43. DUAL RELATIONSHIPS

Key points:

- An heir may be connected to the propositus through both the mother and father or have more than one cause of succession. This heir is said to have a dual relationship or connection with the propositus.
- Heirs with dual relationships generally inherit in dual capacity.

43.1 INHERITING AS HUSBAND AND AGNATIC COUSIN

A husband can inherit in a dual capacity as shown in the next example.

Example 148

A woman, 'Ā'ishah, marries her paternal uncle's son, Aḥmad. 'Ā'ishah dies leaving behind her husband and mother as the only heirs.

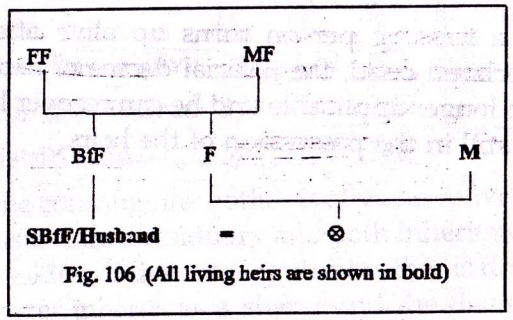

Fig. 106 (All living heirs are shown in bold)

The estate is distributed as follows:

Aḥmad as husband inherits	1/2 as sharer
Mother inherits	1/3 as sharer
Aḥmad as SBfF inherits	1/6 as residuary
Aḥmad inherits a total of	1/2 + 1/6 = 2/3

43.2 INHERITING AS UTERINE SIBLING AND AGNATIC COUSIN

- An heir may inherit as a uterine sibling (sharer) and agnatic cousin (residuary). Agnatic cousins are SBfF and SBcF.

Example 149

A woman, 'Ā'ishah marries a man, Aḥmad. They have two children Shahid and Shahidah. Aḥmad dies. 'Ā'ishah marries Aḥmad's full brother Aftab and they have one son Zahid. Aftab also dies.

All the three children have the same mother and their fathers were full brothers. Shahid and Shahida are full siblings. Shahid and Zahid are uterine siblings as well as cousins. Shahid dies leaving behind a full sister (Shahidah), a mother ('Ā'ishah) and Zahid (uterine brother and cousin).

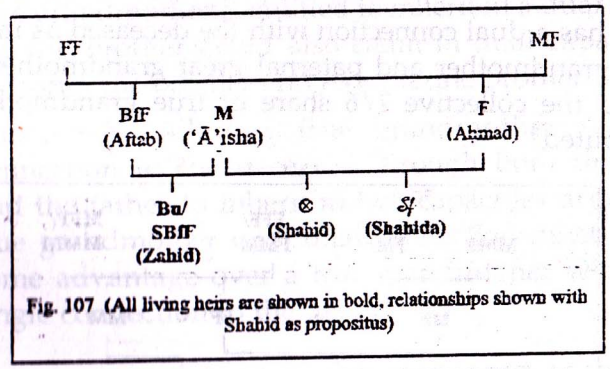

Fig. 107 (All living heirs are shown in bold, relationships shown with Shahid as propositus)

The estate of Shahid is distributed as follows:

'Ā'ishah (mother) inherits	1/6 as sharer
Shahidah (full sister) inherits	1/2 as sharer
Zahid (uterine brother) inherits	1/6 as sharer
Zahid (SBfF) inherits	1/6 as residuary
Zahid inherits a total of	1/6 + 1/6 =1/3

43.3 INHERITING AS PATERNAL AND MATERNAL GRANDMOTHER

- If the propositus is a child of marriage between two cousins, his maternal great grandmother will also be his paternal great grandmother.

Example 150

Consider a situation of two true grandmothers where one is related to the propositus through the father (i.e. MMF) and another true grandmother who is related to the propositus through both the mother and father (i.e. MMM/MFF). MMM and MFF is the one and same great grandmother.

This situation would arise where the FF and MM are siblings and hence the parents of the propositus are cousins. See Fig. 108. A man dies leaving behind two true great grandmothers, Sarah (MMM/MFF) and Dinah (MMF), as well as a son.

Sarah has a dual connection with the deceased as maternal great grandmother and paternal great grandmother. How should the collective 1/6 share of true grandmothers be distributed?

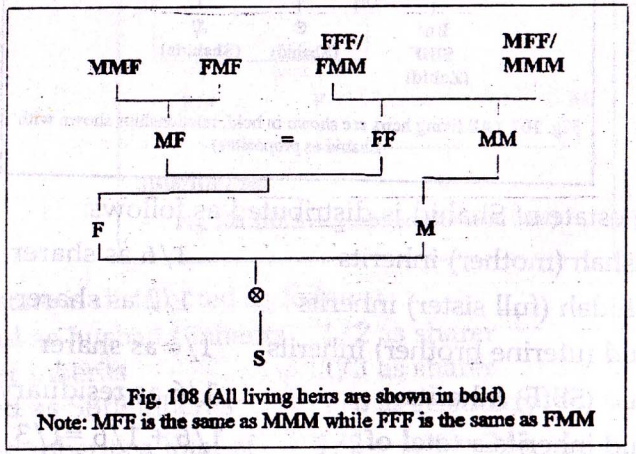

Fig. 108 (All living heirs are shown in bold)
Note: MFF is the same as MMM while FFF is the same as FMM

The *Mālikī Fiqh* does not allow MFF to inherit as sharer so such a question does not arise. According to *Shāfi'ī Fiqh*, the two great grandmothers inherit the 1/6 share equally.

Imām Abū Yūsuf (ﷺ) agrees that the two true great grandmothers should inherit 1/6 equally. However, according to Imām Muḥammad (ﷺ), Sarah with a dual connection would inherit in dual capacity (2/3 of 1/6) and Dinah with a single connection would inherit in single capacity (1/3 of 1/6). The *Ḥanafī* jurists have adopted the view of Imām Abū Yūsuf (ﷺ).

The *Ḥanbalī* jurists agree with the view of Imām Muḥammad (ﷺ).

- Those who do not allow a true grandmother with dual connection to the deceased through both the mother and the father to inherit in two capacities argue that if such a true grandmother is entitled to inherit in a dual capacity, the full brother could also claim in dual capacity as a consanguine brother and as a uterine brother.
- Those who allow a true grandmother with dual connection to the deceased through both the mother and the father to inherit in two capacities argue that a true grandmother with dual connection must be given some advantage over a true grandmother with only a single connection to the deceased.

43.4 INHERITING AS PATERNAL AND MATERNAL GRANDFATHER

- As with the grandmothers, a grandfather may have dual connection with the propositus. This, of course, can only occur in the case of false grandfathers.

Example 151

A man dies leaving behind only one great grandmother (MFM) and one great grandfather (FMM/FMF). Both these great grandparents are false grandparents and inherit in the capacity of distant kindred. The great grandfather is related to the deceased through both the mother and the father. The great grandmother is related to the deceased only through the mother.

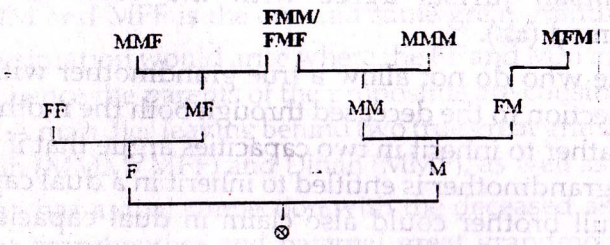

Fig. 109 (All living heirs are shown in bold)
Note: FMM is the same as FMF

As far as the *Ḥanafī Fiqh* is concerned, the question of dual inheritance does not arise in this situation because the false great grandfather would exclude the false great grandmother because he is related to the deceased through a sharer (MM) whereas the false grandmother (MFM) is related to the deceased through a distant kindred (FM). See section 11.4.4 rule 2.

According to the *Shāfi'ī* and *Ḥanbalī Fiqh* using the doctrine of *Tanzīl*, the great grandfather (FMM/FMF) in each capacity will totally exclude the great grandmother (MFM) under rule 4 (see section 11.4.7b). So FMM/FMF will inherit the whole estate.

43.4 GRANDCHILDREN WITH DUAL RELATIONSHIPS

- Grandchildren inheriting as distant kindred may have a dual connection with the deceased. Such descendants inherit in dual capacity according to both Imām Abū Yūsuf (رحمه الله) and Imām Muḥammad (رحمه الله). See example 21 in section 11.4.3c.

Example 152

Fig. 110 shows two cousins (DD and SD) who marry and their son (SDD/SSD) who will be the grandson of the propositus, will have a dual connection with the propositus and inherit in dual capacity.

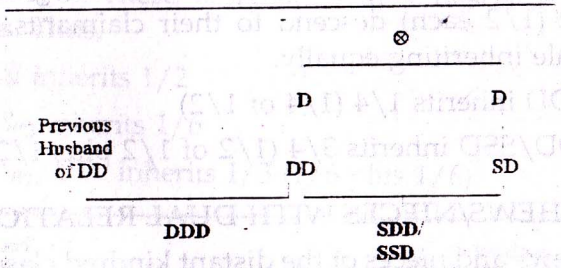

Fig. 110 (All living heirs are shown in bold)
Note: SDD is the same as SSD

According to the doctrine of Imām Abū Yūsuf (رحمه الله), based on the per capita principle:

DDD inherits 1/5

SSD/SSD inherits 2/5 + 2/5 = 4/5.

According to the doctrine of Imām Muḥammad (رحمه الله), based on the per stirpes principle:

DDD inherits 1/6 (1/3 of 1/2)

SDD/SSD inherits 5/6 (2/3 of 1/2 plus 1/2)

Note that DD and SD are initially assigned 1/2 portion each. DDD inherits through DD only; thus one portion for DD (1/3 of 1/2) and two portions for SDD (2/3 of 1/2). The share assigned to SD devolves to SSD.

According to the *Shāfi'ī* and *Ḥanbalī Fiqh* (*Tanzīl* system), the ordinary legal heir for DDD and SDD/SSD in both capacities is D. The shares assigned to each daughter (1/2 each) descend to their claimants. According to the *Shāfi'ī Fiqh*, the male inherits double the share of the female, thus:

DDD inherits 1/6 (1/3 of 1/2)

SDD/SSD inherits 5/6 (2/3 of 1/2 plus 1/2)

According to the *Ḥanbalī Fiqh* the shares assigned to each daughter (1/2 each) descend to their claimants, the male and female inheriting equally.

DDD inherits 1/4 (1/4 of 1/2)

SDD/SSD inherits 3/4 (1/2 of 1/2 plus 1/2)

43.5 NEPHEWS/NIECES WITH DUAL RELATIONSHIPS

- Nephews and nieces of the distant kindred class can also have a dual connection with the propositus.

For example if the uterine sister and the consanguine brother of the propositus marry and have a daughter, this will be a niece of the propositus (DBc/D$\mathcal{S}u$) with a dual connection as shown in Fig. 111, who will inherit in a dual capacity under Imām Muḥammad's (رحمه الله) per stirpes system and under the *Ḥanbalī Tanzīl* system. Because of the different exclusion criteria of Imām Abū Yūsuf (رحمه الله), inheriting in dual capacity does not arise in this class of heirs.

- Similarly with D$\mathcal{S}c$/DBu, SBc/S$\mathcal{S}u$ and S$\mathcal{S}c$/SBu.

Example 153

Fig. 111 shows three nieces, one of whom has a dual connection (D$\mathcal{S}u_1$/DBc) with the propositus and the other two with a single connection (D$\mathcal{S}f$ and D$\mathcal{S}u_2$).

According to the doctrine of Imām Abū Yūsuf (رحمه الله), D$\mathcal{S}f$ excludes DBc and D$\mathcal{S}u$. That leaves D$\mathcal{S}f$ as sole heir. Incidentally, DBc would also exclude D$\mathcal{S}u$. See section 11.4.5.

According to the doctrine of Imām Muḥammad (رحمه الله), the $\mathcal{S}f$ line of descent is assigned 1/2 share, the 2$\mathcal{S}u$ lines of descent are assigned 1/3 equally and the Bc line of descent is assigned 1/6. These assigned shares descend to their claimants. Thus,

D$\mathcal{S}f$ inherits 1/2

D$\mathcal{S}u_2$ inherits 1/6

D$\mathcal{S}u_1$/DBc inherits 1/3 (1/6 plus 1/6)

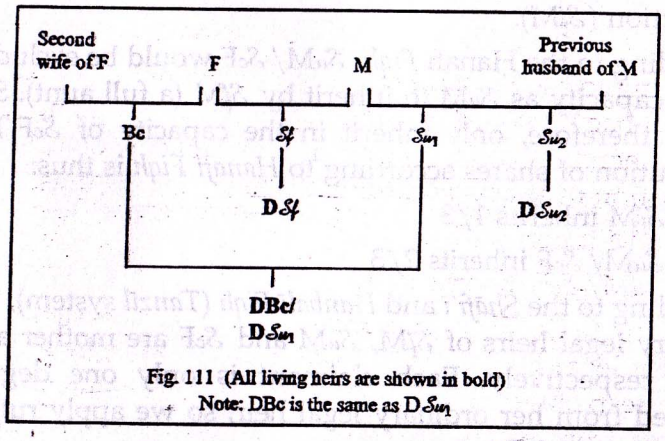

Fig. 111 (All living heirs are shown in bold)
Note: DBc is the same as D$\mathcal{S}u_1$

According to the *Shāfi'ī* and *Ḥanbalī Fiqh* (*Tanzīl* system), the ordinary legal heirs of D$\mathcal{S}f$, D$\mathcal{S}u$ and DBc are $\mathcal{S}f$, $\mathcal{S}u$ and Bc, respectively. Each claimant is only one degree removed

from her ordinary legal heir, so we apply rule 3 (see section 11.4.7b). $\mathcal{S}f$ is allocated 1/2, $\mathcal{S}u_2$ is allocated 1/6, $\mathcal{S}u_1$ is allocated 1/6 and Bc is allocated 1/6. These allocation of shares to the ordinary heirs descend to their representatives. The final distribution of shares according to the *Shāfi'ī* and *Ḥanbalī Fiqh* is thus:

D $\mathcal{S}f$ inherits 1/2

D $\mathcal{S}u_2$ inherits 1/6

D $\mathcal{S}u_1$/DBc inherits 1/3 (1/6 plus 1/6)

43.6 UNCLES/AUNTS WITH DUAL RELATIONSHIPS

- Uncles, aunts and their children (cousins of the propositus) may have a dual connection with the propositus.

Example 154

Fig. 112 shows two aunts, one with a dual connection ($\mathcal{S}u$M/ $\mathcal{S}c$F) with the propositus and the other with a single connection ($\mathcal{S}f$M).

According to the Ḥanafī *Fiqh*, $\mathcal{S}u$M/ $\mathcal{S}c$F would be excluded in her capacity as $\mathcal{S}u$M to inherit by $\mathcal{S}f$M (a full aunt). She would therefore, only inherit in the capacity of $\mathcal{S}c$F.The distribution of shares according to *Ḥanafī Fiqh* is thus:

$\mathcal{S}f$M inherits 1/3

$\mathcal{S}u$M/ $\mathcal{S}c$F inherits 2/3

According to the *Shāfi'ī* and *Ḥanbalī Fiqh* (*Tanzīl* system), the ordinary legal heirs of $\mathcal{S}f$M, $\mathcal{S}u$M and $\mathcal{S}c$F are mother and father respectively. Each claimant is only one degree removed from her ordinary legal heir, so we apply rule 3 (see section 11.4.7b).

