18. Right of an unborn child to inheritance

An unborn child (*foetus*) in the womb is entitled to inheritance. The amount, to be reserved, is variable depending on the position of other heirs. If a man, for example, dies leaving a pregnant wife, and a mother who acknowledges the pregnancy, in which case the wife is paid an eight and the mother a sixth, because if the *foetus* be born alive, the wife would receive an eight, and the mother a sixth, but if it be not born alive, the wife would receive a fourth, and the mother a third. One-sixth and one-eight are, therefore, paid immediately, as these are their portions in all events.[23]

19. Death in Common Calamity

If more than one person dies in a common disaster, like an earthquake, train or bus accident, and if it not possible to prove the sequence of death, the estate of each of them (dead persons) would be inherited by his heirs, and there would be no mutual rights of inheritance between them. Thus the property would be distributed among the surviving heirs.[24]

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[23] Hedaya, P. 216.
[24] Syed Khalid Rashid, Muslim Law, P. 349.

Chapter Nineteen
Sunni Law of Inheritance

1. Explanation of some terms and concepts used in the law of Islamic Inheritance

(i) 'Agnate' means a person related to the deceased through male links only; for example, the son's son or the son's daughter, the father or the father's father.

(ii) 'Cognate' means a person related to the deceased through one or more female links; for example, the daughter's son or the daughter's daughter, the mother's father or the father's mother's father.[1]

(iii) 'Deceased' or '*propositus*' means a person whose relatives are to be determined for distributing his estate from the same stock, or common ancestor. Where a term of relation is used without any qualifying words, it must be presumed that the relation is referred to the deceased.[2] Thus 'son' means the son of the deceased.

(iv) 'Distant kindred' or '*Zabul Arham*' means those blood relations who are not competent to be either sharers or residuaries.

(v) 'Estate' means all heritable property of the deceased at the time of his death after deducting his funeral expenses, debts and legacies, if any.[3]

(vi) 'Residue' means that portion of the estate which is left over after satisfying the claims of the sharers; and so a 'residuary' means a person who is entitled to receive the 'residue'. In Arabic, residuary means *Zabul-Ashabat*.

(vii) 'Sharer' means a person who inherits a definite fraction of the estate as prescribed in the Holy Quran. In Arabic, he is known as '*Zabul Furuz*'.

(viii) 'Son's son' how low soever (h.l.s) means a male agnate in the descending line; for example, a son's son, a son's son's son and so on.

(ix) 'Son's daughter', how low soever, means a female agnate in the descending line; for example, a son's daughter, a son's son's daughter and the daughter of a son how low soever.

(x) 'True grandfather means a male ancestor between whom and the deceased no female intervenes, for example, father's father, father's father's father how high soever (h.h.s).

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[1] Asaf A.A. Fyzee. *Outlines of Muhammadan Law*, P. 403.
[2] Faiz Badruddin Tyabji, *Muslim Law*, P. 218.
[3] Tyabji, P. 217.

(xi) 'False grandmother' means a male ancestor between whom and deceased a female intervenes; for example, the mother's father or the mother's mother's father.

(xii) "True grandmother' means a female ancestor between whom and the deceased no false grandfather intervener; for example, the father's mother, the mother's mother, the father's mother's mother etc.

(xiii) 'False grandmother' means a female ancestor between whom and the deceased a false grandfather intervenes; for example, mother's father's mother.

2. Classification of heirs

Under the *Sunni* law of succession the heirs are divided into three classes-

(i) Sharers, (ii) Residuaries, (Agnates) and

(iii) Distant kindred (uterine relations)

There is no difference between the *Sunni's* and the *Shiya's* with regard to 'sharers' (*Zabil Furuz*). But the shiyas repudiate entirely agnates and "uterine relations". The shiyas, therefore, find no distinction between residuaries and distant kindred. They group them together and treat them according to their degree of nearness with the deceased.[4]

The total number of sharers is twelve under two heads-

Those who are related to a deceased by matrimonial contract, viz (1) Husband or (2) Wife and those who are his or her relations by blood. They are sub-divided into the following three categories–

(a) Descendents of the deceased –

(3) Daughter (4) son's daughter h.l.s

(b) Ascendants of the deceased–

(5) Mother (6) True grandmother (7) Father (8) True grandfather h.h.s

(c) Descendants of the parents of the deceased–

(9) Full sister (10) Consanguine sister (11) Uterine sister (12) uterine brother.

