

'Ā'ishah gets  $\frac{3}{4}$  of  $\frac{5}{24} = \frac{3}{4} \times \frac{5}{24} = \frac{15}{96} \equiv \frac{5}{32}$

Zainab gets  $\frac{1}{4}$  of  $\frac{5}{24} = \frac{1}{4} \times \frac{5}{24} = \frac{5}{96}$

'Ā'ishah's total share is thus:

$$\frac{1}{2} + \frac{5}{32} = \frac{16}{32} + \frac{5}{32} = \frac{21}{32}$$

Zainab's total share is thus:

$$\frac{1}{6} + \frac{5}{96} = \frac{16}{96} + \frac{5}{96} = \frac{21}{96} \equiv \frac{7}{32}$$

Aminah's share remains  $\frac{1}{8}$ .

To check our calculation the final shares should add up to one:

$$\frac{21}{32} + \frac{7}{32} + \frac{1}{8} = \frac{21}{32} + \frac{7}{32} + \frac{4}{32} = \frac{32}{32}$$

It can be seen that the final ratio of shares of 'Ā'ishah to Zainab's  $\frac{21}{32}$  to  $\frac{7}{32}$  that is 3:1, the same as the original ratios.

- ◆ There is a short cut to solving problem (v). However, if you understand the long hand method it can be applied to more complex situations.

After Aminah has been given her share of  $\frac{1}{8}$  we divide the remaining cake which is  $\frac{7}{8}$  in a ratio of 3:1, thus:

'Ā'ishah's share is  $\frac{3}{4}$  of  $\frac{7}{8} = \frac{21}{32}$

Zainab's share is  $\frac{1}{4}$  of  $\frac{7}{8} = \frac{7}{32}$



## 6. CONDITIONS NECESSARY FOR SUCCESSION

Before any distribution of an estate can take place certain conditions have to be met. The following conditions are essential:

### 1. Death of propositus

- ◆ Death must be proven (actual death) or by decree of a court of law (presumption of death). See chapter 42 on missing heir/person.

### 2. Heirs must be alive

- ◆ Only heirs alive at the time of death of the propositus can inherit.
- ◆ If an heir dies before distribution of the estate his portion is inherited by his heirs.
- ◆ An embryo will only inherit if it is born alive. The share that should be reserved for the embryo is discussed in detail in chapter 28.

### 3. Estate or property must be left by the deceased

- ◆ The law of succession applies to all kinds of property whether ancestral or self-acquired, movable or immovable.
- ◆ Jurists differ as to what constitutes property.
- ◆ According to the *Ḥanafī Fiqh* the concept of property excludes rights such as contracts and these rights lapse with the death of the individual. The other *Fiqh* are of the opinion that these rights are inheritable.
- ◆ The property no matter how small must be distributed amongst the heirs.

## 7. CAUSES OF SUCCESSION

A claimant can only be considered as capable of inheriting if he or she is associated with the deceased in one or more of the three following causes of succession. These three causes of succession are:

### 1. Marital tie (*Nikāh*)

Subsistence of the marriage constructively or actually at the time of the death of the propositus. See chapter 47 for details.

### 2. Blood relationship (*Nasab*)

In Sunni Islamic law, this cause is applicable to the paternal connection only. Blood relationship as a cause of succession is severed between an illegitimate individual and his father together with the blood relatives of the father. See chapter 26 for details.

### 3. Fictitious relationship (*Walā'*)

*Walā'* literally means friendship and assistance. It is a bond between two individuals which creates a relationship between them allowing inheritance. The *Hanafi* jurists recognise two kinds of *Walā'*, the master of a manumitted slave (*Walā' Al-Itāq* or *Mawlā Al-Itāq*) and the successor by contract (*Walā' Al-Mawāla* or *Mawlā Al-Mawāla*). I have mentioned these potential heirs for the sake of completeness and historical significance

- ◆ An heir may have more than one cause of inheritance such as a husband who is also an agnatic cousin. See chapter 43.

