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## MODULE 1

### UNIT 1 THE BASIC PRINCIPLES OF ISLAMIC LAW OF INHERITANCE

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#### 1.0 Introduction

The ultimate owner of all properties is Allah. This becomes very clear to one when one breathes one's last i.e when one is dead. Death is definitely inevitable. Every person shall taste it. The Qur'an says:

كُلُّ نَفْسٍ ذَائِقَةُ الْمَوْتِ

(Every soul shall taste death). After one's death, the real Owner (i.e. Allah) takes control of one's property and this is shared among one's heirs based on the divinely-fixed shares as contained in the holy Qur'an. A person's property includes all the property he leaves behind after his death such as money, clothes, cars, houses, jewelry, ring to mention but a few. In this unit, we shall examine the broad principles of inheritance in Islam. An attempt will also be made to discuss the importance of inheritance in the area of social welfarism.

#### SELF ASSESSMENT EXERCISE I

##### Who is the Ultimate owner of Wealth?

#### 2.0 Objectives

At the end of this unit, you should be able to:

- Explain why it is Allah who fixes the shares in inheritance
- State the importance of inheritance in Islam.

- Explain how ownership of wealth is determined in Islam.
- Discuss Dignity of Labour in Islam
- Determine the beneficiaries of inheritance.
- Quote some prophetic traditions to show the excellence of *'ilmul farā'id*.

### 3.0 MAIN CONTENT

#### 3.1 The Religion of Islam

Islam means peace and the religion is named by Allah (Q5:4). The religion of Islam covers all aspects of life, be it social, economic, moral or political. It leaves no stone unturned in relation to the life of man. Allah says:

مَا فَرَطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ ثُمَّ إِلَىٰ رَبِّهِمْ يُحْشَرُونَ

“We have not neglected in the Book a thing. Then unto their Lord they will be gathered (Q 6: 38)” The Glorious Qur’an, contains a number of different rights and restrictions particularly on matters affecting heirs. The Qur’an (Q4:7-13 and Q4:176-177) give specific injunctions as regards inheritance. However, some other verses refer to the issue of inheritance indirectly or broadly. Therefore, a dead person or his heirs are not allowed to dispose the totality of his wealth or estate according to his personal wishes alone. This is because man is guided through the Qur’an on how he can acquire and dispose wealth. Proper distribution of wealth among heirs is a form of *'ibādah* (worship). Therefore, efforts must be made to seek the knowledge or the assistance of experts, in the administration of inheritance

#### 3.2 The Importance of *'ilmul Farā'id* (Knowledge of Inheritance)

Islamic law of inheritance is known as *'ilmul farā'id* or *'ilmul mīrāth*: meaning the knowledge of inheritance or the knowledge of succession. Both refer to the knowledge needed before one can expertly share the estate of a deceased person to its beneficiaries. Inheritance and its knowledge are so important that both the Qur’an and Hadith provide clear injunctions on how a dead person’s property should be shared.

In fact, the Prophet did not only consider it to be half of knowledge, he also encouraged people to learn it when he said: “o people! Learn *farā'id* (knowledge of Inheritance). It is half of knowledge”. *'ilmul farā'id* is also important in the sense that it is a way of alleviating poverty. It raises the living standard of its beneficiaries.

It makes a person realise the reality of life in the sense that his wealth is shared to his immediate family and possibly to his extended ones including

those people that did not give him helping hands when he needed them. Such persons may be one's wives or husband. They may also be one's children. It is therefore necessary for one to do what is most beneficial with one's wealth before one passes on. The reality that while one accounts for acquisition of wealth, some others should freely inherit and benefit from it on one's death, is sufficient to curb acquisition tendencies particularly through unlawful means. The allotment of one's properties to others ought to caution one to limit one's inordinate lust for wealth which Allah had allotted to others at one's death. Abdullah B. Mas'ud reported that the prophet asked me of his companions:

- أيكم مال وارثه أحب إليه من ماله

“Who among you loves his heirs' wealth more than his own?”

Their reply was that none of them loved his heirs' wealth more than his own. The Prophet then Said:

- اعلموا أنه ليس منكم من أحد إلا مال وارثه أحب إليه من ماله، مالك ما قدّمت وما لوارثك ما أخرت

“Know that none among you that do not prefer his heirswealth to his own. Your wealth is that which you send forth (as charity etc), and your heirs' wealth is that which you leave behind”.

Therefore, this knowledge encourages one to be generous and proactive. One does not need to wait till the time when one is experiencing the pangs of death before doing good acts such as giving charity, helping the downtrodden etc. The Prophet was also reported to have advised against the delay of charity till the point of death. Those that are hale and hearty are encouraged to stretch their cloth when the sun is shining. He said:

أفضل الصدقة أن تتصدق وأنت صحيح صحيح تخشى الفقر وتأمل الغنى ولا تُمهّل حتى إذا بلغت الحلقوم قلت لفلان كذا ولفلان كذا، ألا وقد كان لفلان

“The best type of charity is that which you give when you are healthy and needful of funds, fearing poverty and hoping for wealth. Do not postpone it till when your soul reaches your throat. You then say, “Give so much to so-and-so, and so much to so-and-so. Verily, by then, so-and-so had already gotten the much”.

If a person is conscious of the Day of Reckoning, and he is taking account of how he amasses wealth, he would avoid corruption and allied offences. It does not make sense to commit sins in the process of acquiring wealth which on the

long run will be left for others to enjoy while one faces the consequence of the illegitimate acquisition one would know that one is accountable to Allah on the Day of Judgement based on the Hadith of the Prophet which says:

لاتزول قدما ابن آدم يوم القيامة من عند ربه حتى يسأل عن خمس، عن عمره فيما أفناه، وعن شبابه (أو جسمه) فيما أبلاه وعن ماله من أين اكتسبه وفيما أنفقه، وماذا عمل فيما علم؟

A human being's feet will not depart the presence of his Lord, on the Day of Resurrection, until he is questioned about five things

His lifetime – how he spent it?

His youth (his body) - how did he utilise it?

His wealth - how did he earn it and how did he spend it?

And what did he do in regard to what he knew?

As regards its importance, the Prophet exhorted people to learn and teach it the knowledge of inheritance. He also predicted that there would be chaos in any society that abandons it.

عن ابن مسعود قال لى رسول الله صلى الله عليه وسلم: تعلموا العلم وعلموه الناس،  
تعلموا الفرائض وعلموه الناس، تعلموا القرآن وعلموه الناس،

Abdullah b. Mas'ud said the prophet (PBUH) said: “Learn the knowledge and teach it to the people. Learn the Qur'an and teach it to the people (Sunan ad-Dārimi)

### 3.3 Dignity of Labour

In Islam property or wealth is acquired through three lawful ways. One, one may acquire wealth through donations or gift *Hibah*. Islamic concept of gift is different from the concept of gift in other cultures. This will be elaborated upon in subsequent units of this course. Two, it may be acquired through mirath (inheritance) and lastly, it may be gotten through one's effort i.e. the reward for one's effort. There is dignity in labour in Islam. In fact, the Prophet specifically praised the acquiring of wealth through one's sweat. He said:

لأن يأخذ أحدكم حبله فيأتى بحزمة الحطب على ظهره فيبيعها فيكف الله بها وجهه خير له من أن يسأل الناس أعطوه أو منعوه.

“That one of you takes his rope and goes to the mountain and brings back a bundle of wood on his back and sells it, so through that Allah save his honour. That is better for him than begging, whether they give him or not”.

He also said: “Never has any one eaten better food than what he eats from work done by his hands”. The implication of these traditions of the prophet is

that if one acquires wealth through lawful means one would enjoy such wealth which would not serve as a barrier for him in entrance to al-Jannah (Paradise). As good as donation is, a person should not accept it from a person whose source of wealth is unlawful.

If a person is conscious of *'ilmul farā'id*, he would not acquire wealth through unlawful means. The Qur'an constantly reminds man of his return and account to Allah.

وَاتَّقُوا يَوْمًا تُرْجَعُونَ فِيهِ إِلَى اللَّهِ ثُمَّ تُوَفَّى كُلُّ نَفْسٍ مَّا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

“And fear the Day when you will be returned to Allah. Then every soul will be compensated for what it earned and they will not be wronged”.(Q 2: 281)

## **SELF ASSESSMENT EXERCISE II**

State the 3 Principal ways of acquiring legitimate wealth in Islam

### **3.4 The Distributable Wealth**

It must be mentioned that not all the wealth of a person is acceptable for inheritance. The ill-gotten part of the wealth if it is known is not distributable in Islamic law of inheritance. The ill-gotten part should be given to the poor. However, the deceased should not expect rewards from the sadaqah because Allah is pure and he will not accept *sadaqah* that is impure.

إِنَّ اللَّهَ تَعَالَى طَيِّبٌ لَا يَقْبَلُ إِلَّا طَيِّبًا

But if heirs do not know the part of wealth that is ill-gotten, there is no sin on them.

### **3.5 Confirmation of Death of the Person as a Condition for Inheritance**

Before a person is inherited, he must be confirmed dead. The confirmation may be done by a doctor or through the experience of elderly people. It is not allowed to inherit a living person. Even when a person is missing, his or her property cannot be inherited until the expiration of a period long enough for the expiration of his/her life-span or a period long enough to presume that he is dead depending on the circumstances of his/her missing.

### **3.6 The Shares and the Principle of Fairness**

Allah has given each heir his share. Therefore, no heir should take or be given more than his divinely-fixed share. If an heir should take more than his share, he is like a person usurping the rights of an orphan. He is eating nothing but Hell. The implication is that he would be cast into Hell fire on the Day of Judgement. Even if one fasts through one's lifetime and prays all the five daily prayers throughout his lifetime, he would be punished on the Day of

Reckoning for usurping the rights of other heirs. Usurpation of the rights of other heirs is a serious sin, it is a great transgression. This will be made known to such a person on the day when he would be asked to read the book of his deeds. On the day he would say which type of book is this that recorded both small and big sins

وَوُضِعَ الْكِتَابُ فَتَرَى الْمُجْرِمِينَ مُشْفِقِينَ مِمَّا فِيهِ وَيَقُولُونَ يَا وَيْلَتَنَا مَا لَ هَذَا الْكِتَابِ لَا يُغَادِرُ صَغِيرَةً وَلَا كَبِيرَةً إِلَّا أَحْصَاهَا وَوَجَدُوا مَا عَمِلُوا حَاضِرًا وَلَا يَظْلِمُ رَبُّكَ أَحَدًا

“And the record (of deeds) will be placed (open), and you will see criminals fearful of that within it, and they will say, “Oh, woe to us! What is this book that leaves nothing small or great except that it has enumerated it? And they will find what they did present (before them).And your Lord does injustice to no one” (Q18:49).

Violation of the divine laws of inheritance attracts heavy punishment. In the same vein, no heir should also be given less than his rights. Every heir must be adequately catered for. An heir is however allowed to give out his or her own share as charity.

If a person should be given more than his heir and he wants to be saved from the wrath of Allah, he should reject or give the excess to the person whose shares have been taken. Nobody should be wronged.

لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ

“You do no wrong, nor are you wronged” (Q2:279)

There must be fairness to every heir. Otherwise, the wrong-doers would not escape Allah’s punishment on the Day of Judgement.

#### 4.0 **Conclusion**

Allah gives each heir his divinely-fixed shares. Efforts must be made to uphold the injunction of Allah no matter the temptations. The dead is not permitted to dispose the totality of his wealth according to his whims and caprices alone. There are rules and injunctions for all the acts and aspects of the life of a Muslim. These injunctions must be adhered to strictly. Knowledge of Islamic law of inheritance can reduce some devilish acts of man because knows that whatever he acquires whether lawfully or wrongly would be shared to his heirs including the ones he hates and those who hate him.

#### 5.0 **Summary**

We have learnt in this unit that Islam regulates all aspects of man particularly the social aspects part of inheritance. The knowledge of Islamic law of inheritance is very important in the sense that it can curb corruption and other allied practices.

You have also learned that Allah takes control of a person's property after the person's death. It is good to own property. However, our lecture reveals that it is better owned through lawful means so as not to serve as a barrier for us on the Day of Judgement. We also discussed the aspect of wealth that is distributable in Islamic law of inheritance. The study also touches on the confirmation of death of a person before he is inherited and that the sharing must be fair to all concerned parties.

#### 6.0 Tutor – Marked Assignment

- Explain with Quranic verses the comprehensiveness of the Religion of Islam
- What are the ways by which the importance of the knowledge of Islamic Law of inheritance is shown?
- Why did the Prophet caution against delay in giving charity? Quote an Hadith to that effect.
- List five questions a person would be asked on the Day of Resurrection.
- Write short notes on ownership of property in Islam.

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## UNIT 2 LEGITIMATE MEANS OF ACQUIRING WEALTH IN ISLAM

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- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### 1.0 Introduction

To eat from one's labour is praised by the Prophet. This shows the importance of the source of wealth in Islam. When property is being acquired, one should be able to take into consideration the purpose of life (i.e. to worship Allah). If this is well understood, one will be careful in the process of wealth acquisition. In this lecture, you will learn the real owner of wealth and that the creatures are trustees. You will also learn about private ownership of wealth and the three ways of acquisition of property.

#### 2.0 Objectives

At the end of this lecture, you should be able to:

- Explain the definition of wealth
- Discuss how Allah is the real Owner of everything
- Discuss the trusteeship of man in relation to property
- Mention the three of the ways by which wealth is acquired
- Bring out some lessons from relevant Quranic quotations in this lecture.

#### 3.0 Main Contents

##### 3.1 Property and its Ultimate Owner

Property is referred to as *māl* (plural *amwāl*). Allah is the creator of everything. In fact, His divine attributes of creation are seen in all living and non-living things

He said, "Our Lord is He who gave each thing its form and then guided (it) Q20:50

On the issue of ownership, Islam affirms that the ultimate owner of everything is Allah. The Quran Says:

لَهُ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَمَا بَيْنَهُمَا وَمَا تَحْتَ الثَّرَى

To Him belong what is in the heavens and what is on the earth and what is in between them and what is under the soil Q20:6

In this verse, Allah tells us that He is absolute owner. This verse carries a comprehensive definition of everything we can conceive of. It mentions all that is in heaven, on earth, in between, or within the bowels of the earth. Therefore, man is never a real owner, but a trustee. The Quran says: Q57:7

آمَنُوا بِاللَّهِ وَرَسُولِهِ وَأَنْفَقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلِفِينَ فِيهِ فَالَّذِينَ  
آمَنُوا مِنْكُمْ وَأَنْفَقُوا لَهُمْ أَجْرٌ كَبِيرٌ

“Believe in Allah and His messenger and spend out of that in which He has made you successive inheritors (trustees) for those who have believed among you and spent, there will be a real reward”.

This verse clearly shows that “*khalq*” (creation) is only meant for Allah for He is the Creator of all those things that have fallen to the lot of man as His vicegerent. He did not only create everything (including man), he also subjugated to human being the basic requirements of life such as fire, water and food crops. What man does is to use basic ingredient provided by Allah such as air, water nerves etc to produce some other facilities and materials man does not create from nothing (ex-nihilo)

Q..... Allah say: And have you seen that which you sow? Is it you who makes it grow, or are We the grower? If We willed, we could make it (dry) debris, and you would remain in wonders..... And have you seen the water that you drink? Is it you who brought it down from the clouds, or is it We who bring it down?... and have you seen the fire that you ignite? Is it you who produced its tree or are We the producer?”

All these assertions are obvious things man also confirms. Man came into this world with nothing and found everything therein. Who created them? It is Allah, the Owner of various forms of wealth on earth. From these self-evident truths, nothing should be really attributed to man or regarded as his property. Allah owns everything. All the things considered to be the property of man and whose ownership he has assumed should be ascribed to Allah, the true Creator and Owner.

Despite all the realities, Allah still gives man the opportunity of amassing wealth or property. He does not deprive man of owning

property. He even allows him to enjoy the fruits of his labour. Allah wants man to search for ways of making progress within His creations and property. Allah gives man sense of possession to develop property for his use. Through His grace wealth or property has been ascribed to man.

