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„Succession in Islamic Law According to the Shafii School,,
An Abstract

I. The estate available for distribution is divided as follows

A. Zawil furud, (sharers)

1. Father
2. Mother
3. Father's father (unlimited line of ascendency)
4. Grandmother (maternal & paternal -- unlimited ascendency)
5. Daughter
6. Son's daughter
7. Uterine brother
8. Uterine sister
9. Germane sister
10. Consanguine sister
11. Husband
12. Wife

B. 'Asaba (residuaries)

1. Male
   a. son
   b. son's son (unlimited line of descendency)
   c. germane & consanguine brothers and their sons
   d. father's brothers (germane & consanguine)
   e. father
   f. grandfather

IX. Distinction between a brother (germane or consanguine) his son exceptions.

A. Brother's sons and mother
B. Brother's sons and Grandfather
C. Brother's sons with sisters, with daughters
D. „Mushtaraka" -- taking father's place.

X. Doctrine of Sons of an Uncle
illustration of apportionment and exclusion.

XI. Grandfather and Collaterals, separately and in competition.

A. Separately -- noted by *Qorān* and Hadith

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1. grandfather with no joint sharers
   a. one-third of estate
   b. al-muqasama

2. grandfather with sharers
   a. one-sixth of estate
   b. al-muqasama
   c. remaining one-third

XII. Conditions of inheritance and suspension of succession

A. Conditions necessary

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1. „Mafqud" -- missing person
2. Proof of paternity
3. Posthumous children

3. Female

a. asaba bi ghayrih b. asaba ma ghayrih	daughters, sons' daughters, germane & consanguine sisters in competition with theirbrothers

C. Dhawul-arham (leftovers)

1. relatives of deceased -- i. e., descendants of daughters and sons' daughters
2. persons t9 whom the deceased is related -- i. e., mother's father and paternal grandparents
3. relatives of the deceased's parents -- i. e., sister's issue, bro ther's female issue, uterine brother's issue (unlimited line of descendency)
4. relatives of the deceased's ancestors -- i. e., daughters of paternal uncles, maternal uncles, maternal & paternal aunts and their children (unlimited descent line).

II. Manner of succession -- one of the following, depaending on circumstances.

A. Sharers' portions equal entire estate

B. Sharers' portions are less than entire estate

C. Sharers' portions are greater than entire estate

D. Sharers' portions are less than entire estate and there are no residuaries.

III. Al-Gharrawan or Al ,Umaryatan -- allottment of parents' portion in the oresence of surviving spouse.

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C. Bait al-mal (Public treasury)

V. Hajb (exclusion)

A. By person

1. Total exclusion, Partial exclusion

a. parents, spouses, children do not exclude heirs who have direct access to predisposed shares.

b. persons related to the above (who have direct access) will be barred during lifetime of that person.

c. the closer the generation to the decedent, the more remote the exclusion.

d. one person who is excluded affects another's shares.

1. consanguine & germane brothers affect mother's share, but are excluded by father.

2. uterine brother etc.

3. Muadda -- germane and consanguine brother and grand-father.

VI. Shares of children & their descendants different combinations explanation thereof.

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A. „Himariyya" or „Mushtaraka"

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XIII. Impediments to inheritance

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C. Simultaneous Death

D. Apostasy

E. Illegitimacy.

« Succession in Islamic Law According to the Shafii, School »

This article is a summary of the regulations of the Shafii' school concerning inheritance.

In this article, matters have been explained in simple and clear language with examples. The special opinions of Shafii' with the evidence of tradition and reason, have been noted where they differ from the other schools.

In addition to describing the problems related to inheritance, the order of precedence of the various heirs has been compared and analyzed.

All matters are documented from the *Qoran, Hadith* (Tradition of the Prophet), and accepted works on Islam, especially those written by followers of the Shafii' school. All Islamic expression related to inheritance have been translated and explained in footnotes.

Furthermore, certain special problems of inheritance, such as simultaneous death, posthumous children, and illegitimate children, have been compared with present American law.

Documentation will be found in footnotes under appropriate sections.

It is sincerely hoped that this summary will be useful to the reader.

When a person dies, his estate shall be distributed between his heirs, subject to the payment of the following claims respectively.

A. Alms (which is a form of taxation).

B. Funeral expenses appropriate to the standard of living of the deceased.

C. Payment of debts and mortgages.

D. Payment of valid bequests, which may include up o one third (1/3) of his estate. 1

After payment of the above charges, the remaining estate is available for distribution.

