

# Inheritance according to the Five Schools of Islamic Law

Volume 7 of 8

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This work on the Shariah or Islamic Law offers a comparative study of the Divine Law that, according to authentic Islamic doctrines, embodies the Will of God in society. In the Islamic world view, God is the ultimate legislator. The five major schools that are used in the comparison are: Hanafi, Hanbali, Shafi'i, Maliki and Jaf'ari.

The present book, vol. 7 of 8, is dedicated to dissecting the intricate ways of Inheritance, the conditions and situations that may occur. The issue is presented according to the five Schools of thought.

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# Rules Concerning the Heritage

## The Heritage

The heritage (*al-tarikah*) comprises the following things:

1. That which the deceased owned before his death in the form of:
  - a) tangible property,
  - b) debts,
  - c) any pecuniary right, e.g. the right consequent to *tahjir* (demarcation of ownerless vacant land with an intention of cultivating it), where he intends to cultivate ownerless vacant land and demarcates it by constructing a wall or something of the kind, thus acquiring a right to cultivate it in preference to others; or an option (*haqq al-khayar*) in a contract of sale; or the right of pre-emption; or the right of retaliation (*qisas*) for murder or injury, where he is a guardian of the victim (e.g. if a person kills his son and then dies before retaliation, causing the right of *qisas* to change into a pecuniary right payable from the murderer's estate, exactly like a debt).
2. That which the decedent comes to own at his death, e.g. compensation for unintentional homicide (*al-qatl al-khata'*), where the heirs opt for compensation instead of *qisas*. The rule applicable to this compensation is the one applicable to all other properties, and all those entitled to inherit, including husband and wife, will inherit from it.<sup>1</sup>
3. That which the decedent comes to own after his death, e.g. an animal caught in a net that he had placed in his life, and similarly where he is a debtor and his creditor relinquishes the debt after his death or someone volunteers to pay it for him. Also, if an offender mutilates his body after his death and

amputates his hand or leg, compensation will be taken from him. All these will be included in the heritage.<sup>2</sup>

## Deductions from the Heritage

Different types of deductions are made from the heritage. Some of them are deducted from only a third of the heritage, and discussion regarding them has preceded in the chapter on wills. Some deductions are made from the whole heritage, and they too are of different types. Hence, if the heritage suffices, they will be completely met, and what remains of it after these deductions and the execution of the will, will be for the heirs. All the schools concur on this.

If the *tarikah* falls short of meeting these deductions, the more important among them will be given precedence over those of lesser importance. If anything remains after the preferred deductions are made, the next in order will follow; otherwise only the deductions of higher preference will be covered. The schools differ regarding the order of preference of these deductions.

The Imamiyyah state: The first deduction before any other thing, is to meet the *wajib* funeral expenses, such as expenses of ablution (*al-ghusl*), shrouding, carrying the body and digging the grave, if required, irrespective of whether the decedent has made a will to this effect or not. Therefore, funeral expenses, according to them, are prior to debts, irrespective of the debts being related to the fulfilment of religious duties (*haqq Allah*) or to creditors (*haqq al-nas*). They bring proof from the tradition narrated by al-Sakuni from al-Imam Ja'far al-Sadiq ('a):

أَوَّلُ شَيْءٍ يُبَدَأُ بِهِ مِنَ الْمَالِ الْكَفَنِ، ثُمَّ الدَّيْنِ، ثُمَّ الوَصِيَّةِ، ثُمَّ المِيرَاثِ

*The first thing which is deducted from the decedent's estate is the shroud (funeral expenses), then debt, then the will, and then the inheritance.*

The Imamiyyah fuqaha' differ among themselves regarding the case where a creditor has a right over the estate itself, such as where the decedent dies after mortgaging his property with a pledgee, the property being all that he owned. Here, a group of fuqaha' give the funeral expenses preference over the right of the pledgee, because of the general nature of the traditions which include the above-mentioned tradition of al-Sakuni in which no difference has been made between pledged and unpledged properties.

Other fuqaha' give precedence to the right of the pledgee because the owner of the pledged property is forbidden by the Shari'ah to exercise his rights of ownership, and that which is forbidden by the Shari'ah is like that which is forbidden by reason.<sup>3</sup>

After meeting the funeral expenses, the repayment of debts will start, irrespective of their being *haqq*

*Allah* or *haqq al-nas*, such as unpaid *khums* and *zakat*, pecuniary atonements (*kaffarat*), the returning of the *mazalim*,<sup>4</sup> the unperformed obligatory Hajj, and other similar religious and non-religious liabilities. All these debts are in a single category.

Therefore, if all of them cannot be completely met from the estate, they will be covered pro rata like the liabilities of an insolvent person,<sup>5</sup> allowing no exception to this except *khums* and *zakat*, provided these relate to the actual items of their incidence present, in which case the two will be preferred over other debts. But if these two are due (without the items of incidence being present), they will be treated as all other debts.

The four Sunni schools, along with the Imamiyyah, concur that funeral expenses are preferred over the debts payable from the estate before death. The four schools then differ among themselves in giving precedence to funeral expenses over debts relating to the heritage, such as an article which the owner pledged before his death. The Hanafi, the Shafi'i and the Maliki schools say: Those claims which are related to specific parts of the heritage will be given precedence over funeral expenses (*hashiyat al-Bajuri 'ala Sharh Ibn Qasim*, vol. 1, *fasl al-mayyit*, and Abu Zuhra's *al-Mirath 'inda al-Ja'fariyyah*, p. 40, 1955).

The Hanbalis observe: Funeral expenses will be preferred over all other claims and debts including a pledge, penal damages, etc. (*al-Tanqih fi fiqh al-Hanabilah*, p. 71, *al-Matba'at al-Salafiyyah*).

In short, according to all the schools, the funeral expenses have precedence over debts unrelated to specific items of the heritage, and the Hanafi, the Shafi'i and the Maliki schools give priority to debts related to specific items of the heritage over funeral expenses, while the Hanbali school gives priority to funeral expenses in this case. Some Imami legists favour the view of the three schools, and others concur with the Hanbalis.

## Heirs and the Decedent's Heritage

The schools concur that the heritage devolves on the heirs immediately after the death if there is no debt or will involved. They also concur that the remainder of the heritage exceeding debts and bequests stands transferred to the heirs. The schools differ whether that part of the heritage covered by debts and bequests will be considered transferred to the heirs or not.

The Hanafis state: The part which equals the value of debt will not be included in the property of the heirs. Consequently, if the complete estate is covered by debt, the heirs will not own anything from it. But they have a right to free the estate from the creditors by paying them their claim on the estate. If the estate is not totally covered by debt, the heirs will own the remainder.

The Shafi'i's and the majority of Hanbali legists say: The heirs will come to own the indebted part of the estate, irrespective of whether the debt covers the whole estate or only a part of it. However, the debt

will relate to the whole estate and the estate will be liable for it. (Abu Zuhrah, *al-Mirath 'inda al-Ja'fariyyah*).

The Imamiyyah differ among themselves on the issue; the majority of them hold the opinion that the estate will be transferred to the heirs whether totally covered by debts or not. The debts will be linked to it in one of the various ways, like a claim of pledge, or like the claim of damages resulting from the crime of a slave, or linked directly in a way not resembling any of these two ways. In any case, a debt will not hinder the actual act of inheritance, although it hinders the right of disposal in regard to that which is covered by the debt. This opinion is close to the Shafi'i view. (*al-Jawahir and al-Masalik, bab al-mirath*)

The result of the difference of opinion appears in the increase in the estate which takes place between the time of death and the time of repayment of the debt. According to the opinion of the Shafi'is, the Hanbalis and most of the Imami legists, the increase belongs to the heirs and they will dispose it without any hindrance from the creditors and others. But according to the Hanafi view, the increase will be subject to the estate, being linked to the debts payable from it.

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1. The author of *al-Jawahir* says: The preponderant (mashhur) opinion among the Imamiyyah legists is that those related through the mother do not inherit the compensation for involuntary homicide. As to the right to qisas it is inherited by all those who inherit the heritage excepting the husband and the wife, who, however, will inherit the compensation in lieu of qisas.

2. Al-Shaykh Ahmad Kashif al-Ghita, *Safinat al-najat, bab al-wasaya*.

3. This is the proof (dalil) mentioned by al-Sayyid al-Hakim in *al-Mustamsak, bab kafan al-mayyit*. Al-Shaykh Muhammad Abu Zuhrah, in *al-Mirath 'inda al-Ja'fariyyah*, writes: It is obvious in this situation that the right of the creditors relates to the property itself and supersedes all other rights to that property. Through this observation, the Shaykh attributes to the Imamiyyah a consensus concerning the preference of the right of the pledger over funeral expenses, while there is a difference of opinion among them on this issue, and neither of the two differing opinions is preponderant to justify the attribution of consensus.

4. There is a difference between the mazalim and usurped (maghasib) properties. The mazalim are those in which haram and halal wealth has been mixed and the owner is unable to discern due to his ignorance, while the maghasib properties have a known owner. The mazalim also differ from those properties whose owners are not known (majhul al-malik), because in the latter the ignorance is concerning the property itself and its being mixed with other property is not necessary. The rule for the mazalim is to give them away as charity (sadaqah) on behalf of its (real) owner when there is no hope of finding him.

5. Al-Sayyid al-Hakim in *Mustamsak al-Urwah*, vol. VII, mas'alah 83, says: This—i.e. pro rata distribution—is customary among us, and this is what is required by the principle of not preferring something without a cause for such preference (tarjih bila murajjih) as well as the tradition of the Prophet (s): "The debt due to God is better entitled to repayment," is understood not to imply a difference (between the debts due to God and the debts due to people); rather it solely explains that it is wajib to fulfil haqq Allah and that neglecting it is not permissible.

# Causes of Inheritance and Impediments

## Causes of Inheritance

There are three causes of inheritance:

- a. blood relationship (*al-qarabah*),
- b. marriage concluded by a valid contract, and
- c. *al-wila* '.

We can bring these three causes under two heads: consanguinity (*nasab*) and affinity (*sabab*). By *nasab* is meant blood relationship and *sabab* includes both marriage and *al-wila* '. *Al-wila* ' is a bond existing between two persons which creates between them a relationship similar to *nasab*. Hence a person manumitting a slave becomes his *mawla* and inherits from the latter if he has no other heir. We will not discuss here *al-wila* ' with its different meanings and forms because it has no practical application today, and will discuss only the two other causes.

Blood relationship (*al-qarabah*) is established between two persons through legitimate birth when one of them is a direct descendant of the other (such as fathers how highsoever, and sons how lowsoever), or when both of them are descendants of a third person (such as brothers and maternal and paternal uncles). Legitimate birth materializes through a valid marriage as well as through 'intercourse by mistake.' But the marital bond will not materialize except through a valid marriage between man and woman. There is no difference of opinion regarding mutual inheritance between husband and wife. The schools, however, differ concerning the right of inheritance of certain relatives; the Shafi'i and the Maliki schools deny them such a right and consider them exactly like strangers.

These relatives are: Daughter's children, sister's children, daughters of brothers, children of uterine brothers, all kinds of paternal aunts, uterine paternal uncle, maternal uncles and aunts, daughters of paternal uncles and the maternal grandfather. Therefore, if a person dies and has no relatives except one of those mentioned the heritage escheats to the public treasury (*bayt al-mal*) and they will not receive anything, according to the Shafi'i and Maliki schools, because they are neither among the sharers (*dhawu al-furud*) nor among the residuaries (*'asabat*). (*al-Mughni*, 3rd ed. vol. 6, p. 229)

The Hanafi and the Hanbali schools consider them capable of inheriting in the particular situation where there are no sharers and residuaries.

The Imamiyyah consider them capable of inheriting without this condition. Details will follow.

# Impediments to Inheritance

The schools concur that there are three obstacles to inheritance:

- a. difference of religion,
- b. murder,
- c. slavery.

Ignoring slavery, we will discuss the other two causes.

## Difference of Religion

There is consensus that a non-Muslim will not inherit from a Muslim.<sup>1</sup> The schools differ regarding a Muslim inheriting from a non-Muslim. 'He inherits,' say the Imamiyyah; 'He does not,' say the other four schools.

If one of the decedent's sons or relatives who is a non-Muslim becomes a Muslim after his death and after the distribution of the heritage between the heirs, he is not entitled to inherit by consensus. The schools differ as to whether he inherits if he becomes a Muslim after the death but before the distribution of the heritage. He inherits according to the Imamiyyah and the Hanbalis, and not, according to the Shafi'i, the Maliki and the Hanafi schools.

The Imamiyyah state: If there is a single Muslim heir, he will take the whole heritage and the conversion of another to Islam will not entitle him to inheritance.

## An Apostate (Murtadd)

A murtadd from Islam does not inherit in the opinion of the four Sunni schools, irrespective of his apostasy being *'an fitrah* or *'an millah*,<sup>2</sup> except if he returns and repents before the distribution of the heritage. (*al-Mughni*, vol. 6)

The Imamiyyah observe: A *murtadd 'an fitrah*, if a male, will be sentenced to death without being asked to repent, and his wife will observe the *'iddah* of death from the time of his apostasy, and his estate will be distributed even if he is not executed. His repentance will also not be accepted concerning the dissolution of his marriage, or the distribution of his estate, or the *wujub* of his execution, though it will be accepted in fact and by God, as well as in regard to other issues such as the ritual cleanliness of his body and the validity of his acts of worship (*'ibadat*). Similarly, he may own after his repentance new properties acquired through work, trade, or inheritance.

A *murtadd 'an millah* will be asked to repent. If he does so, he will have all the rights and obligations of Muslims. If he does not repent, he will be executed and his wife will observe the *'iddah* of divorce from

the time of his apostasy. Then if he repents while she is undergoing *'iddah*, she will return to him and his property will not be distributed unless he dies or is killed.

A woman will not be sentenced to death irrespective of her apostasy being *'an fitrah* or *'an millah*. But she will be imprisoned and beaten at the times of *salat* till she repents or dies. Her heritage will be distributed only after her death. (al-Sayyid Aba al-Hasan's *Wasilat al-najat* and al-Shaykh Ahmad Kashif al-Ghita's *Safinat al-najat, bab al- 'irth*)

### **Inheritance of Followers of Other Religions**

The Maliki and the Hanbali schools say: Followers of different religions will not inherit from each other. Hence a Jew will not inherit a Christian and vice versa, and similarly the followers of other religions.

The Imami, the Hanafi and the Shafi'i schools state: They will inherit from one another because they are a single religious group, considering that all of them are non-Muslims. But the Imamiyyah lay down a condition in the case of a non-Muslim inheriting from another of his kind, that there be no existing Muslim heir. Therefore, if such an heir is present, even though distant, his presence will prevent a non-Muslim heir, even if he is closely related, from inheriting. This condition is not relevant to the other four schools, because according to them, as mentioned earlier, a Muslim does not inherit from a non-Muslim. ( *Ghayat al-muntaha*, vol. 2, al-Shi'rani's *Mizan*, *al-Jawahir* and *al-Masalik* )

### **The Ghulat**

Muslims are unanimous in holding that the Ghulat are polytheists (*mushrikun*) and do not belong to Islam and Muslims in any manner. The Imamiyyah have been especially severe concerning the issue of the Ghulat because a large number of their Sunni brothers have unjustly attributed to them the deviations of the Ghulat. The Imami 'ulama' have unequivocally mentioned in their books on doctrine and law that the Ghulat are *kafir*. Accordingly, al-Shaykh al-Mufid in *Sharh 'Aqa'id al-Saduq* (p. 63, 1371 H.) says:

The Ghulat feign to follow Islam. They are those who attribute divinity and prophethood to Amir al-Mu'minin 'Ali and the Imams of his descent, and exceed all limits and deviate from the mean concerning their excellence in the religion and the world. They are misguided, unbelievers, whom Amir al-Mu'minin ordered to be killed and burnt, and the Imams judged them as unbelievers and apostates from Islam.