## 8. GENERAL RULES OF SUCCESSION

### Key points:

After the death of an individual there are four rights that need to be performed/settled regarding his property/estate:

1. Pay funeral and burial expenses.
2. Pay all debts
3. Pay bequests/legacies from up to 1/3 of the remaining estate.
4. Distribute the remaining estate amongst the heirs of the deceased according to *Sharī'ah*. It is a practice in some Islamic countries e.g. Malaysia, that the issue of joint acquired property is to be settled prior to any distribution of the estate.

### 8.1 CONCEPT OF THE ESTATE (*At- TARIKAH*)

- ◆ After the death of an individual his estate devolves upon his legal heirs (*Warathāh*).<sup>[1]</sup>
- ◆ According to the *Hanafi Fiqh* the part of the estate covered by debts and bequests/legacies does not devolve upon the heirs at the time of death of the propositus. According to the *Shāfi'i* and *Hanbalī Fiqh*, the whole of the estate including the indebted part devolves

<sup>[1]</sup> It should be noted that in classical *Hanafi* law there is the concept of fictitious survival of the deceased in which the deceased remains the owner of his estate until all his obligations have been discharged. In this concept, the estate is administered by the *Qādī* (judge), and there is no need for an executor.

upon the heirs.

- ◆ This difference of opinion may become important if the value of the estate increases between the time of death of the propositus and distribution of the estate.
- ◆ The estate (*Tarikah*) includes:
  - ▶ All property whether moveable or immovable, self-acquired or ancestral.
  - ▶ All debts.
  - ▶ Any peculiar rights (contracts, options, compensation).
  - ▶ The deceased individual although dead still has certain rights. He can acquire property after his death such as an animal caught in a trap which the deceased set up when alive.
  - ▶ Blood money (*Diyah*) paid for the death of the propositus if he has been killed and his heirs opt for compensation is also treated as part of his estate of the propositus. In cases of deliberate homicide the relatives of the victim can opt for blood money, death penalty for the killer or forgive the killer; in cases of accidental homicide the relatives of the victim only exaction is blood money.

## 8.2 FUNERAL EXPENSES

- ◆ Funeral and burial expenses should be paid out of a dead person's estate.
- ◆ The funeral should be neither extravagant nor deficient.
- ◆ According to the *Hanafi Fiqh* (view of Imām Abū Yūsuf (رضي الله عنه)) the husband should pay for the funeral expenses of his wife. This is also the view of the *Mālikī Fiqh*. According to the *Shāfi'ī Fiqh* the husband should pay for his wife's funeral expenses if he is rich. If the wife was

rich, the funeral expenses will be paid out of her estate.

- ◆ Funeral expenses generally take precedence over debts.

## 8.3 DEBTS

Narrated 'Alī bin Abī Ṭālib (رضي الله عنه): *You (people) recite this Verse, "After a legacy you bequeath or a debt," but Allāh's Messenger (ﷺ) decided that a debt should be discharged before a legacy...."* (Tirmidhī and Ibn Mājah).

- ◆ Payment of debts is one of the most important duties of the deceased. Debts must be paid before the execution of the will and distribution of the inheritance.

Narrated Amr bin Al-Āṣ (رضي الله عنه): *The Messenger of Allāh (ﷺ) said, "All the sins of a Shahid (martyr) are forgiven except debt."* Ṣaḥīḥ Muslim.

Narrated Abū Hurayrah (رضي الله عنه): *The Messenger of Allāh (ﷺ) said, "A believer's soul remains in suspense until all his debts are paid off."* (Aḥmad, Tirmidhī and Ibn Mājah).

This means that the judgement regarding a soul's salvation or perdition or its entry into Paradise is held in abeyance until its debts are fully paid off and settled. This applies to a person who leaves some property upon his death. His debt should be paid out of the property that he leaves behind.

Narrated Abū Hurayrah (رضي الله عنه): *Whenever a dead man in debt was brought to Allāh's Messenger (ﷺ) 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*

Allāh made the Prophet (ﷺ) 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." (Ṣaḥīḥ Al-Bukhārī and Muslim)

The *Ḥanafī Fiqh* gives priority to secured debts and debts incurred during health take priority over debts incurred during death sickness. See sections 49.6 and 49.7.