The heirs are divided into the three following principal categories: (A) Zawil-furud, or „sharers" ; (B) ,Asaba, or „Residuaries"; (C) Dhawu al-arham. These categories will be considered in further detail.

A. Zawil-furud, or „sharers" are those to whon definite shares are allotted by the *Qoran*, *Hadith*,2 *Ijma3* and *Qiyas*.4

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1 - AlRamly,- Shahābuldin, *Nihāvatu-l-muhtā ila Sharhi-l- minhā* , B. 6, pp. 6-7.

2 - *Tradition of the Prophet*.

3 - "general agreement"

4 - "analogy"

There are the following twelve (12) groups of sharers:
1. Father, 2. Mother, 3. Father's Father (no matter how high), 4. Grandmother (maternal and paternal, no matter how high), 5. 5. Daughter, 6. Son's daughter, 7. Uterine brother, 1 8. Uterine sister, 9. German 2 sister, 10. Consanguine 3 sister, 11. Hosband, 12. Wife.

1. Father: If a decedent leaves a father and children, the father receives one-sixth (1/6) of the deceased's property by the right of sharer, according to the *Qoran*. 4 If there are no descendants (son and daughter or son's son, no matter how low), the father takes the remainder of the property if there are other parties entitled to shares; otherwise, the entire property passes to him, by the right of Asaba or „residuaries".

If the deceased is survived by female children and the remainder is in excess of one-sixth (1/6), the father takes one-sixth (1-6) by the right of „sharers" and the remainder by the right of „residuaries".5

2. Mother: When a person dies and is survived by his mother and children, or more than one brother or sister, the mother is entitled to take one-sixth (1/6) of her deceaased child'sestate; if are there no children, or only one brother or sister, or neone, she has the right to take one-third (1/3) of the estate, according to the *Goran*.6

3. Grandfather: (Father's father, no matter how high) There is no definite share for a grandfather in the *Qoran*, but by principle of „Qiyas" he take one-sixth (1/6) of the property in the absence of the father.7

4. Grandmother (Mother's mother and Father's mother, no matter how high): If a person is survived by one grandmother,

1 - Mother's side
2 - both Father's and Mother's sides
3 - Father's side
4 - Süra 4, v. 11
5 - Al-Ramly., Op. cit., V. 6, p. 18.
6 - Sura 4, V. 11
7 - Zarqäni, Muhammad ibn Abdul Baqer ibn Yüszf, *Sharh Müatta al Imäm Mälik*, V. 3, p. 432.

she can take one-sixth (1/6) of the deceased's estate. If both grandmothers have survived, they divide one-sixth (1/6) between themselves in equal portions, according to the following ‚Hadith': „Give 1/6 of the property to both grandmothers in equal portions." 1

5. Daughter: When the deceased is survived by one daughter, and there is no son, she is entitled to take one-half (1/2) of the estate. If there are two or more daughters, they shall take two-thirds (2/3), which they shall share equally, according to the *Qoran*.2

6. Son's daughter: If a decedent leaves one son's daughter, and there is no son or daughter, she receives one-half (1/2) of the estate. If there are two or more daughters of one or more sons, they take two-thirds (2/3) of the estate and divide it between themselves in equal portions. This share is allotted according to the principle of Ijma, and is not mentioned in the *Qoran*. 3

7. and 8. Uterine brothers and sisters: If the deceased leaves no descendants or ascendants in the paternal line, one uterine brother or sister receives one-sixth (1/6) of the estate. If there are two or more (males, females or both) uterine sib ings, they have the right to take one-third (1/3) of the estate, sharing it equally. In this case, there no distinction regarding sex, because they are related to the deceased only on the mother's side, according to the *Qoran*. 4

9. and 10. Germane and consanguine sisters: If anyone dies without descendants and is survived by one germane oer consanguine sister, she can take one-half (1-2) of the deceased's estate. If there are two or more, they take thirds (2-3) and they divide it among themselves in equal portions, according to the *Qoran*.5

11. Husband: When a wife leaves a husband, he has the right to take one-half (1/2) of her property, if she is not survived by any son or daughter or son's son (no matter how low), or son's daughter by any marriage; otherwise he takes only one-fourth (1/4) according to the *Qoran*. 6

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1 - Al-Ramly, op. cit., V. 6, p. 19.

2 - Sūra 4, V. 11.

3 - Zarqāni, op. cit., V. 3, p. 422-3, and Al-Ramly, op. cit., pp. 17-198.