The Imami 'ulama' mention them in their legal works in the chapter on *taharah* (purification), and consider them ritually unclean. Their mention also occurs in the chapter on marriage, where it is observed that the marriage of Muslim women with them, as well as marrying their women, is *haram*, although the 'ulama' permit marriage with women of *Ahl al-Kitab*. The mention of Ghulat is also made in the chapter on *jihad*, where they are considered polytheists in a state of war. In the chapter on inheritance, the 'ulama' prohibit their inheriting from Muslims.<sup>3</sup>



## One Who Denies an Essential of the Faith

There is consensus among the schools that a person who denies any of the established and known doctrines of the faith and considers a *haram* as *halal* or vice versa, making that his creed, goes out of the pale of Islam and becomes an infidel. To this category also belongs one who attributes *kufr* to a Muslim.

It is worthwhile here to point out two issues that have been dealt in detail by the highly learned and leading Imami scholar Aqa Rida al-Hamadani in *Misbah al-faqih*, vol. I.

1. If a person appears to follow Islam and pronounces the *Shahadatan*, though we do not know whether he does so hypocritically, without having faith in it, or pronounces them with veritable faith, there is no difference of opinion in judging him a Muslim. But if we have knowledge of his falsity and know that he has no faith in God and the Prophet (s) but only presents himself as a Muslim hypocritically with a certain purpose in view, will we consider him a Muslim?

The gist of the Shaykh 's opinion is that this hypocrite has a reality and an appearance. As to the reality he is a non-Muslim, though his appearance presents him as a Muslim. It is our duty to leave his reality to God Almighty's judgement, and there is no doubt that God will deal with him as a non-Muslim, because it is presumed that he is such in reality. But we, Muslims, will accept his appearance and associate with him as a Muslim regarding marriage and inheritance, because we have been ordered to do so. It is stated in a tradition:

مَنْ قَالَ لَا إِلَهَ إِلَّا اللَّهُ حَقَّنَ دَمَهُ وَمَالَهُ

*He who says 'la'ilaha ilia Allah,' his life and property are secure.*

This implies that he will be treated as a Muslim, irrespective of any doubt on our part and our knowledge of his verity or falsity. This is also confirmed by the Prophet's treatment of the hypocrites, whom he treated in the same manner in which he treated other Muslims, though he knew of their hypocrisy (*nifaq*).

2. The secret behind the consensus of Muslims regarding the *kufr* of a person denying an established rule is that this denial as such necessitates the denial of the Prophet's prophethood. It follows from this that a person making such a denial, on becoming aware that his rejection amounts to rejecting the prophethood and the messengerhood of the Prophet (s), will be doubtlessly considered a non-Muslim. But if he is not aware of it -- either because of ignorance, or his belief that his denial does not necessitate the denial of prophethood -- will he be considered a non-Muslim?

The summary of the Shaykh's reply is that an ignorant person can be viewed in different situations. At times his ignorance is the result of his absorption in sin and absence of attention to what is *haram* (like a

person who has indulged constantly in fornication from the first day to his present old age, and this continuity has developed in him the belief that his act is *halal*, not *haram*); such a person is definitely a *kafir*.

At times his ignorance is due to his following a person whom it is not valid to follow. Such a person is also a non-Muslim even if he believes that his denial does not lead to denying the Prophet's messengerhood.<sup>4</sup>

It may be that none of the two above-mentioned causes are the result of his ignorance; rather, his ignorance may be the result of his lack of attention to the station of prophethood, so that if he is informed about it he would desist from his denial. Such a person is doubtlessly a Muslim because he resembles one who disputes regarding a certain thing with the Prophet (s) while not recognizing him, but when he comes to recognize that he is the Prophet (s), he refrains and is penitent.

There are other cases mentioned by the author of *Misbah al-faqih* which we leave for reasons of space. Those seeking details should refer to the first volume of the book.

## Homicide

The schools concur that homicide, when intentional and without legal authority, impedes inheritance. This is based on the tradition:

لَا مِيرَاثَ لِلْقَاتِلِ

*There is no (share in) inheritance for a murderer.*

Moreover, since the murderer's act expedites inheritance, his intention will be frustrated. Apart from this, the schools differ.

The Imamiyyah observe: He who kills his relative as *qisas* or in self-defence or on the orders of a just judge, or for similar other reasons justified by the Shari'ah, in these instances homicide is no obstacle to inheriting. Also, unintentional homicide (*alqatl al-khata'*) is no hindrance.<sup>5</sup>

The author of *al-Jawahir* states: The intentional act of a child and a lunatic is considered *khata'* (mistake). Similarly *khata'* includes a quasi-intentional act (*shibh al-'amd*). An instance of *shibh al-'amd* is where a father beats his child with an intention of correcting him and the child dies as a result of the beating. Al-Sayyid Aba al-Hasan al-'Isfahani writes in *al-Wasilah*: "Some of the causes which lead to death--like digging a well on a road, if a relative falls in it--the person having dug the well will inherit him, though he will be liable to pay the compensation (*diyah*)." Accordingly, there is no hindrance to the concurrence of the liability to *diyah* and inheritance.

Each one of the four Sunni imams has a separate opinion in this case. The opinion of Imam Malik concurs with the Imamiyyah. The opinion of al-Imam al-Shafi'i is that unintentional homicide is an obstacle to inheritance, just like intentional murder; the same is the case where the murderer is a child or a lunatic.

The opinion of Imam Ahmad is that a homicide that calls for punishment, even if of a monetary kind, impedes inheritance. This excludes lawful killing, such as killing for *qisas*, or in self-defence, or in war, the killing of a rebel (*baghi*) at the hands of an *'adil* person -- in all these cases he will inherit.

The opinion of Imam Abu Hanifah is that a homicide which hinders inheritance is one which necessitates *qisas* or *diyya* or *kaffarah* (atonement). This includes *al-qatl al-khata'*, but not *al-qatl bi al-tasbib* (where the accused is an indirect cause of homicide) or homicide by a lunatic or a minor. (*al-Mughni*, vol. 6, and Abu Zuhrah's *Mirath al-Ja'fariyyah*)

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1. The word 'Muslim' includes all those who pray facing towards the Ka'bah (ahl al-qiblah). Hence a Sunni inherits from a Shi'i and vice versa, in accordance with Qur'anic nass, the Sunnah, and ijma'. Rather, this rule is among the essentials of the faith, exactly like the wujub of salat and fasting.

2. Al-Murtadd 'an fitrah is a born Muslim who apostatizes. Al-Murtadd 'an millah is one born to kafir parents who then becomes a Muslim and later deserts his faith.

3. I believe that there is no one today who considers 'Ali ('a) and his descendants to possess divinity and that this sect has become extinct. I have myself visited those places in Syria which are inhabited by the 'Alawis, who are accused of holding such beliefs. I lived among them for a few days and travelled from one village to another in their region. I saw them following Islamic practices like all other Muslims, without the least difference. What do we say about one who proclaims from the ma'adhin at the times of prayer "La ilaha ilia Allah, Muammad rasal Allah"? Is not negating the divinity of all except Allah contrary to accepting the divinity of others? Then how is it correct to attribute ghuluw to them, when God has said:

وَلَا تَقُولُوا لِمَنْ أَلْقَى إِلَيْكُمُ السَّلَامَ لَسْتَ مُؤْمِنًا

And do not say to anyone who offers you peace: 'You are not a believer'? (4:94)

4. This when he can acquire knowledge of the facts but neglects to do so. But one incapable of acquiring such knowledge is excusable.

5. The author of al-Jawahir has narrated from a large number of Imami legists that a culprit in an unintentional homicide is prevented from inheriting the compensation, without being prevented from inheriting from the remaining heritage.

## Distribution of the Heritage

As pointed out earlier, inheritance results due to marriage or consanguinity, and there is no difference of opinion that the husband or wife has a share with all other heirs, the husband being entitled to one-fourth when there are descendants and one-half in their absence, and the wife to one-eighth in the

presence of descendants and one-fourth in their absence.

The schools differ concerning a daughter's off spring, whether he/she is in the category of descendants whose presence is capable of lowering the share of the spouse from its higher to its lower limit or if his/her presence and absence has no effect. Details of this will come while discussing the inheritance of spouses.

There is again no difference of opinion that the distribution of the heritage begins with *ashab al-furud* (the 'sharers,' whose shares have been determined by the Qur'an) and that there are six kinds of these shares. But the schools differ regarding the number of sharers entitled to these shares and regarding the residuaries (those entitled to the remainder after the sharers have received their shares).

The schools also differ about the capacity to inherit of: daughter's children; uterine paternal uncles and aunts; and maternal uncles, aunts and grandfather. We mentioned earlier that these heirs fall in the category of distant kindred in the classification adopted by the four Sunni schools, and the rules applicable to them differ from those applicable to the sharers and residuaries.

## The Shares and Sharers

A 'share' (*al-fard*) is a fixed portion (of the heritage) determined by the Qur'an. According to consensus there are six such shares:  $1/2$ ,  $1/4$ ,  $1/8$ ,  $1/3$ ,  $2/3$  and  $1/6$ . Some have summarized it by saying: " $1/3$  and  $1/4$ , and the double and half of each."

**$1/2$**  is the share of the only daughter if there is no son sharing with her, and according to the four Sunni schools the son's daughter is like the daughter, while according to the Imamiyyah she takes the place of her father. Half is also given to the only sister, either full or half on the father's side, if there is no brother sharing with her. A husband gets half if the wife has no offspring to inherit her.

**$1/4$**  is the husband's share if the wife has a descendant and the wife's if the husband has no descendant.

**$1/8$**  is the share of a wife if the husband has a descendant.

**$2/3$**  is the combined share of two or more daughters in the absence of male children, and of two or more sisters, full or consanguine, if there is no brother sharing with them.

**$1/3$**  is the share of the mother if the decedent has no male child, or brothers whose presence, as per the forthcoming details, prevents her from inheriting more than one-sixth. Two or more uterine brothers and sisters also inherit one-third.

**$1/6$**  is the share of the father and the mother in the presence of a child. The mother also gets one-sixth if the decedent has brothers. The same is the share of a single uterine brother or sister. The inheriting of one-sixth as sharers by the above three enjoys concurrence. The four Sunni schools add to these

sharers entitled to one-sixth, one or more son's daughters along with the daughter of the decedent. Hence if the decedent has a daughter and a son's daughter, the former will take half and the latter one-sixth.

But if the decedent has two or more daughters and a son's daughter, the latter will be prevented from inheriting unless she has a male counterpart of her class, such as when she has a brother or, lower in order, her brother's son, i.e. the great grandson of the deceased. One-sixth is also given to the paternal grandfather in the absence of the father.

A grandmother, just like a mother, inherits a sixth if she is a paternal or maternal grandmother or mother of the paternal grandfather. Thus if she is the mother of the decedent's mother's father, she will not inherit. If two parallel grandmothers, such as the mother's mother and the father's mother are present together, the share of one-sixth will be equally divided between them.<sup>1</sup>

Some of the six different shares coexist with some others. Hence, a half can exist with a half (e.g. husband and sister, each receiving a half), with one-fourth (e.g. husband and daughter, she receiving a half and he one-fourth), with one-eighth (e.g. wife and daughter, the former getting an eighth and the latter a half), with one-third (e.g. husband and mother, where her share is not reduced by a brother, he receiving a half and she a third), and with one-sixth, (e.g. husband and the only uterine brother or sister, the former receiving a half and the latter one-sixth).

One-fourth can coexist with two-thirds (e.g. husband and two daughters, he receiving a fourth and they two-thirds), with one-third (e.g. wife and two or more uterine brothers or sisters, she receiving one-fourth and they one-third) and also with one-sixth, (e.g. wife and a single uterine brother or sister, the former receiving one-fourth and the latter one-sixth).

One-eighth can coexist with two-thirds (e.g. wife and two daughters, she receiving one-eighth and they two-thirds) and with one-sixth (e.g. wife and either parent in the presence of a child).

Two-thirds can coexist with one-third (e.g. two or more consanguine sisters along with uterine brothers) and with one-sixth (e.g. two daughters and either parent).

One-sixth can coexist with itself (e.g. parents in the presence of a child).

Those shares which do not coexist are: one-fourth and one-eighth, one-eighth and one-third, and one-third and one-sixth.

## **The Residuaries (al-'Asbat)**

According to the four Sunni schools, there are three types of *nasabi* residuaries:<sup>2</sup> a residuary by himself (*'asabah bi nafsiha*), a residuary through another (*'asabah bi ghayriha*), and a residuary along with another (*'a abah ma'a ghayriha*).

A 'residuary by himself' includes all males between whom and the decedent there is no intervening woman, and the meaning of being such a residuary is that he is independent of others (in his right to inherit as a residuary), and that he is a residuary in all cases and situations. A 'residuary through another' and 'residuary along with another,' are residuaries in certain cases without being so in others, as will become clear later.

The 'residuaries by themselves' are the closest of residuaries and inherit in the following order:

- the son,
- then the son's son, how lowsoever; he takes the place of his father,
- then the father,
- then the paternal grandfather, how highsoever;
- then the full brother;
- then the half-brother by father;
- then the son of the full brother;
- then the son of the half-brother by father;
- then the full paternal uncle,
- then the consanguine paternal uncle (who is father's half-brother by grandfather),
- then the son of the full paternal uncle,
- then the son of the consanguine paternal uncle.

If some of them exist along with others, the son will supersede the father, in the sense that the father will take his *fard* (share) --which is one-sixth-- and the son will take the remainder as a residuary.

According to the four Sunni schools, the son's son will similarly supersede the father, and the father will supersede the paternal grandfather. They differ regarding the paternal grandfather as to whether he will supersede the brothers in inheritance or if they inherit jointly with him, so that all of them are considered as belonging to the same class.

Abu Hanifa observes: The grandfather will supersede the brothers and they will not inherit anything along with him. The Imami, the Shafi'i and the Maliki schools state: They will inherit with him because they belong to his class.

Among the residuaries, those related from both sides will supersede those related from only one side.

Hence a full brother will supersede a consanguine brother and the full brother's son will supersede a consanguine brother's son. Similarly, in the case of paternal uncles the degree of their nearness (to the decedent) is taken into consideration, and the nearest is preferred. Therefore, the decedent's paternal uncle supersedes his father's paternal uncle, and he in turn will supersede the grandfather's paternal uncle.

The following four female relatives are considered 'residuaries through another':

1. daughter or daughters,
2. son's daughter or daughters,
3. full sister or sisters,
4. consanguine sister or sisters.

It is known that all the above-mentioned inherit as sharers in the absence of a brother.<sup>3</sup> One of them is entitled to a half, and if more, to two-thirds, and if they have a brother they inherit as residuaries -- according to the four Sunni schools-- but not if they are alone, and will share the heritage with him, the male receiving twice the share of females.

As regards 'residuaries along with another,' they are full or consanguine sister or sisters that inherit along with a daughter or son's daughter. Therefore, a sister or sisters inherit as 'sharers' if there is no daughter or son's daughter inheriting along with them, and inherit as residuaries with a daughter or son's daughter. Hence the daughter or the son's daughter will take her share and the full or consanguine sister or sisters will take the remainder, thereby becoming residuaries along with the daughter.

After this explanation it becomes clear that a full or consanguine sister inherits in three different ways. She is a sharer if she has no brother and the decedent no daughter, a 'residuary through another' if she has a brother, and a 'residuary along with another' if the decedent has a daughter. The same applies in the case of two or more sisters. It also becomes clear that full and consanguine paternal uncles will not share in the heritage along with the daughter except in the absence of full or consanguine brothers and sisters.

The four Sunni schools concur that if there is a single residuary without any sharers, he will inherit the whole heritage, and in the presence of a sharer he will take the remainder after the sharer has taken his share. If there is no residuary, according to the Maliki and the Shafi'i schools, the excess will escheat to the *bayt al-mal*, and according to the Hanafi and the Hanbali schools it goes to the sharers by way of 'return' (*radd*), and the estate will not escheat to the *bayt al-mal* in the absence of sharers, residuaries and distant kindred.