M is allocated 1/3 and F is allocated 2/3. These shares allocated to the ordinary heirs descend to their

representatives. $\mathcal{S}f$M and $\mathcal{S}u$M divide 1/3 share allocated to M between themselves in a ratio of 3:1. This is because the ratio of inheritance between $\mathcal{S}f$ and $\mathcal{S}c$ is 1/2 to 1/6. The whole 2/3 share allocated to F descends to $\mathcal{S}c$F. The final distribution of shares according to the *Shāfi'ī* and *Ḥanbalī Fiqh* is thus:

$\mathcal{S}f$M inherits 1/4 (3/4 of 1/3)

$\mathcal{S}u$M/ $\mathcal{S}c$F inherits 3/4 (1/4 of 2/3 plus 2/3)

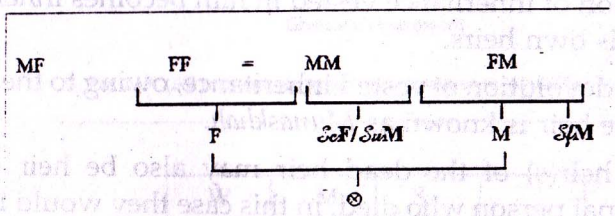

Fig. 112 (All living heirs are shown in bold)
Note: $\mathcal{S}c$F is the same as $\mathcal{S}u$M

44. DEVOLUTION OF VESTED INHERITANCE (*Al-MUNASKHAH*)

Key points:

- If an heir who is alive at the time of death of the propositus subsequently dies before the actual distribution of the estate of the propositus, then the portion of inheritance vested in him becomes inheritable by his own heirs.
- This devolution of vested inheritance, owing to the death of the heir is known as *Munaskhah*.
- The heir(s) of the dead heir may also be heir of the original person who died, in this case they would inherit in both capacities.
- Tthe general rules of inheritance apply.
- Inheritance shares are calculated at each point in time when someone dies. The shares are first assigned to the original heirs (including the dead heir). The estate vested in the dead heir is redistributed to his heirs. This process may have to be repeated if more than one heir has died, shares being assigned at each death prior to actual distribution of the estate.

Example 155

A man ('Abdullâh) dies leaving behind his mother (Aminah), widow (Maryam) and son (Khalid) as heirs (see Fig. 113). Before the distribution of the estate, his son (Khalid) dies leaving behind a mother (Maryam) and son (Mahmood) as his only heirs.

'Abdullâh's estae is initially distributed to the heirs alive at the

time of his death, that is , his mother, his wife and his son Khalid. The portion vested in Khalid is distributed to Khalid's heirs, that is, his mother and his son, as shown below.

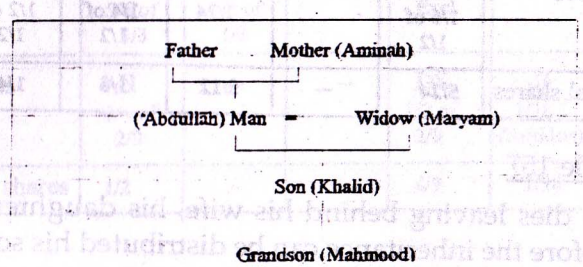

Fig. 113 (All relations shown are with reference to 'Abdullāh)

	W 1/8	M 1/6	S 17/24	
S dies	M 1/6 of 17/24	MF Excl.	–	S 5/6 of 17/24
Final shares	**35/144**	**1/6**	**–**	**85/144**

The final allocation of shares is thus:

Aminah	1/6	≡ 24/144
Maryam	1/8 + 17/144	= 35/144
Mahmood	85/144	85/144

Example 156

A man dies leaving behind his wife, his daughter and a full brother. Before the inheritance can be distributed his daughter dies and she herself leaves behind a husband and her own daughter.

Let us consider the distribution of the estate.

	W 1/8	D 1/2	Bf 3/8		
D dies	M 1/6 of 1/2	–	BfF 1/24	H 1/4 of 1/2	D 1/2 of 1/2
Final shares	5/24	–	5/12	1/8	1/4

Example 157

A man dies leaving behind his wife, his daughter and his son. Before the inheritance can be distributed his son dies as well.

Let us consider the distribution of the estate.

	W 1/8	D 7/24	S 17/24
S dies (Doctrine of *radd* applied)	M 2/5 of 17/24	ℌ 3/5 of 17/24	–
Final shares	43/120	77/120	–

Example 158

A man dies leaving behind a father, a mother and two daughters as the only claimants to his estate. Before the inheritance can be distributed one of his daughter's dies, immediately followed by the death of his mother who also leaves a full sister behind as well.

Let us consider the distribution of the estate

Distribution of inheritance according to *Ḥanafī Fiqh* (see section 18.2.5) is thus:

	F 1/6	M 1/6	D 1/3	D 1/3	
D dies	FF 5/6 of 1/3	MF 1/6 of 1/3	–	ℌ Excl.	
M dies	H 1/4 of 2/9	–	–	DS 1/2 of 2/9	ℌ 1/18 (Residue)
Final shares	1/2	–	–	4/9	1/18

Distribution of inheritance according to *Mālikī*, *Shāfi'ī* and *Ḥanbalī Fiqh* (see section 18.2.9) is thus:

	F 1/6	M 1/6	D 1/3	D 1/3	
D dies (Zaid's (ra) doctrine)	FF 2/3 of 5/18	MF 1/6 of 1/3	–	ℌ 1/3 of 5/18	
M dies	H 1/4 of 2/9	–	–	DS 1/2 of 2/9	ℌ 1/18 (Residue)
Final shares	11/27	–	–	29/54	1/18

Example 159

A woman dies leaving behind a father, a mother and two daughters as the only claimants to his estate. Before the inheritance can be distributed one of his daughter's dies.

Let us consider the distribution of the estate.

	F 1/6	M 1/6	D 1/3	D 1/3
D dies (Doctrine of *radd* applied)	FM Excl.	MM 1/6 of 1/3 Increased to 1/12	–	Sf 1/2 of 1/3 Increased to 1/4
Final shares	1/6	1/4	–	7/12

Al-Ma'Mūniyyah is the case where the propositus left behind a mother, a father and two daughters, one of the daughters died as discussed in examples 158 and 159. The distribution of the inheritance is dependent on the gender of the propositus.

45. SIMULTANEOUS DEATH

Key points:

- If two (or more) individuals who are mutual heirs die together at the same time or it cannot be ascertained who died first, then according to the *Ḥanafī, Mālikī* and *Shāfi'ī Fiqh,* death is presumed to be simultaneous, and neither of the deceased can inherit from each other. This was the practice followed by Abū Bakr ﷺ and 'Umar bin Al-Khattāb ﷺ.
- In line with general principles of *Mīrāth,* only heirs alive at the time of death of the propositus can inherit from him. It therefore follows that individuals dying simultaneously cannot inherit from each other.
- If mutual heirs die together and it is known that they did not die at the same time but the sequence of deaths is not known, then the *Shāfi'ī Fiqh* states that the inheritance is suspended until the sequence of deaths is established by evidence or by agreement amongst the surviving heirs.
- According to the *Ḥanbalī Fiqh* mutual heirs who die together or the sequence of death cannot be ascertained are entitled to inherit from each other. According to one report, this was the view of 'Alī bin Abī Ṭālib ﷺ and 'Abdullâh bin Mas'ūd ﷺ.

Example 160

Two full brothers (Bilal and Mubarak) die in a shipwreck and it cannot be ascertained who died first. They leave behind their mother, their paternal uncle (BfF) and one daughter each. Bilal leaves behind a net estate of £9000 and Mubarak behind a net estate of £1800.

According to the *Ḥanafī, Mālikī* and *Shāfi'ī Fiqh*, Bilal and Mubarak do not inherit from each other.

Bilal's estate is inherited thus:

Mother	1/6 = £150
Bilal's daughter	1/2 = £450
Paternal uncle	1/3 = £300

Mubarak's estate is inherited thus:

Mother	1/6 = £300
Mubarak's daughter	1/2 = £900
Paternal uncle	1/3 = 600

The final distribution of the estates according to the *Ḥanafī, Mālikī* and *Shāfi'ī Fiqh* is thus:

Mother	£150 + £300 = £450
Bilal's daughter	£450
Mubarak's daughter	£900
Paternal uncle	£300 + £600 = £900

According to the *Ḥanbalī Fiqh* Bilal and Mubarak inherit from each other.

If we assume Bilal died first his estate is distributed thus:

Mother	1/6 = £150
Bilal's daughter	1/2 = £450
Brother Mubarak	1/3 = £300
Paternal uncle	Excluded

If we assume Mubarak died first his estate is distributed thus:

Mother	1/6 = £300
Mubarak's daughter	1/2 = £900
Brother Bilal	1/3 = £600
Paternal uncle	Excluded

The share allocated to Mubarak is redistributed to his heirs, his mother, his daughter and his paternal unlce.

The share allocated to Bilal is redistributed to his heirs, his mother, his daughter and his paternal unlce.

The final distribution of two brother's estates is thus:

Mother	£150 + £300 + (1/6 of £300) + (1/6 of £600) = £600
Bilal's daughter	£450 + (1/2 of £600) = £750
Mubarak's daughter	£900 + (1/2 of £300) = £1050
Paternal uncle	(1/3 of £300) + 1/3 of £600) = £300

46. DOCTRINES *RADD* AND *'AWL*

Key points:

- Under certain circumstances, after allocation of the estate amongst all the heirs with fixed shares, there is a residue left over but there are no residuaries (*'Aṣabāt*). This residue is returned to those sharers who are entitled to it, in proportion to their original shares. This residue is called *Al-Radd* and we have to apply the doctrine of *Radd* in this situation.
- 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*.

46.1 THE DOCTRINE OF *RADD*

- The doctrine of *Radd* applies when after allocation of shares amongst the heirs with fixed shares there is a residue and there is no residuary heir to inherit this residue.
- This residue by return is called *Al-Radd*.
- The *Ḥanafī* and *Ḥanbalī Fiqh* have adopted the doctrine of *Radd*. The *Shāfi'ī Fiqh* allows the doctrine of *Radd* if there is no "properly administered" *Baytul-Māl*.
- Zaid bin Thābit (ﷺ) as well as Imām Mālik (ﷺ) and Imām Shāfi'ī (ﷺ) did not adopt the doctrine of *Radd;* any residue that would otherwise be *Al-Radd* goes to *Baytul-Māl*. The later *Shāfi'ī* jurists added the clause "properly administered" to *Baytul-Māl*, thus adopting the doctrine of *Radd*. The doctrine of *Radd* is not practised by the traditional Mālikī *Fiqh*.

- Those advocating the doctrine of *Radd* quote the Qur'ānic text (33:6), *"Blood relatives are nearer, the one to the other, than other believers"*. They argue that any blood relative has a greater right to inheritance than any stranger or the community as a whole represented by *Baytul-Māl*.
- Those not in favour of the doctrine of *Radd* argue that the shares prescribed by the Qur'ān should not be increased and any excess should go to *Baytul-Māl*.
- There is difference of opinion amongst Muslim jurists who practice the doctrine of *Radd* as to the way *Al-Radd* is distributed amongst the sharers.
- According to 'Uthmān bin 'Affān ﷺ, all the Qur'ānic heirs are entitled to *Al-Radd*.
- 'Abdullâh bin Mas'ūd ﷺ and 'Abdullâh bin 'Abbās ﷺ had variant views as regards who is entitled to *Al-Radd*.
- Under traditional *Ḥanafī Fiqh*, all the Qur'ānic heirs except the spouse are entitled to inherit *Al-Radd*. Some modern Ḥanafī jurists have entitled the spouse to *Al-Radd* in preference to *Baytul-Māl* if there are no other claimants at all, because they argue that it is better to give the *Al-Radd* to the spouse than to *Baytul-Māl*.
- After the sharers (*Aṣḥābul-Furūḍ*) have been allotted their shares, the residue (if any) is inherited in the following manner:
  1. In the first instance, the residue devolves upon the residuaries.
  2. If there are no residuaries, the residue (*Al-Radd*) is distributed amongst the fixed sharers (except spouse). In situations where there is a residuary (including ﷺ or ﷺ acting as residuary), the question

of *Al-Radd* does not arise.

3. If there are no residuaries and no sharers (except spouse) the residue devolves upon the distant kindred.
4. The spouse is not entitled to *Al-Radd* because he or she is not a blood relative. The Qur'ānic text (33:6) cited earlier on which the doctrine of *Radd* is based upon, refers to blood relatives. Any excess after the spouse has been given his or her share goes to *Baytul-Māl*.

- The sharers normally entitled to *Al-Radd* are:
  - Mother, true grandmother
  - Daughter, son's daughter
  - Full sister, consanguine sister
  - Uterine brother, uterine sister
- Careful examination of the above five groups of heirs reveals that *Al-Radd* can be given to either one , two or three of these types of heirs, but no more than three.

46.1.1 Examples of *Al-Radd* distribution

- The following examples demonstrate the doctrine of *Radd*.
- In each example, none of the heirs can act in the capacity of residuary, hence any residue is distributed as *Al-Radd*.

Example 161

A man dies leaving behind only one daughter as the sole heir.

The daughter gets 1/2 as a fixed sharer and she gets 1/2 as *Al-Radd*. Therefore, the daughter as the sole heir inherits the whole estate.

Example 162

A man dies leaving behind only two daughters as the only heirs.

The two daughters share 2/3 of the estate as sharers. They also share the 1/3 residue as *Al-Radd*. Each daughter therefore, inherits 1/2.

Example 163

A man dies leaving behind a widow and a daughter as heirs.

The heirs are assigned their fixed shares:

Widow 1/8

Daughter 1/2

The total sum of these shares is: $1/8 + 1/2 = 1/8 + 4/8 = 5/8$

In the absence of any residuary, the residue of 3/8 is returned to the sharers entitled to *Al-Radd*, in this case it is the daughter.

The final distribution of the estate is thus:

Widow 1/8

Daughter $1/2 + 3/8$ (R) $= 7/8$

Example 164

A woman dies leaving behind a husband and a daughter as the only heirs.

The heirs are assigned their fixed shares:

Husband 1/4

Daughter 1/2

The total sum of these shares is: $1/4 + 1/2 = 3/4$

In the absence of any residuary, the residue of 1/4 is returned to the sharers entitled to *Al-Radd*, in this case it is the daughter.

The final distribution of the estate is thus:

Husband 1/4

Daughter 1/2 + 1/4 (R) = 3/4

Example 165

A man dies leaving behind a widow and a son's daughter as the only heirs.

The heirs are assigned their fixed shares:

Widow 1/8

Son's daughter 1/2

The total sum of these shares is: 1/8 + 1/2 = 5/8

In the absence of any residuary, the residue of 3/8 is returned to the sharers entitled to *Al-Radd*, in this case it is the son's daughter.

The final distribution of the estate is thus:

Widow 1/8

Son's daughter 1/2 + 1/4 (R) = 7/8

Example 166

A man dies leaving behind a widow and a full sister as the only heirs.

The heirs are assigned their fixed shares:

Widow 1/4

Full sister 1/2

The total sum of these shares is: 1/4 + 1/2 = 3/4

In the absence of any residuary, the residue of 1/4 is returned to the sharers entitled to *Al-Radd*, in this case it is the full sister.

The final distribution of the estate is thus:

Widow 1/4

Full sister 1/2 + 1/4 (R) = 3/4

Example 167

A man dies leaving behind a mother and a son's daughter as the only heirs.

The heirs are assigned their fixed shares:

Mother 1/6

Son's daughter 1/2

The total sum of these shares is: 1/6 + 1/2 = 2/3

In the absence of any residuary, the residue of 1/3 is returned to the sharers entitled to *Al-Radd*, who in this case are the mother and the son's daughter.

The estate is divided amongst the mother and son's daughter in a ratio of 1:3, in proportion to their original fixed shares.

The final distribution of the estate is thus:

Mother 1/4

Son's daughter 3/4

Example 168

A man dies leaving behind a true grandmother and a uterine sister as the only heirs.

The heirs are assigned their fixed shares:

True grandmother 1/6

Uterine sister 1/6

The total sum of these shares is: 1/6 + 1/6 = 1/3

In the absence of any residuary, the residue of 2/3 is returned to the sharers entitled to *Al-Radd*, in this case it is the true grandmother and the uterine sister.

The estate is divided amongst the true grandmother and uterine sister in a ratio of 1:1, in proportion to their original fixed shares.

The final distribution of the estate is thus:

True grandmother 1/2

Uterine sister 1/2

Example 169

A man dies leaving behind a true grandmother and two uterine sisters as the only heirs.