The sharers are entitled to a definite fractional share from the property of the deceased. Their entitlements vary under different situations, which are shown in Table 1, next of the twelve sharers, there are six sharers who inherit under certain circumstances as residuaris also. They are–father, true grandfather, daughter, son's daughter, full sister and consanguine sister.
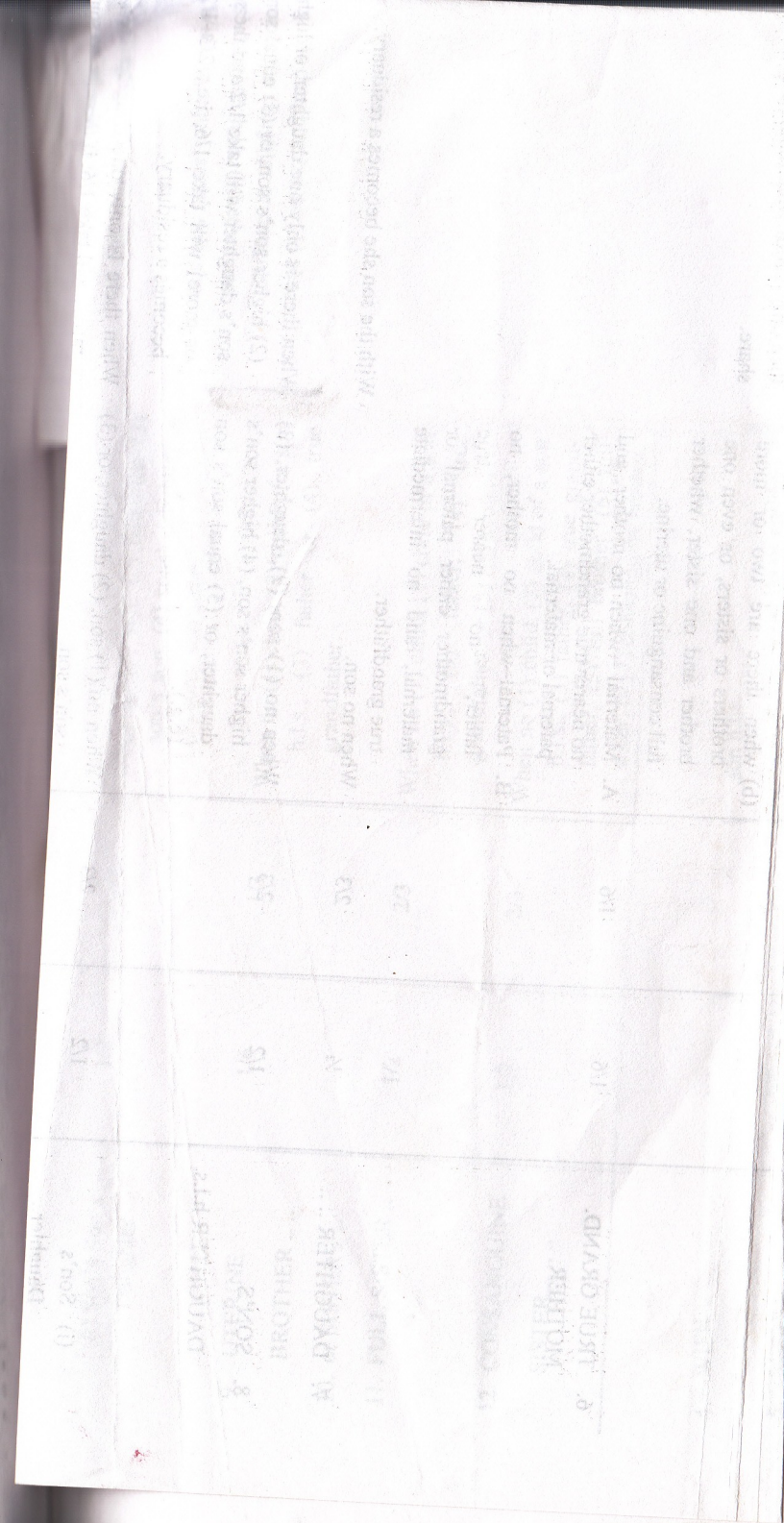
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4   Ameer Ali, *Muhammadan law*, Voll. II, P. 48 (Reprint, 1985).

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4   Ameer Ali, *Muhammadan law*, Voll. II, P. 48 (R

The table can be understood in the following manner:

Firstly, it is to be seen, who from amonst the shares is alive. It can be done by looking at column 1 of the Table.

Secondly, it is to be seen whether he is entirely excluded by another heir or not. It can be done by looking at column 3 of the Table. If he is not entirely excluded, then column 4 is to be seen in order to examine whether he is affected by the presence of another sharer. If he is so affected, the effect can be seen in column 5.[5]

These possibilities may arise after allotment of shares to the *Quranic* heirs— (i) equal to unity (ii) more than unity and (iii) less than unity. In the first case there is no problem, but in the latter two cases, the problem can be solved by '*Increase*' or *Aul* and Return or *Radd*. (*Aul* and *Radd* are explained under sections 4 and 5 of this chapter).

3. Allotment of Shares

Under this section, it has been explained through illustrations as to how the sharers inherit from net estate of the deceased after payment of funeral expenses, debts and legacies.

Illustrations[6]

Father, Mother, Father's Father, Mother's mother

(1) Father   .. $\frac{1}{6}$ as sharer

    Father's mother   excluded by father

    Mother   .. $\frac{1}{6}$ as sharer

    Mother's mother   excluded by mother

    Two daughters $\frac{2}{3}$ as sharer

    Son's daughter   excluded by daughter

Husband and wife

(2) Husband $\frac{1}{2}$ as sharer

    Father $\frac{1}{2}$

                ($\frac{1}{6}$ as sharer and $\frac{1}{3}$ as residuary)

5   Shawkat Mahmood. *Principles and Digest of Muslim Law*. P. 245.
6   D.F Mulla. PP. 48-51

(3)　Two wive's　　　　$\frac{1}{4}$ as sharer

　　　Father　　　　　　$\frac{3}{4}$ residuary

Mother

(4)　Mother　　　　　　$\frac{1}{3}$ as sharer

　　　Father　　　　　　$\frac{2}{3}$ ($\frac{1}{6}$ as sharer and $\frac{3}{6}$ as residuary)

