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KAZAKH INHERITANCE LAW AND ITS DIFFERENCE FROM OTHER LEGAL SYSTEMS

After gaining independence Kazakhstan started studying its historical heritage in the context of spirituality of Central Asian nations. The preservation of historical and cultural heritage can serve as boon to renewal of spiritual identity. The research of Central Asian and Mawrenahr (Transoxiana) medieval scholars, as well as modern-day local and foreign scholars will help to uncover Turkic civilization from various perspectives of its historical evolution, in which Muslim theologians played a crucial role.

The inheritance law of Turkic people pre-and-post Mongol invasions was researched fragmentarily, and this makes the research critical and offer future perspectives. "In the world there are many cultural layers, which exist over-centuries, but remain undiscovered for public. Consequently, they are unrecognized and not given due" quoted a famous historian Salyk Zimanov.

Each modern state has its unique historical evolution. The governmental forms and their legal systems were shaped over course of centuries depending on religion, culture, policy, economy and geographic location. The legislative establishment was formed based on ethnic and cultural factors. Building national legal framework is one of key tasks for every state and hence research of inheritance law in Kazakh steppe is important.

Methodology: research work was written using theoretical works on history of religion, theory of law, history and theory of culture, ethnographic, Islamic law, Kazakh khanate law and other. The historical-comparative analysis and synthesis method were applied to study historical succession of Turkic spirituality for medieval period.

Key words: history, cultural heritage, inheritance system, Islam, Turkic peoples.

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Қазақ мұрагерлік құқығы және оның басқа құқықтық жүйелерден айырмашылығы

Тәуелсіздік алғаннан кейін Қазақстан өзінің тарихи мұрасын Орталық Азия халықтарының руханият тұрғысынан зерттеуді бастады. Тарихи-мәдени мұраны сақтау рухани болмыстың жаңаруының негізі бола алады. Орта Азия және Мавренахр (Трансоксиана) ғалымдарының зерттеулері, сонымен қатар қазіргі жергілікті және шетелдік ғалымдар түркі өркениетін оның тарихи эволюциясының әр түрлі тұрғысынан ашуға көмектеседі, мұнда мұсылман теологтары шешуші рөл атқарды.

Моңғол шапқыншылығына дейінгі және одан кейінгі түркі халықтарының мұрагерлік құқығы үзілді-кесілді зерттелді, бұл зерттеуді сыни етеді және болашақтың перспективаларын ұсынады. «Әлемде ғасырлар бойы қалыптасқан, бірақ көпшілік үшін ашылмаған көптеген мәдени қабаттар бар. Демек, олар мойындалмайды және уақытылы берілмейді», – деген атақты тарихшы Салык Зиманов.

Әрбір қазіргі заманғы мемлекеттің өзіндік тарихи эволюциясы бар. Мемлекеттік нысандар және олардың құқықтық жүйелері ғасырлар бойы дінге, мәдениетке, саясатқа, экономикаға және географиялық орналасуына байланысты қалыптасты. Заң шығарушы институт этникалық және мәдени факторларға негізделген. Ұлттық заңнамалық базаны құру әр мемлекет үшін шешуші міндеттердің бірі, сондықтан қазақ даласында мұрагерлік құқығын зерттеу маңызды болып табылады.

Әдістеме: зерттеу жұмысы дін тарихы, құқық теориясы, мәдениеттің тарихы мен теориясы, этнографиялық, ислам құқығы, қазақ хандығы құқығы және басқа да тақырыптар бойынша

теориялық еңбектерді қолдана отырып жазылды. Ортағасырлық кезеңдегі түркі руханиятының тарихи сабақтастығын зерттеу үшін тарихи-салыстырмалы талдау және синтез әдісі қолданылды.

Түйін сөздер: тарих, мәдени мұра, мұра жүйесі, ислам, түркі халықтары.

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Законодательство в области наследования у казахов и его отличие от других правовых систем

После обретения независимости Казахстан начал изучать свое историческое наследие в контексте духовности народов Центральной Азии. Сохранение исторического и культурного наследия может служить благом для обновления духовной идентичности. Исследования средневековых ученых Мавераннахра (Transoxiana) и Средней Азии, а также современных местных и зарубежных ученых помогут раскрыть тюркскую цивилизацию с различных точек зрения ее исторического развития, в котором мусульманские богословы сыграли решающую роль.