The heirs are assigned their fixed shares:

True grandmother 1/6

Two uterine sisters 1/3

The total sum of these shares is: 1/6 + 1/3 = 1/2

In the absence of any residuary, the residue of 1/2 is returned to the sharers entitled to *Al-Radd*, in this case it is the true grandmother and the uterine sisters.

The estate is divided amongst the true grandmother and uterine sisters in a ratio of 1:2, in proportion to their original fixed shares.

The final distribution of the estate is thus:

True grandmother 1/3

Two uterine sisters 2/3 (1/3 each)

Example 170

A man dies leaving behind a widow, a mother and a daughter as the only heirs.

The heirs are assigned their fixed shares:

Widow 1/8

Mother 1/6

Daughter 1/2

The total sum of these shares is: 1/8 + 1/6 + 1/2 = 19/24

In the absence of any residuary, the residue of 5/24 is returned to the sharers entitled to *Al-Radd*, who in this case

are the mother and the daughter.

After the widow has been allocated her share of 1/8, the residue of 7/8 is distributed amongst the mother and daughter in a ratio of 1:3, in proportion to their original fixed shares.

The final distribution of the estate is thus:

Mother gets 1/4 of 7/8 = 7/32

Daughter gets 3/4 of 7/8 = 21/32

Widow gets 1/8 = 4/32

Example 171

A man dies leaving behind a widow, a mother and two daughters as the only heirs.

The heirs are assigned their fixed shares:

Widow 1/8

Mother 1/6

Two daughters 2/3

The total sum of these shares is: 1/8 + 1/6 + 2/3 = 23/24

In the absence of any residuary, the residue of 1/24 is returned to the sharers entitled to *Al-Radd*, who in this case are the mother and two daughters.

After the widow has been allocated her share of 1/8, the residue of 7/8 is distributed amongst the mother and two daughters in a ratio of 1:4, in proportion to their original fixed shares.

The final distribution of the estate is thus:

Mother 1/5 of 7/8 = 7/40

Two daughters 4/5 of 7/8 = 28/40 (7/20 each)

Widow 1/8 ≡ 5/40

Example 172

A woman dies leaving behind a husband, a mother and a daughter as the only heirs.

The heirs are assigned their fixed shares:

Husband	1/4
Mother	1/6
Daughter	1/2

The total sum of these shares is: $1/4 + 1/6 + 1/2 = 11/12$

In the absence of any residuary, the residue of 1/12 is returned to the sharers entitled to *Al-Radd*, who in this case are the mother and the daughter.

After the husband has been allocated his share of 1/4, the residue of 3/4 is distributed amongst the mother and daughter in a ratio of 1:3, in proportion to their original fixed shares.

The final distribution of the estate is thus:

Mother	1/4 of 3/4 = 3/16
Daughter	3/4 of 3/4 = 9/16
Husband	1/4 ≡ 4/16

Example 173

A man dies leaving behind a widow, a uterine brother and a uterine sister as the only heirs.

The heirs are assigned their fixed shares:

Widow	1/4
Uterine brother and sister	1/3

Note that the widow inherits 1/4 when there is no child and no agnatic grandchild h.l.s.

The total sum of these shares is: $1/4 + 1/3 = 7/12$

In the absence of any residuary, the residue of 5/12 is returned to the sharers entitled to *Al-Radd*, who in this case are the uterine brother and uterine sister.

After the widow has been allocated her share of 1/4, the residue of 3/4 is distributed amongst the uterine brother and uterine sister equally.

The final distribution of the estate is thus:

Uterine brother	1/2 of 3/4 = 3/8
Uterine sister	1/2 of 3/4 = 3/8
Widow	1/4 ≡ 2/8

Example 174

A man dies leaving behind a widow, a mother, a uterine brother and a uterine sister as the only heirs.

The heirs are assigned their fixed shares:

Widow	1/4
Mother	1/6
Uterine brother and sister	1/3

The total sum of these shares is: $1/4 + 1/6 + 1/3 = 3/4$

In the absence of any residuary the residue of 1/4 is returned to the sharers entitled to *Al-Radd*, who in this case are the mother and uterine siblings.

After the widow has been allocated her share of 1/4, the residue of 3/4 is distributed amongst the mother and uterine siblings in a ratio of 1:2, in proportion to their original fixed shares.

The final distribution of the estate is thus:

Uterine brother and sister	2/3 of 3/4 = 1/2
Mother	1/3 of 3/4 = 1/4
Widow	1/4

The uterine brother and uterine sister will share the 1/2 equally so each gets 1/4.

Example 175

A man dies leaving behind a widow, two true grandmothers (MM and MF) and two uterine sisters as the only heirs.

The heirs are assigned their fixed shares:

Widow	1/4
Two true grandmothers	1/6
Two uterine sisters	1/3

The total sum of these shares is: 1/4 + 1/6 + 1/3 = 3/4

In the absence of any residuary, the residue of 1/4 is returned to the sharers entitled to *Al-Radd*, who in this case are the true grandmothers and uterine sisters.

After the widow has been allocated her share of 1/4, the residue of 3/4 is distributed amongst the true grandmothers and uterine sisters in a ratio of 1:2, in proportion to their original fixed shares.

The final distribution of the estate is thus:

Two true grandmothers	1/3 of 3/4 = 1/4 (1/8 each)
Two uterine sisters	2/3 of 3/4 = 1/2 (1/4 each)
Widow	1/4

Example 176

A man dies leaving behind a full sister, a consanguine sister and a uterine sister as the only heirs.

The heirs are assigned their fixed shares:

Full sister	1/2 ≡ 3/6)
Consanguine sister	1/6
Uterine sister	1/6

The total sum of these shares is: 3/6 + 1/6 + 1/6 = 5/6

In the absence of any residuary, the residue of 1/6 is returned to the sharers entitled to *Al-Radd*, which in this case is all the three heirs.

Al-Radd is distributed amongst all three heirs. One way to do this calculation is to convert all shares into fractions with a common denominator (6) and then reduce the denominator to the value of the sum of the numerators (5) so the final shares are:

Full sister 3/6 increased to	3/5
Consanguine sister 1/6 increased to	1/5
Uterine sister 1/6 increased to	1/5

Example 177

A man dies leaving behind a mother, a daughter and a son's daughter as the only heirs.

The heirs are assigned their fixed shares:

Mother	1/6
Daughter	1/2 ≡ 3/6)
Son's daughter	1/6

Note that the son's daughter (DS) gets 1/6 to make a total of 2/3 with the daughter.

The total sum of these shares is: 1/6 + 3/6 + 1/6 = 5/6

In the absence of any residuary, the residue of 1/6 is returned to the sharers entitled to *Al-Radd*, which in this case is all the three heirs.

Al-Radd is distributed amongst all three heirs. One way to do this calculation is to convert all shares into fractions with a common denominator (6) and then reduce the denominator to the value of the sum of the numerators (5)

so the final shares are:

Mother 1/6 increased to	1/5
Daughter 3/6 increased to	3/5
Son's daughter (DS) 1/6 increased to	1/5

Example 178

A man dies leaving behind a mother, a full sister and a uterine brother.

The heirs are assigned their fixed shares:

Mother	1/6
Full sister	1/2 ≡ 3/6)
Uterine brother	1/6

Note that the mother inherits 1/6 in the presence of two or more siblings (full, consanguine or uterine).

The total sum of these shares is: 1/6 + 3/6 + 1/6 = 5/6

In the absence of any residuary the residue of 1/6 is returned to the sharers entitled to *Al-Radd*, which is all the three heirs in this case.

Al-Radd is distributed amongst all three heirs. One way to do this calculation is to convert all shares into fractions with a common denominator (6) and then reduce the denominator to the value of the sum of the numerators (5) so the final shares are:

Mother 1/6 increased to	1/5
Full sister 3/6 increased to	3/5
Uterine brother 1/6 increased to	1/5

Example 179

A woman dies leaving behind a husband and a daughter's son as the only heirs.

SD is a class I distant kindred. The distant kindred are entitled to inherit with the spouse. Therefore, this is not a case of *Al-Radd*. The distribution of the estate is thus:

Husband	1/2
Daughter's son	1/2

Example 180

A man dies leaving behind a widow and a full brother's daughter as the only heirs.

DBf is a class III distant kindred. The distant kindred are entitled to inherit with the spouse. Therefore, this is not a case of *Al-Radd*. The distribution of the estate is thus:

Widow	1/4
DBf	3/4

46.2 THE DOCTRINE OF *'AWL*

- The doctrine of *'Awl* applies when after the allocation of shares amongst the sharers (*Aṣḥābul-Furūd*) the total sum of the fixed shares is greater than one. All the shares are decreased proportionately. An exception to this is inheritance amongst the distant kindred under the system of *Tanzīl* as practiced by *Shāfi'ī* and *Ḥanbalī Fiqh*. See section 11.4.7b (rule 5) as well as examples 52 and 53.
- The doctrine of *'Awl* which is based on *Ijma* was established during the caliphate of 'Umar bin Al-Khattāb ﷺ and some say that Zaid bin Thābit ﷺ suggested the doctrine of *'Awl*.
- The doctrine of *'Awl* probably rests upon the view that a Qur'ānic share does not represent an absolute entitlement which is fixed in absolute terms, but rather one which is fixed in ratio to the other Qur'ānic shares.

- The doctrine of *'Awl* involves increasing the common denominator of all the fractional shares to the same value as the sum of all the numerators. The numerators are left unaltered. Thus, the total sum of the fractional shares is now one and each share has been proportionately reduced.
- It is interesting to note that the doctrine of *'Awl* is only applicable when the denominator of the sum of the shares is either 6, 12 or 24.
- Calculations have shown that only a limited number of improper fractions can occur to which the doctrine of *'Awl* is applied. This is illustrated in the examples below. These improper fractions (fractions greater than one) are:

7/6	8/6	9/6	10/6
13/12	15/12	17/12	
27/24			

According to 'Abdullâh bin Mas'ūd ﷺ, it is possible to have 31/24. This is because 'Abdullâh bin Mas'ūd ﷺ allows a *Maḥrūm* (see chapter 10) to act as a partial excluder. So in the case of a widow, mother, two full sisters and two uterine sisters inheriting together with a son as a *Maḥrūm*, the total sum of the shares is 31/24. This case has been named *Al-Thalathiniyyah*. The distribution of the shares would be:

W	M	2♀	2♂	S (killer)
3/31	4/31	16/31	8/31	Nil

- The doctrine of *'Awl* only occurs if there is a daughter, agnatic granddaughter (DS h.l.s.), full sister or consanguine sister amongst the heirs.
- 'Abdullâh bin 'Abbās ﷺ was of the view that in situations where the sum of the shares of the Qur'ānic heirs is greater than one, the Qur'ānic heirs who are guaranteed

a minimum share (spouse, parents and uterine siblings) should not be further reduced and the burden of necessary reduction should fall on those Qur'ānic heirs who sometimes inherit as sharers and sometimes as residuaries (namely daughter, granddaughter, full sister and consanguine sister), as the share of this group of Qur'ānic heirs is not guaranteed in the same way. Although the argument is sound, this opinion of 'Abdullâh bin 'Abbās ﷺ was preceded by the judicial authority of 'Umar bin Al-Khattāb ﷺ and has not been adopted in Sunni jurisprudence.

47.2.1 Examples of *Al-'Awl*

- The following examples illustrate how the doctrine of *'Awl* is applied in practical situations.

Example 181

A woman dies leaving behind a husband and two full sisters as the only heirs. Some say this was the first case of *Al-'Awl*.

The fixed shares of these heirs are:

Husband	1/2
Two full sisters	2/3

The total sum of these shares is:

$$1/2 + 2/3 = 3/6 + 4/6 = 7/6$$

The common denominator is 6, this is increased to the same value as the sum of the numerators which is 7. The numerator of each fraction share is left unaltered. So instead of 7/6 we have 7/7.

The final distribution of the estate is thus:

Husband	1/2 ≡	3/6 reduced to 3/7
Two full sisters	2/3 ≡	4/6 reduced to 4/7 (2/7 each)

Example 182

A woman dies leaving behind a husband, a full sister and a consanguine sister as the only heirs.

The fixed shares of these heirs are:

Husband	1/2
Full sister	1/2
Consanguine sister	1/6

The total sum of these shares is:

$$1/2 + 1/2 + 1/6 = 3/6 + 3/6 + 1/6 = 7/6$$

The common denominator is 6, this is increased to the same value as the sum of the numerators which is 7. The numerator of each fraction share is left unaltered. So instead of 7/6 we have 7/7.

The final distribution of the estate is thus:

Husband	1/2 ≡ 3/6 reduced to 3/7
Full sisters	1/2 ≡ 3/6 reduced to 3/7
Consanguine sister	1/6 ≡ 1/6 reduced to 1/7

Example 183

A man dies leaving behind a mother, two full sisters and two uterine sisters as the only heirs.

The fixed shares of these heirs are:

Mother	1/6
Two full sisters	2/3
Two uterine sisters	1/3

The total sum of these shares is:

$$1/6 + 2/3 + 1/3 = 1/6 + 4/6 + 2/6 = 7/6$$

The common denominator is 6, this is increased to the same value as the sum of the numerators which is 7. The numerator of each fraction share is left unaltered. So

instead of 7/6 we have 7/7.

The final distribution of the estate is thus:

Mother	1/6 ≡ 1/6 reduced to 1/7
Two full sisters	2/3 ≡ 4/6 reduced to 4/7 (2/7 each)
Two uterine sisters	1/3 ≡ 2/6 reduced to 2/7 (1/7 each)

Example 184

A woman dies leaving behind a husband, a mother and a full sister as the only heirs. This case has been named *al-Mubahalah* (refutation).

The fixed shares of these heirs are:

Husband	1/2 ≡ 3/6
Mother	1/3 ≡ 2/6
Full sister	1/2 ≡ 3/6

The total sum of all these shares is:

$$1/2 + 1/3 + 1/2 = 3/6 + 2/6 + 3/6 = 8/6$$

The common denominator is 6, this is increased to the same value as the sum of the numerators which is 8. The numerator of each fraction share is left unaltered. So instead of 8/6 we have 8/8.

The final distribution of the estate is thus:

Husband	1/2 ≡ 3/6 reduced to 3/8
Mother	1/3 ≡ 2/6 reduced to 2/8 = 1/4
Full sister	1/2 ≡ 3/6 reduced to 3/8

Example 185

A woman dies leaving behind a husband, a mother and two full sisters as the only heirs.

The fixed shares of these heirs are:

Husband	1/2 ≡ 3/6

Mother	1/6
Two full sisters	2/3 ≡ 4/6

The total sum of all these shares is:

1/2 + 1/6 + 2/3 = 3/6 + 1/6 + 4/6 = 8/6

The common denominator is 6, this is increased to the same value as the sum of the numerators which is 8. The numerator of each fraction share is left unaltered. So instead of 8/6 we have 8/8.

The final distribution of the estate is thus:

Husband	1/2 ≡ 3/6	reduced to 3/8
Mother	1/6	reduced to 1/8
Two full sister	2/3 ≡ 4/6	reduced to 4/8 = 1/2 (1/4 each)

Example 186

A woman dies leaving behind a husband, a full sister and two uterine brothers as the only heirs.

The fixed shares of these heirs are:

Husband	1/2 ≡ 3/6
Full sister	1/2 ≡ 3/6
Two uterine brothers	1/3 ≡ 2/6

The total sum of all these shares is:

1/2 + 1/2 + 1/3 = 3/6 + 3/6 + 2/6 ≡ 8/6

The common denominator is 6, this is increased to the same value as the sum of the numerators which is 8. The numerator of each fraction share is left unaltered. So instead of 8/6 we have 8/8.

The final distribution of the estate is thus:

Husband	1/2 ≡ 3/6	reduced to 3/8
Full sister	1/2 ≡ 3/6	reduced to 3/8
Two uterine brothers	1/3 ≡ 2/6	reduced to 2/8 (1/8 each)

Example 187

A woman dies leaving behind a husband, a mother, two full sisters and a uterine sister as the only heirs.