(5)　Mother　　　　　　$\frac{1}{3}$ as sharer $\frac{1}{6}$

　　　Father　　　　　　$\frac{2}{3}$ ($\frac{1}{6}$ as sharer and $\frac{1}{2}$ as residuary)

　　　2 Sister　　　　　Excluded by father.

(6) Note: In example—(1) father and mother take $\frac{1}{6}$ each and two daughters take $\frac{2}{3}$ as sharers. Father's father and mother's mothers are excluded by father and mother respectively on the basis of principle, "the nearer in degree excludes the more remote". This is the case of equal to unity ($\frac{1}{6}+\frac{1}{8}+\frac{2}{3}=1$). In example (2) husband takes $\frac{1}{2}$ as sharer and father takes as residuary as there is no child or child of a son of the deceased. In example (3), two wives jointly take $\frac{1}{4}$, as there is no child or child of a son of the deceased and father takes $\frac{3}{4}$ as residuary in the absence of other heir. In example (5) the sisters are excluded by father, but they affect the share of the mother by reducing it to $\frac{1}{6}$ from $\frac{1}{3}$. Two brothers also would have reduced the mother's share in the same manner. But only one brother or only one sister would not reduce the share of the mother and she would have taken $\frac{1}{3}$.

(6)　Mother　　　　　　$\frac{1}{3}$ as sharer

　　　Sister　　　　　　excluded by father

　　　Father　　　　　　$\frac{2}{3}$ as residuary

(7)　Mother　　　　　　$\frac{1}{6}$

　　　Brother (full, consanguine or uterine) excluded by father.

　　　Sister (full, consanguine or uterine) excluded by father

　　　Father　　　　　　$\frac{5}{6}$ as residuary

Note: Mother takes $\frac{1}{6}$ and not $\frac{1}{3}$ because of one brother and one sister.

(8)　Husband　　　　　$\frac{1}{2}$ as sharer

　　　Mother　　　　　　$\frac{1}{6}$ ($\frac{1}{3}$ of $\frac{1}{2}$)

　　　Father　　　　　　$\frac{1}{3}$ as residuary.

(9)　Wife　　　　　　　$\frac{1}{4}$

　　　Mother　　　　　　$\frac{1}{4}$ ($\frac{1}{3}$ of $\frac{3}{4}$)

　　　Father　　　　　　$\frac{1}{2}$ as residuary.

Note: In example (8), the husband's share is $\frac{1}{2}$ and mother takes $\frac{1}{3}$ of remaining $\frac{1}{2}$, ($\frac{1}{3}$ of $\frac{1}{2}$), that is $\frac{1}{6}$. Similarly, in example (9), the mother is entitled to only $\frac{1}{3}$ of what remains after deducting the share of the wife. Here wife takes $\frac{1}{4}$ and there remains $\frac{3}{4}$. Now she takes $\frac{1}{3}$ of $\frac{3}{4} = \frac{3}{12} = \frac{1}{4}$.

True grandfather and true grandmother

(10)　Father's mother　　excluded by father

　　　Mother's mother　　$\frac{1}{6}$

　　　Father　　　　　　$\frac{5}{6}$, ($\frac{1}{6}$ as sharer, $\frac{2}{3}$ as residuary).

　　　　　　　　　　　　$\frac{6}{6}=1$

(11)　Father's mother　⎤　$\frac{1}{6}$ (each taking $\frac{1}{12}$)

　　　Mother's mother　⎦

　　　Father's father　　$\frac{5}{6}$, ($\frac{1}{6}$ as sharer and $\frac{2}{3}$ as residuary).

Daughters and Son's daughters h.l.s

(12)　Father　　　　　　$\frac{1}{6}$ as sharer

　　　Mother　　　　　　$\frac{1}{6}$ as sharer

　　　Three son's daughters $\frac{2}{3}$　jointly (each taking $\frac{2}{9}$).

(13)　Father　　　　　　$\frac{1}{6}$ as sharer

　　　Mother　　　　　　$\frac{1}{6}$ as sharer

　　　Daughter　　　　　$\frac{1}{2}$ as sharer

Three son's daughters $\frac{1}{6}$ (each taking $\frac{1}{18}$), son's daughters are not entirely excluded.

In example (12) only one daughter takes $^1/_2$ and son's daughters take $^1/_6$ making it a full share of daughter which is $^2/_3$ ($^1/_2+^1/_6$).

(14) Father	$^1/_6$ as sharer	
Mother	$^1/_6$ as sharer	
Two son's Daughter	$^2/_3$ as sharer	
Son's son's daughters	excluded by son's daughters	
(15) Father	$^1/_6$ as sharer	
Mother	$^1/_6$ as sharer	
Son's daughter	$^1/_2$ as sharer	
Son's son's daughters	$^1/_6$ as sharer	
	$^6/_6 = 1$	

Note: In example (15) it is seen that there being only one son's daughter, the son's son's daughter is not entirely excluded from inheritance, but she takes $^1/_6$. The share of son's daughter is $^1/_2$ and that of son's son's daughter is $^1/_6$ making it equal to $^2/_3$ ($^1/_2 +^1/_6$), which is equal to the full share of son's daughters in the absence of daughters. This is a peculiar case.