Закон о наследовании тюркских народов до и после монгольских нашествий был исследован фрагментарно, что делает исследование критическим и открывает перспективы на будущее. «В мире существует много культурных слоев, которые существуют веками, но остаются не открытыми для общественности. Следовательно, они не признаются и не получают должного», писал известный историк Салык Зиманов.

Каждое современное государство имеет свою уникальную историческую эволюцию. Государственные формы и их правовые системы формировались на протяжении веков в зависимости от религии, культуры, политики, экономики и географического положения. Законодательное учреждение формировалось на основе этнических и культурных факторов. Создание национальной правовой базы является одной из ключевых задач для каждого государства, и поэтому исследование наследственного права в казахской степи является важным.

Методология: исследовательская работа была написана с использованием теоретических работ по истории религии, теории права, истории и теории культуры, этнографического, исламского права, казахского ханства и др. Метод историко-сравнительного анализа и синтеза применялся для изучения исторической преемственности тюркской духовности в средневековый период.

Ключевые слова: история, культурное наследие, система наследования, ислам, тюркские народы.

Introduction

The following factors acted as catalyst in systematic evolution of Kazakh law:

1. Vast territory
2. Migration and unification of nomadic and seminomadic folks in vast steppe, stretching from East to West, coupled with fall and change of political and governmental systems, had led to formation of “free zone” with cultural and legal democratic traditions.
3. The fragmentation resulted in regulation of social relations and enhancement of regulative legal framework. Kazakh law differed from other legal systems by solving disputes and precedents with involvement of the society, whereas the nomads’ legal framework interrelated principles and legal standards. These standards mingled with customs, traditions and lifestyle of nations, who inhabited Central Asia and medieval Kazakhstan. Kazakh law consisted of democratic principles outlined in

“Desht-i-Qipchak”, which envisaged mainly financial liability as punishment (Zimanol, 2005:190).

Consequently it is not surprising that they survived in form of ethnographic folklore, oral tradition, like “Seven Laws”, Genealogy, heroic epos “Koblandy Batyr” and other. Given the fact that this Kazakh law was not documented, the genealogy represents a key source to reconstruct specific political culture of the nomadic nations. The nomads practiced genealogic traditions of transferring lineal, patrimonial and tribal information from generation to generation, including toponymics, legends and myths. The genealogic tradition was unique in terms of social tool to regulate family and marriage issues, inheritance right and kinship system (Tulibayeva, 2004).

Justification of the choice of article and goals and objectives

The study and preservation of the historical and cultural heritage of independent Kazakhstan is necessary for the renewal of spiritual identity. Studies

of the works of Central Asian medieval scholars, as well as modern local and foreign scholars, reveal the features of Turkic civilization from various points of view, its historical development, in which Muslim theologians played a decisive role.

The law on the inheritance of the Turkic person, which existed before and after the Mongol invasions, was investigated fragmentarily, which adds to our study a critical aspect and opens up prospects for the

future. Each modern state has its unique historical evolution. The governmental forms and their legal systems were shaped over course of centuries depending on religion, culture, policy, economy and geographic location. The legislative establishment was formed based on ethnic and cultural factors. Building national legal framework is one of key tasks for every state and hence research of inheritance law in Kazakh steppe is important.

Nomads' legal principles can conditionally be divided into several groups:



These principles were interrelated and represented a common legal system structure, which ensured its internal unity, harmony and independence, capable to stand against external impact. The unity of traditional law principles and their underlying views together with legal rules and institutes ensured of the latter's influence on people behavior and actions (Ogoltsova et al., 2010)

History of evolution

Islam was a dominant religion for Kazakhs with Turkestan, Khorasm and Bukhara (Mawrenahr cities) being its major expansion centers. Islam did not gain strong ground among ordinary people, who performed the religious duties mingling them with Tengri cult (sky god). Kazakhs worshipped to their ancestors, kept images of their fathers calling them buttengri. Abulgazi wrote that after death of respected man his son or daughter would make a doll in his own similitude. They then kissed and touched face of that doll, brought food for it (History of Kazakh SSR, 1957:187).