4 - Qorān, Sūra 4, V. 12.

5 - Qorān, Sūra 4, V. 177.

6 - *Qoran*, Sūra 4, V. 12.

12. Wife: Upon the death of her husband, his wife is entitled to take one-fourth (1/4) of his property if he leaves no descendants from any marriage; otherwise she receives one-eighth (1-8), and if there is more than one wife, they shall divide such portion between themselves in equal, according to the *Qoran.* 1

B. Asaba, or „ressiduaries" are heirs who do not have a fixed share, but who take the entire estate if there are no sharers, to take the remainder from the sharers' portions, or receive nothing if the sharers take the whole estate. 2

There are two kinds of Asaba, male and female. The former are: son; son's son, no matter how low; germane and consanguine brothers and their sons; father's brothers (germane and consanguine); father; grandfather.

The latter are as follows: daughters, son's daughters; germane and consanguine sisters, in competition with their brothers.3

The female residuaries are divided into two classes: A. Asaba bi ghayrih, or „residuaries by another" and B. Asaba ma ghayrih, or "residuaries with another". The female residuaries (the deceased's sister or daughter) in competition with their brothers become „Asaba bi ghayrih", although they have fixed shares.

The deceased's sister, germane or consanguine, in competition with the daughter of the deceased and the son's daughter, become „asaba ma gheyrih" according to this Hadith „ One-half (1/2) for the daughter and one-sixth (1/6) for the son's daughter and the remainder for the sister. 4

C. Dhawul-acham: These atre relatives who are neither sharers nor residuaries, but they receive their portions if 1) there are no surviving sharers or residuaries, or 2) the „Bait almal" or public treasury is judged incompetent to receive the estate.

This category can be divided into four groups:

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1 - *Ibid.*, Sūra 4, V. 12.

2 - Al Muty,i, Muhammad Najyb (ed.) *Al Ma mū, Sharh ul Muhdhab*,

3 - *Ibid.*, V. 15, p. 253.

4 - Al Shawkāny, Muhammad ibn Àli, Nail ul awtār sharh Muntaqa l akhbār, V. 5, p. 62.

1. Those persons who are related to the deceased such as the daughter's descendants and the descendants of the son's daughter (no matter how low).

2. Those persons to whom the decedent is related, such as the mother's father and the father of the mother's father (no matter how high), the mother of the mother's father (no matter how high).

3. Those who are related to the deceased's parents, such as a sister's issue, brother's female issue and uterine's issue, no matter how low.

4. Those relatives who are related to the deceased's ancestors, such as a daughter of paternal uncles, maternal uncles, maternal and paternal aunts and their children, no matter how low. 1

Manner of Succession

At the time of the distribution of the decedent's estate, one of the following four cases will occur:

A. The total of the fractions of the sharers' portions may be equal to the exact sum of the property. In this case, the sharers will take the entire estate, and the residuaries will get nothing. For exam-example, a wife dies and leaves a husband ,a germane or consanguine sister, and one uncle. The husband takes one-half (1/2) and the sister takes the other half, leaving no inheritance for the uncle.

B. The total of the fractions of the sharers' portions may be less than unity of the property. In this case, the sharers' take their poltions and the remainder passes to the residuaries. 2 For example, a husband dies and is survived by his wife, mother, and one germane or consanguine brother. The wife takes one-fourth (1/4), the mother one-third (1/3), and the five-twelfth (5/12) remaining pass to the brother, who is the residuary.

C. The total of the fractions of the sharers' portions may be more than unity. In this case, the problem is solved by the application of the doctrine of „awl". This doctrine requires that the denominator will be increased to make it equal to the sum of the

1 - Al-Shawkāny, op. cit., V. 6, pp. 66-67.

2 - Al Mutyi, op. cit., V. 15, pp. 269-270.

numerators, so that the deficiency is distributed among all the sharers in proportion to-their shares. For example, when a wife dies and leaves a husband and two sisters (not uterine), the husband takes one-half (1/2) and the two sisters two-thirds (2/3).

Two sisters	2/3 = 4/6	7/6	is adjusted to 4/7	7/7
husband	1/2 = 3/6		is adjeusted to 3/7	

Obviously, in this case the residuaries will take no share. 1

D. The total of the fractions of the sharers' portions is less than unity and there are no residuaries. In this case, the remainder passes to the „Bait al-mal" or public treasury if it is judged competent. Otherwise, the remainder will return to the sharers in proportion to their shares, according to the rule of „Radd" or return. 2 But in no case will it return to the spouses. For example, when a decedent leaves a mother and one daughter, the mother's share is one-sixth (1/6) and the daughter's share is one-half (1/2).