## The Residuaries From the Imami Viewpoint

The Imamiyyah do not recognize these three different kinds of residuaries and limit the heirs to 'sharers' and 'residuaries' without differentiating between male and female residuaries. Hence, a single son is entitled to the whole estate; a single daughter and a single sister too are similarly entitled. They classify the heirs, both males and females, into three categories:

1. Parents and children, how lowsoever.
2. Brothers and sisters (and their children), how lowsoever, and grandparents, both paternal and maternal, how highsoever.
3. Paternal and maternal uncles and aunts and their children.<sup>4</sup>

Whenever there exists a male or a female heir in the higher category, it will prevent all others belonging to the lower category from inheriting, whereas in the opinion of all the other schools these different categories may combine and inherit together, and at times all the three categories may inherit together, such as a mother along with a uterine sister and a full paternal uncle, in which case the mother receives one-third, the sister one-sixth, and the uncle the remainder.

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1. 'Abd al-Muta'al al-asa'idi, *al-Mirath fi al-Shari 'at al-Islimiyyah*, 5th ed., p. 14.

2. 'Asabiyyah is of two types, related to nasab or sabab, and by sabab is meant the *wila'* of the manumitter and his children.

3. A single daughter and daughters, according to the Imamiyyah inherit as sharers as well as by 'return,' similarly, a single sister and sisters. But a son's daughter/daughters take the share of the person through whom they are related, that is the son.

4. These three categories of heirs are natural, because there is no intermediary between the decedent and his/her parents and children; hence they belong to the first category. Subsequently, after them, come the brothers/sisters and the grandparents, because they are related to the decedent through a single intermediary, the parents; hence, they belong to the second category. After them is the category of the paternal and maternal uncles/aunts, because they are related to the decedent through two intermediaries, i.e. the grandfather or the grandmother, and the father or the mother; hence they belong to the third category.

## Al-Ta'ib

The six kinds of shares determined in the Qur'an at times equal the whole estate, such as two daughters along with parents ( $2/3 + 1/6 + 1/6$ ). Here the question of *'awl* and *ta'sib* does not arise, because the two daughters will take two-thirds and the parents one-third.

At times the total of the shares does not exhaust the whole estate, such as a single daughter, whose



share is half, or two daughters, whose share is two-thirds. This (in Sunni schools) results in *ta'sib*.

When the total shares exceed unity --such as when the husband, the parents and the daughter inherit together, the share of the husband, the daughter and the parents being one-fourth, one-half and one-third respectively-- the estate cannot cover all the three shares together. This results in *'awl*. *'Awl* will be discussed in the second chapter.

As to *ta'sib*, it has been defined here as the sharing of inheritance by the residuaries along with the closely-related sharers (such as where the decedent has two or more daughters and no son, or where he does not have any children, but has one or more sisters, no brother, and a paternal uncle).

Here, the Sunni schools regard the brother of the decedent as an heir along with the daughter or daughters, and he receives one-half with the one daughter, and one-third if there are two or more daughters. Similarly, they regard the paternal uncle to be an heir along with a sister or sisters.

The Imamiyyah state: *Ta'sib* is void, and it is *wajib* that that which remains after the sharers have received their shares be returned to the closely-related sharers. Hence, (in the above examples) the whole estate, according to them, will be inherited by the daughter or daughters and the brother will receive nothing, and if the deceased has no child at all, but has a sister or sisters, they will inherit the whole estate to the exclusion of the paternal uncle, because a sister is nearer to the decedent than him and the 'nearer excludes the remote.'

This difference between the Sunni schools and the Imamiyyah originates from the tradition of Tawus. The Sunni schools accept this tradition while the Imamiyyah reject it. The tradition states:

أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَلِأَوْلَى عَصَبَةِ ذَكَرٍ

*Give the sharers their respective shares, and of what remains, the first in order is a male relative.*

It has also been narrated in another form:

فَمَا بَقِيَ فَهُوَ لِرَجُلٍ ذَكَرٍ

*And what remains is for the male relative.*

Hence, the daughter being a sharer is entitled to half the estate, and the brothers being the nearest male relatives of the decedent after her will be given the remaining half. Similarly, if the decedent has no

children at all, and has a sister without any brother, the sister will take half as a sharer and the other half will be inherited by the decedent's paternal uncle, because he is the decedent's nearest male relative after his sister.

The Imamiyyah do not endorse the veracity of Tawus's tradition and reject its attribution to the Prophet (s), because, according to them, Tawus is an unreliable (*da'if*) narrator. Had they endorsed this tradition they would have concurred with the Sunni schools, in the same manner as the Sunni schools would have concurred with them if they had rejected this tradition. After rejecting this tradition's attribution to the Prophet (s), the Imamiyyah negate *ta'sib* on the basis of the Qur'anic verse:

لرِّجَالٍ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ

الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۗ نَصِيبًا مَّفْرُوضًا

***Men are entitled to a share of what the parents and near relatives leave, and women are entitled to a share of what the parents and near relatives leave, whether it is little or more, a determined share. (4:7)***

This verse proves an equality between men and women concerning the right of inheritance, because it speaks about the women's share exactly as it speaks about men's, whereas those who accept *ta'sib* differentiate between male and female relatives and give the males the right to inherit to the exclusion of females where the decedent has a daughter, a brother's son and a brother's daughter.

They give one half to the daughter and the other half to the brother's son, without the brother's daughter getting anything, although she is in the same category with him. Similarly, if the decedent has a sister, a paternal uncle and a paternal aunt, they divide the estate between the sister and the uncle and exclude the aunt.

The Qur'an entitles both men and women to inheritance, while these schools entitle men and neglect women. This shows that the opinion justifying *ta'sib* is void because it leads to a void conclusion.<sup>1</sup>

In objection to this stand, it is observed that the inheriting of the whole estate by a daughter or daughters is contrary to the verse of the Qur'an:

فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ

وَالْأَبْوَيْهِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ

**Then if they are more than two females they shall have two-thirds of what the deceased has left, and if there is only one, she is entitled to half the estate; and for his parents, each is entitled to one-sixth of what he has left if he has a child (4: 11)**

Similarly, the inheriting of the whole estate by a single sister contradicts the explicit verse:

إِنْ أَمْرُوهُ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا

إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ

**If a childless man dies and he has a sister, her share is half of what he has left, and he shall be her heir if she has no child; then if there be two sisters, their share is two-thirds (4: 176)**

The Qur'an determines the share of a single daughter as half and that of two or more daughters as two-thirds. Similarly, it determines the share of a single sister to be half and that of two or more sisters to be two-thirds, while the Imamiyyah obviously oppose this law.

The Imamiyyah give the following reply in regard to the first verse (4:11):

1. Certainly, the Qur'an has determined the share of two or more daughters to be two-thirds and that of a single daughter as half; but it is necessary that there be another person so that the remainder after the deduction of the share could revert to him. The Qur'an does not specifically mention this person, and had it done that, there would have been no difference of opinion. The Sunnah also makes no mention of it, neither explicitly nor implicitly, and the tradition, *وَأُلْحِقُوا الْفَرَائِضَ*, is not authentic as already mentioned.

Hence nothing remains to prove specifically to whom the remainder goes, except the following verse of the Qur'an:

وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ

**Some relatives are preferred over some others in the ordinance of God. (33:6)**

It proves that the nearer relative is to be preferred to the more distant, and there is no doubt that one's

daughter is more closely related to one than one's brother, because she is related to him directly while his brother is related to him through either parent or both of them. Therefore, in such a case, the remainder will revert to the daughter or daughters, to the exclusion of the brother.

2. The Hanafi and the Hanbali schools observe: If the deceased leaves behind a daughter or daughters and there exists none else from among the sharers and the residuaries,<sup>2</sup> the whole estate will devolve on the daughter, half as a share and the other half by 'return,' and similarly on the two daughters, two-thirds as their share and the remaining by way of 'return.' If the verse does not prove the negation of the 'return' devolving on the sharers in this case, it will similarly not negate it in other cases, because a single proof is incapable of being broken into parts.

Furthermore, the Hanafi and Hanbali schools say: If the decedent leaves behind a mother and there are no other sharers and residuaries, she will take a third as a sharer and the remaining two-thirds by way of 'return'. If a mother can take the whole estate, it is similarly wajib that the daughter be also entitled to it, because both of them belong to the class of sharers. (*al-Mughni* and *al-Shi'rani's Mizan, bab al-fara'id*)

3. The four Sunni schools concur that if the decedent leaves behind his father and a daughter, the father will take one-sixth as a sharer and the daughter will similarly take half as a sharer, and the remainder will revert to the father, despite the Qur'anic verse:

وَالْأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ

***and for his parents, each is entitled to one-sixth of what he has left if he has a child (4: 11)***

Hence as the share determined by this verse does not negate the father's right to receive more than one-sixth, similarly the share determined in the verse:

فَلَهُنَّ ثُلُثَا مَا تَرَكَ

***they shall have two-thirds of what the deceased has left (4: 11)***

will not negate the daughters' right to receive more than two-thirds nor a single daughter's right to the excess over half, especially after the shares of both the daughters and the father have been mentioned in the same verse and the same context.

4. The Qur'an says:

وَأَسْتَشْهِدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ

**And call two witnesses from among your men, but if there are not two men, then one man and two women (2:282)**

This verse explicitly states that a debt is proved by two male witnesses and also by the evidence of a male and two female witnesses. Some of the four Sunni schools consider it provable by a single male witness and an oath; rather, Malik says: It is proved by the evidence of two women and an oath. Hence, as this verse does not prove that a debt is not provable by a single male witness along with an oath, similarly the verse relating to inheritance does not prove the invalidity of reverting the remainder to a daughter or daughters, and to a sister or sisters.

The Imami reply in regard to the second verse (4: 176) *إِنْ أَمْرُو هَكَأ لَيْسَ لَهُ وَكَلَّةٌ* is that the word *walad* is applicable to both a male and a female child, because it is derived from *wiladah* (birth), which includes son and daughter, and also because the common denominator between a person and his relatives is kinship, which is inclusive of males and females. The Qur'an has used the word *awlad* for children of both sexes.

وَصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ

**God charges you, concerning your children: to the male the like of the portion of two females (4: 11)**

وَمَا يَنْبَغِي لِلرَّحْمَنِ أَنْ يَتَّخِذَ وُلْدًا

**And it is not befitting the All-merciful to take a child. (19:92)**

As these verses show, the word *walad*, stands for 'child,' irrespective of sex.

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ

**O mankind, we have created you from a male and a female (49: 13)**

Accordingly, since a son prevents the brother from inheriting, a daughter will also prevent him. What has been said about the daughter's inheritance applies in the case of the sister as well. Apart from this, the

Imamiyyah have raised a number of objections against the Sunni schools, bringing to their notice certain conclusions that follow logically from their thesis, which are as unnatural as they are opposed to *qiyas*, which is practiced by these schools.

Among these criticisms is the one mentioned in *al-Jawahir*, that if the decedent has ten daughters and a son, the son, in this case, will take one-sixth and the daughters the remaining five-sixths. If in the place of the son the decedent has a paternal uncle's son (i.e. if he leaves behind ten daughters and a paternal uncle's son), according to the rule of *ta'sib* the uncle's son will receive one-third and the daughters two-thirds, and consequently the son's position here is worse than that of the uncle's son!

This is despite the fact that man has greater affection for his children when compared to his brothers, and he sees in his children, sons and daughters, an extension of his own existence. It is for this reason that we see individuals belonging to the Lebanese families having only daughters changing their school of fiqh from Sunni to Shi'i solely because they fear that their brothers and uncles will become coheirs with their children.

Presently, there are many Sunni scholars thinking of forsaking the principle of *ta'sib* and accepting the Imami view concerning the inheritance of a daughter, exactly as they have abandoned the view invalidating bequest in favour of an heir and have accepted the Imami view despite the consensus of the Sunni schools regarding its invalidity.

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1. Al-Shaykh Abu Zuhrah, in *al-Mirath 'inda al-Jafariyyah*, has dealt with the proofs mentioned by the Imamiyyah refuting *ta'sib*, but he has not mentioned this argument of theirs.

2. Full or consanguine sisters are residuaries with a daughter, and jointly share the estate with her like the full or consanguine brothers.

## Al-'Awl

'*Awl* is applied where the shares exceed the heritage, such as where the decedent leaves behind a wife, parents and two daughters (the shares being, the wife's one-eighth, the parents' one-third, the two daughters' two-thirds; here the estate falls short of the sum of one-eighth, one-third and two-thirds [27/24]). Similarly, if a woman dies and leaves behind her husband and two agnate sisters, the share of the husband is one-half, and that of the sisters two-thirds; here the estate falls short of the sum of half and two-thirds (7/6). '*Awl* occurs only if the husband or the wife is present.

The schools differ regarding the issue. Will the deficit, in such a case, be diminished proportionately from the shares of all the sharers, or will it be diminished from the shares of only some of them?

The four Sunni schools accept the doctrine of *'awl*, the rule that all the shares will be diminished proportionately, exact like the creditors' claims when the assets fall short of meeting them. Hence the heirs are wife, parents and two daughters, according to these schools it will be an instance of *'awl*. The obligation is met by dividing the heritage into 27 parts, though it earlier comprised 24 parts. The wife will take  $3/27$  (i.e. her share becomes  $1/9$  instead of  $1/8$ ), the parents take  $8/27$  and the daughter  $16/27$ .

The Imamiyyah do not accept the doctrine of *'awl* and keep the corpus (in the previous example) fixed at 24 parts by diminishing the share of the two daughters. Hence the wife takes her complete share of  $1/8$  (which is  $3/24$ ), the parents take  $1/3$  (which is  $8/24$ ), and the remainder goes to the two daughters.

The four schools argue in favour of the validity of *'awl* and the reduction of all the shares by citing the precedent of a woman who died during the reign of the Second Caliph, 'Umar, leaving behind a husband and two agnate sisters. The Caliph gathered the Companions and said: "The shares determined by God for the husband and the two sisters are a half and two-thirds respectively. Now if I start with the husband's share, the two-thirds will not remain for the two sisters, and if I start with the two sisters, the half will not remain for the husband. So give me advice."

Some advised him to follow *'awl* by diminishing all the shares proportionately, while Ibn 'Abbas vehemently opposed it. But 'Umar did not accept his view and acted according to the opinion of others, telling the heirs: "I do not see any better way regarding this estate but to distribute it amongst you in proportion to your shares." Hence 'Umar was the first person to apply *'awl* to the shares and all the Sunni schools followed him.

The Imamiyyah argue regarding the invalidity of the doctrine of *'awl* by observing that it is impossible for Allah, *subhanahu*, to divide an estate into shares of half and two-thirds, or shares of one-eighth, one-third and two-thirds, because, otherwise, ignorance and frivolity would be attributed to Him, while He is too exalted to deserve such attributes. Hence, it has been narrated from 'Ali (*'a*) and his pupil 'Abd Allah ibn 'Abbas that they said: "He Who can count the number of sand grains (in the universe) surely knows that the number of shares do not exceed six."

The Imamiyyah always diminish the share of the daughters or sisters, and the shares of the husband, the wife and the parents remain unaltered; because the daughters and the sisters have been assigned a single share and do not face a reduction from a higher to a lower share. They, therefore, inherit as sharers in the absence of a male heir and as residuaries in his presence, and at times they are entitled along with him to less than what they are entitled to when alone.

However, the share of the husband is reduced from a half to one-fourth, the wife's from one-fourth to one-eighth, the mother's from one-third to one-sixth, and in certain cases the father, inherits one-sixth as a sharer; the share of none of them further diminishes from its determined minimum, and nothing is reduced from it. Hence, when the shares exceed the corpus, a start will be made from this minimum limit and the remainder will go to the daughters or sisters.

Al-Shaykh Abu Zuhrah, in *al-Mirath 'inda al-Ja'fariyyah*, quotes Ibn Shihab al-Zuhri<sup>1</sup> as having said, "If it were not for the preference given to the fatwa of the just leader 'Umar ibn al-Khattab over the fatwa of Ibn 'Abbas, the observation of Ibn 'Abbas is worthy of being followed by every scholar and worthy of consensus over it." The Imamiyyah have adopted the opinion of Ibn 'Abbas --may God be pleased with both of them-- which is a good rule, as pointed out by Ibn Shihab al-Zuhri, who was an ocean of knowledge.