In Kazakh law the justice was reached by reconciliation of parties. Like Islamic law, it also actively applied fraternization institute. The inheritance and participatory share rights were exercised by transferring property from elder to younger generation. N.I.Grodekov claimed that a father of family would divide all property into dowry for daughters and bride-money for sons except for youngest son, leaving some share for himself and his wife, or in another option – share for funerals. The funeral share included weapon, clothes, tools, food supply, horses, bulls, hunting birds and dogs. They were all buried or burnt together with a dead

man. The minimum share was determined by father, but Council of Elders was summoned from time to time to protect right of sons and limit father's power. Father was not entitled to deprive sons of their shares. Even depriving them of shares due, father was required to give his sons good horse or camel equal to share or pay for it. The Kazakh and Mongol government and law institutions had numerous similar rules. Great Yassa Code applied traditional law concerning the inheritance right.

Scientific research methodology

This research work was written based on some outstanding theoretical works on history (Masanov) of religion, theory of law (Zimanov), history and theory of culture, (Tulibayeva) ethnographic, Islamic law (Fox), Kazakh khanate law (Shakirov) and others. The historical-comparative analysis and synthesis method were applied to study historical succession of Turkic spirituality for medieval period. The most interesting and new part of our study was the work on the Al-Zhandi manuscript, on the basis of which many positions in the field of inheritance were clarified.

Results and discussion

Yassa Code stipulated sharing inheritance among heirs-sons after death of father with elder son receiving the bigger portion. Yurt (nomads' house) was inherited by youngest son considering what status his mother had in marriage with father. The dowries were deemed to be wives' property and left with them. Under Holly Traditions father or mother's property was distributed among heirs-sons, but youngest son was privileged to inherit his father's house (yurt) and consequently based on Rashid ad-Din's writing all property and household

were succeeded to him. The youngest son was called “owner of the house”. Taking extra caution towards their wives’ cattle the husbands kept it apart. In doing so, father attempted to leave their wives’ property for their sons.

As far as daughters concern, they inherited equal shares in form of future dowry. Compared to Kazakh law, property was transferred by fathers to their sons during their lifetime through giving shares after they reached age of minority or marriage. The share hugely depended on father’s financial situation and mainly included cattle. The special point was share meant to pay bride money. This fact indicates dissociation of patriarchal family into small parts, which further created individual and independent families with their property being controlled by fathers of those families. Only such inheritance tradition could ensure just equal property division and prevent discord among close relatives.

Thus, inheritance law was exercised by sharing fathers’ main property with family being its subject. The fathers were not entitled to dispose absolutely family’s assets, he could leave a certain portion for himself, while sons were given share of inheritance and bride money, daughters received dowry.

Comparing inheritance norms outlined in Yassa and traditional Kazakh law, we emphasize fact that the property was distributed equally among close relatives based on traditions. Concerning this N. Masanov told: “it regulated transfer of property and permanent distribution of wealth in nomadic environment with traditional legal status”. Kazakh law did not have inheritance institute as father of family did not transfer property to one person. Khan power succession is worth special attention. Kazakh nomadic society had the following khan power scheme: khan – brothers - sons – brothers’ sons. The scheme demonstrates that khan’s brothers had advantage over his sons, who succeeded power in case of absence of brothers. For instance, Tauke khan became a khan as Jangir’s son. After his demise, throne was taken over by his son Bolat. Khan Bukey left the khanate to his son Jangir at age of 15. This was recorded in letter written by Bukey Horde sultans and elders to Shoke sultan: “during his lifetime a deceased khan made a will in our presence appointing his son Jangir Bukey-uly of blue-blood origin as Kazakh ruler”, which made him a governor of his younger brother sultan Shigai” (Urozbayeva, 2007).

The evolution of family and intra-family property in medieval Kazakhstan at its development level was widely reflected in the inheritance law. The inheritance procedure from senior to younger

generation was exercised by giving share to sons during their fathers’ lifetime, this procedure ceased to exist in late XIX century. The similar inheritance scheme can be traced in Iraq school of Islamic law, mentioned by al-Jandi in his work “Chapter on inheritance”, where the religious scholar compared opinions of Balkh and Iraq theologians concerning this issue and claimed: «Anyone who wants to have in-depth knowledge of fara’id (division of property) must know that heir inherits either from alive or deceased person”. Balkh religious scholars told (be Allah mercy upon them): inheritance is succeeded after death of testator as he is deemed to be owner of his property while he/she is alive. If an heir inherits and controls property in that state, that property will belong to two individuals, which is illogic.