Sister

(16) Mother	$^1/_6$
2 full sister	$^2/_3$ (each taking $^1/_3$)
Uterine sister or uterine brother	$^1/_6$
Consanguine sister	excluded by full sister
(17) Full sister	$^1/_2$
Two con. sister	$^1/_6$ (each taking $^1/_{12}$)
Uterine brother } Uterine sister }	$^1/_3$ (each taking $^1/_6$).

Note: In example (17) it is seen that the consanguine sisters are not excluded, because there is only one full sister.

4. Doctrine of *Aul* or Increase

If it is found that the sum total of the fractional share allotted to the sharers exceeds unity, then the share of each sharer is to be reduced proportionately. This is done by reducing the fractional shares to a common denominator and 'increasing' the denominator so as to make it equal to the sum of the numerators. This process is called increase or in Arabic '*Aul*', because it involves a proportionate reduction in the shares of the sharers by increasing the denominator to the sum of the numerators.

Illustrations

The doctrine of increase has been explained in the following examples:

(1) Mother	$^1/_6 = ^1/_6$	reduced to	$^1/_8$
Husband	$^1/_2 = ^3/_6$	reduced to	$^3/_8$
2 full sisters	$^2/_3 = ^4/_6$	reduced to	$^4/_8$
	$^8/_6$		$^8/_8 = 1$

This is a case of more than unity. But by applying the process of the doctrine of increase, it becomes equal to unity. The doctrine has been applied step by step.

First step—Reduce the fractional shares to a common denominator. Thus $^1/_6+^1/_2+^2/_3 =^8/_6$ (here 8 is the common denominator).

Second step —Add up numerators 1+3+4=8.

Third step —Take the numeration of each and put the total of numeration calculated in steps as its denominator.

(2) Wife	$^1/_8 = ^3/_{24}$	reduced to	$^3/_{27}$
2 Daughters	$^2/_3 = ^{16}/_{24}$	reduced to	$^{16}/_{27}$
Father	$^1/_6 = ^4/_{24}$	reduced to	$^4/_{27}$
Mother	$^1/_6 = ^4/_{24}$	ditto	$^4/_{27}$
	$^{27}/_{24}$		$^{27}/_{27} = 1$

Note: Regarding the above example (2), Coulson narrated an incident which is as follows—'While delivering a surmon in the mosque Hazrat Ali (R) was interrupted by a questioner from the congregation,

who asked what would happened to the wife when the deceased husband has also left two daughters, a father and mother?

Hazrat Ali (R) replied without any hesitation, "The wife's $\frac{1}{8}$th becomes $\frac{1}{9}$". Here wife's $\frac{3}{27}$ is equal to $\frac{1}{9}$.[7]

(3)	Wife	$\frac{1}{4} = \frac{3}{12}$	reduced to	$\frac{3}{17}$
	2 full sisters	$\frac{2}{3} = \frac{8}{12}$	reduced to	$\frac{8}{17}$
	2 Uterine sisters	$\frac{1}{3} = \frac{4}{12}$	reduced to	$\frac{4}{17}$
	Mother	$\frac{1}{6} = \frac{2}{12}$	reduced to	$\frac{2}{17}$
		$\frac{17}{12}$		$\frac{17}{17} = 1$

(4)	Two daughters	$\frac{2}{3} = \frac{8}{12}$	reduced to	$\frac{8}{15}$
	Father	$\frac{1}{6} = \frac{2}{12}$	reduced to	$\frac{2}{15}$
	Mother	$\frac{1}{6} = \frac{2}{12}$	reduced to	$\frac{2}{15}$
	Husband	$\frac{1}{4} = \frac{3}{12}$	reduced to	$\frac{3}{15}$
		$\frac{15}{12}$		$\frac{15}{15} = 1$

(5)	Mother	$\frac{1}{6} = \frac{2}{12}$	reduced to	$\frac{2}{13}$
	Daughter	$\frac{1}{2} = \frac{6}{12}$	reduced to	$\frac{6}{13}$
	Son's daughter	$\frac{1}{6} = \frac{2}{12}$	reduced to	$\frac{2}{13}$
	Husband	$\frac{1}{4} = \frac{3}{12}$	reduced to	$\frac{3}{13}$
		$\frac{13}{12}$		$\frac{13}{13} = 1$

(6)	Mother	$\frac{1}{6} = \frac{1}{6}$	reduced to	$\frac{1}{7}$
	Two full sisters	$\frac{2}{3} = \frac{4}{6}$	reduced to	$\frac{4}{7}$
	Two uterine brothers	$\frac{1}{3} = \frac{2}{6}$	reduced to	$\frac{2}{7}$
	(each taking $\frac{1}{6}$)	$\frac{7}{6}$		$\frac{7}{7} = 1$

5. Doctrine of *Radd* or return

When after satisfying the claim of the sharers, a residue is left but there is no residuary to receive the residue, residue reverts back to the sharers in proportion to their shares. The process by which it is done is

[7] N.J. Coulson. *A History of the Islamic Law*. P. 24 (Edinbargh. 1964).

known as "Return" or in Arabic "Radd". But neither the husband nor the wife is entitled to return if there be any heir. So husband or wife can take residue as return only in the absence of other heir.