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1. The famous and great Tabi'i faqih who has been highly eulogized by the Sunni 'ulama'. He had met ten Sahabah.

## Exclusion (al-Hujb)

By *Hujb* is meant the exclusion of some relatives from inheritance. *Hujb* is either exclusion from the actual inheritance itself (such as the exclusion of the grandfather by the father, which is called '*hujb al-hirman*') or prevention from a part of the inheritance (such as the reduction of the husband's share by a child from a half to one-fourth, which is called '*hujb al-nuqsan*').

The schools concur that parents, children, husband and wife are not excluded by *hujb al-hirman*, and whenever present they will take their share from the inheritance and no impediment prevents them from it, because they are the nearest to the decedent, being related to him without any intermediary, while *all* others are related through an intermediary.

The schools concur that the son excludes brothers and sisters from inheritance, and, with greater cause, the paternal and maternal uncles. The son does not prevent the paternal grandfather and the maternal grandmother, in the opinion of the Sunni schools, and the son's son in the absence of the son, is exactly like the son, inheriting as his father would have inherited and excluding in the same manner.

There is consensus among the schools that the father excludes the brothers and sisters from inheritance, as well as the paternal grandfather. But the maternal grandmother, according to the Sunni schools, inherits along with the father and takes one-sixth in the absence of the mother, and in the opinion of the Hanbalis the paternal grandmother inherits along with the father, i.e. her son. The Shafi'i, the Hanafi and the Maliki schools say: She will not inherit with him, because she is excluded by him. (*al-Mughni*, vol. 6, p. 211, and *al-Bidayah wa al-nihayah*, vol. 2, p. 344)

The Imamiyyah state: The father is similar to the son and none of the grandparents inherit along with him, because they belong to the second category while he belongs to the first of the categories of heirs.

The four schools say: The mother excludes all kinds of grandmothers (*al-Mughni*, vol. 6, p. 206), but



does not exclude grandfathers, brothers or sisters, nor the full and agnate paternal uncles and aunts, and all of them share the inheritance with her.

The Imamiyyah observe: The mother, like the father, excludes all kinds of grandparents, brothers and sisters.

The four schools state: The daughter does not exclude the son's son, and two or more daughters exclude the son's daughters, except when they have a male counterpart. But a single daughter does not exclude the son's daughters. A single daughter or daughters exclude cognate brothers.

The Imamiyyah say: A daughter is like a son and excludes the children's children, both male and female, and, with greater justification, the brothers and sisters.

The schools concur that a grandfather and brother exclude paternal uncles and aunts, and a child, male or female, brings down the husband's share from a half to one-fourth and the wife's share from one-fourth to one-eighth. The schools differ regarding the minimum number of brothers or sisters required to diminish the mother's share from one-third to one-sixth.

The Malikis say: The minimum required to diminish her share is two brothers. The Hanafi, the Shafi'i and the Hanbali schools observe: Two brothers or two sisters suffice.

The Imamiyyah state: Brothers do not diminish the share of the mother unless the following conditions are fulfilled:

1. There should be two brothers, or a brother and two sisters, or four sisters. Hermaphrodites will be considered sisters.
2. The absence of impediments to inheritance, such as homicide and difference of religion.
3. That the father be present.
4. The brothers should be either full or agnate.
5. They should have been born. Hence, unborn brothers do not exclude.
6. They should be alive. Hence, if one of them is dead, he will not exclude.

On the whole, the difference between the Sunni schools and the Imami school is that the Imamiyyah prefer the nearer relative to the more distant, irrespective of his/her belonging to the same category (e.g. the son supersedes the son's son, and the father supersedes the grandfather) or another category (e.g. the son's son supersedes the brothers).

They say: One who is related through both parents excludes his consanguine (agnate) counterpart on the same side. Hence a full sister excludes a consanguine brother, and a full paternal aunt excludes a

consanguine paternal uncle; but a full paternal uncle does not exclude a consanguine maternal uncle, because they are not from the same side. The Imamiyyah do not discriminate between male and female heirs regarding their right to inheritance. Therefore, in the same way as the children's children represent the children in their absence, the children of brothers and sisters represent their parents in their absence.

The Sunni schools do accept the doctrine of preferring the nearer relatives to the more distant ones, though not totally; rather, they lay down the condition of unity of class, i.e. the nearer one excludes another who is related through him/her, except the uterine (cognate) brothers, who are not excluded by the mother though they are related through her, and similarly the great grandmother, who inherits with the grandmother, i.e. with her daughter.

But if he/she is not related through another, he/she is not excluded; e.g. the father, though he excludes the paternal grandfather, does not exclude the mother's mother, and similarly the mother, though she excludes the maternal grandmother, does not exclude the paternal grandfather. The uncles and aunts of the decedent are preferred over the uncles and aunts of the decedent's father. Similarly, the grandparents of the decedent are preferred over his/her father's grandparents. The nearer grandmother excludes the more distant grandmother. All this is due to the doctrine of the nearer being preferred.<sup>1</sup>

These schools also differentiate between male and female heirs. Hence, the brothers of the decedent inherit with his daughters, though they do not inherit with his sons. The brothers' children do not inherit with the grandparents in the opinion of these schools, as opposed to the Imamiyyah.

This is a very brief account of the exclusions through which I intended to highlight the salient features of the Imami and the Sunni schools. Otherwise, the chapter on exclusions is a vast one and it is possible for a writer to include in it all the issues of inheritance. This will become clear from the forthcoming discussions.

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1. The paternal grandmother does not exclude a distant maternal grandmother in the opinion of the Shafi'i and the Mliki schools (e.g. the father's mother with the mother's mother's mother), while in the opinion of the Hanafi and the Hanbali schools she is excluded. (al-Sa'idi's al-Mirath fi al-Shari'at al-Islamiyyah)

## The Return (al-Radd)

The question of 'return' arises only in the case of the sharers, because their shares are fixed and determined. At times they exhaust the whole estate (e.g. parents and two daughters, the parents receiving one-third, and two-thirds going to the two daughters), and on other occasions they do not

exhaust it (e.g. a daughter and the mother, the former receiving half and the latter one–sixth).

In the latter case, the question arises as to what is to be done with the remaining one–third and to whom should we return it. In the event of there being no specific shares for the heirs (such as brothers and uncles, who do not inherit as sharers) the question of return does not arise.

The four Sunni schools say: The excess of the sharers' shares is given to the residuaries. Hence if the deceased has a single daughter she will take half and the remainder goes to the father; and in his absence, to the full or consanguine sisters because they are residuaries with a daughter; and in their absence to the full brother's son; and in his absence to the consanguine brother's son; and then, in this order: the paternal uncle, the consanguine uncle and the paternal uncle's son. In the absence of all of them, the excess will be returned to the sharers in the proportion of their shares, except the husband and the wife, as they are not entitled to the return.

For example, if a decedent leaves behind mother and a daughter, the mother will take one–sixth and the daughter half as their respective shares, and the remainder will be given to them as 'return' by division into four parts, the mother receiving one–fourth and the daughter three–fourths. Similarly, if he leaves behind a consanguine and a uterine sister, the former will take the daughter's share and the latter the mother's share.

The Shafi'i and the Maliki schools say: If there is no residuary, the remainder, after the assignment of the sharers' shares, will escheat to the *bayt al-mal*.

The Imamiyyah observe: The sharers are entitled to the remainder in proportion to their shares by way of 'return' if there exists no relative in their category; and if such a relative exists, after the sharer takes his share the remainder will go to that relative (e.g. when the mother and the father are heirs, after the mother takes her determined share, the remainder shall go to the father).

If there exists with a sharer a relative who does not belong to his category, the sharer will take his share and then also the remainder by way of 'return' (e.g. when the decedent is survived by his mother and a brother, she, after taking one–third as a sharer, will take the remainder by way of 'return,' the brother receiving nothing because he belongs to the second category, while she belongs to the first category).

Similarly, if there exists a consanguine sister with a paternal uncle, she will inherit the first half as a share and the second half by way of 'return,' to the exclusion of the uncle, because he belongs to the third category while she belongs to the second category.

The Imamiyyah do not give the 'return' to a uterine brother or sister in the presence of a consanguine brother or sister. Hence if the decedent is survived by a uterine and a consanguine sister, the former is entitled to one–sixth and the latter to a half (as sharer) as well as the remainder by way of 'return,' to the exclusion of the uterine sister.

Yes, a uterine brother or sister is entitled to the 'return' if there is none belonging to their category, such as if the decedent is survived by a uterine sister and a consanguine paternal uncle, the whole estate will devolve on her to his exclusion, because he belongs to the third category, while she belongs to the second category.

The Imamiyyah also do not entitle the mother to the 'return' in the presence of those who prevent her from inheriting in excess of one-sixth. Hence if the deceased has a daughter and parents, and also brothers -- who exclude the mother from inheriting one-third-- the remainder will go only to the father and the daughter. But if there are no brothers to exclude the mother, the 'return' will be shared by the father, the daughter, and the mother in proportion to their shares.

It will be seen while discussing the inheritance of husband and wife, that the Imamiyyah entitle the husband and not the wife to inherit by way of 'return' in the absence of all other heirs apart from them.

## The Inheritance of a Fetus; Disowned and Illegitimate Children

### The Inheritance of a Fetus

If a person dies while his wife is pregnant, the distribution will be postponed, if possible, till childbirth; otherwise, a share will be withheld for the child. The schools differ regarding the share to be withheld.

The Hanafis observe: The share of a single son will be withheld for the child in the womb, because it is generally so and it is improbable that it should fall short. (*Kash al-haqa'iq fi sharh Kanz al-daqa'iq*, vol. 2, *bab al-fara'id fi fiqh al-Hanafiyyah*)

Mu'awwad Muhammad Mustafa in *al-Mirath fi al-Shari'ah al-Islamiyyah* and Muhammad Muhammad Sa'afan, quoting from *al-Sirajiyah*, state that Malik and al-Shafi'i have said: A share of four sons and four daughters will be withheld.

A curious incident has been reported in *al-Mughni* (3rd ed. p.314): It has been narrated from *al-Maridini* that a pious and learned resident of Yaman informed him that a woman of Yaman gave birth to a thing resembling a paunch. They thought that it contained no child and threw it away on the wayside. When the sun rose and it was warmed up by sunshine, it wriggled and burst open and seven male infants emerged from it. All of them survived and were physically sound, except for the smallness of their bodily members. This gentleman from Yaman further added: One of them wrestled with me and put me down, and I was reproached by the people, who would say, "You were beaten by a seventh of a man!"

The Imamiyyah state: The share of two male children will be withheld for caution's sake and the husband and the wife will be given their minimum shares.

A child in the womb will inherit on condition of its being born alive<sup>1</sup> and its mother giving birth to it in less than six months --or even six months, if her husband copulates and dies immediately afterwards. It is also necessary for the maximum gestation period not to expire after the death, in accordance with the difference among the schools regarding this period, as already mentioned in the chapters on marriage and divorce. Therefore, as per consensus, if the child is born after the expiry of the maximum gestation period, he will not inherit.

## **Child Disowned by the Father (Walad al-Mula'annah)**

The schools concur that there will be no mutual inheritance between the couple if the husband accuses the wife of adultery, and between the child born thereafter and its father and paternal relatives. However, the child, its mother and maternal relatives will inherit mutually. While inheriting from the child, its relatives through both parents and relatives through the mother enjoy the same status. Hence his full and uterine brothers are considered equal in status.

The Imamiyyah observe: If the father takes back his accusation and accepts the child, the child will inherit from the father, but the father will not inherit from the child.

## **The Illegitimate Child (Walad al-Zina)**

The four Sunni schools concur that an illegitimate child is similar to a child disowned by the father, in all that which has been mentioned concerning the absence of mutual inheritance between the child and the father and the presence of such inheritance between the child and its mother. (*al-Mughni*, vol. 6, *bab al-fara'id*)

The Imamiyyah say: There is no mutual inheritance between an illegitimate child and its fornicator mother, in the same manner as there is no such inheritance between the child and its fornicator father, because there is a common impeding cause between the two, i.e. fornication.

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1. The schools differ regarding the signs of life, whether it is the making of sounds or movement (crying or breast-feeding). That which is important is that life be proved in any possible manner. Hence, if it is proved that the child was born unconscious and possessed life, he will doubtlessly inherit.

# The Marriage and Divorce of an Ill-Person

The Hanafi, the Shafi'i and the Hanbali schools say: Marriage during illness is similar to marriage during health in respect of each spouse inheriting from the other, irrespective of whether the marriage is consummated or not. In this context an 'ill person' means one in his death-illness.

The Malikis observe: If a marriage contract is concluded during the illness of either spouse, the marriage will be considered invalid except where it has been consummated. (*al-Mughni, bab al-fara'id*)

The Imamiyyah state: If a person marries during death-illness and dies before consummation, the wife will neither be entitled to *mahr* nor inheritance from him. Further, he will not be entitled to inherit her if she dies before him, prior to consummation, and then he dies after her as a result of that illness (*al-Jawahir, bab al-mirath*). If a woman marries during death-illness, the rule applicable to a healthy woman applies to her concerning the right of the husband to inherit from her.

The schools concur that if an ill person divorces his wife and dies before the completion of the *'iddah*, the wife will inherit from him irrespective of the revocability or irrevocability of the divorce.<sup>1</sup> They also concur that she will not inherit if he dies after the completion of her *'iddah* and before her marriage with another. The Malikis and the Hanbalis observe: She will inherit regardless of the length of time.

The Hanafi and the Shafi'i schools state: After the completion of her *'iddah* she becomes a stranger and is not entitled to any share in the inheritance. (*al-Mughni, bab al-fara'id*)

This opinion is in accordance with the Islamic jurisprudential principles, because the marital bond snaps on the completion of the *'iddah*, making her marriage with others permissible, and every woman whose marriage with others becomes permissible does not inherit from her former husband. This principle cannot be departed from except on the presence of a Qur'anic verse or a confirmed tradition.

The Imamiyyah say: If a husband divorces his wife during his death-illness in a revocable or irrevocable manner (as in the case of a triple, menopausal divorcee with whom marriage has not been consummated), and then dies before the completion of one year from the date of divorce, she will inherit from him if the following three conditions are fulfilled:

1. that his death be the result of the illness during which he divorced her;
2. that she should not have remarried;
3. that the divorce should not have been given on her demand.

They base these conditions on the traditions of the Ahl al-Bayt ('a).

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1. This is the earlier opinion of al-Shafi'i; his latter opinion is that a divorcee of a revocable divorce inherits during 'iddah, while a divorcee of an irrevocable divorce does not.

## The Father's Share in Inheritance

Following are the different situations relating to the father's share in inheritance:

1. The schools concur that the father, in the absence of the mother, children, children's children, grandmothers and spouse, is entitled to the whole estate, though by relationship (*qarabah*) according to the Imamiyyah, and through *ta'sib* according to the rest, i.e. the difference lies in naming the cause leading to inheritance, not in the actual inheritance and his share in it.
2. If a spouse exists with the father, he/she will take the maximum share to which he/she is entitled and the remainder, as per consensus, will go to the father.
3. If there are with the father a son, or sons, or sons and daughters, or the son's son how lowsoever, the father will take one-sixth and the remainder, as per consensus, will go to the others.
4. If there is a single daughter with the father, they will be entitled to a half and one-sixth respectively as sharers. The remaining one-third will return to him by way of *ta'sib* according to the Sunni schools. Hence the daughter receives half as share, and the father the other half as share and 'return.' The father excludes the grandfathers, brothers and sisters, both paternal and maternal, irrespective of their being full, consanguine or uterine.

The Imamiyyah observe: The remainder will return to the father and the daughter together, and not solely to the father. The remainder will be divided into four parts, the father receiving one part and the daughter three parts, because in every instance of 'return' in which two sharers are involved, the remainder will be divided into four parts, and if three sharers are involved, it will be divided into five parts (*Miftah al-karamah*, vol. 28, p. 115).

5. If there are two or more daughters with the father, according to the Sunni schools the daughters will take two-thirds and the father one-third.