Iraqi religious scholars claimed: heir takes control of property in last moment of testator as inheritance is transfer of property to heir after death of testator, who ceases to own his property. The transfer of property proves that inheritance is respected between husband and wife without causing any disagreements (Al-Zhandi, 13B).

This inheritance form shows how big patriarchal family has been fragmented into small parts with property being succeeded from generation to generation. The major heir was youngest son only, who, in Fox’s opinion, was not singled out, on the contrary, it narrowed down a list of property to be shared among elder sons. Such scheme, when property was inherited by sons during their father’s lifetime, created universal succession as inheritance included transfer of all right and obligations, related to fathers’ property and household. Unlike the share, inheritance procedure gives impetus to civil-law relations based on private property. The debts were not annulled due to father’s death. On the contrary, an immediate heir, being youngest son, assumed debt liabilities to creditors at amount of his inheritance. However, in view of shares distributed to other sons, who were not liable for their fathers’ debts, they received less inheritance and consequently significant part rested within family. To confirm Fox’s opinion Grodekov gave an example, when judges dismissed creditors’ claims to sons by making a legal decision based on precise customs. This type of law was a single codified document which encompassed rules of traditional law and Shari’at, for instance Seven Charters by Tauke Khan” (Shakirov, 2012).

Institute of will

In Kazakh tradition the will was close to act of donation by its nature. These included

personal items or guidance. According to Krasovsk and Grodekov, weapon and dresses were shared among sons. The other property was subject to inheritance procedure. One example of judge legal decision is following: «A guy called Bekzhan would leave adobe home with household items after his death: 2 blankets, 2 cushions, matrass, washstand, wash basin, samovar and kettle”. There was no mentioning on cattle, as it was distributed under the inheritance

law. The spiritual wills were made in presence of relatives and mullahs, which indicates influence of Islamic law (Fox, 2008).

Spouses’ property rights:

The dowry was considered a special famine property, which was cited by scholars such as Levshin, Krasovski, Gaverdovski. The girls were given in marriage for bride money, received by their fathers, custodian, close relative. The bride money consisted of three levels (Table 1).

Table 1 – Classification of bride money



The dowry was a sacred property of wife and consequently she was motivated to increase it. In case of her death the property was inherited by her children. The different opinion was suggested by D’Andre, who thought that dowry was not only women’ property. Father of family would give part of his cattle to each his wife, and then she combined that share and dowry, making a separate property. The exception was senior wife, *baibishe*, who fixed portion of share in her own discretion. Each junior wife, *tokal*, lived in her adobe home with her children, while senior wife would leave in husband’s house. Subsequently, she inherited her husband’s

property after his death. The poorer family was, the higher probability there was for junior wife to become a servant maid.

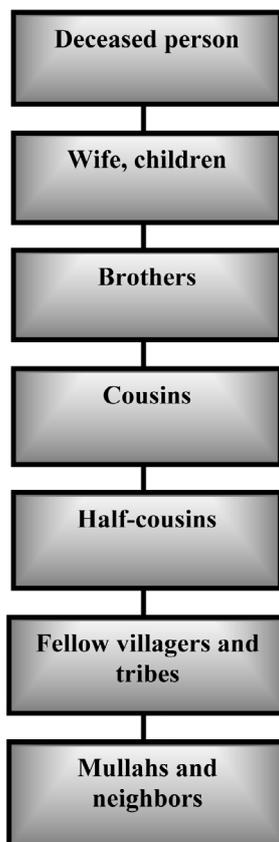
As can be seen from the above, Kazakh inheritance law applied universal succession, which did not annul debt to creditors after death of father. The shares were not used to pay off father’s debts (Table 2). The debts were paid by those who received inheritance. Consequently, large portion of property, distributed among sons, was not used to pay off father’s debts. Only youngest son assumed financial liabilities. The sons received all property right and household.

Table 2 – Share of father

Elder sons	Received double portion than daughters, bride money, without any financial liabilities.
Daughters	Dowry
Youngest son	Inheritance, yurt, father’s household, bride money, financial liabilities
Wives	Own dowries, inheritance, share in some cases, dowries were inherited by their sons.
Mother, father	Not indicated.

Firstly, wives and children followed by brothers in case of their absence (Table 3).