Illustrations[8]

(1)	Mother	$\frac{1}{6}$
	Daughter	$\frac{1}{2}$

Note: Total of two shares comes to $\frac{2}{3}$ ($\frac{1}{6}+\frac{1}{2}$), which is less than unity. There remains $\frac{1}{3}$ ($1-\frac{2}{3}$) which is to be returned to both mother and daughter proportionately. This can be done in the following process:

First step—Reduce the fractional shares to a common denominator. Thus $\frac{1}{6} + \frac{1}{2}$ becomes $\frac{1}{6}+\frac{3}{6}$ (Here 6 is the common denominator).

Second step—Add the numerators. $1+3=4$

Third step— Make the total of the numerators obtained in the second step, the denominator in the fractions in the first step.

Thus $\frac{1}{6}+\frac{3}{6}$ becomes $\frac{1}{4}+\frac{3}{4}$ (Here 4 is the sum of numerators 1 and 3).

The shares are thus increased proportionately making their sums equal to unity—$\frac{1}{4}+\frac{3}{4}=\frac{4}{4}=1$.

(2)	Husband	$\frac{1}{2}$
	Mother	$\frac{1}{2}$ ($\frac{1}{3}$ as sharer and $\frac{1}{6}$ by return)

(3)	Wife	$\frac{1}{4}$
	Sister (full or consanguine)	$\frac{3}{4}$ ($\frac{1}{2}$ as sharer and $\frac{1}{4}$ by return)

(4)	Mother	$\frac{1}{6} = \frac{1}{6}$	increased	to	$\frac{1}{5}$
	Full sister	$\frac{1}{2} = \frac{3}{6}$	increased to		$\frac{3}{5}$
	Uterine brother	$\frac{1}{6} = \frac{1}{6}$	increased to		$\frac{1}{5}$
		$\frac{5}{6}$			$\frac{5}{5} = 1$

[8] D.F. Mulla, PP. 60-62.

(5) Husband $1/4$ (not entitled to return) $= 4/16$

Mother $1/6$ increased to $1/4$ of $3/4$ $= 3/16$

Daughter $1/2 = 3/6$ increased to $3/4$ of $3/4$ $= 9/16$

$\overline{11/12}$ $\overline{16/16 = 1}$

(6) Wife $1/8$ (no return) $= 5/40$

Mother $1/6$ increased to $1/5$ of $7/8$ $= 7/40$

Two son's daughters $2/3 = 4/6$ increased to $4/5$ of $7/8$ $= 28/40$

$\overline{23/24}$ $\overline{40/40 = 1}$

(7) Husband $\left\{\begin{array}{l} 1/2 \end{array}\right.$ $= 2/4$

Uterine brother $1/6$ increased to $1/2$ of $1/2$ $= 1/4$

Uterine sister $1/6$ increased to $1/2$ of $1/2$ $= 1/4$

$\overline{5/6}$ $\overline{4/4 = 1}$

(8) Wife $1/4$ (no return) $= 4/16$

Consanguine sister $1/6$ increased to $1/4$ of $3/4$ $= 3/16$

Full sister $1/2 = 3/6$ increased to $3/4$ of $3/4$ $= 9/16$

$\overline{16/16 = 1}$

(9) Wife $1/4$ $= 3/12$

Mother $1/6$ increased to $1/3$ of $3/4$ $= 3/12$

Uterine Brother $1/6$ $\Big\}$ increased to $1/3$ of $3/4$ $= 3/12$

Uterine sister $1/6$ increased to $1/3$ of $3/4$ $= 3/12$

$\overline{9/12}$ $\overline{= 12/12}$

6. Residuaries

If there is no sharer, or if there are sharers, but there is a residue left after satisfying their claims, the whole inheritance or the residue, as the case may be, devolves upon the residuaries in the order of set froth in the following table:

Table of Residuaries[9]

DESCENDANTS

1. *Son*— Daughter takes as a residuary with the son, the son taking a double portion.

2. *Son's son h.l.s*— The nearer in degree excluding the more remote. Two or more son's sons inherit in equal shares. Son's daughter h.l.s takes as a residuary with an equal son's son. If there be no equal son's son, but there is a lower son's son, she takes as residuary with him, provided she cannot inherit as a sharer. In either case, each son's son h.l.s take double the share of each son's daughter h.l.s.

Note.—When the son's daughter h.l.s. becomes a residuary with a lower son's son, and there are son's daughters h.l.s equal in degree with the lower son's son she shares equally with them, as if they were all of the same grade.

ASCENDANTS

3. *Father*.

4. *True grandfather h.h.s.*—The nearer in degree excluding the more remote.

DESCENDANTS OF FATHER

5. *Full brother*.—Full sister takes as a residuary with full brother, the brother taking a double portion.

6. *Full sister*.—In default of full brother and the other residuaries above named, the full sister takes the residue, if any, if there be (1) a daughter or daughter, or (2) a son's daughter or daughters h.l.s or even if there be (3) one daughter and a son's daughter or daughter h.l.s.

7. *Consanguine brother*.—Consanguine sister takes as a residuary with consanguine brother, the brother taking a double portion.

8. *Consanguine sister*.—In default of consanguine brother and the other residuaries above named, the consanguine sister takes the residue, if any, if there be (1) a daughter or daughters, or (2) a son's

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9   D.F. Mulla, Mulla, P. 54A.

daughter or daughters h.l.s. or even if there be (3) one daughter and son's daughter or daughters h.l.s.