The Imamiyyah say: The father receives one-fifth and the daughters four-fifths, because the one-sixth which remains after they have taken their shares returns to all of them and not solely to the father, as mentioned in the preceding example.

6. If a maternal grandmother is present with him, she will take one-sixth and he the remainder, because in the opinion of the Sunni schools a maternal grandmother is not excluded by the father (*al-'Iqna' fi hall*

*alfaz Abi Shuja', vol. 2, bab al-farai'd)*

The Imamiyyah observe: The father will receive the whole estate and the grandmother is not entitled to anything in any manner, because she belongs to the second category and he to the first.

7. If there are the father and mother together, she will take one-third if not prevented from it according to the Sunni schools, by two brothers or sisters, and by two brothers or one brother and two sisters or four sisters according to the Imamiyyah, as mentioned while explaining *hujb*; the father will take the remainder. But if she is partially excluded by the brothers, her share will be reduced to one-sixth and the father will take the rest. A consensus prevails here.

A question might be appropriately raised here: Why do the Imamiyyah not return the remainder to both parents, as done by them if a daughter inherits with the father?

The reply is that both the father and the daughter are sharers when they inherit together, and when sharers inherit together each takes his determined share and the remainder 'returns' to all of them in proportion to their shares. In the present case, the father while inheriting with the mother inherits as a residuary and not as a sharer because there is no child present, whereas the mother inherits as a sharer, and whenever a sharer inherits together with a residuary the latter takes the remainder. (*al-Masalik*, vol. 2, *bab al-mirath*)

8. If a daughter's son is present with the father, the father will take the whole estate and the daughter's son, according to the four Sunni schools, will get nothing because he is among the distant kindred.

The Imamiyyah say: The father will receive one-sixth as his share and the daughter's son will take half as his mother's share. The remainder will return to both exactly in the manner mentioned in the fourth illustration pertaining to his inheriting with the daughter.

## **The Mother's Share in Inheritance**

Following are the different situations relating to the mother's inheritance:

1. The Imamiyyah observe: The mother is entitled to the whole estate in the absence of the father, children, children's children and spouse.

The other schools say: The mother will not receive the whole estate except in the absence of all sharers and residuaries, i.e. in the absence of the father, the paternal grandfather, children, children's children, brothers, sisters, their children, grandfathers how highsoever, paternal uncles and their children. As to the presence of grandmothers, they do not prevent her from inheriting the whole estate, because all of



them are excluded by her in the same manner as the grandfathers are excluded by the father. Similarly, maternal uncles and aunts do not prevent her from inheriting the whole estate, because they are related to the decedent through her and one who is related through another person is excluded by that person.<sup>1</sup>

2. If the situation mentioned in the first mode prevails along with the presence of a spouse, the spouse will take his/her maximum share and the remainder will go to the mother.

3. If with the mother are present a son, or sons, or sons and daughters, or son's son how lowsoever, according to consensus she will take one-sixth and the remainder will be taken by the others.<sup>2</sup>

4. If a single daughter inherits with the mother and there are no other residuaries, such as the paternal grandfather, brothers, and paternal uncles, and no sharers, such as sisters and spouse, the mother will receive one-sixth and the daughter half as sharers, and the remainder, according to the Imami, the Hanafi and the Hanbali schools, will be shared by both after dividing it into four parts, the mother receiving one part and the daughter three parts.

The Shafi'i and the Maliki schools state: The remainder will escheat to the *bayt al-mal*, and it has been mentioned in *al-'Iqna' fi hall al-faz Abi Shuja'* (vol. 2) that if an -orderly system of *bayt al-mal* does not exist, as when the ruler is unjust, the remainder will return to the sharers in proportion of their shares.

5. If there are two daughters inheriting with the mother in the absence of all other sharers and residuaries, as in the preceding illustration, the views expressed there apply here as well, except that the remainder here will be divided into five parts, one part going to the mother and the other four to the two daughters.

6. The case where she inherits with the father has been discussed in the preceding section regarding the father's share in inheritance.

7. Where she inherits with the paternal grandfather in the absence of the father, the four Sunni schools observe: The paternal grandfather will represent the father, and the rule is the same in both cases.

The Imamiyyah say: The mother is entitled to the whole estate, to the exclusion of the grandfather, because he belongs to the second category and she to the first. As per consensus, the grandmothers, paternal as well as maternal, do not inherit with the mother and, similarly, the maternal grandfather too does not inherit with her. According to the Sunni schools, none of the grandparents except the paternal grandfather inherit with the mother, and none of them inherit with the father except the maternal grandmother. But the Imamiyyah do not consider grandparents capable of inheriting with either parent.

8. If a full or consanguine brother is present with the mother, she will, according to the Sunni schools, take one-third as sharer and the remainder will go to the brother on account of *ta'sib*, and if there are with her two full or consanguine or uterine brothers or sisters,<sup>3</sup> she will take one-sixth and the remainder will be taken by the brothers, because she is excluded by them from inheriting more than one-sixth.

According to the Imamiyyah, she will take the whole estate by share and 'return,' to the exclusion of the brothers.

9. If, along with her, are present a full or consanguine sister or two such sisters, the rule is like the case where a daughter or two daughters are present with her, as mentioned in the fourth and fifth cases.

10. If a single uterine brother or sister is present with her, and there exists no other sharer or residuary, he/she will take one-sixth and the mother one-third, as sharers, and the remainder will 'return' to them in proportion to their shares. If there are with her two or more uterine brothers or sisters, they and the mother will each take one-third as sharers and the remainder will be proportionately shared by them together, because that which remains after the sharers have been assigned their shares returns to them proportionately in the opinion of the Hanafi and Hanbali schools, and escheats to the *bayt al-mal* according to the Shafi'is and the Malikis. The Imamiyyah give the whole estate to the mother.

11. If a full sister and a consanguine sister are present with her, the mother will take one-third, the full sister half, and the consanguine sister one-sixth to complete the two-thirds (for her one-sixth and the full sister's half add up to two-thirds, the maximum which two or more sisters can inherit). The Imamiyyah entitle the mother to the whole estate.

12. According to the Sunni schools the presence with her of full or consanguine paternal uncles and aunts is like that of full or consanguine brothers with respect to inheritance and their respective shares.

13. Where there are with her a paternal uncle and a uterine sister, the mother will take one-third, the sister one-sixth, and the remainder will go to the uncle. Hence the uncle who, according to the Imamiyyah, belongs to the third category, inherits together with the sister (who belongs to the second category) and the mother (who belongs to the first category). The Imamiyyah entitle the mother to the entire estate.

14. If with the mother are present the husband, uterine brothers and full brothers, this case is called *al-mas'alat al-himariyyah* (the case of the donkey), because in such a case the Caliph 'Umar had recognized the uterine brothers' right to inheritance and excluded the full brothers, which led one of the full brothers to say:

يَا أَمِيرَ الْمُؤْمِنِينَ هَبْ أَنْ أَبَانَا كَانَ حِمَارًا

O Leader of the Faithful, assume that our father were a donkey.

Thereat, 'Umar changed his decision and included them among the heirs.

The Hanafi and the Hanbali schools observe: The husband will take half, the mother one-sixth, and the

uterine brother one-third. The full brothers will receive nothing as they are residuaries and the inheritance is exhausted by the sharers alone; i.e. every sharer takes his share and nothing remains for the residuaries. The Maliki and the Shafi'i schools say: The one-third will be distributed among the full and uterine brothers, a male receiving the share of two females (*al-Mughni*, vol. 6, p. 180, 3rd ed.)

The Imamiyyah state: The whole estate goes to the mother.

15. If only a daughter's daughter is present with the mother, according to the Sunni schools, the mother will take one-third as sharer and the rest as 'return' and the daughter's daughter will receive nothing.

The Imamiyyah say: The position of the mother with the daughter's daughter is similar to her position with the daughter, as mentioned in the fourth case.

## Does the Mother Take One-Third of the Remainder?

The Sunni schools observe: If the father and a spouse are present with the mother, the mother will take one-third of what remains after the spouse has taken his/her share, not a third of the undivided estate. The stated reason, as mentioned in *al-Mughni*, is that if she takes one-third of the original estate, her share will exceed the father's share. Al-Shaykh Aba Zuhrah says in *al-Mirath 'inda al-Ja'fariyyah*: "The father's taking half the mother's share appears far-fetched from the viewpoint of the intent of the Qur'anic verse."

He means that on the basis of the mother's taking one-third from the original estate and not from the remainder, her share will be 8/24, the husband's share 12/24 and the father's 4/24, which is half the mother's share. It is improbable for the verse to have intended such a result. But if she takes one-third of the remainder, her share will be 4/24 and the father's will be 8/24, which is twice her share; this is more probable and possibly what might have been intended by the verse.

The author of *Kashf al-haqa'iq* says: If the paternal grandfather is present instead of the father, he will not cause the mother to take one-third of the remainder; rather, she will take one-third of the original estate. Accordingly, this situation arises only when the father and a spouse are present with the mother, and other instances are not covered by it.

The Imamiyyah say: The mother is entitled to one-third of the original estate and not to a third of the remainder, irrespective of the presence of a spouse because the *zahir* (literal sense) of the Qur'anic verse:

فَلِأُمِّهِ الْثُلُثُ

**for his mother is one-third (4:11)**

proves that it is one-third of what the decedent has left, and this statement has not been restricted to a situation where a spouse is not present. Further, the rules of the *Shari'ah* are not derived by reasoning or by applying the criterion of improbability.

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1. The rule that one who is related through another is excluded by the other, is fully accepted by the Imamiyyah, while the Sunni schools consider the uterine brothers an exception. Hence, according to them, they inherit with the mother though they are related through her. The Hanbalis are of the opinion that a paternal grandmother inherits along with the father, i.e. along with her son. (al-Mughni, 3rd. ed., vol. 6, p. 211)

2. According to the Sunni schools, the mother will receive one-sixth if the decedent has children or son's children, how lowsoever. As regards the daughter's children, their presence or absence is of no effect and they do not stop the mother from inheriting more than one-sixth. According to the Imamiyyah, the daughter's children are like one's own children. Hence, the daughter's daughter is considered a child who excludes the mother from inheriting more than one-sixth, exactly like a son.

3. Kashif al-haqa'iq fi sharh Kanz al-daqa'iq, vol. 2, and al-'Iqna' fi hall al-faz Abi Shuja, vol. 2, bab al-fara'id.

## The Inheritance of Children and Grandchildren

### The Sons

In the absence of the decedent's parents and spouse, a son is entitled to the whole estate, and similarly two and more sons. When the sons and daughters inherit together, a male receives twice a female's share. A son, as per consensus, excludes grandchildren, brothers, sisters and grandparents. There is consensus that a son's son is like a son in the son's absence.

### The Daughters

The Imamiyyah observe: A daughter or two or more daughters, in the absence of the parents and spouse, will inherit the whole estate (a single daughter takes half as her 'share' and the other half as 'return', and similarly two or more daughters take two-thirds as their 'share' and the remainder as 'return', without anything going to the residuaries).

The four Sunni schools say: Full and agnate sisters are residuaries with daughter or daughters. This implies that a single daughter will inherit half of the estate as her share in the absence of a son or another daughter, and that two or more daughters will inherit two-thirds as their share in the absence of a son. Hence if the decedent has a daughter, daughters, or a son's daughter, and also has a full or an agnate sister or sisters, if the decedent has no brother the sister or sisters will inherit the remainder as residuaries after the daughter or daughters have taken their share.

A full sister is like a full brother in the application of *ta'sib* and in excluding an agnate brother's son and those who come after him in the order of residuaries, and an agnate sister is a residuary like an agnate brother and excludes a full brother's son and those residuaries who come after him. (*al-Mughni*, 3rd. ed. vol. 6, p. 128, and al-Sa'idi's *al-Mirath fi al-Shari'at al-Islamiyyah*, 5th ed. p. 16)

The Imamiyyah state: None of the brothers or sisters inherit along with a daughter or daughters, nor with a son's daughter or a daughter's daughter, because a 'daughter', how lowsoever, belongs to the first category of heirs, whereas brothers and sisters belong to the second.

The Hanbali and the Hanafi schools state: If there is no sharer, residuary, or any other heir except daughters, they will be entitled to the whole estate, partly as a share and partly by the way of 'return'. But if the father is present with them, he will take the remainder after their share is given. If the father is not present, the remainder will go to the grandfather, and in his absence to the full brother, then to the agnate brother, then to the full brother's son, then to the agnate brother's son, then to the full paternal uncle, then to the agnate paternal uncle's son.

When none of these residuaries and sharers (such as sisters) is present, the daughters take the entire estate even if the decedent has daughters' children, sisters' children, brothers' daughters, uterine brothers' children, paternal aunts of all kinds, uterine paternal uncles, maternal uncles and aunts, and maternal grandmother.

The Maliki and the Shafi'i schools say: If the above-mentioned situation arises, a daughter or daughters will take their prescribed share and the remainder will escheat to the *bayt al-mal*. (*al-Mughni*, vol. 6, *bab al-fara'id* and *Kashf al-Haqa'iq*, vol. 2, p. 356)

## Children's Children

The schools differ where the decedent is survived by children and grandchildren. The four Sunni schools concur that a son excludes both grandsons and granddaughters from inheritance; i.e. the children's children do not inherit anything in the presence of a son. But, if the decedent leaves behind a daughter and son's children, if the son's children are all males or some males and some females, the daughter will take a half and the other half will go to the son's children, who divide it among themselves in the proportion of the male taking twice a female's share. If there are son's daughters along with a daughter, the daughter will be entitled to a half and the son's daughter or daughters to one-sixth and the remainder will go to the sister. (*al-Mughni*, 3rd ed. vol. 6, p. 172)

If the decedent has two daughters and son's children, and there is no male among the son's children, the latter will not be entitled to anything. But if there is a male among them, the two or more daughters will take two-thirds and the remainder will go to the son's children, who divide it among themselves in the proportion of the male taking the share of two females (*al-Mughni*, vol. 6, pp. 170, 172). A daughter excludes the children of another daughter in a manner similar to the exclusion of a son's son by a son.

The Imamiyyah say: None of the grandchildren inherit in the presence of a single child, male or female, of the decedent. Hence if he leaves behind a daughter and a son's son, the entire estate will go to the daughter to the exclusion of the son's son.

If the decedent has no surviving children, male or female, though has children's children, the four Sunni schools concur that a son's son is like a son and represents him in excluding others from inheritance, in the application of *ta'sib*, etc. And if there are sisters inheriting with the son's son, the estate will be divided in the proportion of a male receiving twice a female's share. The four schools also concur that son's daughters are like daughters in the absence of daughters, in that a single son's daughter is entitled to half the estate, and if they are two or more they are entitled to two-thirds.

Like daughters, they exclude uterine brothers from inheritance, and share the estate with the son's son, a male receiving twice a female's share, irrespective of whether the son's son is their own brother or their paternal uncle's son. To sum up, a son's daughter is similar to a daughter. In other words, the children of the decedent's son are exactly like his own children. (*al-Mughni*, vol. 6, p. 169)

According to the Shafi'i and the Maliki schools, daughters' children do not inherit anything irrespective of their sex, because they are considered as distant kindred. Hence if none among the sharers and residuaries exist, the daughters' children will be excluded from inheritance and the estate will escheat to the *bayt al-mal*. The same applies to the son's daughters' children.

The Hanafi and the Hanbali schools state: The son's daughters' children will inherit in the absence of sharers and residuaries. (*al-Mughni*, vol. 6, *fasl dhawi al-'arham* and *Kashf al-haqa'iq*, vol. 2, p. 255).

This was a summary of the opinions of the four Sunni schools regarding the inheritance of grandchildren in the absence of children.

The Imamiyyah observe: The children's children represent the children in their absence and each among them takes the share of the child through whom he is related. Therefore, the daughter's children, even if several and males, are entitled to one-third, and the son's children, even if a single daughter, are entitled to two-thirds. They distribute their share among themselves equally if of the same sex, and if they differ then a male is entitled to twice a female's share, irrespective of their being son's children or daughter's children, and the nearer descendants exclude the remote ones.

