensic Medicine, 1st edition, Dar Al-Radwan Publishing and Distribution, Jordan, 2013, p. 33.
 - ¹⁰ aw No. 18-11 dated July 2018, relating to health, amended and supplemented, Official Gazette No. 46, 2018, p. 35.
 - ¹¹ Daij Al-Mutairi, **Brain Death and Its Legal Adaptation**, a research paper published in the Journal of Sharia and Studies, Kuwait University, Issue 28, March 2007, p. 184.
 - ¹² Al-Bar Mohamed Ali and Zuhair Ahmad Al-Sibai, The Doctor: His Etiquette and Jurisprudence, 1st edition, Dar Al-Qalam Publishing and Distribution, Damascus, 1993, pp. 196-197.
 - ¹³ Salah ben Ali al-Shimrani, **The Impact of Considering Brain Death as Real Death or Not in Fiqh Rulings**, Contemporary Fiqh Research Journal, Issue 89, 2011, p. 17
 - ¹⁴ Journal of the Islamic Fiqh Academy, Issue 2, Part 1, 1986, p. 483.
 - ¹⁵ Ibn al-Qayyim, Al-Ruh, 3rd edition, Riyadh Library, 1966, pp. 178-179.
 - ¹⁶ Al-Ghazali, Ihya Oulum El-Din, vol. 4, Dar al-Rashad al-Haditha, no date, p. 494.
 - ¹⁷ Hasan ben Ahmad ben Hasan al-Faki, Ahkam al-Adwiya fi al-Shari'a al-Islamiya (Rulings on Medicines in Islamic Law), vol. 1, Dar al-Manahij Publishing and Distribution Library, 1425 AH, pp. 361-362.
 - ¹⁸ Salah ben Ali al-Shimrani, op. cit., p. 18
 - ¹⁹ Saad ben Abdelaziz al-Shuwaikh, Brain Death, Journal of the Saudi Fiqh Society, Issue 11, 2011, p. 298
 - ²⁰ Hamid Amari, Brain Stem Death in Light of Fatwa Regulations in Contemporary Issues According to a Maqasid Approach, Prince Abdul Qadir University Journal of Islamic Sciences, Constantine, Algeria, Issue 01, Volume 37, 2023, p. 113.
 - ²¹ Mohamed El-Mokhtar al-Shinqiti, Ahkam al-Jarahah al-Tibbiyyah (Rulings on Medical Surgery), 2nd edition, 1994, pp. 346-347.
 - ²² Saad ben Abdelaziz Al-Shuwaikh, op. cit., pp. 300-301
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²³ Mohamed El-Mokhtar Al-Shinqiti, op. cit., p. 350.

²⁴ Jabran Masoud, *Al-Ra'id: (A Modern Linguistic Dictionary)*, Volume 1, Sixth Edition, Beirut, 1990, p. 389.

²⁵ Ahmed ben Mohamed ben Ali al-Fayoumi al-Muqri, *Al-Musbah al-Munir*, Maktabat Lebanon, Beirut, 1987, p. 29, entry: Turuk.

²⁶ Mohamed al-Shahat al-Jundi, *Al-Miras fi al-Shari'a al-Islamiya (Inheritance in Islamic Law)*, Dar al-Fikr al-Arabi, Cairo, no date, p. 11.

²⁷ The same reference, pp. 18-19.

²⁸ Belhaj Al-Arabi, *Provisions on Inheritance and Bequests in Light of the New Family Law*, second edition, Dar Houma Publishing and Distribution, Bouzareah, 2015, p. 82

²⁹ Mohamed Al-Shahat Al-Jundi, 'Inheritance in Islamic Law', Dar Al-Fikr Al-Arabi, Cairo, no year, pp. 13-14.

³⁰ Decree No. 75-58, dated 26 September 1975, containing the amended Civil Code, supplemented by Law 05-10 dated 20 June 2005, Journal No. 44, 2005.

³¹ Al-Ta'im, Hani, *Fiqh al-Ahwal al-Shakhsiya fi al-Miras (Personal Status Law in Inheritance)*, Dar al-Shorouk, Amman, no year of publication, p. 46.

³² Supreme Court, Civil Chamber, File No. 24770, issued on 14/04/1982, Judges' Bulletin, Special Issue, p. 153.

³³ Belhaj Al-Arabi, *Al-Wajiz fi al-Tarikat wa al-Mawarith faqma al-Qanun al-Asra al-Jadid (A Concise Guide to Inheritance and Bequests under the New Family Law)*, second edition, Dar Houma, Algiers, 2015, p. 85.

³⁴ Mohamed Al-Shahat Al-Jundi, op. cit., p. 12

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³⁹ Badr al-Mutawalli Abd al-Basit, op. cit., p. 682.

⁴⁰ Mira Walid, *Determining the Time of Death and Its Impact on Rights in Light of Medical Developments*, *Al-Ustadh Al-Bahith Journal for Legal and Political Studies*, Issue 02, Volume 06, December 2021, p. 1353.

⁴¹ Mira Walid, op. cit., p. 1354

⁴² Salah ben Ali al-Shamrani, op. cit., pp. 56-57

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⁴⁴ Salah ben Ali Al-Shamrani, op. cit., p. 57.

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