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Memorization Swear Process Review in the Statutory Rules

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ABSTRACT: Memorization wisdom and logic of the oath, in the case of the deceased (heirs of deceased), mandatory or optional nature of the oath of the claimant, the possibility or impossibility refused to read it, and why each current or non-current principle Rooming, legal status of the child, Crazy absent, see the proof of claims with and without resorting to swearing, fighting or the official documentation, such as issues surrounding Memorization oath that makes motivated the authors to investigate and critically analyzing Memorization oath, and the need to amend the 1333 Act civil. This result was obtained by analyzing the issue, by Memorization to convince the judge, and the removal of doubts, he explained religion, because the deceased was not in self-defense, and that even if it was alive, his acquittal evidence presented out.. Hence if the reasons adduced by the applicant or the defendant's statements, the defendants, the judge fixed the survival of religion is, fixing the oath Memorization do not cancel. On the other hand, the criterion Memorization oath, in the case of the child, and the Hidden crazy, but I swear it Rooming against the current, and the proof issues with Evidence no need for another reason, to prove the exceptional figures there is, and can not be used, by the issue of unity and sentence passed on the matter to the matches, so the legislator should amend Section 1333 Q.M, the importance of the oath, in the latter case, the his nose. , On the other hand, Article 1333 Q.M, about the need to swear Memorization, in the case of documentary quarrel official document, the applicability of Article 278 Q.A.d.m, which is necessary in both cases admitted in conflict, is. It seems, that the will of the legislator's position Article 278 Q.A.d.m, which is more logical than the official document, the logical question is, how many died during the life of its provisions do but to prove his heirs have access.

Keywords: by, refusing to swear the oath Memorization.

INTRODUCTION

"The importance of the oath, as a means for the settlement of disputes, historical background is known, has long been a practice that, if not the means to access the supernatural forces to ask a disease, for example, accused of being cast into the fire, if it is truthful, get rid of every sinner, the Lord's anger burned, and he rewarded his aggression." (Katoozian, 2008: 181).

"Today, not only externally easier oath, and the procedures it has been reduced, in some countries the law, religious and metaphysical face it, it faded in the face of civil society: for example, in French law, By the mid-twentieth century, writers generally believed to swear religious figures, and with the particular combination of civil law, the issue is not expected to swear on oath to bring some sort of attachment to the supernatural were considered. However, in recent books about the civil works oath, and opposition to the established principles. In other words, the commitment and the affidavit that was done against God, conscience and moral commitment today to be, and where there is no supernatural elements." (Katoozian, 2009: 59). It seems nowadays, with the overwhelming effect of keeping the oath, the relative effect of the oath that is effective between the parties and deputy party, the evidence disputing his place of religious origin, as has the lyrics: "uttered One should not swear by the Almighty." (Article 280 Q.A.d.).

Part One: swear

swear By this means, the person was entitled to verify the accuracy of statements unconscious, put the witness of God, sworn, and thereby to prove their claims, or as self-defense, and proved to be unfounded the plaintiff's claim, the resorts. ". (Vahedi, 2001: 47).

Part two: Types of oath

By the general, and the judicial oath be divided into two Category. Swear an oath (which is known in jurisprudence The right of the decade), in the sense that, the promise that, or was obliged to leave the practice in the future. Such oath as president, with lawyers and judges, prior to the duty to remember. The oath, no direct connection with the case evidence, and therefore outside the scope of this study. Sworn proof of that, the evidence is debatable, and as always in the presence of the judge to be proven, to say the judicial oath. Judicial oath means putting God's witness in the court of the existence or non-existence of matter, who uttered the oath claims. (Vital, 2005: 413) Sworn proof of (judicial), according to the legal provisions can be divided into three categories: fight or Betty decisive oath, the oath and swear Memorization Further, the following are checked. Another oath inspired by law, Article 5 of the Regulations referred Hays oath, and the "oath to deny science" is.