1-6 + 1/2 = 4/6, 6-6 — 4/6 = 2/6, daughter 9/12
mother 3/12.

If there are no sharers except a husband or wife, or there is no competent Bait al-mal, the remainder passes to the dhawul-arham. They take their portions according to the rule of „tanz yl".3

„Al-Gharrawan" or „Al Umaryatan"

As already mentioned, the shares of the father and mother, in competition with children of the deceased, deceased's brothers and sisters, and also when the parents are alone, are allotted by the **Qoran** and Hadith. The portion of the parents in competition with the surviving spouse is not definite, so this problem is solved by „Umar". 4 The solution is that the spouse takes a share first, then the mother takes one-third (1/3) of the remainder and the surplus goes to the father as residuary. For example:

1) Parents in competition with wife; wife receives one-fourth (1/4), mother one-third (1/3) and father the remainder.

1 - Al Mutyi, op. cit., V. 15, pp. 247-248.
2 - Al Shafii, Muhammad ibn idrys Al Um, V. 4, p. 80.
3 - Each heir succeeds the parents. Al Mutyi, op. cit. V. 15, p. 212.
4 - The second Caliph of Islam.

wife mother father

12/12 — 3/12. = 9/12 — 3/12 = 6/12

2) Parents in competition with husband; the husband receives one-half (1/2), the mother one-third /1(3) of the remainder and the father the rest.

husband mother father

6/6 — 3-6 = 3/6. 3/6 - 1-6 = 2/6

It may then be stated that this rule is based on the original order of the **Qoran,** 1 which states that the female is allotted one-half (1/2) as much as the male. 2

„Sources of Rights to Inheritance"

There are three rights to inheritance:

1. Blood relatives „nasab", who are: a) all lineal ascendants of the deceased and their children, b) all lineal descendants of the deceased and their children, c) all collaterals and their children.

2. Relatives by matrimony.

3. The public treasury or Beit al-mal. According to Islam, if there are no heirs (zawil-furud, Asaba or Dhawu al-arham) or if the heirs do not take the whole estate , then the whole or the surplus goes to the public treasury. 3

„Hajb" or Exclusion

There are two types of exclusuion: exclusion by impedi - mency and exclusion by person. Exclusion by person may be either partial or total. Partial exclusion means the reduction of one share to another (aforesaid).

There are four rules that pertain to total exclusion:

1. The heirs who have directed access to the predisposed shares are not excluded by other persons, such as parents, spouses and children.

1 - Qorän, Süra 4, V. 11.

2 - Zarqäni, op. cit., V. 3, p. 426.

3- Al Shirwäny, Abdul Hamyd, Sharh Tuhfat ul Muhtäj bi sharhil Minhaj, V. 6, p. 388.

2. Each heir who is related to a person having access to the predisposed shares of another person, will, therefore, during the lifetime of this person, be excluded from inheritance reights. Uterine brothers and sisters who atre not excluded by their mother are considered exceptions.1

3. The closer the generation to the decedent, the more remote the exclusion.

4. The person who is impeded to inheritance does not affect the exclusion of another (partially or totally). However, the person who is excluded by another thusly reduces his succession shares:

a. Two brothers (consanguine or germane), in competition with their mother and father, are excluded by the father but reduce the share of the mother to one-sixth (1/6).

b. In the case of one uterine brother and a germane or consanguine brother in competition with the mother and father or grandfather, the uterine brother is excluded by the father or grandfather, and reduces the share allotted to his mother by one-sixth (1/6). This is because the mother's portion is always reduced by collaterals.2

c. According to the rule of „Muadda", which states that in the case of a germane brother and a consanguine brother in competition with the grandfather, the consanguine brother counts against the grandfather, therefore reducing his share. He is then excluded by his germane brother, to the latter's sole advantage.3

Following are some examples:

A mother's mother can be excluded only by the mother. The father's mother is excluded by a father. A mother of a mother's mother is excluded only by the mother's mother or by the mother of the decedent. However, the mother of a father's mother is excluded either by the father's mother or the mother's mother; i. e., a deceased person leaves a mother of a mother's mother and a father's mother. The latter cannot exclude the former,

1 - Al Shirwäny, op. cit., V. 6, pp. 397-398.
2 - Al Mutyi, op. cit., V. 15, p. 244.
3 - Ibid., V. 15, p, p. 279.