### **3.2 Private Ownership of Property in Islam**

The Qur'an attributes property to man to foster progress among them. The attribution of property is contained in the Quran. "And do not consume one another's wealth unjustly or send it (in bribery) to the rulers in order that (they might aid) you to consume a portion of the wealth of the people in sin, while you know (it is unlawful). The examples of those who spend their wealth in the way of Allah and other verses related to man's ownership are contained in the Quran(Q2:267, Q4:5, Q47:36 etc).

In many verses of the Quran, man is urged to spend in the way of the original Giver, Allah. Who is it that would loan Allah a goodly loan so He may multiply it for him many times over? (Q2:245)

Man should see himself as a trustee who holds everything he has on behalf of Allah. Man should surrender his right to Him and so His wish. It is when a person believes that the wealth he has amassed is absolutely his, that he finds it difficult to spend it. But if he is convinced that all his properties are not ultimately his own, he would readily transfer some the property in his custody to the owner by spending it to those people that deserve it. He will not hoard it instead it will be spent in His cause. Allah warns man not to lose his focus so as to gain His pleasure. This explains why on death of man, Allah, the ultimate owner legislates on the redistribution of the wealth through inheritance. Allah Says:

Say (O Muhammad), "if your fathers, your sons, your brothers, your wives, your relatives, wealth which you have obtained, commerce where you fear decline and dwelling with which you are pleased are more beloved to you than Allah and His messenger and Jihad (i.e. striving) in His cause, then wait until Allah executes His command. And Allah does not guide the defiantly disobedient people (Q9:24)

So, it is when the conviction that their worldly possessions belong to them and not to Allah, and that they are not holding them only in trust that they find it extremely difficult to spend in the cause of Allah. But if they are totally convinced that they own nothing and that their worldly possessions belong to Allah they would be able to spend in Allah's cause.

### 3.3 Three ways of Acquiring Wealth in Islam

As mentioned earlier in this course, in Islam property can only be legitimately acquired through *kasb* or *Iktisāb* (earning work), *Mīrath* (inheritance) and *Hibah* (gift).. It should be noted that *iktisāb* may be through salaries, paid jobs, self-employment, proprietorship etc. Whatever may be the case the sources of wealth must be Sharī'ah compliant. It means it should not be from unlawful means such as brewery, prostitution, armed robbery and kidnapping. It is allowed for both males and females to work. The Quran says: men shall have the benefit of what they earn and women shall have the benefit of what they earn (Q4:32). It must be mentioned that Islam does not discourage people (males and females) from becoming very rich even to the extent of being millionaires or multi-billionaires, but the emphasis is on the source of wealth and the manners of spending. Therefore, no limitation is placed upon the property which an individual may acquire provided it is not sourced illegitimately.

Acquisition of wealth through unlawful means is discouraged. Many Quranic verses such as Q4:29 and Q2:188 speak against unlawful means of getting wealth. Allah says: O you who believed, do not consume one another's wealth unjustly but only (in lawful) business by mutual consent. And do not kill yourselves (or one another). Indeed, Allah is to you ever merciful (Q4:29). The following Quranic verses also speak against fraudulent means of acquiring wealth (Q2:188, Q4:58, Q5:33,38, Q2:219, Q5:90)

In Islam, dignity of Labour is given priority as has earlier been explained.

### 4.0 Conclusion

It is clear that everything belongs to Allah and He is the absolute owner of all that exists, and that man is only a trustee of whatever Allah has bestowed upon him. When the conviction that man's worldly possessions belonged to Allah and that he is holding them only in trust is firmly embedded in his hearts, he is enjoined to spend in the way of Allah what is left of his wealth after meeting his basic needs. In fact, spending in the way of Allah will not be difficult. It will be as easy as water flowing from the top of a high mountain down the earth. He will not feel the pain of departing with the wealth given to him because the Owner is the one taking it back.

### 5.0 Summary

In this lecture, you have learned:

- That property is referred to as *māl* in Arabic
- From Q20:6 that all that is in heaven, on earth, in between or within the bowels of the earth belongs to Allah alone

- That the corollary of Q20:6 is that man owns nothing. He is only a trustee. He came to this world with nothing and found everything that makes his sojourn there comfortable. The day he is leaving, he is not taking anything along. All these indicate that he is not the owner. From these self evident truths, it should not be difficult for him to spend the wealth given to him or acquired through inheritance, Hibah (gifts) and work in the way of Allah.

#### **6.0 Tutor – Marked Assignment**

- State the content of Q20:6 and relate it to ownership of property
- Discuss the private ownership of property in Islam
- What are the three ways of acquiring wealth in Islam

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## **UNIT 3      CULTURAL PRACTICES ON INHERITANCE**

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#### **1.0 Introduction**

Different cultures regulate the distribution of inheritance in different parts of the world depending on the history, myths and understanding of the localities. Islam, being a universal fact, stipulates a system of inheritance that is based on equity and universality of humanity. In some cultures, only the son would inherit. In fact, females are not entitled to inheritance in many cultures, indeed. Instead, they are part of the property to be shared like utensils. In this lecture, attempt is made to discuss inheritance in some cultures and religions with a view to highlighting the reformation introduced into the law of succession by the religion of Islam.

#### **2.0 Objectives**

At the end of this lecture, you should be able to:

- state the forms of inheritance in Yoruba culture.
- explain the difference between the Yoruba system of inheritance and Ibo law of succession.
- discuss the Arab system of inheritance before Islam
- compare the systems of inheritance in Ibo, Yoruba and Arab cultures with Islamic law of inheritance.

### **3.0 Main Content**

#### **3.1 The System of Inheritance among Yoruba**

Yoruba speaking peoples occupy a large area in West Africa particularly in Nigeria, Benin Republic and Republic of Togo. Yoruba considered the wife of a deceased as part of the property to be shared by the deceased's brother or even son from another wife. Women were allotted along with utensils, houses and non-living things. This shows that there were no moral rights of inheriting each other as regards the death of one of the spouses. In this culture, children at times take equal shares individually. At other times, the children of a wife of the deceased constitute a block against the blocks of other children of each of the other wives as an equal unit for inheritance notwithstanding the number of children in each block. The brother, sisters and other distant relations would take their shares of the deceased's property before the children. Many distant relatives would even accuse a wife of killing her husband. The woman and her children would be sent packing empty handed. Nowadays, courts have been of succour to such wives provided such wives take their cases to courts. The courts have made a line of demarcation between extended family and the immediate ones. Also, management of the deceased property is in the hands of the eldest son. Parents are excluded from inheriting their children by brothers and sisters.

#### **3.2 The System of Inheritance among Igbos**

The Igbo speaking people of Eastern Nigeria are strict in application of cultural practices. In the Igbo system of inheritance, males exclude females from inheritance. Widows are not reckoned with at all. Both ascendants and collaterals are excluded from inheritance. The eldest son who is called Okpala succeeds his father under the principle of primogeniture. This principles regulates the issue of inheritance in all intents and purposes. When the male head of a family passes away, his eldest son automatically succeeds him. A female no matter her age and status can never be the head of the family. If a title should survive a deceased, the eldest son inherits the title. The eldest inherit even the furniture and clothes of his father to the exclusion of widows.

#### **3.3 English Law of Succession**

Under the English law of succession, ascendants and collaterals are prevented by children and descendants from inheriting the deceased. Children exclude them totally. Males were traditionally preferred to females. The eldest son and his issues are preferred over all other children and their issues. However, the family Law Reform Act 1969

favoured surviving spouse. The interest of surviving spouse is more catered for than other relatives including children.

### **3.4 Jewish Law of Succession**

The Jewish law prefers males to females in the area of succession. Daughters are excluded from inheritance of property of their parents.

### **3.5 Law of Succession among the Arabs**

Before the advent of Islam, males were used to inheriting their parents while females were not given any share. It was even only the adults among the males that could inherit. Infants were not reckoned with at all. Inheritance by confederation was also allowed in the Arab system of inheritance. Two strangers would enter into an agreement that the blood of one was the blood of the other. This meant that an attack on was the attack on the other. They had the right to inherit each other. If one should die earlier, the other could inherit him/her.

### **3.7 Woman as a part of the share of Inheritance**

It could be seen from the above discussed systems of inheritance that females particularly were not treated well. They were marginalized and humiliated. In the Arab custom, Yoruba culture and others, they were parts of the property to be inherited by the eldest son or the deceased's brothers. A son by other wife could inherit as a wife, his late father's wife. He might decide to marry her or give her in marriage to another interested man. He would receive her dower if he gave her in marriage to another person.

### **3.8 Islamic Reformation on Inheritance**

Islam removed all the abnormalities in inheritance through the proclamation made in Qur'an chapter 4 verse 7 as follows:

“For men is a share and for women is a share of what is left by parents and those nearest related, whether, the property be small or large – a legal share”

Women were therefore made to inherit their husband and vice versa. And daughters, mothers, sisters and granddaughters were granted right to inheritance as their male counterparts. As reported by Ambali (1998). Children have right in the property of their parents. Parents have shares in the estate of their children and vice versa. In fact, it is noteworthy that it was a woman according to Ambli (1997) that Allah used to liberate the weak from the injustice of the strong and caused a revolution the better of which human civilization is yet to witness. The

widow of Sa'da to Rabi brought the two female orphans of Rabi to the Prophet protesting "Oh Apostle of God, here are the two daughters of Sa'da b. Rabi who was killed / martyred while fighting on your side in the war of Badr. Their uncle sat on their property and did not give them anything. They cannot be married without money. The Prophet replied that God will decide. Then the verse of succession was revealed. The Prophet (PBUH) sent for their uncle and said. Give the two daughters of sa'ad 2/3 of the estate, give their mother 1/8 of the estate. The rest is for you.

#### **4.0 Conclusion**

From our discussion so far, it is abundantly clear that different cultures adopt varied methods of inheritance of properties. Women were victims of victimization virtually in all cultures and religions before the advent of Islam. They were denied their rights. Instead, both women and their rights were usurped. Some other injustices could be inferred from the attitude of some relatives to children and widows. They were maltreated. In Islam, all the incongruities of the past found in the question of inheritance in some cultures and religions, were removed.

#### **5.0 Summary**

We have been able to examine law of inheritance in some religions and culture. In Yoruba system of inheritance, woman is part of the inheritance to be shared. She could neither inherit her husband nor her children. The eldest son was regarded as alpha and omega in some cultures such as English Law of succession and Igbo system of succession and inheritance. The issue was not different in the life of women with regard to law of inheritance and succession. However, Islam removed all the bad practices contained in the laws of inheritance by giving women their rightful shares. Instead of becoming parts of the property to be shared, they share part of the property of their husband, parents and relations.

#### **6.0 Tutor – Marked Assignment**

- List some of the practices of Yoruba system of inheritance
- Differentiate between the Igbo system of succession and Islamic law of succession.
- Discuss the Arab system of inheritance
- What was the status of woman in some Nigerian cultures and Islamic Religion

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## MODULE 2

### UNIT 1 SOURCES OF ISLAMIC LAW OF INHERITANCE

#### CONTENTS

- 1.1 Introduction
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#### **1.0 Introduction**

There is no river without at least a source. In the same vein, Islamic law of inheritance is derived from some sources. You will learn in this lecture, primary and secondary sources of Islamic law of inheritance. The Religion of Islam from which this discipline is derived was named by Allah (Q5:4). Many other religions are named after their founders such include Zoroastrianism from Zoroaster, Buddhism from Gotama Budha of India, Confucianism from Confucius to mention but a few. Islam means peace and it is derived from aslama, an Arabic word. Muslim is a person that practises Islam and is also derived from aslama meaning one who relates to others in peace and submits totally to the will of Allah. The implication of this in relation to the Islamic law of inheritance is that if people submit to the will of Allah and follow His injunctions as contained in the Qur'an, they will achieve peace in this world through distribution of wealth and alleviation of poverty. The multiplier effects are reduction in criminal acts, peaceful co-existence, love, security etc. On the Day of Judgement, there would be eternal rest for such people.

#### **2.0 Objectives**

At the end of this lecture, you should be able to:

- Mention the sources of Islamic Law.
- Mention other names of the first primary sources of Islamic Law of inheritance.
- List three Quranic verses on Islamic Law of inheritance.
- Give the first and last verses to be revealed

## SELF ASSESSMENT EXERCISE I

What is Islam?

### 3.0 Main Content

#### 3.1.1 The Primary Sources of Islamic Law of Inheritance: The Qur'an

The first primary source of Islamic Law of inheritance is Qur'an. This source represents the will of Allah communicated to man through Prophet Muhammad. Its messages are divine in both meaning and language. It is a source of law to guide practical life of man. The book has remained the same from its revelation till today. The promise as contained in the Qur'an is that it will be preserved till eternity (Q15:9). This source from which other sources are derived enjoys the special protection of Allah.

The book is divided into 114 chapters and was revealed to Prophet Muhammad in piece meal about twenty three years. Other names of the Qur'an are al-Hukm (الحكم the Judgement Q13:37), al-Furqan (الفرقان the Criterion Q25:1), al-Kitab (الكتاب the Book Q2:2) and al-Huda (الهدى The Guidance Q72:13) to mention but a few. All these names indicate the functions which it performs.

The first revelation is Q96:1-5.

- اِقْرَأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ
- خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ
- اِقْرَأْ وَرَبُّكَ الْأَكْرَمُ
- الَّذِي عَلَّمَ بِالْقَلَمِ
- عَلَّمَ الْإِنْسَانَ مَا لَمْ يَعْلَمْ

Recite in the name of your Lord who created

Created man from a clinging substance.

Recite, and your Lord is the most Generous-

Who taught by the pen-

Taught man that which he knew not

The first revelation emphasises the importance of knowledge. This is true of Islamic law of inheritance. A person needs knowledge before he could discharge effectively or share a deceased's property among its beneficiaries. The last verse to be revealed is:

وَاتَّقُوا يَوْمًا تُرْجَعُونَ فِيهِ إِلَى اللَّهِ ثُمَّ تُوَفَّى كُلُّ نَفْسٍ مَا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

And fear the Day when you shall be made to return to God; then shall every soul be paid in full what it has earned and they shall not be wronged (Q2:281).

It is believed that this revelation was given to the Prophet 9 days before he died. The importance of this verse in relation to Islamic law of inheritance is that man is reminded of the day he would return to his God. He would abandon all both the wealth he got lawfully and the ill-gotten property. He is answerable to Allah. The other side of the story is that his property may be inherited by his friends and foes.

The Qur'an contains '*Āyatul 'Aḥkām* (Legal injunctions) on many aspects of man's life particularly the social life such as inheritance. The injunction contained in the Qur'an are valid always because they concern not a particular fact in a particular time but absolute truths which being in the very nature of things are perennial and remain the same. The Quran uses some stylistic devices to give the summarization of some legal injunctions particularly in the case of inheritance. Some legal injunctions on inheritance that are contained in the Quran explicitly are Q4:11-13 and Q4:176.

### 3.1.2 The Second Primary Source of Islamic Law of Inheritance

The second primary source of Islamic law of inheritance is Sunnah, the sayings and practices (tradition) of the Prophet Muhammad (SAW). Its importance with regard to the Islamic legislation particularly inheritance cannot be under estimated. The Sunnah is technically used to mean the precepts and decisions of the prophet, his conduct and practices, and pre-Islamic customs which had received his tacit approval. The Prophet in relation to the Quran is regarded as the expounder of the Quran as contained in the Quran itself

بِالْبَيِّنَاتِ وَالزُّبُرِ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَفَكَّرُونَ

“And with clear proofs and written ordinance and we have revealed to you the reminder so that you may explain to the people what was revealed to them” (16:44)

The legislative power is given to the prophet based among others on the Quranic verse which says:

الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْنُوبًا عِنْدَهُمْ فِي التَّوْرَةِ وَالْإِنْجِيلِ يَأْمُرُهُمْ بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ فَاَلَّذِينَ آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ أُولَئِكَ هُمُ الْمُفْلِحُونَ

“Those who follow the messenger the unlettered Prophet, whom they find written (i.e. mentioned) in what they have of the Torah and the Gospel, **who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves their burden and the shackles which were upon them.** So they, who have believed in him, honoured him supported him and followed the light which was sent down with him- it is those who will be the successful” (Q7:157).