Part three: Memorization swear

The legal heirs of the deceased in space, including the claim (or the same religion) the obligation mate, despite the sufficiency of evidence and proof of claim, because the deceased is not survived, to defend himself, and therefore it is likely that during the life of the deceased rights claims are gone, and the fall of the commitments made, and the heirs have no knowledge of these obligations fall. Therefore, the court shall issue a sworn Memorization Etienne, the main reasons for accepting claims process, and solely for the survival of the judge and the refusal, the applicant swears Memorization "representing, therefore, as claimed in claim on the deceased, there is no evidence to prove their claims sworn Memorization positive claims he is not alone. And the proof of evidence, according to the rule and Gradation sequence, turn the oath Memorization looks, and in accordance with Article 278 Q.A.d.m, on oath, it is proving to be the plaintiff's claim. And if he refuses to take the oath, his right is void. And obviously oath rejection capability and transmission, not read. Therefore Memorization oath, the oath Docility are examples. Under Article 1325 of the Civil Code, by the evidence is debatable. In fact, the news oath, ritual whereby a person, God or other sacred, or bear witness to the truth can be told. (Sarir, 2009: 175) With regard to the amendment of Article 1335 of the Civil Code, applicable in cases that sort, there is no other evidence, or other reasons are weak and swear, boost, and therefore resorting to swearing enterprises as a last resort is cited . And in accordance with Article 281 of the Civil Procedure Code, the court shall issue Etienne oath, and delivered to the provisions of the parties, and adopt regulations Q.A.d.m oath in court soon be term_Majesty (Vallah, Bellah, Tallah), or the name of the Almighty God to other languages spoken, and if you need to concentrate, pay it in terms of quality, time, place and terms determined. Is it possible conflict Memorization swear, there are other reasons?

"For example, if after the issuance Etienneoath, and the oath, the heirs of the deceased reasons not to seek survival and fall right offer, with regard to the number of arguments and denied Contrary to together on a single issue, namely the survival or non-survival of right

Looks at this topic, unlike Betty oath, sworn after Memorization, inconsistent statements and evidence that will be accepted as a compromise to prevent the oath Betty next hearing is incompatible with the statement, while in Memorization oath, any Interests and no compromise. Betty's oath, the oath demanded his claim, the defendant, and the defendant, and can swear, or it rejects the claim, and therefore have the opportunity, either because they do not cite, or if they were cited against his face stuck to fulfill its injustice, and swear falsely opposite side, but this claim is Memorization oath has sworn, and unfair to the defendant the opportunity to no swearing and opportunities, as well as his later arguments heard knowing. (Amrovan, 2011: 141-140). Memorization oath in the process, the process is considered:

1) convert to; 2) the right to survival

1) The oath Memorization Basically, by keeping the deceased died (Negative confession is subject to profit), seems to be the object of desire is the testimony or documents, according to the final subparagraph of Article 1333 Q.M, in the case of claims based on official document, Memorization oath declares that deny the existence of truth. It appears in the analysis and Articles 278 Q.A.d.m, and 1333 Q.M, adjust the base (Whatever the combination of the first possible launch) should be attached to the resolution:

If a claim on the deceased official documentary evidence that the ability to prove the existence of God and its survival, but to adapt immovable property Articles 22, 46 and 48, the case is confirmed.

For example: the expropriation case (abstraction of iodine), the heirs of the deceased who claim to be contentious property, confiscation, and the proof will be adhered to an official document.

But the fight against the heir-faceted demands, claims, demands of the testator, and documented in official documents (contracts Records), on the assumption of an official document proving the right track, but its survival is doubtful due to the death of the deceased, and Memorization oath is required.

"From the legal point of view, when one of the minor or insane, or absent from the proceedings, the possibility of a lawsuit over its mate, and wants to learn Memorization oath or not! , The necessity of an oath is stronger, because it does not exist, and those who have sworn to do, immature and insane and absent compared with their mate. For all of this, we can not defend themselves."