9. *Full brother's son.*

10. *Consanguine brother's son.*

11. *Full brother's son's son.*

12. *Consanguine brother's son's son.*

Then come remoter male descendants of No. 11 and No. 12, that is, the son of No. 11, then the son of No. 12, then the son's son of No. 11, then the son's son of No. 12 and so on in like order.

DESCENDANTS OF TRE GRANDFATHER h.h.s.

13. *Full paternal uncle*

14. *Consanguine paternal uncle*

15. *Full paternal uncle's son.*

16. *Consanguine paternal uncle's son.*

17. *Full paternal uncle's son's son.*

18. *Consanguine paternal uncle's son's son.*

Then come remoter male descendants of Nos. 17 and 18, in like order and manner as descendants of Nos. 11 and 12.

Male descendants of more remote true grandfathers come in like order and manner as the deceased's paternal uncles and their sons and son's sons.

Note.—Each class excludes the next class.

Note on residuaries.—It may be noted that all residuaries are related to the deceased through a male.

Residuaris are of three types.

(a) Residuaries in their own right (these are all males listed in the table of residuaries above).

(b) Residuaries in the right of another: (these are four female residuaries: daughter as residuary in the right of the son, the son's daughter h.l.s as a residuary in the right of the son's son h.l.s., the full sister in the right of the full brother, and

the consanguine sister in the right of the consanguine brother).

(c) Residuaries with others (they are full sister and consanguine sister, when they inherit as residuaries with daughters ad son's daughters h.l.s.)

Sharers who become residuaries.—There are six sharers who under certain circumstances inherit as residuaries. They are:

(i) Father;

(ii) True grandfather h.h.s.;

(iii) Daughter;

(iv) Son's daughter h.l.s.

(v) Full sister; and

(vi) Consanguine sister.

Illustrations[10]

(1)   Son $^2/_3$ as residuary

       Daughter $^1/_3$ as residuary

Note: Daughter becomes residuary in the presence of son and not a sharer in the presence of son. Son takes double portion of the daughter in accordance with *Sura An Nisa*, verse 11 of the Holy Quran, where it has been stated that male shall take double of the female.

(2)   Wife $^1/_8$ = $^3/_{24}$ as sharer

       Son $^2/_3$ of $^7/_8$ = $^{14}/_{24}$ as residuary

       Daughter $^1/_3$ of $^7/_8$ = $^7/_{24}$ as residuary

                                         $\overline{^{24}/_{24}=1}$

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[10] D.F. Mulla, Mulla, *Principles of Mohammedan Law*, P. 54.

In the above example (no.2) after satisfying the claim of the wife, there remains $7/8$ $(1-1/8)$ and out of $7/8$ son takes two portions and daughter takes one portion.

(3) Two sons $4/7$ as residuary

Three daughters $3/7$ as residuary

$$7/7=1$$

(4) Husband $1/4$ $= 5/12$ $= 15/36$ as sharer

Mother $1/6$

Son $2/3$ of $7/12 = 14/36$ as residuary

Daughter $1/3$ of $7/12 = 7/36$ as residuary.

$$36/36=1$$

Note: In the above example the share of husband and mother is equal to $5/12$ $(1/4+1/6)$. Residue is $7/12$ $(1-5/12)$. Son takes two portions of $7/12$ and daughter takes one portion of $7/12$.

(5) Husband $1/2$ $= 9/18$ as sharer

Mother $1/6$ $= 2/3$ $= 3/18$ as sharer

Brother $2/3$ of $1/3$ $= 2/9$ $= 4/18$ as residuary

Sister $1/3$ of $1/3$ $= 1/9$ $= 2/18$ as residuary

$$18/18=1$$

In the above example, brother takes double of the sister from the residue i.e $(1/2+1/6=2/3)$, $1-2/3=1/3$ (residue). So brother takes $2/3$ of $1/3$ and sister takes $1/3$ of $1/3$.

(6) Daughter $1/2$ as sharer

Full sister $1/2$ as residuary

Brother's son excluded by full sister.

(7) Two daughters $2/3$ $= 8/12$ as sharer

Husband $1/4$ $= 3/12$ as sharer

Full sister $1/12$ as residuary

$$12/12=1$$

(8) Mother $1/3$ as sharer

Father $2/3$ as residuary

$$12/12=1$$

(9) Daughter $1/2$ as sharer

Father $1/2$ as residuary ($1/6$ as sharer $+1/3$ residuary)

(8) Daughter $1/2 = 3/6$ as sharer

Son's daughter $1/6$ as sharer

Full sister $1/3 = 2/6$ as residuary

$$6/6=1$$

7. Distant kindred.— The following is the list of distant kindred, which are grouped into four classes as that in case of residuaries:

I. *Descendants of the deceased.*—(I) Daughter's children and their descendants.

(2) Children of son's daughters h.l.s and their descendants

II. *Ascendants of the deceased.*— (I) False grandfathers h.h.s.

(2) False grandmothers h.h.s.

III. *Descendants of parents.*—(I) Full brother's daughters and their descendants.

(2) Consanguine brother's daughters and their descendants.

(3) Uterine brother's children and their descendants.

(4) Daughters of full brother's sons h.l.s. and their descendants.