The commandment of Allah and His Prophet is binding on every Muslim. In fact, the life of Prophet Muhammad is a model. The sunnah explains the Quranic injunctions that are ambiguous, general and absolute. To put it differently and simply, there are legal injunctions in the Quran that are capable of many interpretations, the Prophet classified them. The general ones were explained so as to make them specific. Restrictions were put on the absolute ones. Some of the books of Hadith that contained legal injunctions are Sahih al-Bukhari, Sahih al-Muslim, Sunnan Abu Dahud and al-Tirmidh to mention but a few. Muwatta of Imam Malik is a good collection in the area of legal traditions particularly inheritance. The importance of the Hadith in deriving Islamic laws is too obvious to be emphasised for many Quranic verses cannot be understood without the sunnah.

## **SELF ASSESSMENT EXERCISE II**

Why was the hadith taken as a primary sources of Islamic Law

### **3.1.3 The Secondary Sources of Islamic Law of Inheritance and the process of Extraction of Legal Rules**

It should be noted that where the Quran and the Sunnah are silent as regards legal injunction, *ijtihād*, *ijmā‘u*, *Qiyās* and other are resorted to. *Ijtihād* is the ability to interpret divine text by inferring new rulings in order to relate it to new situations. This makes *Sharī‘ah* relevant to all times and eras. A person that infers details of Islamic practices from the primary sources is called *Mujtahid*. To put it simply, a *Mujtahid* is he who possesses the capacity of *ijtihād*. A *Mujtahid* must be competent in Arabic language, knowledgeable in the Quran and Hadith. He must also be righteous, pious and reliable.

### **3.2.4 Abubakr al-Siddiq’s contributions to legal knowledge on inheritance**

The word *Kalālah* used in the Quran (Q4:176) in respect of inheritance posed a problem to some companions of the Prophet. Some people believed “*kalālah*” refers to a person that dies leaving no lineal heirs, neither issue nor father or grandfather. The opinion of some others was that it refers to a deceased without issue. Abubakr said that since the verse indicates that the sister of the *kalālah* is to receive a half of the inheritance, he therefore inferred

that if the father had been alive, the sister would not have inherited from *kalālah*. The matter is not specified in the Quran. Abubakr therefore concluded that the word means one who dies leaving no lineal heirs in either direction i.e no ascendants nor descendants.

In addition, Abubakr cleared the issue of inheritance from Prophet Muhammad's property. He did not grant the request of Fatimah who demanded for an inheritance from her father's property. He said the Prophet said: لا نورث ما تركنا فهو صدقة "we prophets do not inherit nor leave an estate for inheritance. Whatever we left is for charity (Bukhari).

*Ijmā'a* is another source of Islamic Shari'ah on inheritance. It means a consensus of opinion of the *Mujtahidīn* or an agreement of the Muslim jurists of a particular age on a question of law while a *qiyās* is a process of deduction by which the law of a text is applied to cases which though not covered by the language, are governed by the reason of the text. All secondary sources assist in the interpretation and understanding of the Quranic text and prophetic injunctions concerning inheritance.

### SELF ASSESSMENT EXERCISE III

List the primary and secondary sources of Islamic Law of Inheritance

#### 4.0 Conclusion

The legislation of Allah on inheritance is contained in the Quran and the authority of the Prophet is next to the Qur'an. The Prophet was regarded as the expounder of the Quran particularly the legal injunctions contained therein. He was given the role because he is the authoritative representative of the political and legal sovereignty of Allah on earth because he was the one who received the revelation. Therefore, his decisions must be accepted and his commands must be followed without reservation. Where the Quran and the sunnah are silent, the contributions of his companions to legal issues and other matters count because they were well aware of the wisdom behind the Prophet's sayings and deeds.

#### 5.0 Summary

We have examined in this lecture the sources of Islamic law of inheritance such as the Quran, the Sunnah, *Ijtihād* and *Ijmā'u*. These sources are vital and one needs to be familiar with them if one wants to really understand the application of Shari'ah to inheritance.

#### 6.0 Tutor – Marked Assignment

- Mention the contributions of Abubakr to Islamic Law of inheritance.
- State one reason for considering the caliphs' contribution to the Islamic law of inheritance.

- What are the other names of the Quran. Mention their implication.
- Discuss the legislative power of the Prophet.
- Mention the first and the last portions of revelation.

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## **UNIT 2 ISLAMIC PROVISIONS FOR WEALTH CIRCULATION**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Quranic Basis for Wealth Circulation
  - 3.2 Islamic Institutions for Circulation of Wealth
  - 3.3 Prohibitions of Exploitations and Hegemony
  - 3.4 Nafaqah and Inheritance versus Gender Rights and Responsibilities
- 4.0 Conclusion
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- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### **1.0 Introduction**

The Shariah (Islamic Law) aims at a just and equitable society where all segments of the society is fairly treated. It is natural to have disparity in materials possessions of individual members of the society but efforts should, and is made under the Islamic system, for re-distribution of wealth to alleviate and remove the burden of poverty from the disadvantaged and vulnerable groups in the society. Inheritance, with its well articulated guidelines is one of such formal institutions in Islam. Efforts will be made in this unit to call attention to some of the Islamic provisions for poverty reduction and the interconnection among the various institutions.

#### **2.0 Objectives**

At the end of this unit, you should be able to:

- Discuss Islamic attitude to wealth circulation
- List some of the provisions made by Islamic Law for wealth distribution
- Locate law of inheritance as part of the general provisions for wealth re-distribution in Islam
- Write on gender equity in Islamic law of family maintenance and inheritance

#### **3.0 Main Content**

##### **3.1 Quranic Basis for Wealth Circulation**

God in explaining why booty and other wealth should circulate among the citizens states in the Qur'an chapter 59 verse 7 that: .....  
“So that (circulation of wealth) is not restricted to only the rich among you...” Qur'an 47 verse 38; 2 verse 271 among others stipulate acts of

charity involving redistribution of wealth. As a follow up Islam makes provisions for various channels through which wealth can be made available to the under-privileged through the acts of benevolence of the rich and virtuous acts of the citizens. Certain acts that are detrimental to equitable re-distribution of wealth are proscribed while provisions were made for institutions that promote circulation of wealth among the citizens.

### **3.2 Islamic Institutions for Circulation of Wealth**

Islam establishes and makes elaborate details for the following poverty alleviation devices which, if properly executed in the society. The institutions include:

- (a) Education
- (b) Zakat – compulsory due from the well to do to the less privileged in the society. It is generally about 2 ½ % of the net property of the rich. It means 40 rich persons can annually turn a person in abject poverty into a rich person. Also prescribed are mandatory gift of prescribed quantity of food items for the poor at the end of Ramadan fast (zakatul-fitri)
- (c) Inheritance – It is also a veritable means of wealth circulation to those connected with the deceased by:
  - Blood (kinship)
  - Matrimony (Marriage bond)
  - Master / servant (slave – bond)
  - Common-citizenship (Public Treasury)
- (d) Charity – Recommended acts of charity:
  - Sadaqah
  - Hibah
  - Qaqf
  - Wasiyyah
  - Hard-work labour
- (e) Restitution (Kafarah) – When a person commits an error or omission in its religious rites and has to rectify them through some prescribed acts of charity to the poor. Such included feeding of prescribed number of poor persons; manumission of those in bondage; gifts etc.

### **3.3 Prohibitions of Exploitations and Hegemony**

Islam prohibits the use of wealth to pauperise the poor. This explains why Islam prohibit usury through the wealthy exploit the poor and subjugate them to abject and perpetual poverty.

Islam also prohibits hoarding, profiteering, monopoly and cheating. These vices widen the gap between the rich and the poor in the society. Islam therefore sets to create a just and balance society where the poor is provided with an environment to get out of poverty.

### **3.4 Nafaqah and Inheritance Versus Gender Rights and Responsibilities**

Islamic law makes balanced provisions of rights and obligations in socio-economic activities of each segment of the community. A member of the family enjoys, when appropriate, a share of the wealth of his or her dead relations as a benefit of their relationship through marriage or blood ties. Conversely, the same person has the obligation of maintenance, where applicable of his or her poor relations. Some rights and responsibilities are in kind while some are material and in cash. For example, keeping company of spouse and looking after a sick relation is non-material responsibility and rights. On the other hand, maintenance and inheritance are largely material.

To whom much is given, much is expected. The closer the blood tie, the heavier the responsibility of maintenance of the relation as well as the right of inheritance from the relation. In the same vein, male are entrusted with a large percentage of material responsibility of maintenance in the family.

For example as husband, son, father etc, the male is charged with the material responsibility of the female as contained in, among others, the following quotations from the Qur'an:

(a) Qur'an 2 verse 33 – 4

“men shall take care of women with the bounties which Allah has bestowed more abundantly on the former than the later, and with what they spend of their wealth”

(b) Qur'an 65:6

And mothers shall give such to their children..... And the man to whom the child belongs shall be responsible for their (mothers) food and clothing in a befitting manner.

(c) Qur'an 17:23

“Lodge them (your wives) where you live within your capacity and do not hurt them to incapacitate them. And if they are pregnant, spend on them until they deliver their burden. Then if they suckle for you, give them the recompense...

It is therefore expected that in inheritance too, general material benefits in favour of male, should be understood as justifiable. In many cases males have advantage in inheritance just as females have in

maintenance. It should however be noted, from subsequent units of this lecture, that, there are situations in inheritance where female are equally treated or even allotted greater portion of inheritance than their male counterparts.

It is thus not gender discrimination but gender equity which pairs legal rights with legal responsibilities. Since laws are made based on what is normal and most usual, exceptions to the rule, where the female discharges the legal responsibilities of the male cannot be made the basis of the norm.

#### **4.0 Conclusion**

It has been clearly shown that inheritance in Islam is one of many Islamic provisions for redistribution of wealth and that each of the provisions are interlinked with the others in order to allow circulation of wealth among the citizen. It is also clear that equality is not the same as equity. It is just to be equitable by weighing rights along with responsibilities. This is the case of Islamic provisions on Nafaqah (family maintenance) and inheritance.

#### **5.0 Summary**

The unit has been made to provide the primacy of just and equitable society where the poor are relieved by the rich and wealth is not allowed to be restricted to a particular group. The Quranic basis of the goal and some of the provisions for poverty alleviation are enumerated along with inheritance which is the subject of this course. We have also explained how rights are balanced with responsibilities in the Islamic law of inheritance.

#### **6.0 Tutor – Marked Assignment**

- Examine the position of Islam on exploitation and hoarding
- List some of the institutions of Islam which alleviate poverty in the society
- Explain the prohibition of usury and selfishness in Islam
- Compare the responsibilities of male members of the family with those of the female members in maintenance of the family
- Justify occasional gender disparity in Islamic law of inheritance

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## UNIT 3      FIRST-LINE      CHARGES AGAINST THE PROPERTY OF A DECEASED MUSLIM

### CONTENTS

- 8.0 Introduction
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- 5.0 Summary
- 6.0 Tutor – Marked Assignment
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#### 1.0 Introduction

- The heirs are given their divinely-fixed shares as contained in the Qur'an. The dead person or his/her heir is not permitted to dispose of his estate through whims and caprices. In this unit, you will read about the meaning of inheritance literally and legally. Allah, the ultimate owner has assigned how property of a dead person should be shared. Sentiments of love or hatred should not be allowed to deprive an heir his share or increase the share of heirs. However, before the distribution of the divinely-fixed shares of each beneficiary, we would discuss first the avoidable pitfalls which many people including some scholars fall into. We need to sift the chaff from the wheat. In relation to the sharing of deceased's property. Three items take precedent in the property of the deceased. It is the residue that is shared among the fixed sharers and the residuaries. You will learn of the reactions of the Prophet to outstanding debt based on the three corpses brought before him at different occasions for prayers.

#### 2.0 Objectives

You should be able to:

- Explain the literal meaning of *mirāth*.
- Give the legal meaning of *mirāth*.
- State the three heads of expenditure that need to be taken care of before the distribution of an estate among heirs.

### 3.0 Main Content

#### 3.1 The meaning of mirāth

*Mirāth* means inheritance it is a divine right of heirs in the assets of a deceased. It is contained in the Quran (4:7, 11,12 and 196). Other word that is used for inheritance is fara'id. Farā'id is the plural of farīdah the prescribed shares which are called furūd (singular fard) are the specific shares mentioned in the Qur'an such as one-half, one-third, one-fourth, one-sixth, one-eighth and two-thirds. Therefore, the Islamic Law of inheritance is called 'ilmul farā'id, knowledge of inheritance. It deals with the calculation of inheritance and distributing it among the heirs mentioned in the Quran and the Hadith. The deceased person whether male or female, young or old is called al-mayt and the assets or liabilities left behind is called Tarikah. The asset is also called Warasah which is the plural form of waaris. Heir is the person who inherits the assets of a deceased. Siham is the plural of Arabic word sahm (a portion). It means respective portions of the heirs that they get from the assets based on the Quranic injunction

#### 3.2 The Importance of Fulfillment of Obligations in Islam

In Islam obligation are sacred and must be fulfilled. The Qur'an emphasis the fulfillment of obligation and settlement of debt in so many verses among which are the following:

- (i) Qur'an 61:2-3  
"O you who believe! Why do you say that which you do not do?" "Most hateful it is with Allah that you say that which you do not do".
- (ii) Qur'an 3:76 which says:  
Yes who ever fulfill his pledge and be conscious of Allah indeed Allah loves the pious
- (iii) Qur'an 23:8 which says:  
Those who are through to their pledges and trust (are the believers) other verses include Q2:27 and Q2:140

If death is to be the end of fulfillment of legal obligation by the deceased, the society would be in chaos as the creditor would suffer irreparable lost. Consequently, the Quran emphasizes the fulfillment of legal obligations of the deceased even when he or she is no more in position to personally fulfill the obligation. This explains why legal commitment of the deceased should be promptly settled by his or her heirs. The Qur'an 4:11 and 4:12 each distinctively calls for settlement

of debt and bequest before the distribution of inheritance from the estate of the deceased. Qur'an chapter 4 verse 11 says that inheritance should be distributed "...only after the payment of bequest he may have made or debt he may have incurred..." as if that was not strong enough the verse that follows repeat the same clause as a condition precedent before distribution of inheritance.

### **3.3 The Obligatory three Heads of Expenditure before Sharing**

Before the distribution of the property of the deceased, the following heads of expenditure must be taken into consideration: burial expenses; debt and bequest.

#### **3.3.1 Burial Expenses**

It is only fair to the deceased that from his own wealth, he should be given proper burial therefore, when a person dies, preparations must be made to take care of his corpse. During the course of doing this, some expenses such as the bricks to be used in his grave, the cost of digging his grave, and transporting his dead body to his grave, the payment made to the washer i.e. the person who will wash his body, the cloth to be used to wrap him, the piece of land to be used to bury him and other related expenses must be taken into consideration before the estate is shared among his heirs unless the cost had been voluntarily defrayed by others.

Only the basic expenses that are incurred wholly and exclusively for the burial are chargeable to the estate of the deceased. If a deceased does not have enough funds to pay for his burial expenses, his wife or husband should finance them if he or she is financially capable. If the spouse is not capable, the children should, then the dead person's neighbor or the Muslim community around the area must take up the challenge. The burial expenses that are chargeable to the property of the deceased do not include extravagant expenses incurred in the process of a wasteful burial or ceremony such an extravagant ceremony is not only illegal but sinful.

#### **3.3.2 Outstanding debts of the deceased**

Debts incurred by the deceased are front line charge against his or her property. Efforts must be made to settle the debt from his or her property. Announcement may be made to inform people of the person, to contact for the settlement of the deceased's debts. However, care must be taken to prevent fraudsters from taking undue advantage of the situation. Verification must be done based on the Quranic injunction (Q49:6) Paying debts before a corpse is buried is so important that the

Prophet refused to pray *salatul janazah* for one of his followers who was in debt. He only prayed for him when his debts had been settled.

عن سلمة بن الأكوع رضي الله عنه قال: كنا جلوسا عند النبي صلى الله عليه وسلم إذ أُتيَ بجنّازة فقالوا صلّ عليها فقال هل عليه دين؟ قالوا لا، قال فهل ترك شيئاً؟ قالوا لا فصلّى عليها. ثم أُتيَ بجنّازة أخرى فقالوا يارسول الله صلّ عليها قال هل عليه دين قيل نعم، قال فهل ترك شيئاً قالوا ثلاثة دنانير فصلّى عليها. ثم أُتيَ بالثالثة فقالوا صلّ عليها قال فهل ترك شيئاً؟ قالوا لا، قال فهل عليه دين؟ قالوا ثلاثة دنانير، قال صلّوا على صاحبكم، قال أبو قتادة صل عليه يا رسول الله وعليّ دينه فصلّى عليه.