but they are both allotted one-sixth (1/6) of a deceased person's estate and must divide it equally.1

A grandfather is excluded by the father, etc. A son's son is excluded by his father or uncle. In general, the first generation lineage son excludes the more distant generation of the same lineage. Germane and consanguine brothers are excluded by father and son and son's son, no matter how far removed. The consanguine brother are excluded by the above persons and germane brothers and sisters competing with a deceased's daughter or son's daughter.2

Uterine brothers and sisters are excluded by father, son, son's son, as well as by grandfather, daughter, and son' daughter. Germane brothers may not exclude uterine brothers and sisters in the event that the father's lineage is uncertain, but the mother's lineage is certain. In such a case, the uterine brothers and sisters receive their shares and the germane brothers receive the remainder.

A. germane brother's son is excluded by his father and all of the aforementioned persons. A consanguine brother's son is excluded by a germane brother's son and all of the aforementioned persons. A consanguine brother's son and all persons who exclude him, also exclude the germane uncle. The consanguine uncle is excluded by all of the above persons. The son of the germane uncle is excluded by all of the above persons, and all of the said persons exclude the son of the consanguine uncle.

A. son's daughter is excluded by his father, or his uncle or by two daughters of the deceased. The consanguine sister is excluded by germane sisters, or one germane sister in cionmpetition with the deceased's daughter or son's daughter.3

„The Shares of Children and Their Descendants"

One or more sons take the entire estate if they are the only heirs, according to the principle of Ijma.

One daughter receives one-half (1/2) of the estate and two oe more daughters take two-thirds (2-3) according to the *Qoran.*

1 - Zarqāni, op. cit., V. 3, pp. 435-436.

2 - Al-Shawkāny, op. cit., V. 6, p. 61.

3 - Al Ramly, op. cit., V. 6, pp. 14-16.

A. son, in competition with a daughter, is entitled to receive double portions of her allotment, according to the *Qoran*.1 The grandson, no matter v'hat status, in his father's absence (death, etc.) assumes his father's rights to inheritance.2 However, the daughter's children are „Dhawul arham", and they are entitled to inheritance only there are no sharers, residuaries, „Bait al mal" or „radd". If there are children (be they male and female, or male only) in the first generation, they deprive the descendants in later generations, according to the principle of Ijmy.3

If there are one or more females-in the first generation, the remainder (one-half or one -third) is allotted to the second generation if it contains only males or males and females. Thus, the remainder is divided between them, according to the order of the *Qoran*. However, if there are only females in the second generation, and if the heir in the first generation is only one daughter, the female)s(in the second generation are entitled to one-sixth (1/6) of the in inheritance so as to satisfy the two-thirds (2/3) allottment (shares to females).

If there are two or more females in the first generation, the females in the second generation will therefore be deprived.

If there are two or more daughters only in the first generation, and if, in the second generation, there atre males and females of the predeceased son(s), the remaining one-third (1/3) of the inheritance passes to those children abnd is divided among them according to the *Qoran*. 4

Thus, a brother or his son causes gis sister or aunt to become Asaba bi ghayrih, and this brother is called „akh ul mubarak", or lucky kinsman. 5

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1 - Qoran, Süra 4, Verse 11.

2 - Al Shirwäny, op. cit., V. 6, p. 396.

3 - Al Ramly, op. cit., V. 6, p. 17.

4 - Zarqäni, op. cit., V. 3, pp. 422-423, Sura 4, Verse 11.

5 - because if there were no such berother, the female would receive no property allottment.

As a matter of fact, the son in the first generation, as heir, automatically excludes the inheritance of children in the second generation; the second generation similarly excludes the third generation, etc.

„The Comparison of Father and Grandfather"

Inheritance rights of the grandfather and the father are alike except in the following instances.

A. The presence of the father excludes germane or consanguine brother from inheritance, but the grandfather does not.

B. In the doctrine of „Gharrawan", if there is a grandfather rather than a father, the mother receives one-third (1/3) of the entire estate.

C. In the presence of a father, the father's mother may not receive a share, but in competition with the grandfather, she is entitled to her share.1

„Mushtaraka"2 or „Himariyya" and „Akdariyya"

It has been mentioned already that the consanguine brother is excluded by the germane brother, but the consanguine sister is not excluded by a germane sister. When the sharers take the whole property, the brothers (germane or consanguine) take nothing, except in the two following cases:

1. The doctrine of „Mushtaraka" or „ Himariyya".

In the case of a wife leaving a husband, mother, two uterine brothers and one germane brother, the following allotments are made:

husband	-- 1/2	entire property
mother	-- 1/6	
uterines	-- 1/3	

The germane brother is excluded as residuary. This event arose when Umar was Caliph, and a germane brother came to him

1 - Al Shirwāny, op. cit., V. 6, p. 404. Al Ramly, op. cit., V. 6, p. 19.