CONCLUSION

1. Memorization oath, unlike see suffice to prove the issue is. Despite the existence of Evidence claim Legislators oath, is required.
2. Memorization swear by the Rooming also in conflict. Because if proved "the right" to its survival, in case of doubt or deterioration in the fall, will Rooming. As a result, there is no need to swear. The number "1650", dated 19/10/29 Branch Supreme Court, in this verse is: "If you want based on the evidence, the court's ruling, the survival of religion is a constant, Etienne sworn duty to seek lapses.
3. The context of Article 1333 of the Civil Code Given a choice judge at the request of the oath, the claimant understood, taking the appearance of the word "could" result in unreasonable for it, and I swear to Memorization is dependent on the will and desire to become a judge. So, you should take a look at, a claim that Article 278 Procedure Code, the judge is required to take an oath to claim, he comes not Given a choice.
4. Wisdom Memorization oath, in the case of children, crazy and there is also absent. Since this kind of exception has sworn, and will not be able to resort to concepts, such as the Union of the issue and subscription of (total value), and recently extended the mandate of the above claims. As a result, it is suggested, in order to avoid immediate reference rather legislator, and the need to amend Article Memorization oath, in case the child, and the Hidden crazy state.
5. Law Report, based on the necessity of the oath, where, despite the evidence to the official document and it is necessary in the case of documented case of ordinary document is not based on correct matches. In the case of the deceased (heirs of deceased), whether documentary or the official document case, survival is in doubt, and not that of an official document, there is no doubt, because the deceased may have signified an official document acted, but the heirs do not have access to positive evidence. In other words, logic and reason, I swear it is also understandable in the case of an official document, and except for the cases documented in the official document is not logical. 278 of the Code of Civil Procedure, to correct any distinction between official document, and not an ordinary file.
6. Since oath Memorization wisdom is that the language is not dead, and is alive even if the reasons set on giving the right to express and handle its obligation to prove it, so it must be held that the necessity Where is the oath, the judge did not prove the existence of faith. What if proven survival of religion to judge, according to the evidence adduced by the applicant, by giving him something is canceled. For example, if the heirs of the deceased, stated that the deceased in the last moments of his life, and at the moment of death to the survival of their religion, to the appellant confessed. Finally, in each case the judge through legal reasons or other reasons, or statements made by the parties to meet the survival of religion does not need to swear Memorization.

Section 1333: "In the case of the deceased, if the premium is fixed, and its survival is not consistent with the ruler, the ruler can. The defendant wishes to swear on their right to survival. In the case of a person who, since he is demanding swear, I swear you can not deny the defendant. Judgment in the case of this matter, a court official document is not current. "

Contemplated in the context of that Article, the following results are obtained:

- "Claim on the deceased" is not a correct interpretation of what the fight is dead, and the trial will be heard according to Article 2 of the Civil Procedure Code, the court issued a non-audition. With the death of the deceased debtor, the right and the duty not take, and Debt awarded her wand, and fights to the heirs space, as vicar general of the deceased stated that, ultimately, the proof of religion, against the 869 Q.M and religious rule, " Debt provider of legacy " religion of the wand of the screw. So you have to replace the incorrect interpretation of the term "claim of the heirs of the deceased" was used.
- Article underlying these Memorization oath, according to the same principles and practice of the principle, the implementation and adherence to the principle Rooming. Rooming that, Lion and brought defined it: " Keep what was on what was ", a former channel of the doubt on the viability of certainty that the accessory should not doubt his mind, and that the former was determined to survive. Here the principle is the same, and impromptu, as the uncertainty in its decline, survival should be right Rooming. Fixed the right, so that Cautious, with doubt its survival, the right to survival Rooming heading. "Does not invalidate uncertainty Ba sing but pounced certainty other," the oath Memorization result of discussions at the 1333 Q.M is quite contrary to the principle Rooming.
- Appearance, "said the ruling could ask for ...", "Given a choice judge at the request of the oath, the prosecutor used. But this appears to be dropped, either by obtaining the appearance of the word "may" in the illogical conclusion that, according to the judge, the prosecutor in the case you want to take an oath, and the other does not, This duality and the chance encounter preferences, and different judge in the same case, unjustifiable, and is an example of a double

standard. It must therefore be assumed that, as the question of the survival of the judge is required to take an oath not Given a choice claims.