Salamah, son of Akwa, narrated that: “(one day) when we were sitting with the Prophet (PBUH), a dead person was brought (to us). They said (O Prophet), Pray for the deceased. He said, “Is he in debt?”. The people replied “No”. He said, “Has he left any wealth?” They said, “No”. So, he led his funeral prayer. Another dead man was brought and the people said, “O Allah’s messenger! Lead his funeral prayer. “The Prophet said, “is he in debt?”. They said, “Yes” He said, “Has he left any wealth?” They said, “Three Dinars” so, he led the prayer. Then a third dead man was brought and the people said (to the Prophet), please lead his funeral prayer”. He said, “Has he left any wealth?” They said, “No” He asked, is he in debt? “They said, (“yes he has to pay) three Dinars”. He (refused to pray and) said, “Then pray for your dead companion. “Abu Qatadah said, “O Allah’s messenger! Lead his funeral pray and I will pay his debt “.So, he led the prayer (Sahih Bukhari).

To show the importance of paying debts, when the Prophet was financially capable, he took it upon himself to pay the debts of a dead Muslim when the person’s property could not be sufficient to pay his debts.

This is contained in the Hadith compiled by Bukhari, one of the six authentic collectors of Hadith.

عن أبي هريرة رضي الله عنه أن رسول صلى الله عليه وسلم كان يُوتى بالرجل المتوفى عليه الدين فيسأل هل ترك لدينه فضلا فإن حدث أنه ترك لدينه وفاءً صلى، وإلا قال للمسلمين صلّوا على صاحبكم. فلما فتح الله عليه الفتوح قال أنا أولى بالمؤمنين من أنفسهم فمن توفّي من المؤمنين فترك ديناً فعلي قضاؤه، ومن ترك مالا فَلِوَرَثَتِهِ

Abu Hurayrah narrated that whenever a dead man in debt was brought to the messenger of Allah, he would ask, “Has he left anything to repay his debt?” if he was informed that he had left something to repay his debts, he would offer his funeral prayer, otherwise he would tell the Muslims to offer their friend’s funeral prayer. When Allah made the Prophet wealthy through conquests, he said, “I am more rightful than other believers to be the guardian of the believers so, if a Muslim dies while in debt, I am responsible for the repayment of his debt, and whoever leaves wealth (after his death) it will belong to his heirs (sahih Bukhari).

The prophetic traditions suggests that a dead person in debt would be in bondage on account of his debt. This shows that death of a debtor does not deprive the creditors his/her entitlements. As much as possible, people should avoid being in debt, and if they are, arrangement should be made to pay it as early as possible. Some of the debts that may pertain to religious obligations such as *mahr* (bridal gift), outstanding zakat, *kaffarah*(the cost of restitution) confirmed money or value borrowed from individuals and corporate bodies.

### 3.3.3 Bequests (Wasiyyah)

Bequests can be made by a Muslim against him or her property subject to a maximum of 1/3 of the estate. Will is thus allowed provided it distributes not more than a third of one’s property and not in favour of a legal heir. Will is another expense that has to be deducted from a dead person’s property before sharing the rest among his heirs. It should not be more than 1/3 of a dead person’s property. The will must have been made when a owner is hale and hearty. It is not permissible a will on a death-bed (when death is imminent). (i.e *maradul mawt* – the illness in which a person dies). During this period, he does not have any say again as regards his property. The property has returned to the

real Owner (Allah) who would decide the distribution. A will can also not be made in favour of any legal heir.

### 3.3.4 Abuse of Inheritance

Some Muslims put in their will fictitious bequest and fake debts so as to deprive their real heirs of their rightful shares. This is a violation of the Quranic injunction and the Sunnah (Q4:2) the Prophet said:

لا ضرر ولا ضرار، من ضار ضاره الله، ومن شاق شاقه الله

“One should not initiate harm, nor be harmed (them). Whoever harms others, Allah will harm him, and whoever troubles others, Allah will trouble him”

It is not correct to make adopted children biological in inheritance sharing. This is a clear violation of the Quranic injunction. Only natural children are entitled to inheritance. As stated in Q33:4-5 adopted children do not have the status natural children (sons and daughters of the deceased). They cannot inherit the person who adopted them and vice versa in Islam. Some people elevated adopted children to the status of a natural son or daughter. This is against Q33:4-5.

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِنْ قَلْبَيْنِ فِي جَوْفِهِ وَمَا جَعَلَ أَزْوَاجَكُمْ اللَّائِي تَظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكَ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ (4) ادْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا (5)

Allâh has not put for any man two hearts inside his body. Neither has He made your wives whom you declare to be like your mothers' backs, your real mothers. [AzZihâr is the saying of a husband to his wife, "You are to me like the back of my mother" i.e. You are unlawful for me to approach.], nor has He made your adopted sons your real sons. That is but your saying with your mouths. But Allâh says the truth, and He guides to the (Right) Way (Q33:4). Call them (adopted sons) by (the names of) their fathers, that is more just with Allâh. But if you know not their father's (names, call them) your brothers in faith and *Mawâlikum* (your freed slaves). And there is no sin on you if you make

a mistake therein, except in regard to what your hearts deliberately intend. And Allâh is Ever Often Forgiving, Most Merciful (Q33:5).

It is wrong to contrive a situation that would give some heirs more than their dues. This is an abuse and a violation of the Quranic injunction on justice (Q5:8). The excess should be returned to the right owner.

It is not legal to deny minors or the child in the womb their due shares in inheritance. Minors are denied inheritance. In the rule of Shariah, every related person, young and old, male and female are entitled to inheritance. If a person is aware of injustice and he is capable of stopping it, he should do so.

### **SELF ASSESSMENT EXERCISE I**

State the first three charges against the properties of a deceased Muslim

#### **4.0 Conclusion**

It is clear that Allah takes control of the property of the person after his death. What a person needs is to judiciously use his wealth before he passes away. If one thinks he is smart and accumulates debt with a view of not repaying it, he would pay it on the Day of Judgement. It means there is no hidden place. No one can go scot free without paying for one's actions. One should realise that the opportunity given to man is to write a will before one dies. The opportunity is also restricted.

#### **5.0 Summary**

In this unit, we have examined some of the acts that must be avoided when one is writing a will or sharing a property. Sentiments must be avoided. We have also discussed the issue of funeral rites. All the expenses wholly and exclusively incurred must be deducted from the estate before sharing it among a dead person's heirs. Payment of debt is very important and must be paid before or immediately a person is buried. Hadith of the Prophet is cited to show the importance of paying debts. Will is limited to 1/3 of a dead person's property. Any will above 1/3 of his property should be ignored. Similarly, a legal heir cannot be favoured with additional share based on a will.

#### **6.0 Tutor – Marked Assignment**

- Mention the reaction of the Prophet when three dead people were brought to him.
- List the three heads of expenditure that may be incurred after a person dies
- Write notes on burial expenses of a dead Muslim
- Paraphrase two of the prophetic traditions on payment of debt.
- List 5 examples of debt a Muslim may incur.

- What is the maximum percentage of property on which a person can make a valid will?

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## MODULE 3

### UNIT 1 CATEGORIES OF HEIRS: As-Hābul Furūd (FIXED SHARERS)

#### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Ahkamul mujmalwal mufassal approach on inheritance
  - 3.2 Types of Heirs
  - 3.3 *Dhawi Al-Furūd* (Fixed Sharers)
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
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#### 1.0 Introduction

In Islamic Law of inheritance, a subset of the Sharī‘ah, there is a well-established principle for the distribution of the property of a dead Muslim. After deducting all basic expenses mentioned in one of the earlier units as burial expenses, debts and bequest, the rest property is shared based on the divine injunction.

The holy Quran is a book that uses so many styles to put across its message to people. One of the styles is *Aḥkamul-Mujmal Wal-Mufaṣṣal*. In this lecture, you will learn how the Quran uses this style in passing across its message on inheritance to people.

#### 2.0 Objectives

At the end of this lecture, you should be able to:

- explain the style adopted to present injunctions on inheritance
- mention Quranic verses on fixed sharers.
- list the fixed sharers.
- mention the types of sharers

#### 3.0 Main Content

##### 3.1 *Aḥkamul-Mujmal Wal-Mufaṣṣal*(Detail after Epitome)

Of all the styles used in the Quran, only *mujmal wal-mufaṣṣal* is used by the Qur’an to convey its messages on inheritance. This stylistic device gives summarized legal injunctions to which other verses are to give details. Hadith and *ijtihād* are used to convey the rest details. As

regards inheritance in Islam, Q4:7 gives the summary of how the property is shared to the close relatives

- لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا

“For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much – an obligatory share”(Q4:7).

In this verse, details are not given. Allah mentions shares without being specific as regards the percentage. Parents and close relatives mentioned are also general. The mentioning of women in this verse needs explanation because it is in form of *mujmal*. The statements are not specific. The details of this verse are given in the subsequent verses particularly Q4:11, 12 and 176. The one that is relevant here to the explanations of Q4:7 is Q4:11 when Allah says:

وَصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ فَإِن لَّمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

“Allah instructs you concerning your children (i.e their portions of inheritance) for the male, what is equal to the share of two females. But if there are (only) daughters, two or more, for them is two thirds of one’s estate. And if there is only one, for her is half. And for one’s parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents (alone) inherit from him, then for his mother is one third. And if he had brothers (and/or sisters), for his mother is a sixth after any bequest he (may have) made or debt. Your parents or your children – you know not which of them are nearest to you in benefit. [These shares are] an obligation (imposed) by Allah. Indeed, Allah is ever knowing and wise”.

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكْنَ مِنْ بَعْدِ وَصِيَّةٍ يُوصِيَنَّ بِهَا أَوْ دَيْنٍ وَهُنَّ الرُّبْعُ مِمَّا تَرَكْتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُمْ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورِثُ كَلَالَةً أَوْ امْرَأَةً وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنَ الْبَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ وَصِيَّةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

“And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave after any bequest they (may have) made or debt. And (for them) (i.e. the wives) is one fourth if you leave no child but if you leave a child, then for them is an eighth of what you leave, after any bequest you (may have) made or debt.

And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [this is] an ordinance from Allah, and Allah is knowing and forbearing” (4: 12). In this verse of the Quran, other members of *Aṣḥābul Furūd* are mentioned. They are husband and wife.

These verses explain in detail the content of Qur'an 4:7 earlier quoted. Both give the details regarding the beneficiaries and the portions or shares for each of the beneficiary. We can therefore easily extract exact portion for the heirs from the verses

### 3.2 Categories of Heirs

Types of beneficiaries in Inheritance

There are three major types of beneficiaries as far as inheritance in Islam is concerned they are:

1. *Aṣḥābul Furūd* (Fixed sharers)
  2. *Aṣabah* (Residuaries)
  3. *Dhawil arḥām* (Distant kindred)
- In some special cases the Public Treasury and Master of a bonded person can be beneficiaries too.

**3.2.1. *Aṣḥābul Furūd* (Fixed Sharers)**

These are the beneficiaries who have fixed shares in the sharing of inheritance based on the injunctions of the Qur'an, the Sunnah and other sources of Sharī'ah. The following sharers are the fixed sharers mentioned in the Quran:

- ✓ Father
- ✓ Mother
- ✓ Husband
- ✓ Wife
- ✓ Daughter
- ✓ Full Sister
- ✓ Uterine Brother
- ✓ Uterine Sister

**SELF ASSESSMENT EXERCISE:**

List the fixed sharers in Islamic law of inheritance

*Aṣḥābul Furūd* (Fixed Sharers) come first in the distribution and receiving of inheritance because they are the most important group of beneficiaries of inheritance. We shall take the fixed sharers one after the other and state their shares with explanations.

| <b>Beneficiary</b> | <b>Portion</b>                 | <b>Explanations</b>  |
|--------------------|--------------------------------|--|
| Father takes       | 1/6                            | If al-mayt (the deceased) is survived by at least a child or son's son   |
|                    | 1/6 +<br>balance<br>(residues) | If the deceased is not survived by a son or grandsons, he takes 1/6.<br><br>After others such as brothers have been allotted, he would take the remaining balance as aṣbat (residuary) |
| Mother takes       | 1/6                            | If the deceased has children or son's children. or<br><br>If the deceased has more than one brother or sister of any kind.   |
|                    | 1/3                            | (A) If a mother has a son and that son died leaving his wife and mother behind i.e the man is survived by his  |

|  |     |  |
|--|-----|--|
|  |     | wife and mother, the mother's share is 1/3   |
|  |     | (B) If a mother has a daughter and that daughter died leaving her husband and mother behind i.e the wife is survived by her husband and mother, the mother's share is 1/3<br><br><b>NOTE:</b> The 1/3 is deducted after deducting the wife's / the husband's share |
|  | 1/3 | If the deceased has neither children nor brothers/sisters  |
|  | 1/3 | If the deceased has none of the relatives in A and B, her share is 1/3.  |

| <b>Beneficiary</b> | <b>Portion</b> | <b>Explanations</b>  |
|--------------------|----------------|--|
| Husband takes      | 1/2            | The husband gets 1/2 from his deceased wife's property if she has neither children nor any son's son   |
|                    | 1/4            | The husband takes 1/4 from his deceased wife property if she has children and or whether from the surviving husband or the previous husbands     |
| Wife takes         | 1/4            | The wife takes 1/4 if her deceased husband has neither children nor grandchildren.   |
|                    | 1/8            | The wife takes 1/8 if her deceased husband has children or son's children. The children may be from another wife other than from surviving wife. |
| Daughtertakes      | 1/2            | A daughter takes 1/2 from her deceased   |

|  |                    |   |
|--|--------------------|---|
|  |                    | fathers' property if he has no son's but only one daughter.   |
|  | 2/3                | Two or more daughters take 2/3 if their deceased father has no son. They share 2/3 equally among themselves |
|  | 2:1<br>male:female | Each daughter takes half the share of the son from their deceased father's property if he has a son.        |

### 3.2.3 THE DAUGHTERS AS PRIMARY HEIRS

#### Daughter

One of the fixed sharers is daughter. She has a fixed share in case a son is absent. She becomes residuary in the presence of a son. An only daughter of a deceased gets 1/2 of the property if a son is absent. Two or more daughters in the absence of a son takes 2/3 of the property and share it equally among themselves. In the presence of a son, the daughter (one or more) becomes a residuary. Each daughter takes half the share of the son. This issue is discussed in the following Quranic verse

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنَّ امْرُؤَهُ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

“They request from you a (legal) ruling. Say, “Allah gives you a ruling concerning one having neither descendants nor ascendants (as heirs)”. If a man dies, leaving no child but (only) a sister, she will have half of what he left. And he inherits from her if she (dies and)has no child. But if there are two sisters (or more) they will have two thirds of what he left. If there are both brothers and sisters, the male will have the share of two females. Allah makes clear to you (His Law), lest you go astray. And Allah is knowing all things”.

## 4.0 Conclusion

In this lesson, it is clear that Allah takes into consideration the level of responsibilities he has given to each heir deciding the portion of inheritance to each heir. The Quran explains itself at times. This is true of inheritance. The explanations given are in the first instance in line with the fixed sharers. They are the ones that are very close to one another in terms of showing affection and responsibilities put on them demand such shares.

## **5.0 Summary**

We have examined in this chapter the stylistic devices used to convey inheritance. The device prepares one's mind for the explanations. We also discussed categories of heirs such as fixed sharer and residuaries. The table was used to illustrate the shares of two of the fixed, sharers father and mother with explanations.

## **6.0 Tutor – Marked Assignment**

- Write the verse that gives the rules of sharing inheritance in a broad perspective
- Mention three categories of heirs
- Mention 6 of the fixed sharers
- Give the shares of a father and a mother under different conditions

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## UNIT 2‘AṢABAH (RESIDUARIES)

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Meaning of ‘*Aṣabah*
  - 3.2 Categories of Residuaries
  - 3.3 List of Residuaries
  - 3.4 Son as a Residuary
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### 1.0 Introduction

The knowledge of Islamic Law of inheritance is a key issue in Islamic Law. In fact, the place it occupies in promoting social welfarism is very important. There are common family situations that might occur after a person’s death. The Quran is not silent as far as those situations are concerned. One of those issues is the issue that makes some people become residuaries. In this unit, you will learn about the second category of heirs.