2 - The case of partnership.

and said, „Suppose that my father had been a donkey §(Himar), but we had the same mother,." ,Umar revised his decision and ordered that one-third (1/3) of the remaining property, after the deduction of the mother's and husband's shares, must be distributed in equal portions between the germane and uterine brothers.1 This is the present doctrine of Himariyya.1

2. The doctrine of „Akdariyya"2

Suppose a wife leaves a husband, a mother, a grandfather and a germane or consanguine sister. The following allotments are made:

husband -- 1/2
mother -- 1/3
grandfather -- 1/6
} the whole estate

sister -- 1/2

But there is not a person who can exclude the sister, and she cannot exclude the grandfather. Therefore, she is allotted one-half (1/2) according to the Qoranic by the rule of „awl". Thus, the shares for heirs will be:

husband -- 3/9
mother -- 2/9
grandfather -- 1/9
sister -- 3/9
} 4/9

x 2-3 = 8/27
x 2/3 = 4/27

According to the rule of Akdariyya, the sister is converted into a residuary by the grandfather. Therefore, their portions will be consolidated and the grandfather will take twice as much as the sister, as in „asba bi ghayrih" (residuary by another).

„The Distinction Between the Brother (Germane or Con Consanguine) and his Son"

The inheritance rights are alike except in the following instances:

1 - Al Ramly, op. cit., V. 6, p. 20; Al Shirwany, op. cit., V. 6, pp. 406-408.

2 - Al Mutyi, op. cit., V. 15, p. 276.

A. The brothers' sons do not (cannot reduce the share of the deceased's mother.

B. The grandfather excludes the brothers' sons.

C. The brothers' sons do not cause their sisters to be„Asaba" because the brother' daughters are „dahwul-arham".

D. By the doctrine of „mushtaraka" the brother's son can not assume his father's position, and therefore, has no right to inheritance.1

„The Doctrine of Uncles' Sons"

Suppose 3 brother havethree sons (x, y, z). X, who is y's uterine brother, dies. There are different opinions among all the schools as to y's share. Shafii says tha' y will take one sixth (1/6) of x's property, by right of sharer, a..d the remaining five-sixths (5/6) will be divided between y and z in edual portions as residuaries. Other schools say that y takes the whole of x's estate, because he is related to x on two sides. On the other hand, Shafii says that there is neither an appropriate person nor a reason to exclude z, because bothn and y are of the same generation as x.2

„Grandfather and Collaterals in Competition"

The manner of succession for brothers and sisters and grandfather is illustrated separately by the *Qoran* and Hadith. But, this rule illustrates succession between them if they are in competition.

There are various opinions about this problem; following is a description of the doctrrine of „Zaid ibn-Tha bit",3 which is accepted by Shafii.

In the case of the grandfather in competition with germane or consanguine brother or sisters, one of the two following cases will occur:

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1 - Al Mutyi, op cit., V. 15, p. 247.

2 - Ibn Rushd, Bidāyat ul Mujtahid wa Nihāyat ul Muqt asid, V. 2. p. 383, and Al Ramly, V. 6, p. 32.

3 - Scribe of the Prophet.

1. If the grandfather has no joint sharer, he may choose between these two alternatives: one-third (1/3), or „al-muqasama",1 whichever is more advantageous. Thus, it makes no difference if there are two brothers or four sisters, or one brother and two sisters; and if there is one brother and one sister, or three sisters, or only one brother or one or two sisters, the grandfather takes the share according to the right af „al-muqasama".

If there are more than two brothers or four sisters, he takes one-third (1/3) of the property.

2. If there are sharers with the grandfather, he may choose the most advantageous of three alternatives:

a. one-sixth (1/6)

b. al-muqasama

c. the remaining one-third (1/3).

For example: If there are two daughters, two brothers, one sister and a grandfather, the one-sixth (1/6) portion after the sharers, deductions is more advantageous. If there is a wife, mother, two brothers, one sister and a grandfather, the remaining one-third (1/3) is more advantageous. If there is one daughter, one brother, one sister and a grandfather, „al-muqa-sama" is more advantageous.2

Note: The grandfather with a sister is as a brother (not uterine). But if the deceased leaves a mother, grandfather and a sister, the grandfather cannot reduce the mother's share to one-sixth (1/6). However, if there is a brother instead of a grandfather he and his sister together limit the mother's portion.