They inherit jointly with the decedent's parents and the 'return' reverts to the daughter's children, males or females, in the same manner as it does to the daughter. If the husband or the wife inherits with them, they are entitled to their minimum share.<sup>1</sup>

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1. See *al-Jawahir*, *al-Masalik* and other books on Imami fiqh. The whole text quoted here is from *al-Shaykh Ahmad Kashif al-Ghita's Safinat al-najat*, which I have preferred to the text of my own book *al-Fusul al-Shar'iyyah*, because it is more lucid and comprehensive.

# The Inheritance of Brothers and Sisters

## Brothers and Sisters

In the opinion of the Sunni schools, brothers and sisters inherit in the absence of the son and the father,<sup>1</sup> and inherit jointly with the mother and daughters. According to the Imamiyyah, they do not inherit except in the absence of parents, children and the children's children, male or female. Brothers and sisters are of three kinds:

1. full,
2. agnate (consanguine),
3. cognate (uterine).

## Full Brothers and Sisters

The following situations pertain to the inheritance of full brothers and sisters:

1. Where males and females inherit together and there does not exist along with them any sharer or residuary (i.e. in the absence of the father, mother, daughter, grandmother, son and son's son), they are entitled to the whole estate and distribute it in accordance with the rule that a male receives twice a female's share.
2. Where they consist of males, or males and females, and there is along with them a uterine brother or sister, the uterine brother or sister will take one-sixth and the remainder will go to the full brothers and sisters, a male taking the share of two females. If there are two or more uterine brothers or sisters, they are entitled to one-third irrespective of their sex, with the remainder going to the full brothers and sisters.
3. Where the decedent has a full sister, she is entitled to a half as her share; if more than one, their share is two-thirds. If there does not exist along with a full sister or sisters a daughter or any uterine brothers and sisters, or *sahih* grandfathers<sup>2</sup> and *sahih* grandmothers, the remainder, according to the Imamiyyah, will return to the sister or sisters.

The other four schools say: The remainder will return to the residuaries who are: the full paternal uncle, and in his absence the agnate paternal uncle, in his absence the full paternal uncle's son, and then the agnate paternal uncle's son, and in his absence the remainder will return, according to the Hanafi and the Hanbali schools, to the sister or sisters because only the sharers are entitled to the return conditional on the absence of residuaries; but according to the Shafi'i and the Maliki schools the remainder will escheat to the *bayt al-mal*.

To sum up, the position of full sisters is like that of daughters; a single sister takes a half, and two or more two-thirds, and if they inherit jointly with full brothers they divide the estate, with a male taking twice a female's share.

4. The Sunni schools say: If the decedent has a full and an agnate brother, the former will inherit to the exclusion of the latter, and the agnate brother will take the full brother's place in his absence.

If the decedent has full sister and one or more agnate sisters the full sister takes a half and the agnate sister or sisters one-sixth, except when there is also an agnate brother, in which case they are entitled along with their brother to a half, which they distribute in the proportion of a male taking twice a female's share.

If the decedent has full and agnate sisters, the full sisters are entitled to two-thirds and the agnate sisters receive nothing unless accompanied by an agnate brother, in which case they, along with their brother, are entitled to the remainder, which they distribute in the proportion of a male receiving twice a female's share.

To sum up, a full brother excludes an agnate brother; a single full sister does not exclude agnate sisters; and full sisters exclude the agnate sisters from inheritance when not accompanied by a male counterpart.

The Imamiyyah state: Full siblings exclude agnate siblings irrespective of their number and sex. Therefore, if the decedent leaves behind a full sister and ten agnate brothers, she will inherit to their exclusion.

5. If there is with a sister or sisters a daughter or two daughters of the deceased, the daughter or daughters will take their respective Qur'anic share of half or two-thirds, and the remainder, according to the Sunni schools, will go to the sister or sisters; a son's daughter is exactly like a daughter in this respect.

The Imamiyyah observe: The whole estate will go to the daughter or daughters and the sisters will receive nothing.

## **Agnate Brothers and Sisters**

Agnate brothers and sisters take the place of full brothers and sisters in their absence, and the same rule applies to both. A single sister will receive a half and two or more sisters two-thirds; the principle of 'return' is similarly applicable to both in the manner mentioned earlier.

## **Uterine Brothers and Sisters**

Uterine brothers and sisters do not inherit in the presence of the father, the mother, the paternal grandfather, children, sons' daughters (i.e. the uterine brothers and sisters are excluded by the mother,



the daughter and the son's daughter). 3

We have mentioned earlier while discussing the inheritance of the mother and the daughter that according to the Sunni schools full and agnate brothers and sisters inherit with the mother and the daughter. Rather, if they are present along with daughters' children, it is only they, according to the four Sunni schools, who inherit by excluding the daughters' children, even if they are males.

The uterine brothers and sisters are not excluded by the presence of full or agnate brothers and sisters, and a single uterine brother or sister inherits one-sixth; if more than one, they inherit one-third, irrespective of their sex, and, according to consensus, they share the inheritance equally, with a female receiving a share equal to that of a male.

## **A Subsidiary Issue**

The author of *al-Mughni* observes: if there exists a full, an agnate and a cognate sister, the first will take a half, and the second and the third one-sixth, with the remainder returning to them in the proportion of their shares. This implies that the corpus be divided into five parts, the full sister taking three of them and the other two sisters one each.

The Imamiyyah say: The full sister will take a half and the uterine sister one-sixth, without the agnate sister receiving anything because of her exclusion by the full sister; the remainder will return solely to the full sister. 4 Here the corpus will be divided into six parts, five of them going to the full sister and one to the uterine sister.

## **Children of Brothers and Sisters**

The four Sunni schools say: An agnate brother excludes from inheritance a full brother's son, and the full brother's sons exclude the agnate brother's sons. As to the children of sisters of all kinds (full, agnate and uterine), the uterine brothers' children and the full and agnate brothers' daughters, all of them belong to the group of distant kindred who do not inherit anything in the presence of full or agnate paternal uncles and their children. In the absence of full or agnate uncles and their children, they are entitled to inherit in the opinion of the Hanafi and Hanbali schools, while according to the Shafi'i and Maliki schools they are not so entitled and are considered essentially incapable of inheriting and the estate escheats to the *bayt al-mal* (*al-Bidayah wa al-nihayah*, vol. 2, p. 345, and *al-Mughni*, vol. 6, p. 229).

The Imamiyyah state: The children of brothers and sisters of all kinds do not inherit in the presence of even a single brother or sister of any kind, and when no brother or sister is present, their children take their place, each taking the share of the person through whom he is related to the decedent. Hence, one-sixth is the share of the son of a uterine brother or sister, and one-third is the share of the children of uterine brothers when the number of the brothers is more than one.

The remainder goes to the children of a full or agnate brother, the full brother's children excluding the

agnate brother's children. Hence an agnate brother's son does not inherit with a full brother's son. The children of uterine brothers and sisters share the inheritance equally among themselves like their parents, while the children of agnate brothers and sisters share their inheritance with disparity, a male taking twice a female's share, like their parents.

The higher in generation among the brothers' and sisters' descendants exclude those of the lower generation; hence a brother's grandson is excluded in the presence of a sister's daughter, in accordance with the rule that the nearer excludes the remote. The children of brothers, like their parents, inherit jointly with the grandparents in the absence of their parents; hence, a brother's or sister's son will inherit with the paternal grandfather, and similarly the great grandfather will inherit with the brother in the absence of the grandfather.

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1. Regarding the inheritance of brothers and sisters in the presence of the paternal grandfather, the Sunni schools differ among themselves. This is discussed in the part on grandparents of this section.
  2. A "sahih" grandfather, in the terminology of Sunni fuqaha', is one between whom and the decedent no female intervenes (e.g. the father's father), and a sahih grandmother is one between whom and the decedent no "fasid" grandfather intervenes (e.g. the mother's mother). The intervening of a "fasid" grandfather (e.g. the mother's father's mother) makes the grandmother also a "fasid" grandmother.
  3. According to the Sunni schools, a daughter excludes uterine brothers and sisters from inheritance, though not full or agnate brothers and sisters, despite their opinion that where a sharer and a residuary are present, the distribution will start with the sharer and the remainder will go to the residuary, and a uterine brother or sister is included in sharers while full and agnate brothers or sisters are residuaries. Hence it was obligatory here that the daughter not exclude a uterine brother and sister, or if she were to affect such exclusion, to exclude all kinds of brothers and sisters as observed by the Imamiyyah.
  4. The Ima miyyah do not give the return to a uterine brother or sister where they jointly inherit with a full or agnate brother or sister; the return goes only to the latter.
  5. On the basis that full or agnate brother's sons are regarded as residuaries and the brother's daughters as distant kindred, the four schools concur that if the decedent leaves behind a full or agnate brother's son who is accompanied by his own full sister, he takes the whole estate to her exclusion.

## The Maternal Grandfather

The Sunni schools observe: The maternal grandfather is included in the category of distant kindred who do not inherit in the presence of a sharer or residuary. Accordingly, the maternal grandfather does not inherit with the paternal grandfather, the brothers and sisters, the children of full or agnate brothers, the paternal uncles or their sons. When all of them are absent and there is no sharer present, according to the Hanafi and the Hanbali schools, the maternal grandfather is entitled to inherit. According to the Shafi'i and the Maliki schools, he is never entitled to any inheritance.

The Imamiyyah say: The maternal grandfather inherits with the paternal grandfather and with brothers and sisters of all kinds, and, likewise, he excludes paternal and maternal uncles and aunts of all kinds from inheritance, because he belongs to the second category of heirs, whereas they belong to the third. Hence if a maternal grandfather is present with a full paternal uncle, he takes the whole estate to the exclusion of the paternal uncle.

## Grandmothers

There is consensus that the mother excludes from inheritance all kinds of grandmothers.

The Sunni legists state: In the absence of the mother, her mother represents her and inherits jointly with the father and the paternal grandfather, taking one-sixth in their presence. Similarly, there is no difference of opinion concerning the maternal and paternal grandmothers inheriting jointly. According to the Sunni schools, they are entitled to one-sixth, which they share equally among themselves.

The nearer grandmother excludes the more distant grandmother on her side. Hence the mother's mother excludes the latter's mother; the father's mother also excludes similarly. The nearer maternal grandmother (e.g. the mother's mother) prevents a remote paternal grandmother (e.g. the paternal grandfather's mother). The Sunni schools differ among themselves as to whether or not a nearer paternal grandmother, such as the father's mother, excludes a remote maternal grandmother, such as the maternal grandfather's mother (*al-'Iqna' fi hall al-faz Abi Shuja'*, vol. 2, and *al-Mughni*, vol. 5, *bab al-fara'id.*). According to the Hanbalis, the father's mother inherits with her son; hence when they inherit together, she takes one-sixth and he the remainder.

The Imamiyyah say: If the maternal grandmother is present along with the paternal grandmother, the former takes one-third and the latter two-thirds, because the maternal grandfathers and grandmothers take one-third irrespective of whether they are one or more, dividing their share of the estate equally, and the paternal grandparents take two-thirds, whether one or more, and divide their share with disparity (a male taking twice a female's share).

## The Paternal Grandfather

The four Sunni schools concur that the father's father represents the mother in her absence and inherits jointly with the son, like the father, though differing from the father in respect of his wife, the father's mother, because she does not inherit with the father, except in the opinion of the Hanbalis, but inherits jointly with the paternal grandfather, i.e. with her husband.

The father also differs from the paternal grandfather in the case of both parents jointly inheriting with a

spouse; here, the mother inheriting jointly with the father and spouse receives one-third of the remainder after deducting the share of the spouse, and while inheriting jointly with the paternal grandfather and spouse she receives one-third of the original estate and not one-third of the remainder.

The four schools also concur that the paternal grandfather excludes from inheritance uterine brothers and sisters as well as the children of full and agnate brothers. These schools differ among themselves concerning whether the paternal grandfather excludes full and agnate brothers and sisters or if he inherits jointly with them.

Abu Hanifa observes: The paternal grandfather excludes all kinds of brothers and sisters from inheritance, exactly in the manner that they are excluded by the father. This is despite the fact that according to the Sunni schools the maternal grandfather excludes none of the different kinds of brothers and sisters, because he is included, as mentioned earlier, among distant kindred.

The Maliki, the Shafi'i, and the Hanbali schools and the two disciples of Abu Hanifa, Abu Yusuf and Muhammad ibn al-Hasan, state: Full and agnate brothers and sisters inherit jointly with the paternal grandfather. The manner of their inheriting with him is that he will be given the greater of these two: one-third of the whole estate or a brother's share. Accordingly, if there exist a brother and a sister, he will receive equal to a brother's share and take two-fifths of the estate, and if there exist three brothers, he will take one-third because a brother's share will be one-fourth. (*al-Mughni*, vol. 6, p. 218)

The Imamiyyah observe: The grandparents, brothers and sisters inherit together and belong to the same category. Hence if they exist together and are related to the decedent from the father's side, the grandfather and the grandmother will take the share of a brother and a sister respectively and the estate will be distributed with each male receiving twice a female's share. And if they are all related through the mother, they will distribute the estate with a male receiving twice the share of a female.

And if they exist together and are related to the deceased from either side --such as if there are with the maternal grandparents full or agnate brothers and sisters-- the grandfather or the grandmother or both together will inherit one-third and the brothers and sisters two-thirds.

And if the paternal grandparents exist along with uterine brothers and sisters, a sole uterine brother or sister will receive one-sixth; if they are more than one, they will be entitled to one-third, distributed equally among males and females, with the remainder going to the grandparents who distribute it with the grandfather receiving twice the share of the grandmother.

'Children' how low soever, of brothers and sisters of all kinds, represent their parents in their absence while inheriting along with all kinds of grandparents, each one of them inheriting the share of the person through whom he or she is related.

# The Inheritance of Paternal and Maternal Uncles and Aunts

The four schools say: Aunts, both paternal and maternal, uterine paternal uncles and all kinds of maternal uncles and aunts do not inherit with full or agnate paternal uncles and their sons.<sup>1</sup> Hence if there exists a full or agnate paternal uncle or his son, all the above-mentioned will be excluded from inheritance because they belong to the class of distant kindred, whereas he belongs to the class of residuaries, and according to them the residuaries supersede the distant kindred; rather, the Shafi'i and the Maliki schools do not consider them capable of inheriting at all, as mentioned repeatedly above.

A full paternal uncle inherits in the absence of full or agnate brothers and their sons, and not with full and agnate sisters, because though residuaries, they (the sisters) supersede the paternal uncle in the application of the doctrine of *ta'sib*.

A full paternal uncle inherits jointly with the daughter and the mother, because the two inherit as sharers and he as a result of *ta'sib*, and when a residuary inherits jointly with a sharer, the sharer takes his share and what remains of the estate goes to the residuary. And if there is no sharer at all, the residuary receives the whole estate.

Accordingly, if there are daughter's children or daughter's son's children with full or agnate paternal uncle or their sons, according to the four schools the whole estate will go to the uncle or his son to the exclusion of the daughter's children, even if there happen to be males among them. According to the Imamiyyah the opposite applies and the whole estate is inherited by the daughter's children to the exclusion of the paternal uncle.

In the absence of a full paternal uncle, the agnate paternal uncle takes his place, and in his absence the full paternal uncle's son. As to the mode of inheritance of a full paternal uncle and those who take his place, he takes, as pointed out earlier, the whole estate in the absence of all sharers, and in their presence he takes the remainder. To sum up, a full or an agnate paternal uncle is exactly like a full brother, or an agnate brother in the absence of a full brother.

The nearer 'paternal uncle' will supersede the distant one; hence the decedent's paternal uncle supersedes his father's paternal uncle, and the father's paternal uncle supersedes the grandfather's paternal uncle. Similarly, the full paternal uncle supersedes the agnate paternal uncle. In the absence of full and agnate paternal uncles and their sons, according to the Hanafi and the Hanbali schools, uterine paternal uncles, paternal aunts of all kinds, maternal uncles and maternal aunts become entitled to inherit.