### 8.3.1 Debts to Allāh (ﷻ) and the *Waṣīyyah*

- ◆ The majority view is that debts to Allāh (ﷻ) (*Zakah*, obligatory expiation, etc.) should be paid whether mentioned in the will or not. However, there is difference of opinion on this matter amongst the Muslim jurists.
- ◆ According to the *Ḥanafī* and *Mālikī Fiqh*, debts to Allāh (ﷻ) are extinguished by death, unless mentioned in the will in which case these debts will be taken from the bequeathable one third of the estate. This means debts to Allāh (ﷻ) must be mentioned in the will for them to be paid.
- ◆ According to the *Mālikī Fiqh*, debts to Allāh (ﷻ) are paid after debts to individuals.
- ◆ According to the *Shāfi'ī* and *Ḥanbalī Fiqh*, debts to Allāh (ﷻ) must be fulfilled first from the whole estate whether mentioned in the will or not.

Narrated Ibn Abbās ؓ: A woman from the tribe of *Juhainah* came to the Prophet and said, "My mother had vowed to perform Hajj but she died before performing it. May I perform Hajj on my mother's behalf?" The Prophet (ﷺ) replied, "Perform Hajj on her behalf. Had there been

a debt on your mother, would you have paid it or not? So, pay Allāh's debt as He has more right to be paid." (Ṣaḥīḥ Al-Bukhārī)

- ◆ According to the *Shāfi'ī Fiqh* debts to Allāh (ﷻ) take precedence over other debts owed to individuals. The *Ḥanbalī Fiqh* makes no such distinction.
- ◆ The wife's dower is also a debt which must be paid if it was not paid by the husband to the wife during his lifetime unless she voluntarily relinquished her claim to it.

### 8.4 BEQUESTS/LEGACIES

- ◆ The will is executed.
- ◆ Bequests are paid from up to one-third of the remaining net estate after payment of funeral expenses and debts.
- ◆ See chapter 48 on the Islāmic will for details

### 8.5 OVERVIEW OF THE GENERAL RULES OF INHERITANCE (*MIRĀTH*)

1. Only heirs alive at the time of death of an individual can inherit from him. An heir can inherit either as a sharer (*Aṣ-ḥābul-Furūd*) or as a residuary (*Aṣaba*). See chapter 11.
2. There is a clearly defined order of succession for potential heirs of the deceased. See chapter 11.
3. Heirs can be either partially or totally excluded from inheriting by the presence of other heirs or blood relatives under certain circumstances. See chapter 9.
4. Potential heirs can be disqualified from inheriting. See chapter 10.
5. The *Sharī'ah* places a greater economic responsibility on the man; consequently the male inherits the portion of two females in the same degree of relationship to the

deceased. An exception to this rule is that the uterine brother and uterine sister inherit equally.

6. Under certain circumstances when there are no residuaries ('*Asabāt*) after allocation of the estate amongst all the heirs with fixed shares there is a residue left over. This residue, called *Al-Radd* is returned to the sharers. In this situation we have to apply the doctrine of *Radd*. See chapter 46.
7. Under certain circumstances, the total sum of the assigned shares of the heirs with fixed shares is greater than one. In this situation we apply the doctrine of '*Awl*'. See chapter 46.
8. The principle of representation is not recognised by traditional Sunni Islāmic law. Representation means a more distant relative steps into the shoes of a nearer relative (e.g. a son representing his father) and inherits in an identical manner to the individual he represents.

In *Shari'ah* only heirs alive at time of death are entitled to inherit, they cannot be represented by someone else who has died before the propositus. This means that if a man dies leaving behind a son and a grandson through a predeceased son, the grandson is totally excluded by the son. This is based on the cardinal principle that the nearer in degree to the deceased excludes the one who is more remote in the same class of heirs. Some Muslim states in recent times have modified the traditional Islāmic law by introducing the principle of representation to a limited degree as they fear hardship for the orphaned children of the predeceased son or daughter.

The true grandfather inheriting in place of the father and the true grandmother in place of the mother in *Shari'ah* is a form of substitution and not representation. Because the

substitute does not inherit in an identical manner to the heir he/she has substituted.

The form of representation (*Tanzil*) practised in *Shāfi'i* and *Hanbalī Fiqh* for inheritance amongst the distant kindred (see section 11.4.7) is different from the representation mentioned here. Because in this system of *Tanzil* the nearer in degree excludes the more remote.