„Conditions of Inheritance and Suspension of Succession"

Inheritance depends on two fundamental conditions: the death of a person and the survival of an heir.3

3 - The grandfather is entitled to a share in the same way as a germane or consanguine brother (the case of division).

1 - Al Ramly, op. cit., V. 6, pp. 23-24, Al Shirwäny, op. cit., V. 6, pp.412-414.

1 - Al Ramly, op. cit., V. 6, p. 387.

In any one of the following four cases, the succession will be suspended:

A. Mafqud (missing person) -- when there is reliable information about a missing person, as to whether he is living or dead, his estate will be held until his death is confirmed by factual evidence or by the judicial decree of his death.

If one of the relatives or wife the missing person dies, his portion will be kept until it is established that he was alive at the time of the deceased. If it is confirmed that he predeceased the decedent, the reserved portion will revert back to the decedent's property an d will be distributed among his heirs.1

B. Proof of paternity -- if either one of two persons claim he is the father of one child and there is no positive evidence as to which one is telling the truth, and during this toime one of the said persons dies, the child's portion will be held until illustration of his parentage is clarified.

If, in such circumstances, the child dies, his mother takes her own share, but the share of the father will be held in reserve.2

C. Posthumous children - in the case of a child who is born after the death on the decedent, no matter what relation, the inheritance depends of the following conditions:

1. The embryo must be a blood relative of the decedent.

2. If the wife of the decedent's son is pregnant at the time of his death, the child will be his grandchild.

3. If the decedent's mother or stepmother is pregnant, the posthumous child will be his brother or sister.

In the event of any of the above three conditions, the posthumous child will inherit. 3

1 - Al Mutyi, op. cit., V. 15, p. 224.

2 - Al Shirwäny, op. cit., V. 6, p. 422.

3 - Although no uniform code exists for this in the U.S., the individual States have similar rulings. Rights of posthumous children are similar under American and Islamic law, with the following exception: In American law, teh inheritance rights are continued from previous page:

limited to the posthumous child of the decedent, while under Islam, the rights extend to the posthumous child of any relative, as well as the child of the decedent. *Willis, Estates and Trusts*, V. 2, p. 2713 and p. 2699.3.

2 - According to sharer's rights.

In some circumstances, the posthumous child will inherit only when it is male. For example, if the posthumous child of the brother's surviving wife is female, she is ,,dhwul-arham" and does not inherit.

Under some circumstances, the child will inherit only if it is female. For example, when a women dies and leaves a husband, one germane sister and a pregnant stepmother, if the posthumous child is female, she is a consanguine sister of the deceased and is, there, entitled to take one-sixth (1/6) of her property.2 However, if the child is a male, he is a consanguine brother of the deceased and cannot inherit because he is ,asaba (residuary) and the sharers take the entire estate.

There are two instances in which the entire estate is suspended untile the result of the pregnancy is confirmed: 1) if the posthumous child is the only heir of the deceased; and 2) if the deceased is survived by heirs, they will be excluded by the rights of the unborn child, male or female.

There are two conditions necessary in order to vest the chilb with the right of inheritance:1) the child must be con ceived ı ior to the time of death of the decedent, and 2) the child must be born alive.1

If the deceased's wife remarries and her child is born no more than six months after her husband's death, or if she does not remarry but her child is born no more than years after her husband's death, or if the other heirs acknowledge that the child is that of the deceased, it is confirmed that it is the deceased's child.2

D. A hermaphrodite's share will be delayed until his sex is determined. If his inheritance is dependent upon his sex, his portion will be suspended. For example, a decedent leaves only a hermaphroditic child of an uncle. If the child is male, he is then entitled to take the entire estate. If the child is female, she will be excluded.

If a hermaphrodite is an heir, since male and female heirs

1 - This is similar to conditions of law in Louisiana, Prentice Hall, op. cit., V. 2.

2 - Al Ramly, op. cit. V. 6, p. 30, and Al Shirwäny, op. cit. V. 6, p. 423.

inherit unequual portions, he is allocated the smaller share until the sex is known. For example, let us assume that a decedent is survived only by a hermaphrodite. If it is male, he receives the entire estate. If it is female, she is entitled to receive one-half (1/2) of the estate. In the above two cases the whole property is suspended ntil sex is determined.