The fixed shares of these heirs are:

Husband	1/2 ≡ 3/6
Mother	1/6
Two full sisters	2/3 ≡ 4/6
Uterine sister	1/6

The total sum of all these shares is:

1/2 + 1/6 + 2/3 + 1/6 = 3/6 + 1/6 + 4/6 + 1/6 = 9/6

The common denominator is 6, this is increased to the same value as the sum of the numerators which is 9. The numerator of each fraction share is left unaltered. So instead of 9/6 we have 9/9.

The final distribution of the estate is thus:

Husband	1/2 = 3/6	reduced to 3/9 ≡ 1/3
Mother	1/6	reduced to 1/9
Two full sisters	2/3 ≡ 4/6	reduced to 4/9 (2/9 each)
Uterine sister	1/6	reduced to 1/9

Example 188

A woman dies leaving behind a husband, a mother, a full sister and two uterine sisters as the only heirs.

The fixed shares of these heirs are:

Husband	1/2 ≡ 3/6
Mother	1/6
Full sister	1/2 ≡ 3/6
Two uterine sisters	1/3 ≡ 2/6

The total sum of all these shares is:

1/2 + 1/6 + 1/2 + 1/3 = 3/6 + 1/6 + 3/6 + 2/6 = 9/6

The common denominator is 6, this is increased to the same value as the sum of the numerators which is 9. The numerator of each fraction share is left unaltered. So instead of 9/6 we have 9/9.

The final distribution of the estate is thus:

Husband	1/2 ≡ 3/6 reduced to 3/9 ≡ 1/3
Mother	1/6 reduced to 1/9
Full sister	1/2 ≡ 3/6 reduced to 3/9 ≡ 1/3
Two uterine sister	1/3 ≡ 2/6 reduced to 2/9 (1/9 each)

Example 189

A woman dies leaving behind a husband, two full sisters, two uterine sisters and two consanguine sisters as the only heirs. This case has been named *Al-Marwāniyyah* as well as *Al-Gharrā'*.

The fixed shares of these heirs are:

Husband	1/2 ≡ 3/6
Two full sisters	2/3 ≡ 4/6
Two uterine sisters	1/3 ≡ 2/6
Two consanguine sisters	Excluded by full sisters

The total sum of all these shares is:

$$1/2 + 2/3 + 1/3 = 3/6 + 4/6 + 2/6 = 9/6$$

The common denominator is 6, this is increased to the same value as the sum of the numerators which is 9. The numerator of each fraction share is left unaltered. So instead of 9/6 we have 9/9.

The final distribution of the estate is thus:

Husband	1/2 ≡ 3/6 reduced to 3/9 ≡ 1/3
Two full sisters	2/3 ≡ 4/6 reduced to 4/9 (2/9 each)
Two uterine sisters	1/3 ≡ 2/6 reduced to 2/9 (1/9 each)

Two consanguine sisters Nil

Example 190

A woman dies leaving behind a husband, a mother, two full sisters and two uterine sisters as the only heirs. This case has been named *Al-Shuraihiyyah*.

The fixed shares of these heirs are:

Husband	1/2 ≡ 3/6
Mother	1/6
Two full sisters	2/3 ≡ 4/6
Two uterine sisters	1/3 ≡ 2/6

The total sum of all these shares is:

$$1/2 + 1/6 + 2/3 + 1/3 = 3/6 + 1/6 + 4/6 + 2/6 = 10/6$$

The common denominator is 6, this is increased to the same value as the sum of the numerators which is 10. The numerator of each fraction share is left unaltered. So instead of 10/6 we have 10/10.

The final distribution of the estate is thus:

Husband	1/2 ≡ 3/6 reduced to 3/10
Mother	1/6 reduced to 1/10
Two full sisters	2/3 ≡ 4/6 reduced to 4/10 (1/5 each)
Two uterine sister	1/3 ≡ 2/6 reduced to 2/10 (1/10 each)

Example 191

A man dies leaving behind a widow, a mother and a full sister as the only heirs.

The fixed shares of these heirs are:

Widow	1/4 ≡ 3/12
Mother	1/3 ≡ 4/12
Full sister	1/2 ≡ 6/12

The total sum of all these shares is:

$$1/4 + 1/3 + 1/2 = 3/12 + 4/12 + 6/12 = 13/12$$

The common denominator is 12, this is increased to the same value as the sum of the numerators which is 13. The numerator of each fraction share is left unaltered. So instead of 13/12 we have 13/13.

The final distribution of the estate is thus:

Widow	1/4 ≡ 3/12 reduced to 3/13
Mother	1/3 ≡ 4/12 reduced to 4/13
Full sister	1/2 ≡ 6/12 reduced to 6/13

Example 192

A man dies leaving behind a widow, a mother and two full sisters as the only heirs.

The fixed shares of these heirs are:

Widow	1/4 ≡ 3/12
Mother	1/6 ≡ 2/12
Two full sisters	2/3 ≡ 8/12

The total sum of all these shares is:

$$1/4 + 1/6 + 2/3 = 3/12 + 2/12 + 8/12 = 13/12$$

The common denominator is 12, this is increased to the same value as the sum of the numerators which is 13. The numerator of each fraction share is left unaltered. So instead of 13/12 we have 13/13.

The final distribution of the estate is thus:

Widow	1/4 ≡ 3/12 reduced to 3/13
Mother	1/6 ≡ 2/12 reduced to 2/13
Two full sisters	2/3 ≡ 8/12 reduced to 8/13 (4/13 each)

Example 193

A woman dies leaving behind a husband, a mother and two daughters as the only heirs.

The fixed shares of these heirs are:

Husband	1/4 ≡ 3/12
Mother	1/6 ≡ 2/12
Two daughters	2/3 ≡ 8/12

The total sum of all these shares is:

$$1/4 + 1/6 + 2/3 = 3/12 + 2/12 + 8/12 = 13/12$$

The common denominator is 12, this is increased to the same value as the sum of the numerators which is 13. The numerator of each fraction share is left unaltered. So instead of 13/12 we have 13/13.

The final distribution of the estate is thus:

Husband	1/4 ≡ 3/12 reduced to 3/13
Mother	1/6 ≡ 2/12 reduced to 2/13
Two daughters	2/3 ≡ 8/12 reduced to 8/13 (4/13 each)

Example 194

A woman dies leaving behind a husband, a mother, a daughter and a son's daughter as the only heirs.

The fixed shares of these heirs are:

Husband	1/4 ≡ 3/12
Mother	1/6 ≡ 2/12
Daughter	1/2 ≡ 6/12
Son's daughter	1/6 ≡ 2/12

The total sum of all these shares is:

$$1/4 + 1/6 + 1/2 + 1/6 = 3/12 + 2/12 + 6/12 + 2/12 = 13/12$$

The common denominator is 12, this is increased to the same

value as the sum of the numerators which is 13. The numerator of each fraction share is left unaltered. So instead of 13/12 we have 13/13.

The final distribution of the estate is thus:

Husband	1/4 ≡ 3/12 reduced to 3/13
Mother	1/6 ≡ 2/12 reduced to 2/13
Daughter	1/2 ≡ 6/12 reduced to 6/13
Son's daughter	1/6 ≡ 2/12 reduced to 2/13

Example 195

A man dies leaving behind a widow, a mother, two full sisters and a uterine sister as the only heirs.

The fixed shares of these heirs are:

Widow	1/4 ≡ 3/12
Mother	1/6 ≡ 2/12
Two full sisters	2/3 ≡ 8/12
Uterine sister	1/6 ≡ 2/12

The total sum of all these shares is:

1/4 + 1/6 + 2/3 + 1/6 = 3/12 + 2/12 + 8/12 + 2/12 = 15/12

The common denominator is 12, this is increased to the same value as the sum of the numerators which is 15. The numerator of each fraction share is left unaltered. So instead of 15/12 we have 15/15.

The final distribution of the estate is thus:

Widow	1/4 ≡ 3/12 reduced to 3/15 ≡ 1/5
Mother	1/6 ≡ 2/12 reduced to 2/15
Two full sisters	2/3 ≡ 8/12 reduced to 8/15 (4/15 each)
Uterine sister	1/6 ≡ 2/12 reduced to 2/15

Example 196

A man dies leaving behind a widow, two full sisters and two uterine sisters as the only heirs.

The fixed shares of these heirs are:

Widow	1/4 ≡ 3/12
Two full sisters	2/3 ≡ 8/12
Two uterine sister	1/3 ≡ 4/12

The total sum of all these shares is:

1/4 + 2/3 + 1/3 = 3/12 + 8/12 + 4/12 = 15/12

The common denominator is 12, this is increased to the same value as the sum of the numerators which is 15. The numerator of each fraction share is left unaltered. So instead of 15/12 we have 15/15.

The final distribution of the estate is thus:

Widow	1/4 ≡ 3/12 reduced to 3/15 ≡ 1/5
Two full sisters	2/3 ≡ 8/12 reduced to 8/15 (4/15 each)
Two uterine sister	1/3 ≡ 4/12 reduced to 4/15 (2/15 each)

Example 197

A woman dies leaving behind a husband, a father, a mother and four daughters as the only heirs.

The fixed shares of these heirs are:

Husband	1/4 ≡ 3/12
Father	1/6 ≡ 2/12
Mother	1/6 ≡ 2/12
Four daughters	2/3 ≡ 8/12

The total sum of all these shares is:

1/4 + 1/6 + 1/6 + 2/3 = 3/12 + 2/12 + 2/12 + 8/12 = 15/12

The common denominator is 12, this is increased to the same

value as the sum of the numerators which is 15. The numerator of each fraction share is left unaltered. So instead of 15/12 we have 15/15.

The final distribution of the estate is thus:

Husband	1/4 ≡ 3/12 reduced to 3/15 ≡ 1/5
Father	1/6 ≡ 2/12 reduced to 2/15
Mother	1/6 ≡ 2/12 reduced to 2/15
Four daughters	2/3 ≡ 8/12 reduced to 8/15 (2/15 each)

Example 198

A man dies leaving behind a widow, a mother, two full sisters and two uterine brothers as the only heirs.

The fixed shares of these heirs are:

Widow	1/4 ≡ 3/12
Mother	1/6 ≡ 2/12
Two full sisters	2/3 ≡ 8/12
Two uterine brothers	1/3 ≡ 4/12

The total sum of all these shares is:

1/4 + 1/6 + 2/3 + 1/3 = 3/12 + 2/12 + 8/12 + 4/12 = 17/12

The common denominator is 12, this is increased to the same value as the sum of the numerators which is 17. The numerator of each fraction share is left unaltered. So instead of 17/12 we have 17/17.

The final distribution of the estate is thus:

Widow	1/4 ≡ 3/12 reduced to 3/17
Mother	1/6 ≡ 2/12 reduced to 2/17
Two full sisters	2/3 ≡ 8/12 reduced to 8/17
Two uterine brothers	1/3 ≡ 4/12 reduced to 4/17

Example 199

A man dies leaving behind a widow, a mother, a father and two daughters as the only heirs. This case has been named *Al-Minbāriyyah* because 'Alī bin Abī Ṭālib ﷺ was asked about this case while he was on the *Minbār* (pulpit) delivering the Friday *Khutbah*.

The fixed shares of these heirs are:

Widow	1/8 ≡ 3/24
Mother	1/6 ≡ 4/24
Father	1/6 ≡ 4/24
Two daughters	2/3 ≡ 16/24

The total sum of all these shares is:

1/8 + 1/6 + 1/6 + 2/3 = 3/24 + 4/24 + 4/24 + 16/24 = 27/24

The common denominator is 24, this is increased to the same value as the sum of the numerators which is 27. The numerator of each fraction share is left unaltered. So instead of 27/24 we have 27/27.

The final distribution of the estate is thus:

Widow	1/8 ≡ 3/24 reduced to 3/27 ≡ 1/9
Mother	1/6 ≡ 4/24 reduced to 4/27
Father	1/6 ≡ 4/24 reduced to 4/27
Two daughters	2/3 ≡ 16/24 reduced to 16/27 (8/27 each)

47. MARRIAGE, DIVORCE AND SUCCESSION

47.1 MARRIAGE

Key points:

- This chapter covers the essential points regarding marriage and divorce which affect succession.
- For inheritance to take place between a husband and wife it is necessary that a valid marriage has taken place.
- In Islām, marriage is a civil contract to which both parties, a man and a woman, freely consent and accept.
- A Muslim man may have up to four wives at any one time.
- Consummation of marriage is not necessary for purposes of Islāmic inheritance.
- A Muslim man can marry women of the "Book" (Christian or Jewish women). See section 10.2.
- A Muslim woman is allowed to marry only a Muslim, otherwise the marriage is invalid.
- A marriage contract recited jokingly concludes a marriage (similarly with divorce).

The following are necessary for a valid marriage:

- A man and a woman who have the capacity to enter into a contract and the capacity to marry each other (i.e. there are no prohibitions to marriage for the couple).
- There should be recital of the marriage contract with both definite and clear proposal and acceptance of marriage.

- Guardian's approval. According to the *Ḥanafī Fiqh*, a person can contract a marriage as soon as he or she has attained the age of puberty. The presumption is that puberty is reached at fifteen years, but evidence can be produced to the effect that it is reached at an earlier age. The *Ḥanafī Fiqh* also holds that a woman who is adult and sane has the legal capacity to contract her own marriage.
- According to the *Mālikī, Shāfi'ī* and *Ḥanbalī Fiqh*, an adult virgin woman does not have the legal capacity to contract herself in marriage. The guardian's approval is necessary.
- Suitable witnesses are necessary (2 males or 1 male plus 2 females) at the time of the marriage contract.
- Ascertainment of both parties to the contract (who is marrying who must be absolutely clear).
- *Mahr* (dower) is mentioned in the Qur'ān in *Sūrah An-Nisā'* Verse 4 as an essential part of a Muslim marriage. *Mahr* is a marriage gift given by the bridegroom to his wife.

47.2 MARRIAGE DURING DEATH SICKNESS

- The majority view is that marriage during death sickness (*Maraḍul-Mawt*) is similar to marriage during health.
- See section 49.2 for details.

47.3 DIVORCE

47.3.1 *At-Ṭalāq*

- *Ṭalāq* (divorce) is dissolution of the marriage contract by prescribed formulae.
- Although the term divorce in the western sense of the

word is not exactly the same as the Islāmic concept of *Talāq*, it is used here to denote *Ṭalāq*.

- For a divorce to be valid the husband pronouncing the divorce must be sane and an adult.
- *Ṭalāq* is an extra-judicial proceeding.
- A divorce pronounced in a state of intoxication is valid according to all the four Sunni *Madhāhib* if the divorcer has voluntarily consumed an intoxicant forbidden in Islāmic law.
- A divorce pronounced jokingly is valid (similarly with marriage and freeing of a slave, based on a saying of the Prophet (ﷺ).
- For our purposes divorce can be divided into two types, *Ṭalāq Al-Raj'ī* and *Ṭalāq Al-Bā'in*.
- *Ṭalāq Al-Raj'ī* is revocable and *Ṭalāq Al-Bā'in* is irrevocable.
- The *Sunnah* method of *Ṭalāq* consists of either a single pronouncement of divorce during a period of *Ṭuhr* (period of purity between menstruations) followed by abstinence from sexual intercourse during the *'Iddah* (waiting period) or it consists of three pronouncements of divorce made during three successive periods of *Ṭuhr* with abstinence from sexual intercourse.

47.3.1.1 Revocable divorce (*Ṭalāq-Raj'ī*)

- A revocable divorce is one in which the husband is empowered to revoke the divorce during the waiting period (*'Iddah*) irrespective of the consent of the wife.
- One of the conditions of a revocable divorce is that the marriage should have been consummated, because a wife divorced before consummation of marriage does not have to observe the waiting period (*'Iddah*).
- If the divorce is revocable (*Ṭalāq Al-Raj'ī*) the husband and wife are entitled to inherit from each other if either should die while the woman is observing her waiting period (*'Iddah*). All the four main Sunni *Madhāhib* agree on this. See also sections 49.3 and 49.4.
- If a Christian/Jewish wife who has become divorced revocably becomes a Muslim during her waiting period (*'Idda*) she is entitled to inherit.