(5) Daughters of consanguine brother's sons h.l.s and their descendants.

(6) Sister's (full, consanguine or uterine) children and their descendants.

IV. *Descendants of immediate grandparents (true or false).*—

(I) Full paternal uncles' daughters and their descendants.

(2) Consanguine paternal uncle's daughters and their descendants

(3) Uterine paternal uncles and their children and their descendants.

(4) Daughters of full paternal uncles' son h.l.s and their descendants.

(5) Daughters of consanguine paternal uncle's sons h.l.s and their descendants.

(6) Paternal aunts (full, consanguine or uterine) and their children and their descendants.

(7) Maternal uncles and aunts and their children and their descendants.

and

Descendants or remoter ancestors h.h.s. (true or false)

CLASS I OF DISTANT KINDERED

Principles of distribution and exclusion

Rule I.—(a) Members belonging to the class of distant kindred inherit only in the absence of sharers and residuaries.

(b) Among the distant kindred themselves, Class I (Descendants) exclude Class II (Ascendants), which in turn exclude Class III (Descendants of parents), which in turn exclude Class IV (Descendants of grandparents).

Rule II.— Nearer in degree excludes more remote.

Rule III.—Where the degrees are equal, the children of sharers and residuaries are preferred to those of distant kindred.

Order of succession.—

(1) Daughter's children.

(2) Son's daughter.

(3) Daughter's grandchildren.

(4) Son's son's daughter's children and remoter heirs.

(of the above, each entirely excludes the one who follows).

Allotment of shares.—After determining on the above principles who the heirs are, let us proceed further and allot the shares to each. The following simple rules must be carefully followed.

Rule I. If intermediate ancestors do not differ in their sexes the estate is to be divided among the claimants *per capita*, the male taking a double share.

Illustrations

(a) 2 sons of daughter (Hamida)—$^4/_5$ (each taking $^2/_5$).

I daughter of daughter (Tamanna) — $^1/_5$.

(b) 2 sons of daughter's daughter (x) $^4/_6$ (each taking $^2/_6$)

2 daughters of a daughter's daughter (y) $^2/_6$ (each taking $^1/_6$

Rule II.—If the intermediate ancestors differ in their sexes, th distribution will take effect according to the following sub-rules:
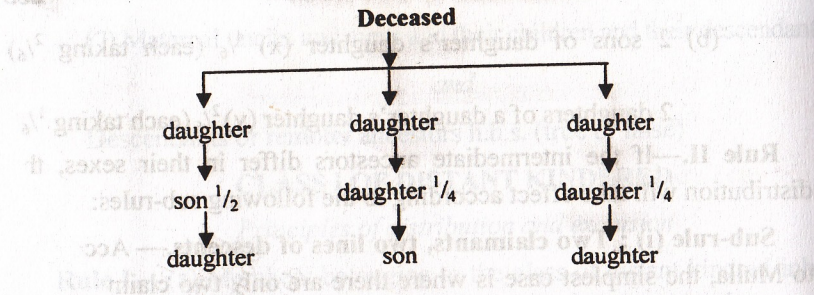
Sub-rule (i) : Two claimants, two lines of descents.— Acc to Mulla, the simplest case is where there are only two claim one claiming through one line of ancestors, and the othe through another line, as shown below.

Deceas..d

daughter (dead)   da..

son (dead)
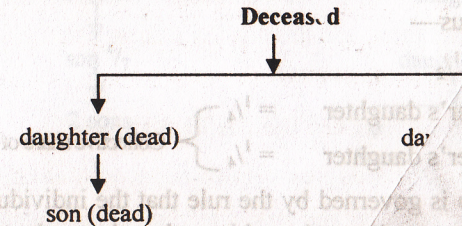
According to Abu Yusuf—The se.. to be disregarded, and the sex of pr.. share will be: male and female t.. Thus, in the above example, da..

According to Imam Mu.. to pause at each degree w.. the sexes don not differ i.. second generation (or applying the princip..

shares and dead .. two present liv.. two shares.

Sub-r.. example daugh..

Deceased

```
                    Deceased
        ┌──────────────┼──────────────┐
        ▼              ▼              ▼
   daughter        daughter        daughter
        │              │              │
        ▼              ▼              ▼
    son ¹/₂      daughter ¹/₄    daughter ¹/₄
        │              │              │
        ▼              ▼              ▼
   daughter          son          daughter
```

The first step is to stop at the first line in which the sexes of the intermediate ancestors differs, and to assign to each male ancestor a double portion. Thus—

daughter's son $= \frac{1}{2}$

$$\left. \begin{array}{l} \text{daughter's daughter} = \frac{1}{4} \\ \text{daughter's daughter} = \frac{1}{4} \end{array} \right\} \text{Collective share of female} = \frac{1}{2}$$

The second step is governed by the rule that the individual share of each ancestor does not descend on his or her descendants as in the preceding case, but the collective share of each male ancestors is to be divided among all the descendants claiming through them, and the collective share of all the female ancestors is to be divided among their descendants. Male is given double share.