#### 2.0 Objectives

At the end of this lecture, you should be able to:

- explain residuaries.
- categorise residuaries.
- list residuaries.
- mention the share of a son at different situations.

#### 3.0 Main Content

##### 3.1 Meaning of Asabah

*At-Ta’sīb* (التعصيب) in the Islamic law of inheritance refers to a situation in which a heir (or a class of heirs) inherits the whole estate or takes the residue after other heirs had taken their fixed sharers. ‘*Aṣabah* are residuaries i.e the persons that inherit what is left of the entire property after the fixed sharers have taken their own portions. If there is no fixed sharer, they take the entire property.

##### 3.2 Types of Residuaries

Residuaries in their own right عصبية نسبية

Residuaries in another's right عاصب بغير  
 Residuaries together with another عاصب مع غير

### 3.2.1 Residuaries in their own right عصبه نسبية

These are the residuaries that have the right of residue on the basis of blood relation عصبه نسبية. This is when a male residuary is directly linked to the deceased without a female intervention. i.e. no female is found in the chain. The residuaries in this group are divided into four groups as contained in the table immediately below. The first excludes the second, and the second excludes the third while the third excludes the fourth. The residuaries are the descendants of the deceased (Asabatun sababiyah). If there is no female and the sons are residuaries, the residue is divided among the sons equally. If it is only one son, he takes everything. A grandson may take everything in the absence of granddaughter. Son, grandson, father and grandfather are some examples of residuaries in this category.

Asabatu nasabiyah – they are the male ascendants, descendants brothers and their sons to mention but a few.

| Group I Male Ascendants               | Group II Male Ascendants                       | Group III Siblings                     | Group IV Descendants of one's ascendants who are not one's siblings |
|---------------------------------------|--|--|---|
| e.g.<br>Son/Sons<br><br>Grandson etc. | Father<br><br>paternal<br><br>grandfather etc. | Real brothers<br><br>Real sisters etc. | Descendants of the grandfather etc.                                 |

### 3.2.2 Residuaries through another's rights (عاصب بغير)

These are the residuaries that agnatised with their male counterparts. i.e. female relatives of the same degree that entitled to fixed share but become residuaries if they co-exist with brothers. For example the existence of a son as residuary makes the son's sister(s) to be residuaries since the daughter(s) are of the same degree of relationship to the dead as the son

### 3.2.3 Residuaries with another عاصب مع غير

A female that becomes a residuary with another female e.g. a real sister with a daughter or granddaughters and no son or any other male

*aṣbah*. A residuary can be a sharer depending on the availability or otherwise some other particular heirs.

### 3.3 List of those that may convert from fixed sharers to residuaries

- Father
- Paternal grandfather
- Daughter
- Son
- Son's daughter
- Full Sister
- Consanguine Sister (i.e sister by the father alone)

### 3.4 Son as a Residuary

- Son is a member of *asbabul furūd*. Children whether male or female always inherits.
- After the fixed sharers have taken their own shares, son takes the whole residue (and converts his own sister(s) to residuaries)
- If there is no son, grandson gets the whole residue. (In each case the son(s) is treated along with his female counterparts (daughter)
- The residue must be shared equally among two sons or more or grandsons.
- A daughter becomes a residuary by the presence of a son.

In all the examples, the male (son) or grandson is entitled to double the amount due to his female counterpart. This is in accordance with the Quranic injunction, .....

For men are the portions of two females. In the same manner are given responsibilities of providing the sustenance of and maintenance of the home, in the spirit of to whom much is given much is expected.

### 4.0 Conclusion

No condition is permanent. This is true of the issue of *at-ta'ṣīb*. Sometimes, the share of a residuary may be high. At other times, it may be very low. This means that a residuary position is not static. The issue of taking residue has put some sharers at a disadvantage particularly the son. In all the cases it is the need to be fair to other co-sharer(s) that causes the fluctuation in the portion due to an heir problem.

### 5.0 Summary

An attempt was made in this unit to explain *at-ta'ṣīb* (residue) and all the conditions attached to it. Types of residuaries were discussed. Some

residuaries are in their own rights while others rely on others. A table that shows some members in every group was provided. List of those that was converted to residuaries were provided. A comprehensive example of residuary was given. This was done to illustrate the rules.

#### **6.0 Tutor – Marked Assignment**

- Explain *at-ta 'şīb* and *'aşabah*.
- Mention 3 types of residuaries
- Explain *aşabiyatun nasabiyatun*.
- Give 4 examples of those that may convert to residuaries.
- Write a brief note on son as a residuaries.

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## UNIT3      DUALITY OF STATUS OF SIBLINGS IN ISLAMIC LAW OF INHERITANCE

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Full Brother as a residuary
  - 3.2 Full Sister as a fixed sharer and a Residuary
  - 3.3 Consanguine Brother as a Residuary
  - 3.4 Consanguine Sister as a fixed sharer and a Residuary
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### 1.0 Introduction

This lecture focuses on various kinds of elimination and substitution in relation to inheritance in Islam. Some heirs cannot inherit in the presence of *aṣḥābul furūd*. However, if fixed sharers (*aṣḥābul furūd*) are not present, they would not only inherit but they take the residue. In this unit, an attempt is made to explain them one after the other.

#### 2.0 Objectives

At the end of this lecture, you should be able to:

- Explain the shifting status of siblings as fixed sharers and Residuaries
- State the conditions that can make a real brother become a residuary.
- List the situations that put a full sister in two situations; fixed sharers and residuary.
- Mention the position(s) of both consanguine brother and consanguine sister.

#### 3.0 Main Content

##### 3.1 Full Brother as a residuary

Full brother is a descendant of father (just as he is also of the mother). In the presence of the father of the deceased (his own full brother), son and grandson, he cannot inherit the deceased. However, if they are non-existent, he inherits as a residuary. If he is alone and no other heir, he takes the full residue. But if he has sisters, he shares the residue with the sister(s) in the ration 2:1. If there are two or more brothers, they share the residue equally among themselves.

### Full Brother's Changing Status

| S/No | Situation                                    | Portion and Status   |
|------|--|--|
| 1    | + Son/father/grandson of the deceased        | The brother is debarred from inheritance   |
| 2    | In the absence of heir in situation number 1 | He inherits the residue along with other entitled heirs e.g his brothers, sisters etc. |
| 3    | If he is the only heir                       | He inherits the whole property as residue  |

### 3.2 Full Sister as a fixed sharer and a Residuary

If the deceased has a son, grandson and father, full sister cannot inherit the deceased because of closer relations. However, if she is alone without the deceased's son or grandson or father, she will inherit  $\frac{1}{2}$  of the property. It is  $\frac{2}{3}$  if the full sisters are two or more and the deceased does not have a son, grandson or father. Full sister becomes a residuary if she has a full brother who became an agnate. Both share the residue in the ratio 2:1. But if there is no full brother and the deceased has a daughter or granddaughter full sister becomes a residuary along with the daughter. Full sister is excluded if the deceased has a son, grandson or father.

### Full Sister's Changing Fortunes in Inheritance from Fixed Sharer to Residuary

| S/No | Situation   | Portion and Status  |
|------|---|---|
| 1    | + Son/grandson/father   | Sister(s) totally eliminated from inheritance   |
| 2    | Absence of any under No 1   | $\frac{1}{2}$ of the property as fixed sharer.<br>Co-sharer of $\frac{2}{3}$ if she has other sister(s) |
| 3    | + Her brother(s)  | Full sister becomes a residuary co-shares with the brother(s) at the ratio of 2:1 (male/female)         |
| 4    | No son/grandson/father/full brother but with daughter(s) or son's daughter(s) | Full sister becomes a residuary along with the daughters or son's daughters                             |

### 3.3 Consanguine Brother as a Residuary

What is the meaning of consanguine? Consanguine means two or more people with the same father but different mothers.

If a full brother is absent, consanguine brother takes his position and inherits as a full brother. If he is alone, he takes the full residue. But if he has consanguine sisters, he shares the residue with the consanguine sister(s) in the ration 2:1. The consanguine sisters share their own share of the residue equally among themselves.

A full brother excludes consanguine brother. He cannot inherit the deceased in the presence of the deceased's full brother. A full sister cannot exclude consanguine brother. Consanguine brother takes the residue if there is full sister(s). This is after the full sister(s) has taken her fixed share. Consanguine sisters become residuaries if there is aconsanguine brother. The son, grandson or father of the deceased excludes consanguine (same father different mothers).

### 3.4 Consanguine Sister as a fixed sharer and a Residuary

It is not allowed for consanguine sisters to inherit when the son, grandson, father or full brother of the deceased is in existence.

Consanguine sister will take  $\frac{1}{2}$  the estate if the deceased has only one consanguine sister. It is  $\frac{2}{3}$  that consanguine sisters will share equally if they are two or more. Consanguine sister will inherit  $\frac{1}{6}$  of the total property when there is one full sister with her. If two or more consanguine sisters are in existence with one full sister, they share  $\frac{1}{6}$  equally among themselves. If there are two or more full sisters, consanguine sisters are excluded totally. Consanguine sister becomes a residuary if she is in existence with a consanguine brother both consanguine sister and brother share the property in the ratio 2:1. Consanguine sister cannot inherit in the presence of the son, grandson, father and full brother of the deceased.

| <b>Full Brother</b>           |  |
|-------------------------------|--|
| Portion                       | Circumstances  |
| Full residue                  | If full brother is alone he takes the full residue   |
| Full residue in the ratio 2:1 | If full brothers have sisters, both full brothers and full sisters share it in the ratio of 2:1(male/female) |

| <b>Full Sister</b>            |  |
|-------------------------------|--|
| $\frac{1}{2}$                 | If the deceased has only one full sister and no fixed sharers, full sister takes $\frac{1}{2}$ of the property.                |
| $\frac{2}{3}$                 | 2 or more full sisters without fixed sharers. They share it equally among themselves.  |
| Residuary                     | Full sister of the deceased becomes residuary if the deceased does not have a full brother but has a daughter or granddaughter |
| Excluded                      | The son, grandson or father of the deceased excludes full sister(s)  |
| <b>Consanguine Brother</b>    |  |
| Full residue                  | If consanguine brother is alone with the deceased, he takes the full residue.  |
| Full residue in the ratio 2:1 | If the deceased has consanguine brother and consanguine sisters, both share it in the ratio 2:1 respectively                   |
| Full residue shared equally   | If the deceased has only consanguine brothers, then share the residue equally among themselves                                 |
| Excluded                      | Full brother of the deceased excluded consanguine brother  |
| Residue                       | If the deceased has full sister(s) and after the full sisters take their fixed share, consanguine brother takes the residue    |
| Excluded                      | The son, grandson and father of the deceased excluded consanguine brother  |

| <b>Consanguine Sister</b>    |  |
|------------------------------|--|
| $\frac{1}{2}$                | If the deceased has only consanguine sister, she takes $\frac{1}{2}$ of the deceased's property                                |
| $\frac{2}{3}$                | If consanguine sisters are 2 or more, they shared $\frac{2}{3}$ of the deceased's property equally among themselves            |
| $\frac{1}{6}$                | A consanguine sister of the deceased takes $\frac{1}{6}$ if the deceased has one full sister                                   |
| $\frac{1}{6}$                | If consanguine sisters of the deceased are 2 or more, they take $\frac{1}{6}$ and share it equally                             |
| Excluded                     | If the deceased has 2 or more full sisters, consanguine sister is excluded   |
| Residuary 2:1 Male<br>Female | If a deceased has a consanguine brother and a consanguine sister, both co-share the residue in the ration of 2:1 (male/female) |
| Excluded                     | The son, grandson, father or full brother of the deceased excludes consanguine sister  |

#### **4.0 Conclusion**

It is evident from the discussion that in Islamic law of inheritance, rights go along with responsibilities. Since males have more responsibilities to bear than female in family management; they are given larger share of the rights. Everything has its place. This is true of the theory of elimination and substitution in the Islamic law of inheritance. When the nearer relatives are around, the distant ones are excluded. This is what happens when a deceased leaves behind a full brother and a consanguine brother or consanguine sister. The latter group would not inherit and the full brother is given priority in inheritance.

#### **5.0 Summary**

We have examined in details some aspects of elimination and substitution in the area of inheritance in Islam. We discussed the situations that can make full

brother or sister inherit the full residue. The place of consanguine sisters and brothers is discussed. They take different positions. At times, they are excluded. At other times they take the full residue. In other situation, they have fixed shares. All these positions show the fairness of the Islamic law of inheritance and that the degree of close relation determines the priority in inheritance.

#### **6.0 Tutor – Marked Assignment**

1. Define full brother and consanguine brother.
2. Compare and contrast the positions of full brother and full sister in Islamic Law of inheritance.
3. Consanguine brothers can be excluded, included and at times take the full residue. Explain
4. Consanguine sister wear many caps. Explain

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## UNIT 4 THE PLACE OF *DHUL ARḤĀM*(DISTANT RELATIVES) IN ISLAMIC INHERITANCE

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Meaning of *Dhul Arḥām*
  - 3.2 Adoption of *Dhul Arḥām*
  - 3.3 List of *Dhul Arḥām*
  - 3.4 Categories of *Dhul Arḥām*
  - 3.5 General Rules Concerning the Distribution of Property among *Dhul Arḥām*
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### 1.0 Introduction

Islam is a total way of life. In the area of family life, the stipulations of Islamic law are all encompassing. As the Islamic Law of inheritance discusses those relatives that have fixed shares, it also discusses the issue of other relatives that are not covered under the fixed inheritance. It takes into consideration every blood relation of the deceased person who whenever it is appropriate enjoys some benefits. In this chapter, we shall discuss the issue of *Dhul arham* and the relationship in the Islamic Law of inheritance.

#### 2.0 Objectives

At the end of this lecture, you should be able to:

- define *Dhul Arḥām*
- explain the four classes of *Dhul Arḥām*
- state the rules that should be applied in determining the inheritance of such relatives
- list the relatives who are excluded from inheriting
- state the legality of *Dhul Arḥām*

#### 3.0 Main Content

##### 3.1 Meaning of *Dhul Arḥām*

Literally, *Dhul Arḥām* means the people of the womb. This is because they share the same womb. Its technical meaning is relatives through female lineage. They are the relatives whose relationship to the

deceased occurs through one or more female links, and who do not normally inherit from a deceased. This set of people neither inherit by prescription from the Holy Qur'an nor by *ta 'şīb* i.e. by a sole heir who inherits the whole property or the residue after others had taken their fixed shares. The set of people are neither sharers nor residuaries. It must be mentioned that generally all blood relations of a deceased who are neither sharers nor residuaries fall under this category.

This has indirect support in the Qur'an chapter 4 verse 8 which says: "And when the relatives and the orphans and the poor are present at the time of division (of inheritance) give them out of the property and address them kindly and justly".

If there are no sharers or residuaries, they would take the whole estate. When a spouse is the only inheritor, they are entitled to the residue after deducting the fixed share of the surviving spouse.

### 3.2 Adoption of *Dhul Arhām*

The direct support for distant relations is found in Q8:75 which states:

وَالَّذِينَ آمَنُوا مِنْ بَعْدُ وَهَاجَرُوا وَجَاهَدُوا مَعَكُمْ فَأُولَئِكَ مِنْكُمْ وَأُولُو  
الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ إِنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ

"And those who believed after (the initial emigration) and emigrated and fought with you – they are of you. But those of (blood) relationship are more entitled (to inheritance) in the decree of Allah. Indeed, Allah is knowing of all things (Q8:75).