47.3.1.2 Irrevocable divorce (*Talāq Al-Bā'in*)

- The *Sunnah* method of *Ṭalāq* becomes irrevocable on expiration of the *'Iddah* period or on the third pronouncement of divorce.
- *Ṭalāq Al-Bid'ah* consists of a triple pronouncement of *Talāq* in one go or pronouncement of *Ṭalāq* with an expression of finality. This form of *Ṭalāq* becomes irrevocable immediately.
- The *Mālikī Fiqh* does not recognise the validity of *Ṭalāq Al-Bid'ah*.
- The *Ḥanafī* and *Shāfi'ī Fiqh* consider *Ṭalāq Al-Bid'ah* to be valid but sinful.
- Once a divorce becomes irrevocable the husband may not return to his former wife and there is no right to mutual inheritance between the husband and wife. See also sections 49.3 and 49.4.
- *Khul'* and *Mubāra'ah* separation operate as an irrevocable divorce.
- Divorce pronounced before consummation of marriage (or valid seclusion) operates as an irrevocable divorce.

47.3.2 *Khul'*

- In *Khul'* the wife requests release from the marriage and pays a consideration to the husband. If the husband accepts, this operates as an irrevocable divorce from the time of acceptance of the offer.
- Also referred to as *Talāq-Bil-Iwad* by the *Mālikī* jurists
- The wife who is seeking a *Khul'* separation from her husband must be sane.
- The woman must observe *'Iddah* for *Khul'* separation.

47.3.3 *Mubâra'ah*

- *Mubāra'ah* is dissolution of a marriage by mutual agreement between the spouses.
- In *Mubāra'ah* separation the wife does not pay any financial consideration to the husband.
- This operates as an irrevocable divorce.

47.4 THE WAITING PERIOD FOR WOMEN (*'IDDAH*)

Key points:

- The necessity for a waiting period (*'Iddah*) for a woman is to be found in the Qur'ān *Sūrah Al-Baqarah* Verse 228 and *Sūrah At-Ṭalāq* Verses 1-4.
- Imposition of *'Iddah* makes it possible to ascertain whether or not the woman is pregnant from her previous husband.
- The length of time *'Iddah* is observed is important for inheritance purposes.

1. Waiting period for divorcee

i. There is no waiting period for a divorced woman if there has been no consummation of marriage and valid seclusion (*Khilwah Al-Sahīḥah*) have not taken place. The divorce in such a situation is irrevocable. The *Shāfi'ī Fiqh* observes that valid seclusion has no effect.

ii. The waiting period for a divorced woman otherwise is one of the following: (Note that majority of Muslim jurists agree that the term of *'Iddah* for the wife in case of *Khul'* is the same as for divorce.)

A. Non-menstruating woman

i. For a premenstrual or postmenopausal woman it is three lunar months.

ii. However, if she menstruates she must restart the waiting period and the menstruation will not be included in the waiting period.

iii. If the husband dies during her waiting period in a revocable divorce she must restart her waiting period of a widow from the time of death of her husband.

iv. If the husband dies during her waiting period in an irrevocable divorce she will continue her waiting period of a divorcee if the divorce was pronounced by the husband while he was healthy. However, if the husband pronounced divorce during his *Maraḍul-Mawt* against the wishes of the wife then according to the *Ḥanafī* and *Ḥanbalī Fiqh* she will need to restart her waiting period of a widow from the time of death of her husband.

B. Menstruating woman

i. For a menstruating woman, the waiting period is three menstrual cycles after pronouncement of divorce according to the to *Ḥanafī* and *Ḥanbalī Fiqh*. This was the view of the majority of the Companions

of the Prophet (ﷺ). According to the *Mālikī* and *Shāfi'ī Fiqh* it is three periods free from menstruation including the free period during which divorce is pronounced. This difference is due to the interpretation of the Arabic word *Qar* (plural *Qurū'*).[1]

ii. If the husband dies during her waiting period in a revocable divorce she must restart her waiting period of a widow from the time of death of her husband.

iii. If the husband dies during her waiting period in an irrevocable divorce, she will continue her waiting period of a divorcee if the divorce was pronounced by the husband while he was healthy. However, if the husband pronounced divorce during his *Maraḍul-Mawt* against the wishes of the wife then according to the *Ḥanafī* and *Ḥanbalī Fiqh* she will need to restart her waiting period of a widow from the time of death of her husband.

C. Pregnant woman

i. For a pregnant woman, the waiting period is until the delivery of the child.

2. Waiting period for widow

A. Non-pregnant widow

i. The waiting period of a non-pregnant widow is four months and ten days even if the marriage is not consummated.

[1] Lexically, the word *Qurū'* can mean the time of purity between menstrual periods (*Ṭuhr*) or it can mean menstruation (*Ḥaid*) itself. The opinion of the majority of the Companions of the Prophet (ﷺ) is that it means menstruation.

B. Pregnant widow

i. For a pregnant widow, the waiting period ends on delivery of the child.

47.5 DIVORCE/*KHUL'* DURING DEATH SICKNESS

◆ For the opinions of the four main *Sunni Madhāhib* see sections 49.3 and 49.4.

48. *Al-WAṢIYYAH* : The ISLAMIC WILL

Key points:

- The Islāmic will is called *Al- Waṣiyyah* and its importance is clear form the following *Ḥadīthān*:

"It is the duty of a Muslim who has anything to bequest not to let two nights pass without writing a will about it." (Ṣaḥīḥ Al-Bukḥārī)

"A man may do good deeds for seventy years but if he acts unjustly when he leaves his last testament, the wickedness of his deed will be sealed upon him, and he will enter the Fire. If, (on the other hand), a man acts wickedly for seventy years but is just in his last will and testament, the goodness of his deed will be sealed upon him, and he will enter the Garden." (Musnad Ibn Ḥanbal and Ibn Mājah)

- A will is a transaction which comes into operation after the testator's death.
- The one who makes a *Waṣiyyah* is called a testator (*Al-Mūsī*).
- The one on whose behalf a will is made is called a legatee (*Al-Mūṣā Lahu*). Technically speaking, the term "testatee" is propbably a more accurate translation of *Al-Mūṣā Lahu*. However, the term "legatee" is more commonly used in this context and I have therefore, used the term "legatee" to refer to a beneficiary of the will (*Waṣiyyah*). The term "donee" is used for the beneficiary of a gift (*Hibah*).
- It should be noted that according to the general consensus of Muslim scholars the Qur'ānic Verses on bequests (2:180 and 2:240) were abrogated by the

Qur'ānic Verses on inheritance (4:11 and 4:12).

- *Sharī'ah* has placed two restrictions on the testator. Firstly, to whom he can bequeath his estate and secondly, the amount that he can bequeath.
- These two restrictions are based on the following two *Ḥadīth*:

Narrated by Sa'd bin Abī Waqqās ﷺ:*"I was stricken by an ailment that led me to the verge of death. The Prophet came to pay me a visit. I said, "O Allāh's Apostle! I have much property and no heir except my single daughter. Shall I give two-thirds of my property in charity?" He said, "No." I said, "Half of it?" He said, "No." I said, "One-third of it?" He said, "You may do so, though one-third is also too much, for it is better for you to leave your offspring wealthy than to leave them poor, asking others for help...".* (Ṣaḥīḥ Al-Bukḥārī, Ṣaḥīḥ Muslim, Muwaṭṭa', Tirmidhī, Abū Dāwūd and Ibn Mājah.)

Narrated Abū Hurayrah ﷺ: *Allāh's Prophet (ﷺ) said, "Allāh has appointed for everyone who has a right what is due to him, and no bequest must be made to an heir.* (Abū Dāwūd). Similar *Ḥadīth* narrated by Abū Umāmah ﷺ and reported by Ibn Mājah, Aḥmad and others.

- The will gives the testator an opportunity to help someone (e.g. an orphaned grandchild, see section 8.2 no. 8, or a Christian widow) who is not entitled to inherit from him.
- According to *Shāfi'ī Fiqh*, a bequest made by a Muslim in favour of an apostate is invalid.
- The nature of the bequest (general or specific) and the legatee need to be determined as different rules apply.
- The English law of intestate succession (distribution of the estate of a person who dies without leaving a will) is very

different from the Islāmic law of intestate succession.

- There is nothing in English or U.S. law to prevent a Muslim making a valid will so that his/her estate is distributed according to *Sharī'ah*. In fact in such situations a written valid will becomes absolutely necessary for Muslims.

48.1 THE TESTATOR (*AL- MŪṢĪ*)

48.1.1 Who can be a testator

- Every adult Muslim with reasoning ability has the legal capacity to make a will.

  An adult for this purpose is someone who has reached puberty. Evidence of puberty is menstruation in girls and night pollution (wet dreams) in boys. In the absence of evidence, puberty is presumed at the completion of the age of fifteen years.

  The *Mālikī* and *Ḥanbalī Fiqh* also consider the will of a discerning (*Tamyīz*) child as valid. The age of discernment for a child is seven complete years.

- The testator must have the legal capacity to dispose of whatever he bequests in his will.

- The testator when making a will must be of sane mind, he must not be under any compulsion and he must understand the nature and effect of his testamentary act.

- The testator must own whatever he bequests.

- The testator can revoke his will by a subsequent will, actually or by implication.

  The *Ḥanafī Fiqh* alone holds that if the testator after making a will, subsequently loses his capacity to make a will, due to for instance insanity, for a period of one month or more, the will is nullified.

48.1.2 The power of the testator

- The power of the testator is limited in two ways:

  1. Firstly, he cannot bequest more than 1/3 of his net estate unless the other heirs consent to the bequest or there are no legal heirs at all or the only legal heir is the spouse who gets his/her legal share and the residue can be bequeathed.
  2. Secondly, the testator cannot make a bequest in favour of a legal heir under traditional Sunni Muslim law. However, several Islamic countries do allow a bequest in favour of a legal heir providing the bequest does not exceed the bequeathable one-third. Legal heir in this context is one who is a legal heir at the time of death of the propositus.

48.2 THE LEGATEE (*Al-MŪṢĀ LAHU*)

48.2.1 Types of legatee

- The legatee may be specific or general
- Examples of specific legatee includes a named individual or group of individuals e.g. "the daughters of my sister 'Ā'ishah".
- Examples of general legatee include the poor, the orphans, the sick and so on.
- Generally speaking, for a bequest to be valid, a legatee must be in existence at the time of death of the testator except in the case of a general and continuing legatee such as the poor, orphans etc.
- *Mālikī Fiqh* allows bequests in favour of legatees described as members of a restricted class or group

(e.g. "any children of my friend Khalid") who come into existence after the testator's death.

- A specific legatee (e.g. a named individual or group of individuals) must be in existence at the time of the bequest being made as well as alive at the time of death of the testator for the bequest to be valid.

48.2.2 Who is entitled to be a legatee

- The legatee must be capable of owning the bequest.
- Any bequest made in favour of any legal heir already entitled to a share is invalid under traditional Sunni Muslim law unless consented to by other legal heirs.
- An acknowledgement of debt in favour of a legal heir is valid.
- A bequest in favour of an individual who is excluded from inheriting due to some impediment (see chapter 10) is in itself valid as in the case of a Christian or Jewish wife.
- For a bequest in favour of an unborn child see section 48.2.7.
- The time of death of the testator is the determining factor in deciding if a relative is a legal heir or not. This status once determined cannot be changed:

1. If a person in whose favour a bequest is made is not an heir at the time the bequest is made but becomes an heir subsequently and is a legal heir at the time of death of the testator, the bequest is invalid.
   - Thus, if a man dies leaving behind a son, a father, a paternal grandfather and a bequest in favour of the paternal grandfather, the bequest is valid as he is not an heir at the time of death of the propositus. However, if the father dies before the propositus, the paternal grandfather now becomes an heir and the bequest in his favour is no longer valid.
   - A bequest in favour of a woman who later becomes the testator's wife is equally invalid.
2. Similarly, if a bequest is made in favour of an individual who is an heir at the time when the bequest is made but becomes a non-heir subsequently and is therefore, not a legal heir at the time of death of the testator, the bequest is valid.
   - Thus, if a man makes a will in favour of a grandson through a predeceased son and his only heirs are a wife and a daughter, this will as it stands is invalid because the grandson is a legal heir. However, if a son is born to the testator, he as an heir will totally exclude the grandson and the bequest becomes valid.

48.2.3 Killer as a legatee

- See also section 10.1.
- According to the *Ḥanafī Fiqh* a killer is excluded from a bequest in a similar manner to a killer being excluded from inheriting from his victim unless the heirs of the testator consent to the bequest.
- *Mālikī* and *Shāfi'ī Fiqh* allow the killer to accept a bequest in a similar manner to a gift.
- According to the *Mālikī Fiqh*, the testator has the power of condoning the offence committed on his person, thus, a bequest made after the mortal injury is valid.
- The *Ḥanbalī Fiqh* excludes a killer from a bequest in a similar manner to a killer being excluded from inheriting from his victim unless the bequest is made after the fatal

act or the testator confirms the bequest after the fatal act but before death.

48.2.4 Legatee's acceptance and rejection of a bequest

- Acceptance or rejection of a bequest by the legatee is only relevant after the death of the testator and not before.
- Generally speaking once a legatee has accepted or rejected a bequest he cannot change his mind subsequently.
- A specific legatee needs to accept a bequest. If such a legatee is a sane adult he must accept the bequest personally, otherwise it is accepted by his guardian.
- The *Ḥanafī Fiqh* allows a child who has reached the age of discrimination or the age of seven, to accept a bequest and a bequest in favour of an unborn child is fully effective without any acceptance.
- In the case of general legatees such as the poor or orphans acceptance is not necessary. Similarly, for institutions or organisations acceptance is not necessary unless they have a legal representative.
- If the legatee dies without accepting or rejecting the bequest, the bequest becomes part of the legatee's estate according to the *Ḥanafī Fiqh* because non-rejection is regarded as acceptance.
- According to the other three *Sunni Madhāhib*, the right to accept or reject the bequest passes onto the heirs of the legatee.

48.2.5 When does a legatee become the owner?

- The time at which ownership of a bequest is transferred from the testator (or his heirs) to the legatee is important

as a specific bequest itself may generate income before its actual delivery.

- According to the *Ḥanafī Fiqh*, any such income that is generated forms part of the bequest and is subject to the 1/3 rule. The other *Sunni Fiqh* state that the income belongs to the owner (legatee).
- The transfer of ownership of the bequest to the legatee according to the four main *Sunni Madhāhib* is as follows:

  Ḥanafī Fiqh ..... at time of death of testator

  Mālikī Fiqh ..... on accepting the bequest

  Shāfi'ī Fiqh ..... at time of death of testator

  Ḥanbalī Fiqh .... on accepting the bequest

48.2.6 What happens if the legatee dies before the testator?

- Generally speaking, the legatee must be in existence at the time of death of the testator for the bequest to be valid except in the case of general and continuing legatees (e.g. the poor, the orphans).
- All the *Sunni Madhāhib* agree that if the legatee dies before the testator, the bequest is invalid since a bequest can only be accepted after the death of the testator.
- If there is uncertainty as to whether or not the legatee survived the testator, such as a missing legatee, the bequest is invalid because the legatee must be alive at the time of death of the testator for the will to be valid.
- If the testator and legatee die together, such as in an air crash, and it is not certain who died first, the bequest is invalid according to the *Ḥanafī*, *Mālikī* and *Shāfi'ī Fiqh*. But according to the *Ḥanbalī Fiqh*, the bequest devolves upon the legatee's heirs who may accept or reject it.