Now, applying this principle to the above problem, the daughter's son stands alone and his share descends to his daughter; but the collective share of the two daughter's daughter is to be distributed among their descendants, on the principle: double share to male. Thus—

Daughter's daughter's son—$\frac{2}{3}$ of $\frac{1}{2}$ $= \frac{1}{3}$

Daughter's daughter's daughter—$\frac{1}{3}$ of $\frac{1}{2}$ $= \frac{1}{6}$
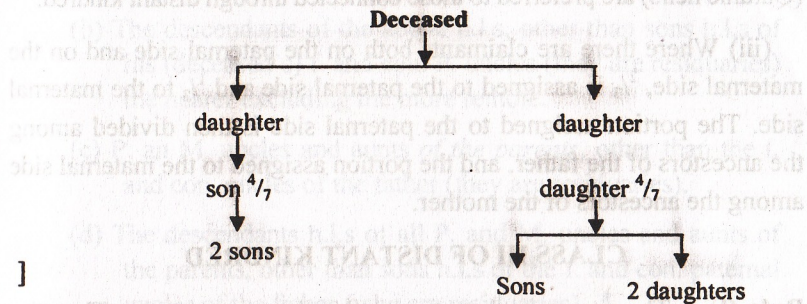
Hence, the full answer to the problem is—

Daughter's son's daughter $= \frac{1}{2}$

Sons daughter (daughter's daughter's son) $= \frac{1}{3}$

Daughter's daughter's daughter (dsd) $= \frac{1}{6}$

Sub-rule (iii)): More than two claimants, two lines.— When there are two or more claimants through the same intermediate ancestor,

there is a further rule to be applied. "Count for each such ancestor, if male, as many males as there care claimants claiming through him, and, if female, as many females as there are claimants claiming through her, inspective of the sexes of the claimants. Let us take this example:

```
                    Deceased
        ┌──────────────┼──────────────┐
        ▼                             ▼
   daughter                       daughter
        │                             │
        ▼                             ▼
   son ⁴/₇                      daughter ⁴/₇
        │                  ┌──────────┴──────────┐
        ▼                  ▼                     ▼
    2 sons               Sons              2 daughters
```

Here, daughter's son (in the second degree) will count two males because he has two surviving heirs, and the daughter's daughter will count as three females because three of her descendants are among the surviving heirs. Thus we have—

daughter's son= $\frac{4}{7}$

daughter's daughter= $\frac{3}{7}$

The $\frac{4}{7}$ of daughter's son will go to his sons equally, each taking $\frac{2}{7}$.

The $\frac{3}{7}$ of daughter's daughter will go to her son and two daughters, the son taking twice the share of the daughter. Thus—

daughter's daughter's son—$\frac{2}{4}$ of $\frac{3}{7}=\frac{6}{28}$

(each) daughter's daughter— $\frac{1}{4}$ of $\frac{3}{7} =\frac{3}{28}$. Thus, the final shares will be:

dss = $\frac{8}{28}$

dss = $\frac{8}{28}$

dds = $\frac{6}{28}$

ddd = $\frac{3}{28}$

ddd = $\frac{3}{28}$

CLASS II OF DISTANT KINDRED

Rules of distribution.—

(i) The nearer in degree excludes more remote. (ii) Among claimants in the same degree, those connected with the deceased through sharers (Quranic heirs) are preferred to those connected through distant kindred.

(iii) Where there are claimants both on the paternal side and on the maternal side, $^2/_3$ is assigned to the paternal side and $^1/_3$ to the maternal side. The portion assigned to the paternal side is then divided among the ancestors of the father, and the portion assigned to the maternal side among the ancestors of the mother.

CLASS III OF DISTANT KINDRED

Rule (I)— The nearer in degree excludes the more remote. Thus the children of brothers and sisters exclude their grandchildren, the sister's son excludes the brother's son's daughter.

Rule (2)— Among the claimants in the same degree of relationship, the children of residuaries are preferred to those distant kindred. Thus a full brother's son's daughter being a child of a residuary (full brother's son), is preferred to full sister's daughter's son who is the child of a distant kins woman (full sister's daughter).

Rule(3)— In the same degree of relationship, subject to rule (2) above, the descendants of full brothers exclude those of consanguine brothers and sisters. But the descendants of full sisters do not exclude the descendants of consanguine brothers and sisters, and the latter take the residue, if any after alloting shares to the descendants of full sisters are not excluded by descendants of either full or consanguine brothers or sisters, but they inherit with them.

Of the above groups each in turn must be exhausted before any member of the next group can succeed.

CLASS IV OF DISTANT KINDRED

Order of succession—

(a) P. (Paternal) and M. (Maternal) uncles and aunts *of the deceased*, other than his f. and con. p. uncles who are residuaries.

(b) The descendants of the above h.l.s, other than sons h.l.s of his (deceased's) f. and con. P. uncles (they are residuaries) the nearer excluding the more remote.

(c) P. an M. uncles and aunts *of the parents*, other than the f. and con. uncles of the father (they are residuaries).

(d) The descendants h.l.s of all P. and M. uncles and aunts of the parents, other than sons n.l.s of the f. and con. paternal uncles of the father (who are residuaries).

(f) The descendants h.l.s of all the P. and M. uncles and aunts of the grandparents, other than sons h.l.s. of the f. and con. P. uncles of the father's father (they being residuaries), the nearer excluding the more remote.

(g) Remoter uncles and aunts and their descendants in like manner and order.

Of the above groups each in turn must be exhausted before any member of the next groups can succeed. These classes consist of collaterals.