- The justification Memorization oath said that Mitt is not in self-defense, and that even if it had survived, the plaintiff alleged that the reason for the decline may be due to heirs without obligation, he does not have access and swear to judge Memorization comfort, and eliminates uncertainty of his mind. Regardless of whether such a justification, and Causality is true or not, it must be said that this uncertainty, and the criterion in the case of official documents concerning the evidence is there. Because although a formal document, the document is normally a special reputation, and although it is contrary to the normal document, the question is heard, but in the case, the right to rely on the official document. Like ordinary document doubt, the survival of the official documentation to get there, and how many dead run signified the official document, and the obligation settlement is reached, the official document, in other words, to prove "the right" more credit ratio, the document is normal, but about "the survival of the doubt," the official or ordinary document is no different, as well as possible, the survival of the document to document normal, certainly not the same size, the possibility of such doubts about the official document, should be considered. Thus the distinction between official and ordinary, logical and rational in terms of the need or lack of need Memorization not swear.

In the case of Article 1333 of the Civil Code, the doctor Katoozian says: "In the fight against child and crazy, and absent who can not defend themselves, and the collapse of religious doubts remain hidden there, it can be Two measures Article 1333 Q.M, join the fight against the dead, and in this case the prosecutor asked Memorization oath, the law is different from group to participate in the (grand master), and the Union territory of issue of the warrant and spread to matches are preferred and some others, because of his opposition to the rule base and its exceptional features, special vow to fight Memorization know the deceased. It looks like the Civil Code, the latter has to follow. Because the tune of 1333 Q.M, they were willing, if appropriate, to the fights. Some jurists of exceptional sentence However, use of such a place, the need to attach the sworn proof of claim, assigned to the case, which is a subject of dispute claim religion is not the same and are added in the same case, the Its occupants are presumed heir, in case they are not dead (testator), but this claim with the appearance in 1333 Q.M, and Article 279 refers Q.A.d.m opposite, and right on the Go whether religious or concrete, as well as what the right eye, the dispute will be entitled to claim against the deceased and the loss of his property, and to the credit of the deceased are entitled to, and claims he is dead, (see Katoozian, 2009: 288-289). Aside from the fact that "the fight is dead", according to the authors of the common mistakes, such as a wand on him about it, a legal entity, you know, kind of like an idolater. Based on what you have available, you have the capacity factors "legal personality wand" to take place. Also does Memorization oath to fight the conviction, and the exclusion of the conflict on children, crazy and absent in spite of participation in the (total value), and the Union two problem true Without a weighted preference is not true. What is the unit of measure, unit requiring judgment. "Mitt Rooming right to survival, a Rooming existence." Doctor Langroodi, in a matter of civil law, the claims of the heirs of the deceased, is allocated. The 3492 article: "Mitt litigious dispute over a claim whereby the obligation, to prove Mitt" in the 3496 draft, said: "If in the case of the deceased, claiming to be an official document, accepted It is, however, exempt from Dexter Memorization, because of the obligation can be read in his life is to go one way or another." (Langroodi, 2009: 333) Failure to consider the doctor Langroodi: About the fact that, in the case of documentary evidence, the claimant should not be exempt from Memorization swear by them and Are concordant mind, but the use of the word "fight the dead," and "demonstrate commitment to duty," according to the Mitt can not be placed on the right and the obligation, to demonstrate a commitment to speak from the dead, is meaningless, uses the word "read" in a 3496 article about Mitt to end the conflict, what is the rational evident Mitt can not read is debatable, and it is not unheard litigious.

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