48.2.7 Unborn child or a non-existent legatee

- A bequest in favour of an unborn child is valid if the child is born within the minimum period of gestation of six lunar months from the time of the bequest.
- If the testator acknowledges the existence of the unborn child, then the bequest is valid if the child is born within the maximum period of gestation allowed under Sunni Muslim law from the time of death of the testator. (See section 26.3.2.). The underlying principle here is that a legatee must be in existence at the time of death of the testator.
- The *Mālikī Fiqh* allows a bequest in favour of a child not yet in existence; one that is yet to be conceived (e.g. a bequest in favour of "any future son of my sister").

48.2.8 Division of bequest amongst legatees

- If a will is made in favour of a fetus, and twins are born, they share equally whether male or female.
- If a bequest is made in favour of a group of people or for different purposes, they share equally. However, if the bequest is for different purposes and it includes the performance of a religious duty (e.g. *Hajj*) on behalf of the testator, then such a duty takes precedence over other purposes.
- If the bequests exceed the allowed bequeathable third of the estate, all bequests are abated proportionally including bequests for religious duties according to *Sunni* jurisprudence. See also section 48.3.1 for details of *Ḥanafī Fiqh* view.

48.3 THE WILL (*AL-WAṢIYYAH*)

- No specific wording is necessary for making a will.
- A *Waṣiyya* can be oral or written, and the intention of the testator must be clear that the *Waṣiyyah* is to be executed after his death.
- Any expression which signifies the intention of the testator is sufficient for the purpose of constituting a bequest.
- There should be two witnesses to the declaration of the *Waṣiyyah*.
- A written *Waṣiyyah* where there are no witnesses to an oral declaration is valid if it written in the known handwriting/signature of the testator according to *Mālikī* and *Ḥanbalī Fiqh*.
- The *Waṣiyya* is executed after payment of debts and funeral expenses.
- The *Waṣiyyah* includes all gifts that are made during the death sickness (*Maraḍul-Mawt*) of the deceased, since the majority of Muslim jurists consider them as wills (see section 49.5 below).
- Certain items can be left for particular legal heirs providing the value of the item does not exceed the legal share entitlement of the heir. For example, a man can specify that he would like to leave his car or watch for a particular son. This is then given to the son as part of his legal share.
- If something specific which has been bequeathed is no longer owned by the testator at the time of death or it no longer exists, then the bequest lapses.

48.3.1 The one-third rule

- The maximum amount of estate that can be bequeathed must not exceed one-third of the estate of the deceased after payment of debts and funeral expenses unless consented to by the other heirs, in which case the shares of the heirs are reduced accordingly. This is to protect the interests of the legal heirs.
- The time at which the bequeathable one-third is calculated according to the four *Sunni Madhāhib* is as follows:

  Ḥanafī Fiqh ..... at time of distribution of the estate

  Mālikī Fiqh ..... at time of the bequest

  Shāfi'ī Fiqh ..... at time of death of testator

  Ḥanbalī Fiqh .... at time of death of testator
- If the bequests are greater than one-third of the net estate and the heirs do not consent, then the bequests are abated proportionally so that the total is up to one-third of the net estate. This is the majority view as well as the view of Imām Abū Yūsuf (رحمه الله) and Imām Muḥammad (رحمه الله).
- However, according to Imām Abū Ḥanīfah (رحمه الله), any particular bequest that is greater than 1/3 of the estate is first reduced to 1/3, then all the bequests are abated proportionally.

Example 200

A man dies leaving behind both parents and a son as his only legal heirs. In his will he bequest that one-half of his estate be donated to the local *Masjid* and one-sixth to his only grandson of a predeceased son. He leaves behind a gross estate valued at £108 000. His funeral expenses total £1000 and he leaves debts of £35 000. After payment of

funeral expenses and debts the net value of the estate of the propositus is £72 000.

The bequest of one-half to the local *Masjid* is *ultra vires* (Latin for "beyond powers"). All the legal heirs do not give consent to this bequest. The bequethable one-third is £24 000.

According to the *Shāfi'ī, Mālikī* and *Ḥanbalī Fiqh*, as well as the two prominent scholars of Imām Abū Ḥanīfa (رحمه الله) (Imām Muḥammad (رحمه الله) and Imām Abū Yūsuf (رحمه الله)) the bequest are abated proportionally so that their value is equal to the bequeathable one-third.

The bequest to the local *Masjid* is reduced to 3/4 of 1/3 (3/4 of £24 000) and the bequest to the grandson is reduced to 1/4 of 1/3 (1/4 of £24 000). Not that the ratio of the bequests remains the same, i.e. 3:1.

So the final distribution of the estate is:

Funeral expenses	£1 000
Debts	£35 000
Bequest to local *Masjid*	£18 000
Bequest to grandson	£6 000
Mother	£8 000
Father	£8 000
Son	£32 000

According to Imām Abū Ḥanīfah (رحمه الله) the bequest to the local *Masjid* of one-half must be first reduce to one-third. Then the bequests are abated proportionally. The value of the bequeathable one-third remains unaltered. The bequest to the local *Masjid* is now reduced to 2/3 of 1/3 (2/3 of £24 000) and the bequest to the grandson is reduced to 1/3 of 1/3 (1/3 of £24 000).

According to Imām Abū Ḥanīfah (رحمه الله) the final distribution

of the estate is thus:

Funeral expenses	£1 000
Debts	£35 000
Bequest to local *Masjid*	£16 000
Bequest to grandson	£8 000
Mother	£8 000
Father	£8 000
Son	£32 000

48.3.2 When more than one-third can be bequeathed

- Legal heirs of the testator can consent to bequests greater than 1/3 of the net estate.
- The power of each heir to ratify bequests greater than 1/3 is directly proportional to the inheritance share of each heir.
- The legal heir must of course have the legal capacity to give such a consent.
- If there are no legal heirs at all, then there are no individuals whose interests need to be protected and therefore, the whole of the net estate may be bequeathed. According to the *Mālikī Fiqh* in which the *Baytul-Māl* is a residuary heir, this is not allowed.
- In *Mālikī Fiqh*, the application of the 1/3 rule is absolute, a testator can never bequest more than 1/3 of the net estate. See also section 11.8.
- If the legal heirs consent to bequests greater than 1/3 of the net estate then according to the *Ḥanafī*, *Shāfi'ī* and *Ḥanbalī Fiqh* the legal heirs are effectively removing the restriction placed on the testator and the bequest is a direct transfer from the testator to the legatee.

- According to the *Mālikī Fiqh*, since this restriction cannot be removed, the consent of the legal heirs in this situation is akin to the heirs giving the legatee a gift in a new and separate transaction. In this case, the heirs must of course have the legal capacity to donate a gift.
- If the sole surviving heir is the spouse then the spouse relict inherits his/her legal share and the residue (1/2 in the case of the husband and 3/4 in the case of the widow) can be bequeathed.
- Consider a man dying and leaving behind a wife as the only heir and he bequests all his property to a friend. If the wife does not assent to the bequest, the friend as legatee is firstly allotted 1/3 because the legatee has precedence over the rights of the heirs to the extent of 1/3. The wife is then given 1/4 of what remains (2/3) which is 1/6 of the whole, and the friend as legatee takes the remainder.

48.3.3 Types of bequests

- A bequest may be specific or general.
- A specific bequest can be distinguished from other similar property, e.g. "my flat at 20, Queensborough Gardens, Edinburgh."
- A share in a particular item or a species of property is a specific bequest e.g. "one of my flats in Glasgow."
- A general bequest is not specific, e.g. "one-quarter of my estate."
- A specific bequest is determined at the time the bequest is made and must be in the possession of the testator at that time.
- A general bequest is determined at the time of death of

the testator so it should be in existence at the time of death of the testator.

48.3.4 What can be bequeathed

- Anything which can be legally owned under Islāmic law by the testator can be bequeathed.
- A bequest therefore, includes all types of property which can be legally owned under *Sharī'ah*.
- If what is bequeathed no longer exists at the time of death of the propositus, the bequest fails.

48.3.5 Usufructury bequest

- A usufructury bequest (*Manfa'ah*) is a bequest whereby the legatee has the right to use and enjoy the fruits or profits of an estate or some other thing which he does not own (e.g. the rent of flats, milk of the dairy herd, fruits of an orchard).
- Property on which a usufructury bequest is made should be in existence at the time of death of the testator.
- The one-third rule is applicable to usufructury bequests.
- According to the *Ḥanafī Fiqh*, if the usufructury bequest is in favour of a specific legatee, then the usufructury right is not inheritable should the legatee die before the expiration of the term limited for the bequest. The subject of the bequest reverts immediately to the heirs of the testator.
- According to the *Fiqh* of the other three *Sunni Madhāhib*, the usufructury right is inheritable by the legatee's heirs until the term of the bequest expires.
- According to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh*, if a usufructury bequest is made in favour of a specific

legatee, the legatee must be in existence at the time of death of the propositus.

- The *Mālikī Fiqh* allows bequests in favour of a legatee not in existence at the time of death of the propositus.

48.3.6 The Obligatory Bequest

- The juristic foundation for the obligatory bequest is to be found in the Qur'ān, *Sūrah Al-Baqarah* Verse 180:

﴿إِذَا حَضَرَ أَحَدَكُمُ ٱلْمَوْتُ إِن تَرَكَ خَيْرًا ٱلْوَصِيَّةُ لِلْوَٰلِدَيْنِ وَٱلْأَقْرَبِينَ بِٱلْمَعْرُوفِ ۖ حَقًّا عَلَى ٱلْمُتَّقِينَ ﴿١٨٠﴾﴾

"It is prescribed when death approaches any of you if he leaves any goods that he makes a bequest to parents and next of kin according to reasonable usage; this is due from the Allāh-fearing." (Qur'ān 2:180)

- The majority view is that this Verse was completely abrogated (*Nasakha*) by the revelation of the inheritance Verses (Qur'ān 4:11-12). The minority view is that the Qur'ānic Verse 2:180 was only partially abrogated. So that although a bequest for an heir was abrogated, a bequest for relatives who do not inherit was not abrogated. This was the view held by Imām Shāfi'ī (رحمه الله). The evidence for this position is that the language used in the Qur'ānic Verse 2:180 is prescriptive, and the inheritance Verses (Qur'ān 4:11-12) do not explicitly abrogate the Qur'ānic Verse 2:180. In fact the inheritance Verses contain four unqualified references to bequests.
- Some Islamic countries have used this opinion to award the grandchild of a predeceased parent, who is a not a legal heir, an obligatory bequest where the deceased has failed to make such a bequest.

48.3.7 Revocation of bequest by testator

- A testator may revoke his bequest at any time, even during death sickness (*Maraḍul-Mawt*), either expressly or by implication.

48.4 EXECUTOR OF THE WILL (*Al-WASI Al- MUKHTĀR*)

- The executor (*Al-Wasi*) of the will is the manager of the estate appointed by the testator.
- In traditional *Ḥanafī Fiqh*, with the concept of the fictitious survival of the deceased, an executor of the will is not required as the estate is managed by the *Qāḍī*.
- For those living in the West, an executor of the will needs to be appointed.
- The executor has to carry out the wishes of the testator according to Islāmic law, to watch the interests of the children and of the estate.
- The authority of the executor should be specified.
- *Ḥanafī* and *Mālikī Fiqh* state that the executor should be trustworthy and truthful; the *Shāfi'ī Fiqh* state that the executor must be just.
- The *Ḥanafī Fiqh* considers the appointment of a non-Muslim executor to be valid.
- The testator may appoint more than one executor, male or female.
- The testator should state if each executor can act independently of the other executor(s).
- The appointed executor can refuse to act as executor.
- According to the *Ḥanafī Fiqh*, he/she must inform the testator and do so before the death of the testator.
- If one starts acting as an executor, one will be regarded as having accepted the appointment, both in Islāmic and in English law.

48.5 BEQUESTS AND LEGACIES MADE DURING DEATH SICKNESS (*MARAḌUL-MAWT*)

- See also section 49.
- Any will (bequests or legacies) made by an individual (who is mentally sound and fully conscious) during his death sickness is treated as a valid will.
- Note that such bequests and legacies are executed after death (compare this with gifts and dispositions).

48.6 GIFTS AND DISPOSITIONS MADE DURING DEATH SICKNESS (*MARAḌUl-MAWT*)

- Gifts and dispositions made during death sickness of the donor which entail a financial loss on his legal heirs are treated as part of the will. See section 49.5 for details.
- A gift and a bequest are different.
- The gift transaction must be completed before death of the donor, there is no limit on its size during health of the donor, it cannot be revoked once accepted by the donee, and donee must accept the gift during the lifetime of the donor.

48.7 ACKNOWLEDGEMENT OF DEBTS DURING DEATH SICKNESS (*MARAḌUl-MAWT*)

- See section 49.7 for details.

48.8 PRACTICAL POINTS OF IMPORTANCE

These points are useful and not necessarily part of *Sharī'ah*.

- Items or property left in the will are usually called bequests.

- Sums of money left in a will are usually called legacies. I have used the word bequest to cover both bequests and legacies.
- The *Waṣiyyah* incorporates both bequests and legacies.
- It is wise to consult a Muslim scholar/solicitor with knowledge of *Sharī'ah* when making a will so that no aspect of your will is contrary to *Sharī'ah*.
- Particularly for those Muslims living in non-Islāmic states, it is very important to have a written will because the succession law of the land will not be that of *Sharī'ah*. The will should be written in ink or typed.
- The will must be unambiguous.
- The will should comply with the law of the land so that it can be executed after a person's death without any unnecessary legal problems. Needless to say nothing in the will should be contrary to *Sharī'ah*.
- Debts, taxes, funeral expenses and legal fees must be taken into consideration when assessing the amount of bequests to be made.
- If you are living in a non-Islāmic state, it is preferable to name a residuary legatee(s) in case you leave no surviving heirs. In an Islāmic country, if there are no surviving heirs, the estate goes to *Baytul-Māl* after payment of debts, expenses etc.
- It is better to state which particular *Madhhab's Fiqh* you wish to be applied to your will so as to prevent any possible problems occurring during the execution of the will.
- You must be at least 18 years of age to make a valid will under English law (similarly in most of the United States of America) unless you are a military personnel in which case you may make a valid will at the age of 17.

- Under English law no form of attestation is necessary. Some countries may require signing to be done in the presence of a public notary.
- The witnesses must not be beneficiaries or spouse of any beneficiary under English law.
- It is preferable to have witnesses over 18 years of age and easily traceable.
- The testator must sign in the presence of the witnesses.
- The signature should be at the end of the document.
- If the testator is very elderly or infirm, one of the persons acting as witness should be a doctor, who should examine the testator to make sure that he understands what he is doing and its implications. The doctor should be asked to keep a record of the examination.
- The witnesses should write their name, addresses and occupation below the testator's signature.
- The testator and witnesses must be all in the same room at the same time throughout the signing session.
- It is probably better to have three relatively young witnesses so that the witnesses are likely to out survive the testator.
- A self-proving affidavit ("Proof of Will") signed in the presence of a public notary, stating that the requite formalities in the signing of the affidavit were observed, may speed up the administration of the will after the death of the testator. The self-proving affidavit is accepted by some states in the USA.
- Name your executors who should be at least 18 years of age and should be Muslim because the executor is the

lawful guardian of the children until a guardian is appointed.

- You may have up to four executors.
- Under English Law if you marry after you make your will, your will automatically becomes invalidated and you must make a new will.
- If you divorce it is better to make a new will.
- If you have young children it is wise to name a guardian for them in case of your death.
- For joint accounts who owns what should be clearly stated after being agreed upon by all the joint holders. Most joint accounts (husband and wife) are for convenience and do not mean a 50:50 ownership. Clarify the situation before you die.
- This is particularly important for those residing in countries where the testamentary power is limited in favour of the spouse relict and the spouse relict happens to be a non-Muslim.
- In some Islamic countries members of a Muslim family may live in commensality, they do not necessarily form a "joint family" or "joint tenancy." In Hindu law the concept and principle of joint property is that the property is commonly owned. Each joint tenant has an interest in the whole but does not enjoy an exclusive right to any part thereof. None of the tenants know their specified share in the joint property. This concept is not recognised in Islamic law. Under Islamic law on the death of the owner each heir becomes entitled to a specific share. The Muslim heirs may continue to live together but this does not constitute "joint family" or "joint tenancy" as perceived in Hindu law.