Table 3 – Major heirs were:



The research results, received based on Chinese sources, revealed that Eastern Turkic nations applied the collateral inheritance at early stage of evolution of inheritance law. Such system was built upon throne succession scheme with core principle of unifying paternal and maternal parties or in form of rota system. The ethnographers’ theoretical researches of Eastern Turkic nations demonstrated that mothers put their efforts to keep household using paternal rights. They included household, inhabitants, rangelands, manufacturing facilities, cattle. For Turkic nations the relation with maternal relatives reflected inheritance right of whole community, tribe, marriage locations, sons’ settlement in their maternal uncles’ houses, avunculate system, adoption traditions and other issues thereon. This territorial inheritance differed from that of west Turkic nations, who used direct inheritance line – from father to son.

The precise description of collateral relationship was given by Yu.Broml, who claimed the following: “Communities applying collateral inheritance

system “elder brother – cousin (son of elder brother)”. That was a brotherhood family, which preceded patriarchal system and interim only. Such inheritance system encompassed both paternal and maternal bloodlines”.

In brotherhood family the relatives included a brother, cousin (brother or sister’s son) and maternal bloodline. Mahmud Kashgari’s dictionary contains a word, meaning “close relations among maternal uterine brothers and enmity among paternal brothers”. “Paternal brothers fight with each other in anger, while maternal brothers support each other”- qadas quma uruk, ogas oru tartar. Most Turkic nations called a maternal uncle as tai-dayi, which was also used in relation to mother’s relatives, including grandfather.

The grandfather had a similar relationship towards his grandchildren as that of uncle towards his cousin or elder brother towards youngest brother. To sum up, we observe grandfather had a high rank in the inheritance law and Islam. Below are Turkic terms to represent relatives based on Kul Tigin Monument inscriptions (Table 4).

Table 4 – Turkic terminology of relatives (Kul-Tigin Bilgekhagan)

Uncle -kagan	In classical kinship system means “paternal relatives who are older than elder and youngest brother of my father – younger uncle”.
Top-down heirs after them	Written on one of Yenisey inscriptions from Uibat (E-32). Its fourteenth line contains elder relatives, not lineal, uniting elder maternal and paternal relatives.
Maternal cousin	Youngest brother, cousin, as S.Abrason wrote: Paternal and maternal relatives, supposedly signs of <i>matris localis</i> marriage, thereby family included not only father’s children, but also sister’s children, which is further evidence of joint residence of married brothers and sisters
Cousins’ travel to maternal relatives or uncle, married woman’s travel to her uncle upon lapse of one year or few years later	Maternal relatives

The maternal uncle had an important status in family. He was entitled to bride money, share of dowry, negotiate marriage issues, sometimes was involved in building yurt, giving names in line with religious rules, presenting cattle to cousin, paid all marriage expenses, acting as father. In some narrations of Altai nations, a cousin was given his maternal uncle’s name. Concerning relations between uncle and cousin Kazakhs told the following: “your hands will shiver if you beat cousin”.

As can be seen from the above, unlike their western counterparts the eastern Turkic nations used collateral relationship in inheritance matters by uniting maternal and paternal bloodlines, which caused discords. Such inheritance system was based on eldest brother – youngest brother, while father and son kinship contradicted ancestral relationship (Torlanbayev, 2007).

Turkic nations were not homogenous like Persian and Arabs. The heterogenous tribes united and created new alliances, waged wars against or conquered neighboring states, but sometimes were defeated. Moving from one tribe to another they were given various names. If two Turks intended to become relatives, they drained blood from their bodies mixing it with cow or horse milk, and then drank one after another. This ritual made them blood brothers *anda*, phrase *kuda-anda* possibly derived from that word (Kudaiberdiuly, 1990). It should also be noted that Kazakh tradition of *amengerlik* gave rise to inheritance law, under which husband’s relatives, namely brother married a widow acting as *amanger* and was deemed an heir. This tradition reflected Kazakhs’ attitude regarding marriage, conti-