النَّبِيُّ أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنفُسِهِمْ وَأَزْوَاجُهُ أُمَّهَاتُهُمْ وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ  
بِبَعْضٍ فِي كِتَابِ اللَّهِ مِنَ الْمُؤْمِنِينَ وَالْمُهَاجِرِينَ إِلَّا أَنْ تَفْعَلُوا إِلَىٰ أَوْلِيَائِكُمْ مَعْرُوفًا  
كَانَ ذَلِكَ فِي الْكِتَابِ مَسْطُورًا

The Prophet is more worthy of the believers than themselves, and his wives are (in the position of) their mothers. And those of (blood) relationship are more entitled (to inheritance) in the decree of Allah than the (other) believers and the emigrants, except that you may do to your close associates a kindness through bequest. That was in the Book inscribed. (Q33:6).

These two verses describe close maternal relations of the deceased who are not entitled to fixed inheritance. They could neither be sharers nor residuaries.

### 3.3 List of *Dhul Arhām*

- Maternal grandfather of the deceased
- The mother of the grandfather of the deceased
- The son of uterine brother of the deceased
- The son of uterine sister of the deceased
- Maternal uncles
- Maternal aunts
- Aunts of maternal uncles
- Aunts of maternal aunts
- Children of maternal uncles and aunts
- Children of aunts of maternal uncles and aunts
- Uterine paternal uncle
- The sons of the daughters
- The sons of all forms of sisters
- The daughters of the maternal aunts

Although they may not benefit from inheritance, they should come before the generality of people, Muslims and others who would benefit from the property of a deceased person.

### 3.4 Categories of *Dhul Arhām*

#### 3.4.1 Deceased's descendants

Children of the daughters and their descendants

Children of the son's daughters and their descendants

#### 3.4.2 Deceased's ascendants - if the distant relatives of the first class are non-existent, the second class distant relatives take their position. They are:

Non – inheriting grandfather – paternal or maternal. Non – inheriting grandmothers.

Parents' descendants of the third class distant relatives take the queue if the first and second distant relatives are absent. Members of this group include:

- Daughters of the real brother and their descendant's
- Daughters of the consanguine brother and their descendants

- Children of the uterine brother and their descendants
- Daughters of the full brother's sons and their descendants
- Daughters of the consanguine brother's sons and their descendants
- Children of full sister and consanguine and their descendants

### **Near Grandparents' Descendants**

The last group takes the queue if the first three groups are not in existence. Some members of this group are:

- Paternal aunts
- Father's full sisters
- Maternal uncles
- Maternal aunts

Full paternal uncles' sons and daughters and their descendants

Consanguine paternal uncles' sons and daughters and their descendants

### **3.5 General Rules Concerning the Distribution of Property among *Dhul Arhām***

- ✓ The nearer relatives cut off the remote one. If there is only one relative, he or she takes the whole estate.
- ✓ Maternal uncles and maternal aunts takes the position of the mother and receives her share of the inheritance.
- ✓ Members of the same sex take equal shares of the inheritance.
- ✓ A male will have the share of two females i.e a male will receive a double share of a female.
- ✓ Father's maternal brothers and paternal aunts substitute for the father and receive his share.

### **4.0 Conclusion**

In Islamic Law of inheritance, some blood relations are excluded particularly the relatives through female lineage. However, if fixed sharers and residuaries are absent, they enter into their shoes and take their shares. In this unit, rules concerning the distribution of a deceased's property show that fairness is employed in the allocation of shares. Those that are nearer relatives and will bear responsibilities are taken into consideration first.

### **5.0 Summary**

A working definition of *Dhul Arhām*is given in this lecture to serve as a framework for other discussions. The legality of *Dhul Arhām*is situated in the context of Q8:75 and Q33:6. Some memers of *Dhul Arhām*were provided in the write-up to serve as a clue and to bring home our point of discussion. *Dhul*

*Arḥām* has four categories which are all mentioned in this unit. The unit ended with the rules concerning the distribution of property among *Dhul Arḥām*.

### **6.0 Tutor – Marked Assignment**

1. Define *Dhul Arḥām*
2. Mention 2 of the Quranic verses on *Dhul Arḥām*
3. Give examples of *Dhul Arḥām*
4. State with examples the categories of *Dhul Arḥām*
5. What are the general rules concerning the distribution of estate among *Dhul Arḥām*

### **7.0 References / further Reading**

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## MODULE 4

### UNIT 1 IMPEDIMENTS TO INHERITANCE IN ISLAM

#### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Impediments to Inheritance in Islam
  - 3.2 Extraneous Circumstances that do not Constitute Legal Impediment
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### **1.0 Introduction**

The Heirs are given their divinely-fixed shares as contained in the Qur'an. A dead person is not allowed to disqualify his heir from inheriting him/her. However, certain heirs may legally prevented from inheriting a dead relation. If a person is in a group that should not inherit, no amount of affection could make him inherit. In this lecture, you would learn the factors that can deprive an heir from inheriting his dead relation. You will also learn the factors that cannot prevent an heir from inheriting his dead relative.

#### **2.0 Objectives**

At the end of this unit, you should be able to:

- State some factors that can prevent a person from inheriting his dead person's property.
- List some facts that cannot prevent heirs from inheritance.
- Mention some Quranic verses on factors that can prevent one from inheritance.

#### **3.0 Main Content**

##### **3.1 Factors that prevent Heirs from Inheritance**

Allah has assigned how property of a dead person should be shared. Certain circumstances create obstacles to inheritance. The obstacles or impediments are stated in the Sunnah of the Prophet

##### **3.1.1 Religious Differences**

Non-Muslims cannot inherit Muslims. In the same vein, Muslims cannot inherit the property of a non-Muslim. Restrictions on

inheritance are based on the difference of religion. This issue is related to the issue of marriage. Prevention of a non-Muslim from inheriting a Muslim is in accordance with the position of the religion of Islam which is clearly stated in the Quran. Therefore, a Muslim should not inherit a non-Muslim and vice-versa.

لا يرث الكافر المسلم ولا المسلم الكافر

A non-Muslim does not inherit a Muslim just as a Muslim does not inherit a non-Muslim. A Muslim that does not have an heir would have all his property deposited in Baytul mal (Islamic State Treasury). The property may also be used for the propagation of Islam.

It may also be used to give assistance to the poor. Mosques may also benefit from the property of a Muslim whose relatives are non-Muslims. Non-Muslims can only benefit from the property of a Muslim before the death of a Muslim or through his will after his death. The benefit should not be more than 1/3 of his property.

### 3.1.2 Homicide

Manslaughter – If an heir kills a person with a view to inheriting him, he is deprived of inheriting the killed person. Killer cannot inherit a person that he kills irrespective of whether the killing is by mistake or by design i.e. both deliberate killing and killing by mistake prevent the killer from inheriting the killed. The Prophet is reported to have said:

ليس لقاتل ميراث

A killer does not receive (a share of) inheritance ( from the killed)  
In another Hadith, he is reported to have said:

القاتل لا يرث

A killer does not inherit(from the killed)

However, if a mad person and a minor should kill a person, they can inherit. They would not be prevented from inheriting the person's property. This is because they are unconscious of their action.

In addition, if a person whom an heir can inherit attacks the heir and the heir defended himself, the heir will inherit the person if the person should die during the struggle. Killing a person outside the injunctions of Allah is totally prohibited. In fact, if a person should kill a Muslim, the punishment of the killer is hell.

وَمَنْ يَفْتُلْ مُؤْمِنًا مُتَعَمِدًا فَجَزَاءُ جَهَنَّمَ خَالِدًا فِيهَا وَعَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ

عَذَابًا عَظِيمًا

### **3.1.3 Bondage**

A slave is under bondage. He could not own any property. Whatever he owns belongs to his master. If his master should die, he cannot inherit him because he is even part of the property of his master until he is set free. In order not to pass property in default to the master, the slave is not allotted a share.

### **3.1.4 Prophethood**

Prophets did not inherit and they were not inherited. When Fatimah demanded for an inheritance from the Prophet's property, Abubakr rejected the request. He reminded Fatimah of his father's sayings. "We prophets do not inherit nor leave an estate for an inheritance" (Bukhari)

### **3.1.5 Concurrent Death of Relatives**

If there is a plane crash, ship-wreck, fire outbreak, or any such accident involving close relatives who die without knowing the one who died before the other, that constitutes mutual disqualification of inheritance. In all these examples, property of those dead relatives would be inherited by those heirs that are alive.

Wealth acquired by a person through unlawful means such as gambling, prostitution, bribery and corruption, theft, riba (usury) etc is not inherited because it is impure. Lease is not inherited. If the asset belongs to a dead person, it is shared among his heirs. Lessees should not inherit leased asset. It must be returned to the lessor.

### **3.1.6 Illegitimate or Illegal Child**

A child born out of biological wedlock cannot inherit the father because matrimony is the basis of legitimacy of child. Any child born out of wedlock is an illegal child. There is no mutual right of inheritance between him /her and the purported father. She / he can inherit from the mother and vice versa.

### **3.1.7 Lian**

A child whose paternity has been legally denied by the father loses mutual right of inheritance between him and the father. The right of inheritance however exists between the child and the mother.

## **3.2 Extremist Factors which do not Constitute Legal Impediments**

The following extremes factors are not impediments to inheritance:

### **3.2.1 Distance**

If a Muslim is living in a country and his heirs are in another country or towns, distance cannot prevent them from inheriting one another. The

close relative Muslims must inherit one another irrespective of where they are settled.

### **3.2.2 Disobedient Child**

A disobedient child should not be prevented from inheritance for reason of his disobedience. Both obedient and disobedient children should inherit their parents if they survive them. If a person decides to distribute all his property during his lifetime with a view to depriving disobedient children of inheritance, it is not proper. One can only make gifts to people including the obedient ones and disobedient ones. One should avoid any form of discrimination. If a will should contain a clause of deprivation, it should be set aside.

### **3.2.3 Minor**

A minor cannot be deprived of inheritance because he is not of age. A minor and even unborn baby in its mother's womb will inherit his/her parents and other relatives based on the divinely-fixed shares.

### **SELF ASSESSMENT EXERCISE:**

What can deprive an heir of inheritance?

## **4.0 Conclusion**

It is established in the Quran the divinely-fixed shares of each heir. Nobody, except the law, has any right to deprive heirs their inheritance. For those that should not inherit for one reason or the other, nobody has any right to give them inheritance no matter the affection and closeness.

## **5.0 Summary**

We discussed in this unit, the factors that can deprive a person of inheritance such factors include killing, difference of religion and bondage. We also mentioned some circumstances which are misconstrued as impediments to inheritance such as infancy and disobedience.

## **6.0 Tutor – Marked Assignment**

- Mention 3 of the factors that can prevent heirs from inheritance.
- State and explain factors that cannot prevent one from inheritance.
- Can an unborn child in its mother's womb inherit its dead father?
- Can a Muslim leaving in Makkah inherit his dead brother in Nigeria?

## **7.0 References / further Reading**

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## **UNIT2      SUBSTITUTES FOR DIRECT ASCENDANTS AND DIRECT DESCENDANTS IN ISLAMIC INHERITANCE**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 The place and share of granddaughter in inheritance
  - 3.2 Grandmother as a substitute
  - 3.3 Grandson as a substitute
  - 3.4 Grandfather as a substitute heir for the father
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

### **1.0 Introduction**

The direct ascendant is the father or mother. Their own parents are indirect ascendants of the grandchildren just as children are direct descendants and grandchildren indirect. No condition is permanent. This is true of the positions occupied by granddaughter, grandmother, grandson and grandfather. They take the position of others and enjoy their rights. This is called substitution in inheritance. Our focus here is mainly on this theory. We shall explain to you the roles the above-mentioned categories of heirs play in the area of elimination and substitution. You will also be taught how to calculate their shares.

### **2.0 Objectives**

At the end of this lecture, you should be able to:

- State the shares of grandmothers
- Compare and contrast the position of grandmother and granddaughter in Islamic Law of inheritance.
- The position place of son and grandson in Islamic Law of inheritance

### **3.0 Main Content**

#### **3.1 The place and share of granddaughter in inheritance**

If the daughter is non-existent and there is no son, a granddaughter inherits the deceased. i.e. she takes the position of a daughter. The share of only a granddaughter is  $\frac{1}{2}$  if she is alone i.e. if the deceased does not have a son and daughter. If they are two or more, they share  $\frac{2}{3}$  of the deceased's property among themselves. A granddaughter takes  $\frac{1}{6}$  if the deceased has a daughter. Two granddaughters of the

deceased share 1/6 among themselves if the deceased has a daughter. Granddaughters are excluded if the deceased has two or more daughters. They are also excluded if the deceased has a son.

In summary 2 daughters or a son excludes granddaughter. The share of a granddaughter varies by the existence of a daughter or non existence of a daughter and on the existence of other granddaughters.

### 3.2 Grandmother as a substitute

If a deceased's mother is not in existence, grandmother takes her place. Grandmothers can only inherit a deceased if the mother is not in existence. A mother can get as much as 1/3 of the deceased's property. A grandmother in substitution, will get only 1/6. It is this same 1/6 that more than one grandmothers will share among themselves. If the deceased's father or mother is living paternal, grandmother cannot inherit the deceased. Maternal grandmothers can inherit the deceased even when the deceased's father or grandfather is in existence. The grandmother takes position of the direct mother.

### 3.3 Grandson as a substitute for the son in Inheritance

Grandson takes the place of a son if the son is non-existent. He takes the whole residue after the shares of fixed sharers have been taken care of. If a deceased has only grandson, the grandson takes the whole residue if the grandsons are 2 or more, they take the residue equally among themselves after the shares of fixed sharers have been taken care of. The grandson, in the absence of the son is treated as the son.

### 3.4 Grandfather as substitute heir for the Father

A paternal grandfather takes the place of a father and enjoys his rights in his absence. However, the presence of grandfather cannot reduce the share of the mother. The mother's share remains 1/3 of the balance if the only person to inherit the deceased is the surviving spouse (wife or husband). Grandfather cannot exclude paternal grandmother. He can only inherit with her. Grandfather also inherits with brothers and sisters.

| Granddaughter takes |   |
|---------------------|---|
| Portion             | Explanations  |
| 1/2                 | If the deceased does not have a son and daughter but has only one granddaughter. She stands in place of the daughter. |

|                                |   |
|--------------------------------|---|
|                                |   |
| 2/3                            | If the deceased does not have a son and daughter but has two or more granddaughters, the granddaughters share 2/3 among themselves  |
| 1/6                            | If the deceased has a single daughter, granddaughter takes 1/6 of the property  |
| 1/6                            | Two or more granddaughters of a deceased who has a daughter would still share 1/6 among themselves  |
| Excluded                       | Two or more daughters of a deceased will exclude his granddaughter from inheritance just as a son excludes the granddaughter  |
| <b>Grandmother</b>             |   |
| Excluded                       | If the mother of a deceased is in existence, grandmother from that mother is excluded from inheritance  |
| 1/6                            | Where a mother of a deceased inherits 1/3 of the property, grandmother who is not the mother of the existing mother will get only 1/6 – i.e a paternal grandmother is not excluded by the mother. |
| <b>Grandson</b>                |   |
| Excluded                       | Where the deceased has a son, grandson is excluded  |
| Residue                        | Where the deceased does not have a son, grandson takes the whole residue after the fixed sharers have taken their own portion   |
| Sharing of the residue equally | Two or more grandsons will share the residue equally if the deceased has no son   |

| <b>Grandfather</b> |  |
|--------------------|--|
| Excluded           | Where the deceased has a father, grandfather cannot inherit  |
| 1/6                | Grandfather inherits with the deceased's brothers and sisters. Grandfather will take 1/6 of the whole property |

#### **4.0 Conclusion**

We have examined the positions of grandfather, grandmother, grandson and granddaughter. They are not primary heirs. They are only substitutes for the primary heirs in the absence of the latter and they enjoy the same right as enjoyed by those fixed sharers. The level at which all these secondary heirs are, shows that they cannot inherit a deceased whose primary heirs are in existence. It is however to be noted that the existence of the mother does not exclude the paternal grandmother in the absence of father.

#### **5.0 Summary**

An attempt was made in this unit to explain the shares of some secondary heirs. Granddaughters and grandmother can be excluded and can be given some fixed shares. We were able to explain that grandson enjoys the right of a son while grandfather enjoys the right of a father. To make you understand the lecture and have easy assimilation, we put all the sharers of each of the secondary share in tables.