If one of them exists solely, he will receive the whole estate, and if they exist together, the agnates will

receive two-thirds and the cognates one-third. Hence if the decedent is survived by a maternal uncle and a paternal aunt, the uncle will receive one-third and the aunt two-thirds. The uterine maternal uncles and aunts distribute the estate in the proportion of a male receiving twice the share of a female, despite the fact that the uterine brother's children distribute the estate by allocating equal shares to males and females.<sup>2</sup> ('Abd al-Muta'al al-Sa'idi's *al-Mirath fi al-Shari'at al-Islamiyyah, fas l irth dhawi al-'arham*)

The Imamiyyah state: In the absence of the parents, children, children's children, brothers, sisters, brothers' and sisters' children and the grandparents, the uncles and aunts, both maternal and paternal and of different kinds, become entitled to the estate. Some among them inherit to the exclusion of some others, while others among them inherit jointly.

If there exist paternal uncles and aunts and there are no maternal uncles and aunts with them, then a single paternal uncle or aunt is entitled to the entire estate irrespective of whether he or she is a full, an agnate, or a uterine uncle or aunt.

If there exist two or more paternal uncles and aunts related similarly to the decedent, and they are all full or agnate, they will distribute the estate with the male taking twice the female's share. If they are all uterine, they will distribute it without any difference between males and females. But if the paternal uncles and aunts differ in the manner of their relationship with the deceased (some being full, some agnate and others uterine) then only the agnates among them will be excluded from inheritance by the full paternal uncles, for they inherit only in the latter's absence. The agnate paternal uncle and aunt will take the same share which the full paternal uncle and aunt would take if present.

If full or agnate paternal uncles and aunts exist together with uterine paternal uncles and aunts, a sole uterine uncle or aunt will be entitled to one-sixth, and if more than one, they together will be entitled to one-third, sharing it equally without differentiating between the sexes.

If there exist maternal uncles and aunts but no paternal uncle or aunt, a sole maternal uncle will take the whole estate irrespective of his being full, agnate or uterine. If there are two or more maternal uncles or aunts who are similarly related to the deceased (i.e. they are all either full or agnate or uterine), they will distribute the estate equally among themselves, a male receiving an equal share with a female.

But if they differ in the manner of their relation with the deceased (i.e. some are full, some agnate and others uterine) only the agnates among them will be excluded by their full counterparts. Where the full or agnate maternal uncles or aunts inherit with their uterine counterparts, a sole uterine uncle or aunt will take one-sixth, and if more than one, they together will be entitled to one-third, sharing it equally without differentiating between the sexes, with the remainder going to the full or agnate maternal uncles and aunts who also share it equally without differentiating between the sexes.

If a paternal and a maternal uncle or aunt inherit together, the maternal uncle or aunt will take one-third irrespective of their being one or more, and the paternal uncle or aunt two-thirds irrespective of their

being one or more. The maternal uncles and aunts will distribute their share of one-third as they distributed it while they were the sole heirs in the absence of paternal uncles and aunts, and the paternal uncles and aunts will also similarly distribute their share of two-thirds.

In the absence of all paternal and maternal uncles and aunts their children take their place, each of them taking the share of the person through whom he or she is related, irrespective of there being one or more. Hence if one paternal uncle has a number of children and another paternal uncle only one daughter, the single daughter will be entitled to a half and the children of the other uncle to the other half.

The nearer from among the paternal or maternal side excludes the remote from its own side as well as from the opposite side; hence a paternal uncle's son does not inherit in the presence of a paternal or a maternal uncle, except in the particular instance where a full paternal uncle's son is present with an agnate paternal uncle, when the whole estate goes to the paternal uncle's son. A maternal uncle's son does not inherit in the presence of a maternal or a paternal uncle; hence if a paternal uncle's son is present with a maternal uncle, the entire estate goes to the maternal uncle, and if a maternal uncle's son is present with a paternal uncle, the whole estate goes to the paternal uncle.

Paternal and maternal uncles and aunts of the decedent and their children supersede in inheritance the paternal and maternal uncles and aunts of his father. Every child born to a nearer relative supersedes the remoter relative. Hence if a paternal uncle's son exists with the father's paternal uncle, the former is entitled to the estate, and similarly a maternal uncle's son when present with the father's maternal uncle, following the rule of the supersedence of the nearer relative.

If the husband, or wife, is present with paternal and maternal uncles or aunts, the husband or the wife will be entitled to his or her maximum share, the maternal uncles or aunts to one-third, irrespective of their number, and the remainder will go to the paternal uncles or aunts irrespective of their number. Hence the reduction of share is borne by the paternal uncle in all cases where the spouse is present along with the paternal and maternal uncles.

Therefore. if the husband is present with a maternal uncle or aunt and a paternal uncle or aunt, the husband will take three-sixths, the maternal uncle or aunt two-sixths, and the paternal uncle or aunt one-sixth; and if there is a wife, she will take three-twelfths, the maternal uncle or aunt four-twelfths, and the remainder of five-twelfths will go to the paternal uncle or aunt.

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1. They don't inherit only with the paternal uncle's daughters; their presence is similar to their absence in the presence of paternal uncle's sons. Therefore, the four schools concur that if a decedent is survived by a full or agnate paternal uncle's son accompanied by the latter's own full sister, he will be entitled to the whole estate to her exclusion.

2. The Sunni fuqaha' have extensively discussed about distant kindred, whom they consider a third category of heirs after the sharers and the residuaries. They mention different situations and conditions, which cannot be recorded, enumerated and comprehended easily. Hence the instances mentioned here suffice to present a general outline of them. Those

interested in details should refer to al-Mughni, 3rd ed. vol. 6, and al-Sa'idi's Kitab al-mirath fi al-Shari'at al-Islamiyyah.

## The Inheritance of the Spouses

The schools concur that the husband and the wife inherit jointly with all other inheritors without any exception, and that the husband is entitled to half the wife's estate if she does not have any child, neither from him nor from another husband, and to one-fourth if she has a child, either from him or from another husband. They also concur that a wife is entitled to one-fourth if the husband has no child, neither from her –nor from another wife, and to one-eighth if he has a child from her or from another wife.

The four Sunni schools observe: Here, by 'child' is meant only the decedent's own offspring or the son's child, irrespective of its sex. A daughter's child, on the contrary, does not prevent a spouse from taking his or her maximum share; rather, the Shafi'i and the Maliki schools say: The daughter's child neither inherits nor excludes others because it belongs to the category of distant kindred.

The Imamiyyah state: By 'child' is meant one's offspring as well as the children's, children irrespective of their being sons or daughters. Hence a daughter's daughter, exactly like a son, reduces the share of either spouse from the higher to the lower value.

If there are many wives, they will distribute their share of one-fourth or one-eighth equally among themselves. The schools concur that if a person divorces his wife revocably and then one of them dies during the period of *'iddah* of the divorcee, they will inherit from each other as if the divorce had not occurred.

The schools differ regarding the situation where there is no other heir except the spouse as to whether the remainder will return to the spouse or escheat to the *bayt al-mal*.

The four schools say: It will return neither to the husband nor to the wife (*al-Mughni*).

The Imamiyyah are divided on this issue into three groups, each having a different opinion.

The first view is that it will return to the husband and not to the wife; this is the preponderant opinion and the legists have acted accordingly.

The second view is that it returns to both the husband and the wife in all situations.

The third view is that it returns to both in the absence of accessibility to a just (*'adil*) imam, as is the case at the present, and it returns to the husband and not the wife in the presence of an *'adil* imam. This is the opinion of al-Saduq, Naji al-Din ibn Sa'id, al-'Allama al-Hilli and al-Shahid al-'Awwal, and their



argument is that some traditions say that it returns to the wife while some other traditions say that it does not return to her; hence we consider the first group of traditions to be applicable in the absence of an *'adil* imam and the second group of traditions to be applicable in the event of his presence.

## A Missing Person's Property

A missing person is one who has disappeared with no news of his whereabouts and it is not known whether he is alive or dead. We have discussed in the chapters on marriage and divorce about the rules applicable to his wife and her divorce after four years, and here we intend to discuss the distribution of his property as well as his right to inheritance if any relative of his dies during the period of his disappearance. It is obvious that the divorce of the wife after four years neither entails that his estate be distributed after this period nor that it shouldn't; rather, it is possible that the wife be divorced but the estate be not distributed because there is no causal relationship between divorce and death.

The schools concur that it is *wajib* to delay the distribution of his estate so that a period of time passes after which he is not expected to be alive,<sup>1</sup> and the specification of this period is the prerogative of the judge and differs with circumstances. When the judge gives a ruling announcing his death, the (surviving) relative nearest to him as regards inheritance at the time of this announcement will inherit him, but not any of his relatives who has died during the period of his disappearance.

If a relative of the missing person dies during the period of his disappearance in which there is no news of him, it is *wajib* to set aside his share, which will be considered like the rest of his property until his actual condition is known or until the judge rules announcing his death after the period of waiting.

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1. According to the authors of *al-Masalik* and *al-Jawahir*, the preponderant opinion among Shi'i fuqaha' is that the decedent's property will not be distributed until after confirming his death, either by *tawatur*, testimony, or by a report supported by indications capable of leading to such knowledge, or by the expiry of a period after which a like person does not generally stay alive.

## Inheritance of Persons Killed by Drowning, Fire

## and Debris

Both Sunni and Shi'i legists have discussed the issue of the inheritance of persons killed by drowning, fire, building collapse and the like. They differ regarding the inheriting of one of them from another in an obscure situation in which it is not known whose death among them took place earlier.

The Imams of the four Sunni schools, the Hanafi, the Shafi'i, the Maliki and the Hanbali, have observed that none among them inherits from the other and the estate of each one of them will be transferred to the living heirs, excluding the heirs of the other decedent, irrespective of whether the cause of death, and the resultant ambiguity, is drowning, building collapse, murder, fire or plague.<sup>1</sup>

The Imami *mujtahidun* have done extensive work on this issue, and those of the last generation have sufficiently elucidated it by going into minute details which have not crossed the minds of the legists of early and latter eras. Before going into the specifics of the inheritance of victims of drowning, building collapse, etc., they take up the more general issue of two incidents of known occurrence but of unknown sequence, in which the precedence of each to the other leads to different legal consequences.

The latter day Shi'i *mujtahidun* (*muta'akhhirun*) view the issue of the inheritance of victims of drowning and the like as a particular case of a more general problem that is not limited to any single chapter or issue of fiqh, but relates to any two events of known occurrence but of obscure precedence and subsequence, irrespective of whether the two events relate to contracts, inheritance, crime, etc.

Hence the problem includes two contracts of sale, one concluded by the owner himself with A regarding a particular article, and the second by his agent concerning the same article with B, it being unknown which of the two preceded the other so that the validity of the former and the invalidity of the latter contract could be ascertained.

The problem thus concerns any two events in which the consequences of one event are dependent on the precedence of the other over it, where there is nothing to prove that the two events took place simultaneously or successively. Therefore, the issue of drowned persons or the like is not an independent issue; rather, it is one of the many particular issues that come in the purview of a general rule.

Thus we see that the Shi'i *mujtahidun* initially concentrate on elucidating the rule itself and then discuss the issue of inheritance of victims of drowning and the like to see whether the general rule is applicable to them or if they are excluded from its application. There is no doubt that this manner of presenting the argument is more beneficial.

As the understanding of this rule depends upon the comprehension of two other closely-related principles, we shall explain them to the needed extent so as to grasp the said rule, although a discussion

of these two principles is not less beneficial than that of the rule itself.

These two principles are as follows:

- a) The presumption of non-occurrence of an event whose occurrence is doubtful.
- b) The presumption of delayed occurrence of an event known to have occurred.

## The Presumption of Non-Occurrence

Suppose you had a relative living abroad with whom you used to correspond. At one point he stopped writing to you and you did the same. After a long period of time it came to your mind that you should write to him. You wrote to him at his earlier address without the doubt troubling your mind that he might have died or moved to another place. What led you to pay no attention to the possibility of his death or change of his address?

Similarly, we believe in the honesty and integrity of a person, and rely upon him by depositing with him our valuables. Then he acts in a manner which raises a doubt in our minds that he might have changed, yet, we, despite this doubt, continue to treat him in the past manner. The same rule applies to all correspondences, transactions and communications.

The secret here is that man is led by his nature to accept the continuity of an earlier situation until the contrary is proved. Hence if A is known to be alive and later a doubt arises about his death, the presumption accepted by human nature is to consider him alive until his death is known in some manner. This is what is meant by 'the presumption of non-occurrence of an event' whose occurrence has not been proved, and the following statement of al-'Imam al-Sadiq (a) points towards it:

مَنْ كَانَ عَلَى يَقِينٍ ثُمَّ شَكَّ فَلَا يُنْقِضُ الْيَقِينَ بِالشَّكِّ، إِنَّ الْيَقِينَ لَا يَنْقُضُهُ إِلَّا  
الْيَقِينُ،

لَا تُدْخِلِ الشَّكَّ عَلَى الْيَقِينِ، وَلَا تَخْلُطْ أَحَدُهُمَا عَلَى الْآخَرَ،

وَلَا تَعْتَدِ بِالشَّكِّ مَعَ الْيَقِينِ فِي حَالٍ مِنَ الْأَحْوَالِ

*If a person is certain (about something) and then doubts (its remaining so),*

*his earlier certainty will not be demolished by the doubt.*

*Surely, certainty cannot be annulled by anything except certainty; doubt cannot dislodge certainty, nor does any of them mix with the other, under no circumstance give credence to doubt in the presence of certainty.*

Hence, when we know that someone owes a debt for a particular sum and later claims having repaid it, the presumption is that he owes the debt until its repayment is proved. That is, we ought to know the payment of debt in the way that we know the fact of indebtedness, because knowledge is not annulled by anything except knowledge and a doubt arising after knowledge has no effect.

Therefore, one who makes a claim which contradicts the earlier condition of something, the burden of proof rests on him to prove his claim, and he whose claim is in accordance with the earlier condition is only liable to take an oath.

The gist of the above discussion is that the principle of presumption of non-occurrence of an event means the acceptance of an earlier existing situation until the contrary is proved.

## **The Presumption of the Delayed Occurrence of an Event**

If a judge has knowledge of A's being alive on Wednesday and of his being among the dead on Friday, without knowing whether he died on Thursday or on Friday and has no clue to determine the time of his death, how should he decide the issue? Should he rule that A died on Friday, or that he died on Thursday?

Three different periods are involved in this case:

- a) the period in which he was known to be living i.e. Wednesday;
- b) the time at which he is known to be dead, i.e. Friday;
- c) the period between the two times, i.e. Thursday, in which he is neither known to be alive nor dead.

The above principle requires that this intermediate period be considered similar to the period preceding it, not to the period subsequent to it. That is, the period of ignorance about his life will be regarded similar to the preceding period in which he was known to be alive. Hence we will remain on our knowledge of his being alive until the time of the knowledge of his death. The result is that his death will be presumed to have taken place on Friday. The same rule is applicable to every event of known occurrence in which a doubt arises regarding the time of its occurrence, provided that it is a single event and not a chain of events.

## The Knowledge of Occurrence of Two Events with Ignorance of Their Order of Succession

Having explained the two principles concerning the presumption of non-occurrence of an event and the delayed occurrence of a single event, let us examine the general rule which is the end of this discussion.

The general rule concerns two events known to have occurred in which the consequences of each are dependent on its preceding the other, while there exists total ignorance about the precedence of any one of them. Among the instances when this problem arises are: the conclusion of two contracts, one concluded by the owner and the other by his agent; the occurrence of a birth and the making of a gift of property; the deaths of two mutual heirs none of whom is known to have died before the other.

The application of this rule depends upon the judge's knowledge of the time of occurrence of each one of the two events or his ignorance about the time of occurrence of both events or one of them. Hence three different situations arise:

1. Where the judge comes to know the time of occurrence of both the events by examining the statements made by the parties to the suit or through circumstantial evidence. Here he will rule in accordance with his knowledge.
2. Where the judge is ignorant of the precedence of one event over the other, though he comes to know the time of occurrence of one of them (such as, his knowing that a horse was sold on June 2, without knowing whether or not it was defective on June 1, to justify its return, or became such on June 3, to make it unreturnable).