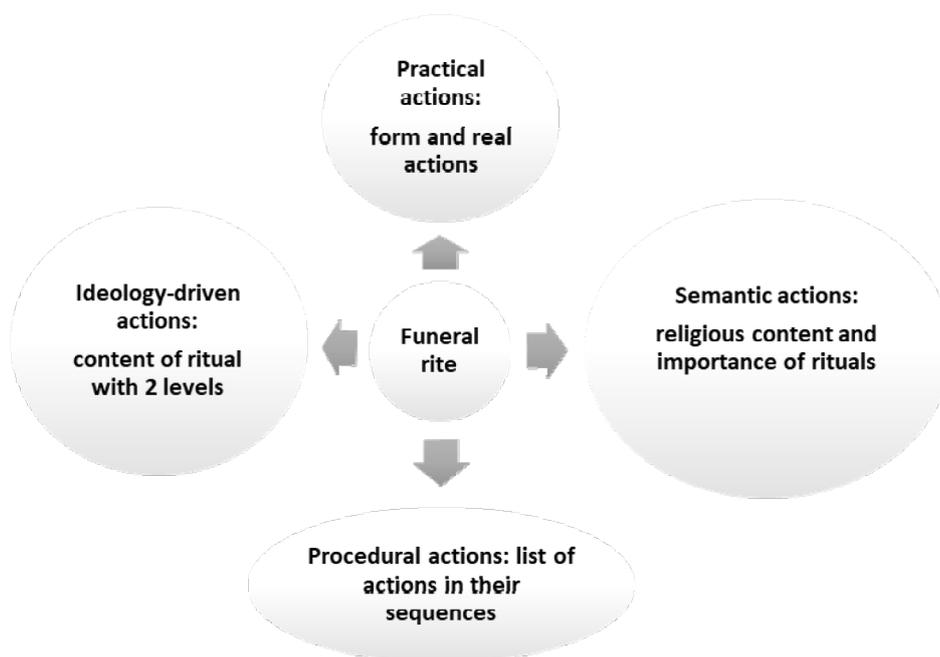
nity of clan and preserve property. If widow chose a candidate not from *amanger*, she was deprived of title to her deceased husband’s property and left house with her dowry. That was a special form of eviction. In case of marriage, she received 1/6 or 1/8 portion of property. If widows were two or three, property was distributed among them. Under such circumstance, sons were taken by custodians from relatives along with their wealth. The daughters left with their mothers, who bestowed them in marriage and took bride money for them. Consequently, daughters were deprived of share in their father’s property. In XV-XVI centuries there were grants of land which transformed into inheritance right called *soiurgul* (*amangerlik*, n.d.).

Funeral ceremonies

The exequies or funeral ceremonies rites are combination of rituals connected with final disposition of corpse and burial, post-burial memorial actions in line with predominant religious practices, including the following factors (Tulibayeva, 2004). (Table 5).

Kazakhs practiced ritual ceremonies, mixing them with Islam, for instance, purification and burying a deceased man facing Makkah, and pagan Tengri religion. The belief in afterlife caused Kazakhs to put a deceased man’s arrow, lance, head of favorite horse, saddle, including food and drink in the grave. The night guard was deployed at house of deceased man. The prominent and noble individuals would be buried in Turkestan. Kazakhs’ ancient customs included burying with 7-9 horses, which were taken to a dead man’s house with colorful cord and slaughtered.

Table 5. Cumulative practical-ritual actions of funeral-memorial rite



The horses were late replaced for different animals. Instead of burying animals with deceased man, Kazakhs would distribute their meat to poor, who, holding an end of colorful cord and sitting next to dead man's leg, swore to accept all his sins. In late XVIII-XIX centuries the cattle were taken by mullahs to transfer a dead man's sins to another person. The dead man's wife went into mourning for whole year by wearing a black head-dress. In case of nobles and wealthy individuals, their horses wore mourning rugs with tails being cut off. The horses were slaughtered one year later with their heads, hooves and furs being left in their masters' graves. Upon lapse of year the mourning ended, monument was erected from mudbricks, while tumulus was made using stones, shell gravel in Mangishlak and North Caspian area. Another option was building luxurious mausoleums from fired brick and decorated with magnificent ornament (History of Kazakh SSR, 1957).

Conclusion

During the research we analyzed property relations, namely inheritance institute and its transformation during historic evolution in Central Asia taking the Kazakh Khanate as example. Based on numerous sources we could determine a circle of key heirs, their shares, difference from other inheritance laws such as Mongol Yassa Code and Islamic rules. By analyzing those sources, we can conclude Islamic rules and Kazakh Law had several common features and were distinguished with fair distribution of heritage and preserving property within community and family. The nomadic lifestyle created a unique inheritance model in terms of legal succession across various regions, north and west groups. In south regions there was religious inheritance system due to Islam expansion in Mawerannahr. The research analysis showcases that heirs' financial status influenced portion of inheritance.

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