#### **6.0 Tutor – Marked Assignment**

- 1 Explain the rights enjoyed by the grandmother
- List and explain the shares of a granddaughter
- Compare the shares of grandson and grandfather

#### **7.0 References / further Reading**

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## UNIT 3      HUIB: DISPLACEMENT IN INHERITANCE

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Definition of *al-hujb*
  - 3.2 Types of *Hujb*
  - 3.3 *HujbNuqṣān*
  - 3.4 *HujbHirmān*
  - 3.5 Heirs who can never be deprived
  - 3.6 Relatives who are not heirs
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

### 1.0 Introduction

Some heirs are barred from inheritance partially while others are barred totally not because of defect in themselves, but the impediment is due to the existence of others. In this unit, your attention will be drawn to those that are deprived of inheritance partially and totally and the reasons for the impediment. There are some heirs who can never be prevented from inheritance no matter the situation. This issue is also discussed in this lesson.

### 2.0 Objectives

At the end of this lecture, you should be able to:

- explain *al-hujb*
- mention each type of *al-hujb* with examples
- explain each type of *al-hujb* with examples
- list those who can never be barred from inheritance

### 3.0 Main Content

#### 3.1 Definition of *al-hujb*

*Hujb* is derived from an Arabic word *ḥajaba* meaning veiled or screened. It means cutting off a person from heirship either partially or totally. In Islamic Law of inheritance, *al-hujb* occurs when an heir is partially or totally deprived of his normal share due to the existence of a nearer heir who takes precedence over him.

### 3.2 Types of *Hujb*

There are two types of impediments. Classification is based on the relationship of heirs to a deceased

*HujbNuqṣān*(Partial Deprivation)

*HujbḤirmān*(Total Deprivation)

**3.2.1** *HujbḤirmān*(partial deprivation or impediments) refers to a situation where the share of an heir reduces on account of the presence of certain relatives. It must be mentioned to you that this type of *hujb* affects all heirs without an exception.*HujbNuqṣān*affects only five heirs or person.

- ✓ The share of a father reduces from residue to 1/6 if the deceased has a child.
  - ✓ The mother's share falls from 1/3 to 1/6 due to the presence of a deceased's sons, daughter or son's children.
  - ✓ The share of a husband falls from 1/2 to 1/4 in the presence of the wife's children or wife's grandchildren that she had for the surviving husband or another man.
  - ✓ The share of wife or wives reduces from 1/4 to 1/8 if the surviving husband has children or grandchildren from any wife. There are variations of reduction. The share of a granddaughter i.e. son's daughter's is reduced from 1/2 to 1/6 if the deceased has a daughter
- The reductions in shares are tabulated in the table below:

| Heirs displaced partially | From    | To                | Causes of Displacement            |
|---------------------------|---------|-------------------|-----------------------------------|
| Father                    | Residue | 1/6               | Child of the deceased,            |
| Father                    | 1/2     | co-sharers of 2/3 | daughters, son's daughters        |
| Mother                    | 1/3     | 1/6               | Sons, daughters son's children    |
| Mother                    | 1/3     | 1/6               | Brother or sister of the deceased |
| Husband                   | 1/2     | 1/4               | Wife's children from any man      |
| Wife                      | 1/4     | 1/8               | Husband's children from any wife  |

### 3.2.1 *HujbHirmān*(Total Deprivation or Impediment)

*HujbHirmān* means total deprivation of an heir from inheritance. This is when the presence of some heirs cuts off other heirs totally from inheritance. For instance, if a deceased is survived by a son, grandsons are totally cut off from inheritance. Ambali (1998) presents this aspect of *hujb* in a table as cited below:

| s/no | Heirs of priority  | Displaced Heirs  |
|------|--|--|
| 1    | Son  | Grandchild, any brother and any uncle  |
| 2    | Grandson   | Grand grandchild and all others barred by the son                                  |
| 3    | Daughter   | Uterine brother  |
| 4    | The daughter of the son  | Uterine brother  |
| 5    | Daughters  | Uterine brothers granddaughter except if she is agnatized                          |
| 6    | The daughters of the son   | Uterine brother, daughters of the son of the deceased except if they are agnatized |
| 7    | Germane brother  | Consanguine brother and all forms of uncle – germane, uterine or consanguine       |
| 8    | The son of germane brother   | All forms of uncles, the son of consanguine brother                                |
| 9    | Consanguine brother  | All forms of uncles, the son of germane or consanguine brother (nephew)            |
| 10   | The son of consanguine brother   | All forms of uncles, the son of germane or consanguine brother nephew              |
| 11   | Germane uncle  | Consanguine uncle  |
| 12   | The son of full uncle (cousin)   | The son of consanguine uncle (cousin)  |
| 13   | Consanguine  | All sons of all forms of uncle   |
| 14   | Germane sister present with the daughter                                 | Consanguine brother  |
| 15   | Consanguine brother present with the daughter of the son of the deceased | Consanguine  |

|    |              |  |
|----|--------------|--|
| 16 | Full sisters | Consanguine sister, except if agnatized  |
| 17 | Father       | Grandfathers, paternal grandmother, all the uncles and the brothers                              |
| 18 | Grandfather  | Great grandfather uterine brothers, uncles and the children of the brother, (nephews and nieces) |
| 19 | Mother       | Grandmother  |

### 3.3 Absolute Sharers

It has to be mentioned that some heirs cannot be totally excluded under any circumstance. They are the son, the daughter, the mother, the father, the wife and the husband.

### 4.0 Conclusion

Exclusion and reduction occurs in inheritance due to the presence of some relatives. It is seen from our discussion that the farther the responsibilities the higher the reduction. When the responsibilities are remote or may not be devolved on a person, such a person is excluded totally. It is noticed from the discourse that no matter the existence of close relatives, some heirs can never be excluded. The only thing that can happen to them is reduction in their shares of inheritance.

### 5.0 Summary

*Hujb* in all its ramifications has been examined in this unit. The meaning and divisions of *hujb* and its other related issues have been discussed in this lecture. Some facts were presented in tables so as to bring home our discussions on the issue. We also enumerated some relatives such as husband, wife, son and daughter who must inherit in all situations. There is no any circumstance that can prevent them from inheritance. This is because of their strong relationship with and closeness to the deceased.

### 6.0 Tutor – Marked Assignment

1. Explain literally and technically the meaning of *hujb*, list the two types of impediments
2. Give the Arabic words of partial deprivation and present the reduction of shares of displaced heir in a tabular form
3. What is *HujbHirmān*?
4. Give 6 of the heirs that are displaced, and those relatives that displaced them

## 7.0 References / further Reading

- Abdul Azim Islahi (1988) Economic Concept of Ibn Taimiyyah Leicester: the Islamic Foundation.
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## **MODULE 5**

### **UNIT 1 WOMEN AND THE ISLAMIC LAW OF INHERITANCE**

#### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Quranic verse on disparity in shares of inheritance between male and female
  - 3.2 Reasons for the difference in inheritance between males and females
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### **1.0 Introduction**

One of the issues that has been generating hot debate in the circle of scholars both Muslims and non-Muslims is the unequal proportion of inheritance between males and females in Islam. It is believed that women are being short-changed by making their portion half that of men. The holders of this erroneous belief could not see the reasons behind the unequal shares between men and women in Islam. For this reason, this unit is devoted to the examination of this issue. You will learn in this unit, Quranic verses on it and the reasons for disparity in the allocation of shares. We would also highlight instances males and females have equal shares of inheritance and occasions when women have better shares than their men counterparts. You will be aware in this unit of the time when females inherit and men are totally excluded.

#### **2.0 Objectives**

At the end of this lecture, you should be able to:

1. Mention the Quranic verse on disparity in the proportion of inheritance due to male and female heirs
2. State the reasons for the disparity in the sharing of inheritance
3. Mention the time when both share equally and when women share more than men
4. List the situations that can make women inherit where their male counterparts cannot

### 3.0 Main Contents

#### 3.1 Quranic verse on Disparity in Shares of Inheritance between Male and Female

3.2 Q4:176 Stipulates different proportions of inheritance between male and female. It reads:

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنَّ امْرَأًا هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الشُّلْثَانِ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

“They request from you a (legal) ruling. Say, “Allah gives you a ruling concerning one having neither descendants nor ascendants (as heirs)”. If a man dies, leaving no child but (only) a sister, she will have half of what he left. And he inherits from her if she (dies and)has no child. But if there are two sisters (or more) they will have two thirds of what he left. If there are both brothers and sisters, the male will have the share of two females. Allah makes clear to you (His Law), lest you go astray. And Allah is knowing of all things”.

Some critics consider as unfair the fact that a female is given half of what is given to a male counterpart.

#### 3.3 Reasons for the difference in inheritance between male and female

Before Islam, particularly during the Jahiliyyah period, women were denied inheritance. They were part of the property to be shared. Islam introduced a number of reforms into the life of Arabs before Islam. One of the areas reformed is inheritance. Inheritance rights of beneficiaries are based on the relationship of consanguinity, marriage contract and Islam.

If Q4:176 is considered in isolation from other legislations and other issues or it is taken out of context, the issue of unfairness to females may be mistakenly justified. However, if it is considered along with its other accessories, no atom of injustice is sensed. It is then one is able to

see clearly how Allah is fair to both men and women. Because it is stated in many verses of the Quran that He Allah is just. Some of them are Q22:10 and Q18:49. Therefore, the reasons for the disparity are based on the following:

### 3.3.1 Financial Responsibility

It is one of the reasons and in fact, it may be the major reason for giving a male twice the amount given to a female is financial obligation placed on men. This is because males are responsible for the financial upkeep of his family, wife and children. In a situation where a husband or a father dies, the financial responsibilities are on the male. He is to take care of his mother and sisters. It is not the responsibilities of the sister to provide for her mother. The income she receives through inheritance is for her alone. It is not to be used for household expenses. She is free to use it the way she likes. Because of this, she is not likely to face financial constraints. In addition, if she gets married, she receives as a matter of right, her bridal gift and other support from her husband. The payment of a dowry is the responsibility of a man. His brother out of his wealth will pay a dowry whereas the sister who receives half of a man's share will receive dowry (bridal gift). She does not only pay but she also receives income from her husband. Whatever she receives from her husband is not to be shared or used at home either for household expenses or for her husband. She is free to use it for herself the way she wants. Even after she has left home, the financial responsibilities at home devolve on the male children. She does not need to carry the financial burdens of their extended family except voluntary. It is not her responsibility.

Women are protected in terms of their wealth. It is for these reasons that a male is given twice the amount of a female. But in the area where financial burdens are not involved, Allah makes the share of inheritance of a male equal to that of a female.

وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ  
فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ  
غَيْرِ مُضَارٍّ وَصِيَّةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

“And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each of them is a sixth...”

The equality of males and females is obvious in this verse because there is no financial burden attached. This is because they don't have the same father but have the same mother. If they were to have the same father, the male child would have inherited the father's financial burdens without involving his sister. Therefore, a man spends on his wife, children and parents. While a woman uses her wealth the way she likes. It is justifiable and fair that a man should take more than a woman.

If a deceased leaves a daughter and a son, the son should take twice as much as a female. This is because the son would take care of the daughter. The financial responsibilities of the father have shifted to the son. Therefore, he is entitled to two times the share of the daughter. If the deceased leaves full sisters and brothers, full sisters are entitled to half the share of a man because her affairs will be taken care of by the male. Her own inheritance is for her alone. If the deceased leaves paternal half sisters and brothers, the brothers' share should double the amount of the sisters because the former will bear their financial burdens.

Another reason which can make a male receive a greater share than a female is in the area of generation to which the heir belongs. Grandchildren would take a larger share of the inheritance of a deceased than grandparents. This is because they are not in the same generation. And in fact, the grandchildren would take care of the grandparents financially. So, they are entitled to more shares. In addition, they also will face more financial challenges than their grandparents. It is also important to note that the daughter of the deceased would inherit more than the deceased's mother because they belong to different generations. The daughter will face more financial responsibilities than the mother. Therefore, Islamic law of inheritance empowers the daughter more than the mother notwithstanding that both of them are females.

### **3.4 Closeness to the deceased determines the share**

Without looking at the issue of gender, male or female, closeness to the deceased gives one edge over the other. For instance, a daughter of a deceased woman is entitled to half (1/2) while the deceased's husband will receive one fourth (1/4) because the daughter is an immediate blood relative and is closer in relation to the mother than the husband.

Other areas where women are much more favoured financially than men include:

- Whatever a woman had before marriage is her property. The husband has no legal right on it.
- Marriage gift is for her alone. It is neither for her husband nor her parents. She doesn't have to spend it i.e it is not compulsory for her to spend her property for household keep (Q4:4)

- The husband bears the responsibilities of food, shelter, clothing, medications and other things that could make her comfortable.
- Her investment income and her salary belong to her alone.
- If a woman is divorced, her unpaid *mahr* (marriage gift) must be paid immediately.
- During *iddah* period, she is to be maintained financially.

#### **4.0 Conclusion**

It is seen that where much is given more is demanded. This is true of the case of male heirs in relation to female heirs. A male heir is expected to perform some financial roles such as household expenses, payment of a dowry which a female heir is exempted. She is allowed to use her income from inheritance for herself the way she wishes in addition to her financial upkeep by her male counterparts pending the time she would get married. Even when she gets married, the financial burdens shifted from her brother or father to her husband.

#### **5.0 Summary**

In this unit, you have learned that:

1. The Quranic verse on the issue of disparity of the shares between male and female is a misunderstood verse. This has been explained very well to uphold the justice of Allah.
2. There are about three reasons for the disparity in the sharing of inheritance in the ratio 2:1 for males and females respectively. The first is financial responsibility a man is bearing. The differences in generation of the heirs and closeness to the deceased in terms of blood relations are another two reasons for the gap in the allocation of the shares in Islamic law of inheritance.

#### **6.0 Tutor – Marked Assignment**

- Write the Quranic verse usually quoted out of context to support the issue of disparity in the area of inheritance between males and females.
- List and explain the three reasons for the difference in the share of inheritance between males and females.
- In Islamic Law, list some areas where women are much more favoured financially than their male counterparts.

#### **7.0 References / further Reading**

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## **UNIT 2 CIRCUMSTANCES WHERE FEMALE HEIRS ARE ALLOTTED THE SAME OR HIGHER PROPORTION OF INHERITANCE MALE HEIRS**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Males and females have equal shares
  - 3.2 Females inherit more than males
  - 3.3 Females inherit while males do not inherit
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### **1.0 Introduction**

To appreciate the position of women in Islam, you should find out what the Quran says about inheritance in relation to them. Your findings will tell you that Islamic law of inheritance does not put females at a disadvantage but gives them equal opportunity and rights with their male counterparts. In this section, you will learn how Islam deals with male and female shares. You will also be taught that at times females inherit higher proportion of inheritance than male.

#### **2.0 Objectives**

At the end of this lecture, you should be able to:

- list the shares given to both males and females on an equal basis.
- mention the circumstances that can make a female inherit more than a male.
- discuss the areas where females inherit and males do not inherit.

#### **3.0 Main Contents**

##### **3.1 Males and females have equal shares**

During the Jahiliyyah period, daughters, wives, mothers and other female beneficiaries were not entitled to inheritance at all not to talk of having equal number of shares with their male counterparts. They were even parts of the property to be inherited. When Islam came, it forbade totally the practice of inheriting widows. This is one of the reformations brought to the lives of females by Islam.

Females have equal shares in the following situations:

- If a deceased leaves a father, a mother and grandson. The father will take 1/6 and the mother will also take 1/6.

| <b>Portion</b> | <b>Father 1/6 and Mother 1/6</b>  |
|----------------|---|
| 1/6 each       | If a deceased should have a father, mother and grandson, each father and mother share 1/6 |

- Six people that are never fully excluded from inheritance but they may have their shares reduced. They are father, husband, son, mother, wife and daughter.

| <b>Males</b> | <b>Females</b> |
|--------------|----------------|
| Father       | Mother         |
| Husband      | Wife           |
| Son          | Daughter       |

We have three males and three females. So, there is the equality of the number of males and females in the above-mentioned category.

- The situations in which females inherit as much proportion as males include the following: when a deceased has a husband, mother, uterine sister and a full brother, their shares are:

Husband  $\frac{1}{2}$

Mother  $\frac{1}{6}$

Uterine Sister  $\frac{1}{6}$

Full brother  $\frac{1}{6}$

It is seen that uterine sister and full brother, female and male respectively each has  $\frac{1}{6}$  of the share and full brother will take the residue which is  $\frac{1}{6}$ .