Here the event whose time of occurrence is known will be given precedence over the event whose time of occurrence is unknown, because the presumption of delayed occurrence of an event will not be applicable to an event whose time of occurrence is known; this knowledge prevents the application of the presumption to it. As to the event whose time of occurrence is unknown, the presumption of delayed occurrence is applicable to it because this principle is relied upon in instances of ignorance.

To sum up, if two events take place one whose time is known and the other whose time is unknown, the one whose time is known will be considered as having occurred earlier irrespective of whether the two events are of the same kind (e.g. the death of two persons, or the conclusion of two contracts) or of different kinds.

3. Where the judge is ignorant of the time of occurrence of both the events, there is no rule capable of determining the precedence or subsequence of either event, because there are no grounds for applying the principle of presumption to one of them as opposed to the other.

Therefore, the presumption of delayed occurrence of an event is applicable only where a single event

has taken place, or where two events occur and the time of occurrence of one of them is known. But where both the events have no known time of occurrence and there is nothing to differentiate between the time of occurrence of the two, reliance on the principle of presumption becomes impossible.<sup>2</sup>

## **Victims of Drowning and Burial under Debris**

At times, there are two close relatives who do not inherit from each other--e.g. two brothers who have children--; such a case does not come in the purview of our present discussion, for the inheritance of each is received by his own children, irrespective of his and his brother's death occurring simultaneously or successively.

At times, only one of the two decedents is entitled to inherit from the other (e.g. two brothers of whom only one has children). This situation is also outside our ambit of discussion (because the estate of the brother having children will be transferred to his children, and the estate of the childless brother will be transferred to his relatives, excluding the brother who has died along with him by drowning, fire, etc.).

This is because a condition of inheritance is that the heir be known to live at the time of death of the person being inherited (while in the above case we have no knowledge of the brother having children being alive at the time of the childless brother's death).<sup>3</sup>

There are other cases where both are entitled to inherit from each other (e.g. a son and a father; two brothers who do not have surviving parents and are childless; a couple, where the heirs of some of them are not those of the other).

This situation is the focus of our discussion, and the Imamiyyah legists lay down two conditions for the mutual inheritance of each from the other.

1. The deaths of both should be the result of a single cause, and should result specifically either by drowning or by being buried under fallen debris (such as where they are in a building which collapses upon them or in a boat which sinks with them). Hence if one of them dies by drowning and the other due to fire or the collapse of a building, or both die together in a plague or battle, they will not inherit mutually. Reportedly, the French law requires the unity of cause for mutual inheritance, but does not limit the causes to drowning and burial under debris, as observed by the Imamiyyah; rather, in that law, mutual inheritance also takes place if the cause of death is fire.

2. The time of death of both should be unknown; hence if the time of death of just one of them is known, only the one whose time of death is unknown will inherit.

To give an example, suppose a building collapses on a couple or a boat sinks with both aboard and during the rescue operations the husband is found taking his last breath at 5 o'clock. Two hours later the wife is found dead, and no one knows whether she died before, after or simultaneously with the husband. The time of death of the husband is known, while that of the wife is unknown. The principle of

presumption of delayed occurrence of an event requires that the wife, whose time of death is unknown, inherit the husband whose time of death is known, while he is not entitled to inherit anything from her.

Where the situation is reversed, the time of death of the wife being known and that of the husband remaining unknown, the husband will inherit not the wife. In other words, where the time of death of only one of them is known, the person whose time of death is unknown inherits from the one whose time of death is known, without the latter inheriting from the former. As the right to inherit is limited to the person whose time of death is unknown, there is no difference made in this situation by the cause of death, and the result is the same irrespective of whether the cause of death is drowning, fire, burial under fallen debris, epidemic or war.

But if the time of death of both is unknown, such as where the couple is found dead without the time of death of any of them being known, both are entitled to inherit mutually; that is, each inherits from the other. This difference between a situation where the time of death of one of two decedents is known and where the time of death of neither is known, has neither been reported from any foreign law, nor have I found it in the books of the early and latter Sunni legists nor the early Shi'i legists. This difference is only mentioned in the works of jurisprudence (*usul al-fiqh*) of recent Shi'i *mujtahidun*.

To sum up, the Imamiyyah limit the scope of mutual inheritance to the situations where the cause of death is either drowning or falling debris and where the time of death of both the decedents is unknown. Accordingly, if both die natural deaths, or by fire or are killed in battle, or as a result of a plague, etc., mutual inheritance will not take place, and the estate of each decedent will be transferred to his own living heirs without any of the two decedents inheriting from the other.

And where the time of death of only one of them is known, the decedent whose time of death is not known will inherit from the one whose time of death is known, without the latter inheriting from the former.

## **The Mode of Mutual Inheritance**

The method applied in mutual inheritance is that it is first assumed, in the example given above, that the husband died before the wife. Consequently, her share of his estate is separated and her heirs inherit her property which existed while she was alive, along with her share of her husband's estate that was added to it.

Then it is assumed that the husband died after the wife. Consequently, his share of her estate is separated and his heirs inherit his property which existed prior to his death, along with his share of the wife's estate which was added to it. None of the two will inherit from the property which each of them has inherited from the other.

Hence, if the wife possessed 100 liras and the husband 1000 liras, the wife inherits from his 1000 and the husband from her 100 only, because if one of them inherits from the property which the other has

inherited from him, it will lead to a person inheriting a part of his own property after his death! And it is impossible for a person to inherit a thing which he has left to be inherited by another.

To sum up, if two mutual heirs die by drowning or being buried under falling debris, when neither the sequence of their deaths is known nor the time of death of one of them, according to the Imamiyyah, each of them will inherit from the other from the property each owned prior to death.

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1. Al-Shi'rani, vol. 2, Kitab al-mizan, bab al-'irth.

2. The details of this will be found in the books of usul al-fiqh of the Imamiyyah (bab tanbihat al-'istishab); of these is the popular al-Rasa'il of al-Shaykh al-'Ansari, Taqirrat al-Na'ini of al-Sayyid al-Khu'i, and Hashiyat al-Rasa'il of al-Shaykh al-'Ashtiyani.

3. See Miftah al-Karamah, al-Masalik, and al-Lum'ah.

## Illustrations

A study of the above discussion will show that in many cases the four Sunni schools exclude women and those related through them from inheritance. The daughter's children, paternal aunts, uterine paternal uncles, the maternal grandfather, maternal uncles and maternal aunts are not entitled to inheritance in the presence of any of the residuaries who are relatives of the deceased through the father.

A full, or agnate, brother's daughter does not inherit with her own brother, and similarly a paternal uncle's daughter does not inherit with her own brother. Had there not been an explicit mention in the Qur'an of the inheritance of daughter, agnate sister, or sisters, and uterine brothers and sisters, their situation would have been similar to that of other female relatives and those related through them.

This was the practice during the *Jahiliyyah* during which the system of inheritance was biased in favour of males and the practice of restricting inheritance to the eldest son who bore arms and fought was prevalent. Where there was no child capable of bearing arms, they gave the inheritance to the relatives of the father.

The reader has observed throughout the discussion of the Sunni system of inheritance that a woman inherits only where her share has been specifically mentioned in the Qur'an or where *qiyas* leads to her being considered equal to a female sharer --such as where a son's daughter is considered equivalent to a daughter. Apart from this, women are deprived from inheritance.

The Imamiyyah have considered both males and females as equally entitled to inherit, and the following



examples illustrate this.

1. Where the decedent has left behind a daughter and a full or an agnate brother:

The four schools: Daughter:  $\frac{1}{2}$  Brother :  $\frac{1}{2}$

The Imamiyyah: The whole estate goes to the daughter to the exclusion of the brother.

2. Where the heirs are a daughter and the mother:

The four schools: Mother:  $\frac{1}{6}$  Daughter:  $\frac{3}{6}$

The remaining  $\frac{2}{6}$  will be taken by the paternal grandfather if present, otherwise by the full brother, in their absence by the agnate brothers, and so on in the descending order of residuaries.

The Imamiyyah: Mother:  $\frac{1}{4}$  Daughter:  $\frac{3}{4}$

The residuaries receive nothing.

3. Where the deceased is survived by the parents and daughter's children:

The four schools: Mother (in the absence of a *hajib*):  $\frac{2}{6}$  Father:  $\frac{4}{6}$

The daughter's children receive nothing.

The Imamiyyah: Mother:  $\frac{1}{6}$  Father:  $\frac{2}{6}$  Daughter's children:  $\frac{3}{6}$

4. Where a woman is survived by her parents and husband:

The four schools: Husband:  $\frac{6}{12}$  Mother:  $\frac{2}{12}$  Father:  $\frac{4}{12}$

The Imamiyyah: Husband:  $\frac{3}{6}$  Mother:  $\frac{2}{6}$  Father:  $\frac{1}{6}$

5. Where the heirs are the parents and a wife:

The four schools: Wife:  $\frac{3}{12}$  Mother:  $\frac{3}{12}$  Father:  $\frac{6}{12}$

The Imamiyyah: Wife:  $\frac{3}{12}$  Mother:  $\frac{4}{12}$  Father:  $\frac{5}{12}$

6. Where the father and daughter inherit:

The four schools: Father:  $\frac{1}{2}$  Daughter:  $\frac{1}{2}$

The Imamiyyah: Father:  $\frac{1}{4}$  Daughter:  $\frac{3}{4}$

7. Where the daughter and the paternal grandfather are present:

The four schools: Daughter:  $\frac{1}{2}$  Grandfather:  $\frac{1}{2}$

The Imamiyyah: The daughter inherits the whole estate to the exclusion of the grandfather.

8. Where the decedent is survived by a wife, the mother, and the paternal grandfather:

The four schools: Wife:  $\frac{3}{12}$  Mother:  $\frac{4}{12}$  Grandfather:  $\frac{5}{12}$

The Imamiyyah: Wife:  $\frac{1}{4}$  Mother:  $\frac{3}{4}$

The grandfather receives nothing.

9. Where the decedent is survived by the paternal and maternal grandfathers:

The four schools: The whole estate is inherited by the paternal grandfather with the maternal grandfather receiving nothing.

The Imamiyyah: Paternal grandfather:  $\frac{2}{3}$  Maternal grandfather:  $\frac{1}{3}$

10. Where the decedent is survived by the maternal grandmother and the maternal grandfather:

The four schools: The whole estate is inherited by the maternal grandmother to the exclusion of the maternal grandfather.

The Imamiyyah: Maternal grandmother:  $\frac{1}{2}$  Maternal grandfather:  $\frac{1}{2}$

11. Where the decedent is survived by the maternal and paternal grandmothers:

The four schools: They will together inherit  $\frac{1}{6}$  which they will distribute equally, and the remainder will go to the highest in the order of residuaries, and in their absence it will revert to the grandmothers in the opinion of the Hanafi and Hanbali schools, and escheat to the *bayt al-mal* in the opinion of the Maliki and the Shafi'i schools.

The Imamiyyah: Maternal grandmother:  $\frac{1}{3}$  Paternal grandmother:  $\frac{2}{3}$

12. Where the decedent leaves behind a son's daughter and a daughter's daughter.

The four schools: The son's daughter is entitled to a half and the remainder is given to the residuary without anything being given to the daughter's daughter.

The Imamiyyah: Each one of them will take the share of the person through whom they are related;

Son's daughter:  $\frac{2}{3}$  Daughter's daughter:  $\frac{1}{3}$

13. Where the decedent leaves behind a daughter's son and a son's daughter:

The four schools: The son's daughter gets a half and the remaining half goes to the residuary, without the daughter's son receiving anything.

The Imamiyyah: Daughter's son:  $\frac{1}{3}$  Son's daughter:  $\frac{2}{3}$

14. Where the decedent leaves behind a daughter and a son's daughter:

The four schools: Daughter:  $\frac{3}{6}$  Son's daughter:  $\frac{1}{6}$

The remainder goes to the residuary.

The Imamiyyah: The daughter takes the whole estate to the exclusion of the son's daughter.

15. Where the decedent is survived by two daughters and a son's daughter:

The four schools: Two or more daughters receive two-thirds and the remainder goes to the residuary, with the son's daughter receiving nothing.

The Imamiyyah: The whole estate goes to the daughters.

16. Where the decedent leaves behind two daughters, son's daughters and a son's son:

The four schools: The two daughters receive two-thirds and the remaining one-third goes to the son's daughters and son's son who distribute it with a male receiving twice the share of a female.

The Imamiyyah: The whole estate goes to the two daughters without the son's children receiving anything.

17. Where the decedent is survived by a daughter and a full or agnate sister:

The four schools: Daughter  $\frac{1}{2}$  Sister  $\frac{1}{2}$

The Imamiyyah: The whole estate goes to the daughter and the sister receives nothing

18. Where the decedent leaves behind 10 daughters and a full or agnate sister:

The four schools: Sister:  $\frac{1}{2}$  10 daughters:  $\frac{1}{2}$

The Imamiyyah: The 10 daughters are entitled to the whole estate without the sister receiving anything.

19. Where the decedent is survived by a daughter and a uterine brother:

The four schools: The daughter receives a half as the sharer and the remainder goes to the residuaries.

The uterine brother receives nothing.

The Imamiyyah: The whole estate goes to the daughter.

20. Where the decedent leaves behind a daughter, a full or an agnate sister, and a full or an agnate paternal uncle:

The four schools: Daughter  $\frac{1}{2}$  Sister  $\frac{1}{2}$

The paternal uncle receives nothing.

The Imamiyyah: The daughter receives the whole estate.

21. Where the decedent is survived by a full or an agnate paternal uncle and a similar aunt:

The four schools: The uncle receives the whole estate to the exclusion of the aunt.

The Imamiyyah: Uncle:  $\frac{2}{3}$  Aunt:  $\frac{1}{3}$

22. Where the decedent leaves behind a daughter and a full or an agnate paternal uncle:

The four schools: Daughter:  $\frac{1}{2}$  Uncle:  $\frac{1}{2}$

The Imamiyyah: The whole estate goes to the daughter.

23. Where the decedent is survived by a daughter, a full or an agnate paternal uncle's son and a uterine paternal uncle:

The four schools: Daughter:  $\frac{1}{2}$  Uncle's son:  $\frac{1}{2}$

The uncle receives nothing.

The Imamiyyah: The whole estate goes to the daughter.

24. Where the decedent leaves behind maternal uncles and aunts and a full or an agnate paternal uncle's son:

The four schools: The paternal uncle's son receives the whole estate without the maternal uncles and aunts receiving anything.

The Imamiyyah: The maternal uncles and aunts will take the whole estate without the paternal uncle's son receiving anything. The method of distributing the estate between the maternal uncles and the maternal aunts has been mentioned earlier while discussing their inheritance.

25. Where the decedent is survived by a paternal uncle's daughter and a full or an agnate paternal uncle's son:

The four schools: The whole estate goes to the paternal uncle's son without the paternal uncle's daughter receiving anything, even where she is the full sister of the paternal uncle's son.

The Imamiyyah: Uncle's daughter:  $\frac{1}{3}$  Uncle's son:  $\frac{2}{3}$

26. Where the decedent leaves behind a maternal grandfather and a full or an agnate paternal uncle:

The four schools: The paternal uncle takes the whole estate to the exclusion of the maternal grandfather.

The Imamiyyah: The whole estate is inherited by the grandfather to the exclusion of the paternal uncle.

26. Where the decedent is survived by a full or an agnate brother's son and five sons of another full or agnate brother.

The four schools: The estate will be divided according to the number of sons and not as per the number of fathers. Hence the estate will be divided into six parts with each receiving one part

The Imamiyyah: The estate will be divided into as many parts as there are fathers and not into as many parts as there are heirs; each will receive the share of the person through whom he is related to the deceased. Hence one brother's son will receive five-tenths and the other brother's five sons will together receive five-tenths, each getting one-tenth.

27. Where the decedent leaves behind a brother's son and a full or an agnate brother's daughter:

The four schools: The male will inherit not the female, even though she is his full sister.

The Imamiyyah: They inherit jointly, the male receiving twice a female's share.

These examples are enough to give a complete picture of the intrinsic difference between the rules of inheritance of the Imamiyyah and the rules of inheritance of the Sunni schools.

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