- In Malaysia, the issue of joint acquired property is to be settled prior to any distribution of the estate.
- If your circumstances change you must write a new will and destroy the old one. Date your will clearly and rescind any previous wills.

48.9 DEBTS TO ALLĀH (ﷻ) AND THE *WAṢIYYAH*

- The majority view is that debts to Allāh (ﷻ) (*Zakāh*, 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. See section 8.3.1.

49. DEATH SICKNESS (*MARAḌUL-MAWT*)

Key points:

- *Sharī'ah* limits the power of the propositus who is in a state of *Maraḍul-Mawt* (death sickness) to protect the rights of legal heirs and creditors if any.

49.1 DEFINITIONS OF DEATH SICKNESS

- Death sickness (*Maradul-Mawt*) is an illness which results in death.
- The point in time at which death sickness commences may be debatable. The issues that need to be addressed are the physical and mental state of the individual, the underlying disease and the actual death.
- The state of death sickness has been said to be established when the process of dying has irrevocably begun, death comes as no surprise, circumstances cause a fear of death, the individual feels an apprehension of death, and progressive deterioration in the condition of the propositus begins.
- A prolonged illness which continues for a whole year, or more, ceases to be regarded as *Maraḍul-Mawt*. Under these circumstances, *Maradul-Mawt* will be considered to commence from the time when the deisease leading to possibility of death becomes acute.
- After the actual event of death, the point of time at which death sickness started can be established.

- If a person who is seriously ill recovers, then obviously the illness cannot be defined as death sickness.

49.2 MARRIAGE DURING DEATH SICKNESS

- According to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh*, marriage contracted during death sickness is valid in the same way as marriage contracted during health.
- If the person in a state of death sickness is the man, the woman is entitled to no more than the proper dower (*Mahr*); any excess is treated as a gift and hence requires the consent of the other heirs in the case of a Muslim wife. In the case of a non-Muslim wife, the gift is subject to the one-third rule.
- If the person in a state of death sickness is the woman, then there is no restriction on the amount of dower (*Mahr*) she can receive because the dower will benefit her heirs.
- According to the *Mālikī Fiqh*, marriage contracted during death sickness is null and void. One view is that such a man and woman do not inherit from each other when either one dies and if the marriage is consummated, the woman is entitled to no more than a proper dower (*Mahr*).

49.3 DIVORCE (*TALĀQ*) DURING DEATH SICKNESS

- A man who irrevocably divorces (*Ṭalāqul-Bā'in*) his wife during his death sickness (*Maraḍul-Mawt*) is not entitled to inherit from his wife should she die before him even if she dies during her *'Iddah* period.
- If a man divorces his Muslim wife irrevocably (*Talāqul-Bā'in*) during his death sickness (*Maraḍul-Mawt*) the woman remains a legal heir and is entitled to inherit

from him according to the *Ḥanafī*, *Mālikī* and *Ḥanbalī Fiqh*. Thus:

Ḥanafī Fiqh wife can inherit only during her *'Iddah* period

Mālikī Fiqh wife can inherit for up to one year from time of divorce

Ḥanbalī Fiqh wife can inherit for up to one year from time of divorce unless she remarries

Shāfi'ī Fiqh wife loses her right to inherit, this was the latter opinion of Imām Shāfi'ī (ﷺ)

- A Christian/Jewish wife who becomes a Muslim after being divorced would not be entitled to inherit under these circumstances because she was not a legal heir at the time of the irrevocable divorce.
- A divorced woman is not entitled to inherit if:
  1. She herself has asked the husband to repudiate her irrevocably,
  2. She obtains separation by *Khul'* divorce (see below for details),
  3. She obtains divorce herself for some other reason such as her husband's impotency.

49.4 *KHUL'* DURING DEATH SICKNESS

- If a wife obtains a *Khul'* separation during her own death sickness, the right of the husband to inherit from her according to the four main *Sunni Madhāhib* is as follows:

Ḥanafī Fiqh Husband remains legal heir during the *'Iddah* period only. If his wife dies during the *'Iddah* period, he gets either the agreed consideration for *Khul'* or his legal share or 1/3 of the net estate, whichever is less. If the wife dies after her *'Iddah* period, he gets either the agreed consideration for *Khul'* or 1/3 of the net estate, whichever is less.

Mālikī Fiqh Husband remains legal heir and is entitled to either the agreed consideration for *Khul'* or his share of the inheritance, whichever is less.

Shāfi'ī Fiqh *Khul'* separation is valid, the husband becomes a non-heir and any consideration for *Khul'* which is above the proper dower (*Mahr*) is treated as a gift to a non-heir subject to ratification by the 1/3 rule.

Ḥanbalī Fiqh Husband remains legal heir and is entitled to either the agreed consideration for *Khul'* or his share of the inheritance, whichever is less.

- If a wife obtains a *Khul'* separation during the death sickness of her husband, her right to inherit from him according to the four main *Sunni Madhāhib* is as follows:

Ḥanafī Fiqh *Khul'* separation is valid and the wife is not entitled to inherit.

Mālikī Fiqh *Khul'* separation is invalid and the wife continues to be a legal heir.

Shāfi'ī Fiqh *Khul'* separation is valid and the wife is not entitled to inherit.

Ḥanbalī Fiqh *Khul'* separation is valid and the wife is not entitled to inherit.

49.5 GIFTS DURING DEATH SICKNESS

- The term gift includes any donation of property or release of a debtor from debt. The transfer is immediate without any exchange. During health, a gift which may be of any amount can be given to any individual, rich or poor, who accepts the offer of the gift.
- There are large volumes of work on the laws relating to gifts which should be consulted by the reader if necessary.
- Gifts or dispositions made during death sickness are treated as part of the will and subject to the same restrictions as bequests (see section 48.1.2) in order to protect the interests of the legal heirs and creditors if any.
- Thus, gifts and dispositions made by an individual during his death sickness in favour of a potentail heir who is a legal heir at the time of death of the propositus are invalid.
- The one exception is a gift made to a woman whom the propositus subsequently marries. The gift is valid; a bequest in the same circumstances would be invalid.
- Transfer of possession of the gift must be before the death of the donor or it becomes a bequest anyway.
- If the recipient does not take possession of the gift before the donor dies then the gift is void according to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh*.
- According to the *Mālikī Fiqh* a disposition (gift) made during death sickness is inoperative.
- Gifts and dispositions which do not entail a financial loss to the heirs and are not in favour of a legal heir are enforced before death and taken from the whole estate.
- If more than one gift is made by the propositus in his death sickness and their total value exceeds 1/3 of the net value of the estate, then the gifts take effect in chronological precedence until the 1/3 is exhausted.
- If the total value of gifts made during death sickness and bequests exceeds 1/3 of the net estate, then gifts take priority over bequests, since gifts are transactions prior to death.

49.6 DEBT PAYMENTS DURING DEATH SICKNESS

- Debts incurred during health which are settled during death sickness are subject to the 1/3 rule according to the *Ḥanafī* and *Mālikī Fiqh* but there is no such restriction placed by the *Shāfi'ī Fiqh*.

This ruling becomes relevant if the estate of the propositus is found to be insolvent after his death.

49.7 DEBTS ACKNOWLEDGED DURING DEATH SICKNESS

- Debts acknowledged during death sickness of the propositus when there is no other evidence will affect the interests of the legal heirs and creditors if any. The four *Sunni Madhāhib* treat such debts as follows:

Ḥanafī Fiqh Such debts if in favour of a non-heir are paid out of the whole estate. If the debt is in favour of a legal heir, it requires consent of other legal heirs. Debts acknowledged during health take priority over debts acknowledged during death sickness. Status as legal heir or non-heir is determined at time of acknowledgement.

Mālikī Fiqh Such debts if challenged are investigated by the court to determine the validity of the

debts. If there is no suspicion, the debt is valid otherwise, the debt is treated as a gift and subject to ratification.

Shāfi'ī Fiqh Such debts are treated in the same manner as debts acknowledged during health.

Ḥanbalī Fiqh Such debts if in favour of a non-heir are paid out of the whole estate. If the debt is in favour of a legal heir, it requires consent of other legal heirs. Status as legal heir or non-heir is determined at time of acknowledgement.

- Debts supported with evidence with or without acknowledgement are treated as valid claims and paid prior to bequests and inheritance. Thus, debts contracted during death sickness which can be established by proof have the same footing as debts contracted during health.

49.8 PATERNITY ACKNOWLEDGED DURING DEATH SICKNESS

- There is no restriction of power on the person in death sickness to acknowledge paternity.
- It should be stressed that acknowledgement of paternity is not a method of making an illegitimate child legitimate but acknowledging a child where evidence for legitimacy already exists.
- An acknowledgement of paternity is binding for all purposes and irrevocable unless repudiated by a sane and adult acknowledged.

50. SCHEME FOR DISTRIBUTION

Key points:

Even after a person dies he still has certain rights and duties which need to be fulfilled. The duties of the deceased are four:

1. Payment of funeral expenses
2. Payment of his/her debts
3. Execution his/her will
4. Distribution of remaining estate amongst the heirs according to *Sharī'ah*

50.1 FUNERAL EXPENSES

- Funeral expenses should be paid out of a dead person's estate prior to payment of debts.

50.2 DEBTS

- 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. See section 8.3.

50.3 THE WILL

- The will is executed.
- Bequests are paid from up to one-third of the remaining net estate after payment of funeral expenses and debts.

50.4 ORDER OF INHERITANCE

The order of inheritance according to the *Ḥanafī Fiqh* is illustrated in Fig. 114 and detailed in the following 13 steps:

1. Consider all the claimants.
2. Exclude all those with any impediment (chapter 10) that disqualifies them from inheriting.
3. Firstly consider the heirs who always inherit as sharers, thus:
   - Husband/Widow

- Uterine brother
- Uterine sister
- True grandmother

4. Assign the husband or widow his or her share. Determine if the uterine sibling(s) and true grandmother are entitled to inherit or not. If so assign him/his/their appropriate share.

   Now consider the remaining heirs who can inherit as sharers and determine whether each one of them is entitled to inherit or not. If entitled to inherit, determine if he/she inherits as a sharer and if so, the share entitlement of each. These are:

- mother
- true grandfather
- daughter
- son's daughter h.l.s.
- full sister
- consanguine sister
- father

5. Now all the sharers that are entitled to inherit as sharers have been assigned their appropriate shares.
6. Add up all the assigned shares of the sharers.
7. The sum of the assigned shares will either be one, greater than one or less than one.

   If the sum of the assigned shares is one there is nothing else to do.

   If the sum of the assigned shares is greater than one then go to step 13.

   If the sum of the assigned shares is less than one then go to step 8.
8. We have a situation where after assigning all the sharers their respective shares we have a residue left. This residue is distributed amongst the residuaries.
9. I have listed the first five generations of residuaries in

order of preference within each class. Considering the life span of an average person it is unlikely that a situation would arise where heirs beyond the fifth generation are alive.

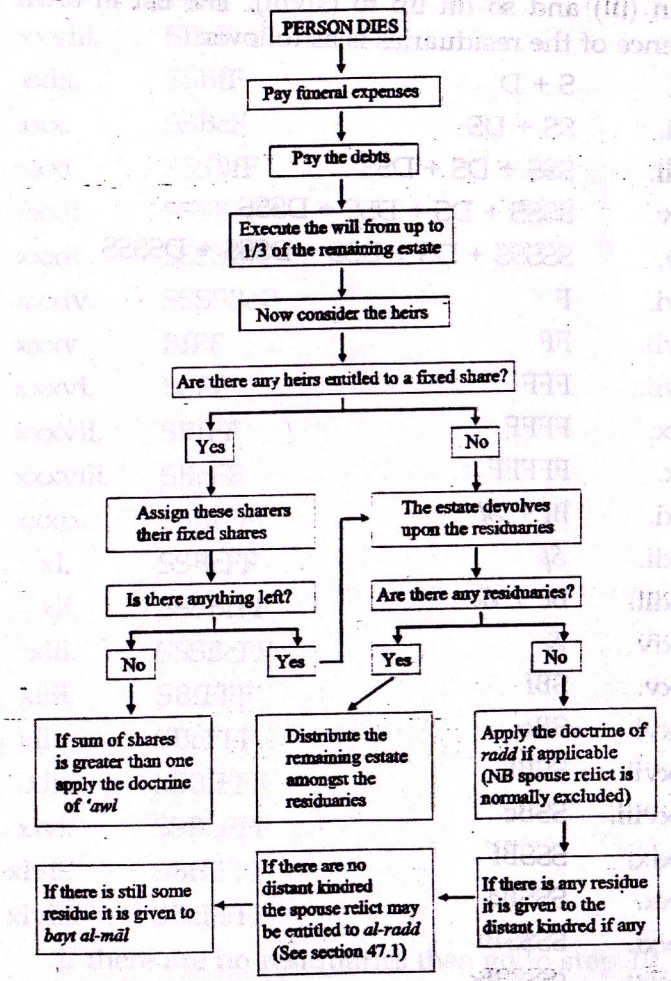

Fig. 114, this flow diagram must be studied in conjunction with the text steps 1-14 Residuary by special reason and the successor by contract have been omitted from this diagram as they do not have a practical purpose in this day and age.

The residue would first be given to heirs in (i), if there are no heirs in (i) then the residue would be given to heirs in (ii), if there are no heirs in (ii) then the residue would be given to heirs in (iii) and so on up to (xlviii). The list in order of preference of the residuaries is as follows:

i. S + D
ii. SS + DS
iii. SSS + DS + DSS
iv. SSSS + DS + DSS + DSSS
v. SSSSS + DS + DSS + DSSS + DSSSS
vi. F
vii. FF
viii. FFF
ix. FFFF
x. FFFFF
xi. Bf + $\mathcal{Sf}$
xii. $\mathcal{Sf}$
xiii. Bc + $\mathcal{Sc}$
xiv $\mathcal{Sc}$
xv. SBf
xvi SBc
xvii. SSBf
xviii. SSBc
xix. SSSBf
xx. SSSBc
xxi. SSSSBf
xxii. SSSSBc
xxiii. SSSSSBf
xxiv. SSSSSBc

xxv. BfF
xxvi. BcF
xxvii. SBfF
xxviii. SBcF
xxix. SSBfF
xxx. SSBcF
xxxi. SSSBfF
xxxii. SSSBcF
xxxiii. SSSSBfF
xxxiv. SSSSBcF
xxxv. BfFF
xxxvi. BcFF
xxxvii. SBfFF
xxxviii. SBcFF
xxxix. SSBfFF
xl. SSBcFF
xli. SSSBfFF
xlii. SSSBcFF
xliii. SBfFFF
xliv. SBcFFF
xlv. SSBfFFF
xlvi. SSBcFFF
xlvii. SBfFFFF
xlviii. SBcFFFF

If there are no residuaries then go to step 10.

10. We now have a situation where we have some residue left but no residuaries. The residue is given to the sharers in proportion to their original shares. This

is the doctrine of *Radd* which is discussed in chapter 46. The sharers entitled to receive *Al-Radd* are:

- mother
- true grandmother
- daughter
- son's daughter h.l.s.
- full sister
- consanguine sister
- uterine brother
- uterine sister

If there are no sharers entitled to *Al-Radd* then go to step 11.

11. We have a situation where we still have a residue because none of the heirs are entitled to *Al-Radd*. This residue is now given to the distant kindred.

    The distribution of inheritance is complex amongst the distant kindred. You will need to read section 11.4

    For the class I distant kindred I have listed all the claimants within the first four generations; for the class II distant kindred I have listed all the claimants within the first three generations; for the remaining classes of the distant kindred I have listed all the claimants within the first two generations. Considering the fact that the distant kindred are a long way down the line of inheritance it is unlikely that a situation would arise where heirs beyond the ones listed are entitled to inherit.