- A deceased with a mother and brothers would have his property shared as follows:

A mother takes  $\frac{1}{2}$

Brothers also shares  $\frac{1}{2}$

Both have equal shares. They are female and male respectively.

- A deceased that leaves her husband and a full sister would have her property shared by the husband and the full sister. Both have equal shares each i.e. the husband inherits  $\frac{1}{2}$  the same as the female i.e. the sister ( $\frac{1}{2}$ ). Both have the same percentage each.

Husband  $\frac{1}{2}$

Full sister  $\frac{1}{2}$

### 3.2 Females inherit more than males

There are some situations when females inherit more than males some of them are:

- If a deceased leaves a husband and one daughter, the husband gets  $\frac{1}{4}$  and the daughter gets  $\frac{1}{2}$ .
- If the deceased leaves a husband and two daughters, the husband receives  $\frac{1}{4}$  and the two daughters receive  $\frac{2}{3}$ .
- If the deceased leaves a daughter and maternal uncles, the daughter takes more than the maternal uncles.
- If a deceased leaves two paternal sisters and paternal brothers, the two paternal sisters inherit more than the two paternal brothers.
- If a deceased leaves a father, mother and husband, the father takes  $\frac{1}{6}$ , the mother takes  $\frac{1}{3}$  and the husband takes  $\frac{1}{2}$ . The remaining  $\frac{1}{6}$  which goes to the father after the mother and the husband have taken their shares is half of his wife's share. Here females inherit more than males. Moreover, if a woman leaves a husband, uterine sister and two full brothers, the husband takes  $\frac{1}{2}$ , the uterine sister takes  $\frac{1}{3}$ , the two full brothers inherit the residue  $\frac{1}{6}$ .

It is clear that uterine sister who is a female and farther relative of the deceased inherit more than two full brothers who are males. From the foregoing, it is clear that it is not gender discrimination that makes a female to be allotted half of the male's portion but the responsibilities.

### 3.3 Females inherit while males do not inherit

There are situations where males do not inherit at all and females inherit. Some examples of such a situation are:

- If a deceased leaves a husband, full sister and paternal brother, the husband takes  $\frac{1}{2}$  and the full sister takes  $\frac{1}{2}$  the paternal brother takes nothing.
- The grandmother in many cases has a share in the inheritance while the grandfather does not.
- If a deceased leaves a maternal grandfather and maternal grandmother, then the maternal grandmother inherits the whole estate by taking one-sixth as a sharer and the rest as residuary while the maternal grandfather inherits nothing.

## 4.0 Conclusion

It should be clear now that the allegation of unfairness to women in inheritance in Islam is not correct. If there is an advantage in inheritance in Islam, it is women that have upper hand. There are situations where a female inherits the same as a male. In some other situations, they inherit more than

males. There are situations where males do not inherit at all. The implication of these scenarios is that the law of inheritance in Islam is not fixed. It depends on the situation. It is Allah that gives and takes life. When He takes life, the arrangement changes. When He gives more life, the equilibrium is not also the same.

## **5.0 Summary**

In this lecture, you have learned that:

- Females inherit as much as males particularly when a deceased leaves a father, a mother and a grandson. Both mother and the father take  $\frac{1}{6}$  each.
- Females inherit more than males e.g if a deceased leaves a daughter and husband, the daughter gets ( $\frac{1}{2}$ ) more than the husband who has  $\frac{1}{4}$ .
- We also discussed some situations where females inherit and males do not inherit.

## **6.0 Tutor – Marked Assignment**

1. Mention 4 of the areas where the shares of both males and females are the same in inheritance.
2. Give examples of the situations when a female inherits more than a male.
3. Describe a situation where a female inherits and a male does not.

## **7.0 References / further Reading**

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## UNIT 3      **AWL: EQUITABLE AND PROPORTIONAL REDUCTION OF FIXED SHARES IN INHERITANCE**

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 MainContent
  - 3.1 ThemeaningofAwl
  - 3.2 DifferentClassesofDenominators
  - 3.3 SpecificCasesofProportional Reductions
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 Reference / Further Reading

The practice of `Awl-Proportionate Reduction in Islamic Law of Inheritance

#### **1. Introduction**

It has been learned that Al-Mighty Allah has allotted certain proportions, the property of a deceased to specific relations. These proportions are fixed but can be reduced proportionally across the various heirs if the primary heirs cannot all be accommodated with each having the full fraction allotted to him or her. In this unit the circumstances and specific solutions are mentioned and explained.

#### **2.0 Objectives**

At the end of this unit, you should be able to:

- Define and explain `Awl
- Explain the necessity for `Awl
- Discuss the different classes of denominators used in Islamic law of inheritance
- Determine cases which require the application `Awl
- Apply the rule of `Awl on the sharing of inheritance

#### **3.0 MAIN CONTENT**

##### **3.1 The Meaning of `AWL**

`Awl literally means non-precisions, in-accurate and deviation from the ideal. The terminology can be deduced from the verse of chapter 4 verse 3 of the Qur'an which states that "....." "that will make it more likely that you will not deviate (Awl) from the right path".

Technically, in Islamic Law of inheritance, it is used to depict an arithmetical solution of proportionate reduction of fixed shares across the heirs in case where the due fractions (of the property) are more than the whole number. The nominator is, in such cases higher than the denominator.

In such a case, the denominator is changed to the higher number (the nominator) while each heir retains the fraction specified for him/her.

### SELF ASSESSMENT EXERCISE

What is `Awl in Mirath?

#### 3.2 Different Classes of Denominators

It should be noted that when calculating the (fractions) subtraction, multiplication, addition and division of fractions, it is easier to find what is called Lowest Common Factor (LCM) of the denominators. For example

$$\frac{1}{2} + \frac{1}{2} = 1 + \frac{1}{2} = 1 \quad \frac{2}{3} - \frac{1}{3} = \frac{2-1}{3} = \frac{1}{3}$$

The LCM of the denominators in the two cases are 2 and 3 respectively. In Islamic law of inheritance there are 4 or (5) classes of denominators. They are:

**3.2.1 At-tamathul (.....):** Where there are equal denominators and straight forward fractions. For example if the heirs of a deceased are just the husband and full (Germane) sister. Each is entitled to 1/2. The denominator is 2 and each has 1 out of 2

$$\frac{1}{2} + \frac{1}{2} = \frac{1+1}{2} = \frac{2}{2} = 1$$

When there are 6 sons for the deceased and each is entitled to equal share. The denominator of each is 6 and each is entitled to 1/6.

**3.2.2** The second is Attadakhul (.....) and Attawa fuq (.....) where the fractions are not equal but are in multiples of one another or each other. Such as 1/3 and 1/6 or 1/2, 1/4 and 3/8. In the second case 6 is a multiple of 3; while 4 and 8 are multiples of 2.

In this case if one is entitled to 1/3 it becomes 2/6 = 1/3. While 1/6 remains as 1/6. If one is entitled to 1/8 and the other 1/4 . 1\4becomes 2/8 = 1/4 . If the denominators have the same Highest Common Factor (HCF) it is also known as (At-tawafuq) (.....).

**3.2.3** At-takhaluf is where a fraction is not a multiple of the other such as 1/3 and 1/4. The LCM is used to find common denominator for 4 and 3. It is 12. A person entitled to 1/4 and 1/3 for example would have 3/12 and 4/12 respectively. 3/12 is still 1/4 while 4/12 is still 1/3.

### 3.2.4 Al-Inkisar

The complex fractions where  $7/8$  or  $2/3$  had to be divided in 6 or 4 each. This involves finding the lowest figure which is divisible into each of the denominators.

## 3.3 Specific cases of Proportional Reductions

### 3.3.1 Changing Denominator 6 to 7, 8, or 9

For example 6 changes to 7 where the shares are  $\frac{1}{2} + \frac{1}{2} + \frac{1}{6}$ . The total becomes  $7/6$  then the 6 is changed to 7. For example where the heirs are one full sister who is entitled to  $\frac{1}{2}$  (in the non-existence of child and father of the deceased) husband ( $\frac{1}{2}$  in the non-existence of child of the deceased) and a grand-mother (in the absence of parents). This means

$$\frac{1}{2} + \frac{1}{2} + \frac{1}{6} = \frac{3}{6} + \frac{3}{6} + \frac{1}{6} = \frac{7}{6}$$

`Awl changes 6 to 7 as each would have  $\frac{3}{7} + \frac{3}{7} + \frac{1}{7}$ .  $\frac{1}{2}$  ( $\frac{3}{6}$ ) becomes  $\frac{3}{7}$  while  $\frac{1}{6}$  becomes  $\frac{1}{7}$ .

Where the heirs are husband, full sister and uterine sister and the shares are

$\frac{1}{2} + \frac{1}{2} + \frac{1}{3} = \frac{3}{6} + \frac{3}{6} + \frac{2}{6} = \frac{8}{6}$ . The denominator 6 is changed to 8 and the shares become  $\frac{3}{8} + \frac{3}{8} + \frac{2}{8} = \frac{8}{8} = 1$  respectively. Where the heirs are husband ( $\frac{1}{2}$ ) two full sisters ( $\frac{2}{3}$ ) and 2 uterine sisters

( $\frac{1}{3}$ ) =  $\frac{3}{6} + \frac{4}{6} + \frac{2}{6} = \frac{9}{6}$ . The 6 is changed to 9 (the nominator) and the shares become  $\frac{3}{9} + \frac{4}{9} + \frac{2}{9} = \frac{9}{9}$ .

Caliph Umar (the second Caliph) was the first to apply `awl, while caliph Ali (the 4<sup>th</sup> Caliph) applied the same rule to change the denominator 24 to 27 to accommodate  $\frac{1}{8} + \frac{1}{6} + \frac{1}{6} + \frac{2}{3} = \frac{3}{24} + \frac{16}{24} + \frac{4}{24} + \frac{4}{24} = \frac{27}{24}$  for wife, 3 daughters grandfather and mother respectively.

The table provided by Ambali and reproduced below gives a comprehensive instances where `awl is applied to effect equitable proportionate reduction of fixed shares.

| Denominator | Heirs              | Basic  | Share Based on `AWL             |                                 |          |
|-------------|--------------------|--|---------------------------------|---------------------------------|----------|
| A: 6-7      | Husband            | $\frac{1}{2}$  | $\frac{3}{6}$                   | $\frac{3}{7}$                   | 3        |
|             | Germane Sister     | $\frac{1}{2}$  | $\frac{3}{6}$                   | $\frac{3}{7}$                   | 3        |
|             | Consanguine Sister | $\frac{1}{6}$  | $\frac{1}{6}$                   | $\frac{1}{7}$                   | 1        |
|             |                    | <b><math>1 \frac{1}{6}</math></b>                              | <b><math>\frac{7}{6}</math></b> | <b><math>\frac{7}{7}</math></b> | <b>7</b> |
| B: 6-8      | Husband            | $\frac{1}{2}$  | $\frac{3}{6}$                   | $\frac{3}{8}$                   | 3        |
|             | Germane Sister     | $\frac{1}{2}$  | $\frac{3}{6}$                   | $\frac{3}{8}$                   | 3        |
|             | Uterine Sister     | $\frac{1}{3}$  | $\frac{2}{6}$                   | $\frac{1}{4}$                   | 2        |
|             |                    | <b><math>1 \frac{1}{3}</math></b>                              | <b><math>\frac{8}{6}</math></b> | <b><math>\frac{8}{8}</math></b> | <b>8</b> |
| C: 6-9      | Husband            | $\frac{1}{2}$  | 3                               | $\frac{1}{3}$                   | 3        |
|             | 2 Full Sisters     | $\frac{2}{3}$  | 4                               | $\frac{4}{9}$                   | 4        |
|             | 2 Uterine Sisters  | $\frac{1}{3}$  | 2                               | $\frac{2}{9}$                   | 2        |
|             |                    | <b><math>\frac{19}{6}</math> or <math>1 \frac{1}{3}</math></b> | <b><math>\frac{9}{6}</math></b> | <b><math>\frac{9}{9}</math></b> | <b>9</b> |

|          |                   |   |                                   |                                   |           |
|----------|-------------------|---|-----------------------------------|-----------------------------------|-----------|
| D: 6-10  | Husband           | $\frac{1}{2}$   | 3                                 | $\frac{3}{10}$                    | 3         |
|          | 2 Full Sisters    | $\frac{2}{3}$   | 4                                 | $\frac{4}{10}$                    | 4         |
|          | 2 Uterine Sisters | $\frac{1}{3}$   | 2                                 | $\frac{2}{10}$                    | 2         |
|          |                   | $\frac{1}{6}$   | 1                                 | $\frac{1}{10}$                    | 1         |
|          |                   | <b><math>\frac{10}{6}</math> or <math>1\frac{2}{3}</math></b> | <b>10/6</b>                       | <b><math>\frac{10}{10}</math></b> | <b>10</b> |
| E: 12-13 | Wife              | $\frac{1}{4}$   | 3                                 | $\frac{3}{10}$                    | 3         |
|          | 2 Full Sisters    | $\frac{2}{3}$   | 8                                 | $\frac{8}{13}$                    | 8         |
|          | 2 Uterine Sisters | $\frac{1}{6}$   | 2                                 | $\frac{2}{13}$                    | 2         |
|          |                   | <b><math>1\frac{1}{12}</math></b>                             | <b><math>\frac{13}{12}</math></b> | <b><math>\frac{13}{13}</math></b> | <b>13</b> |
| F: 12-15 | Wife              | $\frac{1}{4}$   | 3                                 | $\frac{1}{5}$                     | 3         |
|          | 2 Germane Sisters | $\frac{2}{3}$   | 8                                 | $\frac{8}{15}$                    | 8         |
|          | 2 Germane Sisters | $\frac{1}{3}$   | 4                                 | $\frac{4}{15}$                    | 4         |
|          |                   | <b><math>1\frac{1}{4}</math></b>                              | <b><math>\frac{15}{12}</math></b> | <b><math>\frac{15}{15}</math></b> | <b>15</b> |
| G: 12-17 | Wife              | $\frac{1}{4}$   | 3                                 | $\frac{3}{17}$                    | 3         |
|          | 2 Germane Sisters | $\frac{2}{3}$   | 8                                 | $\frac{8}{17}$                    | 8         |
|          | 2 Uterine Sisters | $\frac{1}{3}$   | 4                                 | $\frac{4}{17}$                    | 4         |
|          | Mother            | $\frac{1}{6}$   | 2                                 | $\frac{2}{17}$                    | 2         |
|          |                   | <b><math>\frac{15}{12}</math></b>                             | <b><math>\frac{17}{12}</math></b> | <b><math>\frac{17}{17}</math></b> | <b>17</b> |
| H: 24-27 | Wife              | $\frac{1}{8}$   | 3                                 | $\frac{1}{9}$                     | 3         |
|          | 2 Daughters       | $\frac{2}{3}$   | 16                                | $\frac{16}{27}$                   | 16        |
|          | Mother            | $\frac{1}{6}$   | 4                                 | $\frac{4}{27}$                    | 4         |
|          | Father            | $\frac{1}{6}$   | 2                                 | $\frac{4}{27}$                    | 4         |
|          |                   | <b><math>\frac{27}{24}</math></b>                             | <b><math>\frac{27}{27}</math></b> | <b><math>\frac{27}{24}</math></b> | <b>27</b> |

#### 4.0 Conclusion

You have learned that `Awl is a practice of proportionate deductions from all shares to accommodate all heirs who are basic heirs without any legal deprivation. The shares are reduced in equitable proportion by upgrading the denominator to the nominator and giving the heirs their appropriate fractions.

#### 5.0 Summary

The unit has provided the meaning of the term `Awl. It has provided the justification and need for it as a child of circumstance. You have also been given the different classes of denominators in Islamic law of inheritance involving LCM and HCF. Specific instances of the application of `Awl have also been given with a table provided by M.A. Ambali.

#### 6.0 Tutor Marked Assignment

- Give the technical meaning of `Awl
- Write the different classes of denominators
- What is the justification for the application of `Awl?
- Calculate the shares of the estate in which the following were the heirs: (i) wife (ii) Mother (iii) 2 Germane (full) sisters and (iv) 2 uterine sisters.

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