If the hermaphrodite is a uterine brother or uterine sister, he or she (or both), take their portions, because in this case there is no distinction made between male and female in terms of inheritance. 1

« Impediments to Inheritance »

In contemporary Islamic society, impediments to inheritance are: homicide of the deceased by an heir; difference of religion between heir and decedent; imultaneous death; apostasy:; illegitimacy. Any of these factor: disqualify an individual who would otherwise be an eligible heir.

A. Homicide: No one who has killed or has participated in a killing may receive andy inheritance from the person killed. In this case it makes no difference if the killing was accidental or deliberate, or whether it was justified or not. Even a judge, an official executioner, a minor, or an insane person may be disinherited under the provisions of this law.

The Shafii reason in this case, which differs from other schools, primarily follows this Hadith, „The murderer has no share of the inheritance of his victim."2 Shafii says that the porphet was speaking in general and was not limiting his decision to either a deliberate or an accidental killing. He also gives two logical reasons for this interpretation.

1. It has happened, for example, that a son has killed his father in order to possess his inheritance sooner. Shafii says that the question of killing has been generalized to protect the lives of the bequeathers and to prevent moral depravity by elinating any

1 - Al Mutyi, op. cit., V. 15, p. 259, and Al Ramly, op. cit., V. 6, p. 31.

2 - Al Shawkäny, op. cit., V. 6, pp. 79-80.

reason for committing this dangerous ceim , for m rd ro s c ns-piracies, or for pretending insanity.

2. The inheritance among family members and the disin-heritance of outsiders is based upon the assumed existence of friendship, mercy and compassion, which would not exist among strangers. It is obvious that in the case of an heir's particip ation in the killing of a bequeather, that these qualities do not exist, but rather have been replaced by their opposites-spite, enmity and hatred. Thus, the condirtions entitling such an heir to receive the property of the deceased no longer exist.1

B. Difference of religion: There is a Hadith2 which states: „A non-muslim does not inherit from a muslim and a muslim does not inherit from a non-muslim."

C. Simultaneous death: When the right of inheritance depends upon the priority of the deceased's death, and two or more persons die in the same incident, and there is not suf ficient evidenc that they have died other than simultaneously, neither of them inherits from the other. Because the basic conditions of inheri-tance have not been satisfied, the estate of each deceased person passes to his heirs.3 Most schools of thought accept this rule.nI addit' on, Shafii, has a special remark: where the survival of one relative is established, but it is not determined which one this was' the distribution of the estate (s is suspended until the results of th einvestigation are known.4

D. Apostasy: A person who has changed his religion and has become an apostate is barred from receiving an inheritance from anyone, and vice-versa, if he returns to Islam after the death of the decedent. This is because there is no friendship and mercy between an apostate and a muslim. His or her property is withheld

1 - Al Shirwäny, op. cit., V. 6, pp. 417-419, and Al Mutyi, op. cit., V. 1,5 pp. 216-217.

2 - Zarqäni, op. cit., V. 3, p. 445.

3 - In agreement with Uniform Simultaneous Death Act of United States, op. cit., V. 2, 2724.

4 - Al Mutyi, op. cit., V. 15, p. 223.

If he becomes Muslim again (before the death of the bequeather), he can possess the estate. Otherwise his property passes to the public treasury after his death. 1

E. Illegitimacy: A child who is born out of wedlock is an illegitimate child. Such a child is legally related to its mother in all concerns, including inheritance. It is entitled to inherit from its mother's relatives and vice-versa, but there is no such privilege between such a child and its father. The only form of legitimacy which is recognized by Islamic law is thar of a father establishing relationships with that child by a formal acknowledgement.2 However, he must not mention that such a child was born out of wedlock. 3

In order to make such an acknowledgement valid, the Two Following Condli tions must be Considered.

1. The acknowledger and the acknowledged must have a logical and possible relationship. For example, if the acknowledger is twenty years old and the acknowledged is twelve years old, it is obviously not a feasible relationship.

2. The child acknowledged must not be the already confirmed illegitimate child of another person.

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1 - Al Shafii, op. cit., V. 4, pp. 84-85.

2 - Op. cit., *Wills...*, V. 2, p. 2699. 1. In American Law, in order to legitimize a relationship, some ststes require the natural parents to marry, while others rzgard acknowledgement as being sufficient. These principles apply to most states unless modified by ststute.

3 - Ibn Rushd, op. cit., V. 2, p. 295, and Zarqani, op. cit., V. 3, pp. 377-378.

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