    The residue would first be given to heirs in (i), if there are no heirs in (i) then the residue would be given to heirs in (ii), if there are no heirs in (ii) then the residue would be given to heirs in (iii) and so on up to (xix). The list in order of preference is as follows:

i.	SD	DD				
ii.	SDS	DDS				
iii.	SSD	DSD	SDD	DDD		
iv.	SDSS	DDSS				
v.	SSDS	DSDS	SDDS	DDDS		
	SSSD	DSSD	SDSD	DDSD		
	SSDD	DSDD	SDDD	DDDD		
vi.	FM					
vii.	FMM	FMF				
viii.	FFM	MFM				
ix.	DBf	S$\mathcal{Sf}$	D$\mathcal{Sf}$	DBc	S$\mathcal{Sc}$	D$\mathcal{Sc}$
	SBu	DBu	S$\mathcal{Su}$	D$\mathcal{Su}$		
x.	DSBf	DSBc				
xi.	SDBf	SS$\mathcal{Sf}$	SD$\mathcal{Sf}$	SDBc	SS$\mathcal{Sc}$	SD$\mathcal{Sc}$
	SSBu	SDBu	SS$\mathcal{Su}$	SD$\mathcal{Su}$		
	DDBf	DS$\mathcal{Sf}$	DD$\mathcal{Sf}$	DDBc	DS$\mathcal{Sc}$	DD$\mathcal{Sc}$
	DSBu	DDBu	DS$\mathcal{Su}$	DD$\mathcal{Su}$		
xii.	$\mathcal{Sf}$F	BfM	$\mathcal{Sf}$M			
xiii.	$\mathcal{Sc}$F	BcM	$\mathcal{Sc}$M			
xiv.	BuF	$\mathcal{Su}$F	BuM	$\mathcal{Su}$M		
xv.	DBfF					
xvi.	S$\mathcal{Sf}$F	D$\mathcal{Sf}$F	SBfM	DBfM	S$\mathcal{Sf}$M	D$\mathcal{Sf}$M
xvii.	DBcF					
xviii.	S$\mathcal{Sc}$F	D$\mathcal{Sc}$F	SBcM	DBcM	S$\mathcal{Sc}$M	D$\mathcal{Sc}$M
xix.	SBuF	DBuF	S$\mathcal{Su}$F	D$\mathcal{Su}$F	SBuM	DBuM
	S$\mathcal{Su}$M	D$\mathcal{Su}$M				

If there are no distant kindred then go to step 13.

12. If there are no distant kindred then the residue is given to the *Baytul-Māl*. Some *Ḥanafī* scholars of

recent times have argued that the husband or widow should be entitled to *Al-Radd* in preference to the *Baytul-Māl* and this has been adopted by several Islāmic states during this century.

13. Here we have a situation where the total sum of the shares of the sharers is greater than one so we must apply the doctrine of *'Awl* (see section 46.2).

GLOSSARY

Agnate	Person related to the deceased without the intervention of a female (adj. agnatic)
Agnatise	Process whereby a male residuary heir converts a female into a residuary
Aḥâdîth (احاديث)	Plural of *Ḥadîth*
Â'îmmah (آئمة)	Plural of *Imâm*
'Aṣabah (العصبة)	Residuary heir
'Aṣabât (العصبات)	Plural of *'Aṣabah*
Aṣḥâbul-Faraiḍ (اصحاب الفرائض)	Heirs with fixed shares referred to as sharers or Qur'ânic heirs
'Awl (العول)	Literally means increase but used in context of doctrine of *'Awl*
Âyah (آية)	A sign which leads or directs one to something important; a Verse in the Qur'ân Plural is *Âyât* and dual form is *Âyatân*
Âyât (آيات)	Plural of *Âyah*
Âyatân (آيتان)	Dual form of *Âyah*

Baytul-Mâl (بيت المال)	Public treasury of Muslims
Cognate	Person related to the deceased through one or more female links
Collateral	A person having a common ancestor with the deceased but who is neither a descendant nor an ancestor of the deceased. The collaterals are full and consanguine siblings.
Dârul-Ḥarb (دار الحرب)	Enemy territory or non-Muslim state
Dhawûl-Arḥâm (ذوو الارحام)	Large group of potential heirs all related to the deceased by blood referred to as distant kindred in English
Diyâh (دية)	Blood money given in compensation to the relatives of an individual killed unintentionally
Farâ'iḍ (الفرائض)	Plural of *Farḍ* (obligation). *Farâ'iḍ* is used to denote the fixed shares in inheritance for relatives of the deceased
Fatwa (فتوى)	Legal opinion/ruling on matters of Islâmic law
Fiqh (الفقه)	Science of Islâmic law, jurisprudence
Ghurrah (غرة)	Compensation paid for destruction of an unborn child (5% of blood-money)
Ḥadîth (حديث)	Statement of Prophet Muḥammad (ﷺ), Deeds and his approvals

Ḥadîthân (حديثان)	Dual form of *Ḥadîth*
Hajb (حجب)	Exclusion of a heir from inheriting
Hajb Nuqsân (حجب نقصان)	Partial exclusion of an heir
Ḥajb Hirmân (حجب حرمان)	Total exclusion of an heir
Haid	Menstruation
'Iddah (العدة)	Legally prescribed period of waiting for a divorcee or widow during which she may not re-marry
Ijmâ' (اجماع)	Consensus of opinion on a point of Islâmic law
Imâm (امام)	Religious leader, especially during prayer
Khilwatus-Ṣaḥîḥah (خلوة الصحيحة)	Valid seclusion. Used to refer to a married couple in a situation where there is no hindrance to sexual intercourse.
Khul' (الخلع)	Dissolution of marriage at the request of the wife whereby the wife gives some compensation to the husband
Khuntâ Al-Mushkal (الخنثى المشكل)	An individual whose sex cannot be determined. Hermaphrodite.
Testatee	The beneficiary of a bequest or legacy
Li'ân (اللعان)	Imprecation, oath taken by husband accusing his wife of adultery

Madhâhib (مذاهب)	Plural of *Madhhab*
Madhhab (مذهب)	Islâmic school of jurisprudence/thought
Madhhabân (مذهبان)	Dual form of *Madhhab*
Mafqûd (المفقود)	Missing person
Maḥram (المحرم)	A male person of close blood relationship (brother, father, uncle etc.) who cannot legally marry a particular female according to Islâmic law. Husband is also a *Maḥram*.
Mahr (المهر)	Gift (bridal money/dower) given by husband to his wife at marriage, although it may be deferred after marriage. An essential condition for a valid marriage in Islâm.
Maḥrûm (المحروم)	One who has been disqualified from inheriting due to some impediment such as killing
Manfa'ah (المنفعة)	Bequest of the usufruct
Manumittur	One who frees a slave
Maraḍul-Mawt (مرض الموت)	Death sickness
Maula (المولى)	Has several meanings, can mean master, servant, a manumitted slave, the Lord (Allâh)

Mawlal-'Itâqah (مولى العتاقة)	Master of a manumitted slave, has certain rights to inheritance
Mawlâl-Mawâlah (مولى الموالاة)	Successor by contract, has certain rights to inheritance
Mîrâth (ميراث)	Inheritance
Mubâra'ah (مبارأة)	Dissolution of marriage with mutual agreement
Mujtahid (المجتهد)	Islâmic scholar qualified to make legal ruling based on original sources of Islâmic law.
Mujtahidûn (المجتهدون)	Plural of *Mujtahid*
Munaskha (منسخة)	Devolution of vested inheritance
Muqirlahu (المقرله)	Acknowledged kinsman
Mûṣalahu (الموصى له)	Testatee
Murtadd (المرتد)	Apostate
Musî (الموصي)	Testator
Musnad (المسند)	Collection of *Hadîth* compiled by Imâm Aḥmad bin Ḥanbal (رحمه الله)
Muwaṭṭa' (الموطأ)	Collection of *Ḥadîth* compiled by Imâm Mâlik (رحمه الله)

Nasab (نسب)	Blood relationship, lineage, genealogy
Nikâh (النكاح)	Marriage
Propositus	Person immediately concerned, ancestor through whom descent is traced
Qâdî (القاضي)	Judge
Qarâbah (القرابة)	Blood relationship
Qâtil (القاتل)	Killing, homicide
Qatlul-Khaṭa' (قتل الخطأ)	Unintentional homicide
Qatl Al-Sabab (قتل السبب)	Indirect killing
Qiyâs (قياس)	Analogical deduction used by Muslim jurists to derive at legal rulings
Qurû' (قروء)	Menstruation or period free from menstruation (sing. is *Qar*)
Radd (الرد)	Literally means return used in context of doctrine of *Radd*
Ṣaḥâbah (صحابة)	Companions of the Prophet Muḥammad ﷺ Sing. *Ṣaḥâbî*
Sharî'ah (شريعة)	Literally the path but refers to Islâmic law
Shuf'ah (الشفعة)	Preemption

Sirâjîyyah (السراجية)	Authoritative book on the Islâmic laws of inheritance (*Ḥanafî Fiqh*) written by Sheikh Sirâjuddin and translated into English by Sir William Jones in 1792
Succession	The transmission of rights and property of the deceased to the heirs at the moment of death, includes both testate and intestate disposition
Sunnah (سنه)	Tradition of Prophet Muḥmmad (ﷺ), plural is *Sunan*
Sûrah (سورة)	Chapter of the Qur'ân
Ṭalâq (الطلاق)	Divorce
Ṭalâqul-Bâ'in (طلاق البائن)	Irrevocable divorce
Ṭalâqur-Raj'î (طلاق الرجعي)	Revocable divorce
Tamyîz (تميز)	Ability to discern
Tanzîl (تنزيل)	Representation
Tarikah (تركة)	Gross estate of the deceased prior to deduction of rights and claims attached to it
Testator	Person who makes a will
Tirmidhî (الترمذي)	Collection of *Ḥadîth* compiled by Imâm Tirmidhî (رحمه الله)

Ṭuhr (طهر)	Period of purity (free from menstruation) for women
Usufruct	Literally means to use and enjoy
Walâ' (ولاء)	Fictitious relationship (non-blood) between two individuals which creates a relationship between them allowing inheritance. There are several types e.g. between manumitter and manumitted slave
Waladuz-Zinâ (ولد الزنى)	Iilegitimate child
Waladul-Mulâinah (ولد الملاعنة)	Disavowed child
Waṣîul-Mukhtâr (وصي المختار)	Executor of a will
Waṣiyyah (الوصية)	Islâmic will
Wurathah (الورثة)	Heirs (sing. *Warith*)
Zakâh (الزكاة)	Obligatory charity payable on wealth
Zinâ (الزنى)	Fornication

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AḤÂDITH MENTIONED IN THIS BOOK

1. 'Abd Allâh bin 'Abbâs (ﷺ) narrated: *The Prophet Muḥammad (ﷺ) said, "Give the farâ'iḍ (the shares of the inheritance that are prescribed in the Qur'ân) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased."* (Ṣaḥîḥ Al-Bukhârî)

2. Alî bin Abî Sâlib narrated (ﷺ): *You (people) recite this Verse, "After a legacy you bequeath or a debt," but Allâh's Messenger (ﷺ) decided that a debt should be discharged before a legacy...."* (Tirmidhî and Ibn Mâjah)

3. Amr bin Al-'Âṣ (ﷺ) narrated: *The Messenger of Allâh (ﷺ) said, "All the sins of a Shahid (martyr) are forgiven except debt."* (Ṣaḥîḥ Muslim)

4. Abû Hurayrah (ﷺ) narrated: *The Messenger of Allâh (ﷺ) said, "A believer's soul remains in suspense until all his debts are paid off."* (Aḥmad, Tirmidhî and Ibn Mâjah).

5. Abû Hurayrah (ﷺ) narrated: *Whenever a dead man in debt was brought to Allâh's Apostle(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 Allâh 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."* (Ṣaḥîḥ Al-Bukhârî and Muslim)

6. Ibn Abbâs (ﷺ) narrated: *A woman from the tribe of Juhaina 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 Allâh's debt as He has more right to be paid."* (Ṣaḥîḥ Al-Bukhârî)

7. Usâma bin Zaid (ﷺ) narrated: *The Prophet (ﷺ) said, "A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim."* (Ṣaḥîḥ Al-Bukhari, Muslim, Tirmidhi, Abu Dawud, Ibn Majah and Muwaṭṭa')

8. Buraydah (ﷺ) narrated: *Allâh's Prophet (ﷺ) appointed a sixth to a grandmother if no mother was left to inherit before her.* (Abû Dâwûd)

9. 'Abdullâh bin Amr Al-'Âṣ (ﷺ) narrated: *Allâh's Prophet (ﷺ) said, "If a man commits fornication with a free woman or a slave woman, the child is the product of fornication, he neither inherits nor may anyone inherit from him."* (Tirmidhî)

10. Abû Hurayrah (ﷺ) narrated: *The Prophet (ﷺ) said, "The son is for the owner of the bed."* (Ṣaḥîḥ Al-Bukhârî)

11. Jabir bin 'Abd Allâh (ﷺ) narrated: *Allâh's Prophet (ﷺ) said, "Prayer should not be said over an infant which has not uttered a sound, neither may he inherit nor leave an inheritance."* (Tirmidhî and Ibn Mâjah, but the latter did not mention "nor leave an inheritance")

12. Huzail bin Sharaḥbîl (ﷺ) narrated: *Abû Mûsa was asked regarding (the inheritance of) a daughter, a son's daughter, and a sister. He said, "The daughter will take half and the sister will take the half. If you go to Ibn Mas'ûd, he will tell*

you the same." Ibn Mas'ûd was asked and was told of Abû Mûsa's verdict. Ibn Mas'ûd then said, "If I give the same verdict, I would stray and would not be of the rightly-guided. The verdict I will give in this case, will be the same as the Prophet (ﷺ) did, i.e., one-half is for the daughter, and one-sixth for the son's daughter, i.e. both shares make two-thirds of the total property; and the residue is for the sister." Afterwards we came to Abû Mûsa and informed him of Ibn Mas'ûd's verdict, whereupon he said, "So, do not ask me for verdicts, as along as this learned man is among you." (Ṣaḥîḥ Al-Bukhârî, Tirmidhî and Ibn Mâjah)

13. 'Abd Allâh bin 'Umar (رضي الله عنهما) narrated: *"It is the duty of a Muslim who has anything to bequest not to let two nights pass without writing a will about it."* (Ṣaḥîḥ Al-Bukhârî)

14. Abû Hurayrah (رضي الله عنه) narrated: *"A man may do good deeds for seventy years but if he acts unjustly when he leaves his last testament, the wickedness of his deed will be sealed upon him, and he will enter the Fire. If, (on the other hand), a man acts wickedly for seventy years but is just in his last will and testament, the goodness of his deed will be sealed upon him, and he will enter the Garden."* (Musnad Ibn Ḥanbal and Ibn Mâjah)

15. Sa'd bin Abî Waqqâs (رضي الله عنه) narrated:*"I was stricken by an ailment that led me to the verge of death. The Prophet came to pay me a visit. I said, "O Allâh's Apostle! I have much property and no heir except my single daughter. Shall I give two-thirds of my property in charity?" He said, "No." I said, "Half of it?" He said, "No." I said, "One-third of it?" He said, "You may do so, though one-third is also too much, for it is better for you to leave your offspring wealthy than to leave them poor, asking others for help...".* (Ṣaḥîḥ Al-Bukhârî, Ṣaḥîḥ Muslim, Muwaṭṭa', Tirmidhî, Abû Dâwûd and Ibn Mâjah)

16. Abû Hurayrah (رضي الله عنه) narrated: *Allâh's Prophet (ﷺ) said, "Allâh has appointed for everyone who has a right what is due to him, and no bequest must be made to an heir.* (Abû Dâwûd). Similar *Ḥadîth* narrated by Abû Umâmah (رضي الله عنه) and reported by Ibn Mâjah, Aḥmad and others.

ṢAḤÂBAH AND MUSLIM JURISTS MENTIONED IN THIS BOOK

1. 'Abdullâh bin 'Abbâs (ﷺ), d. 68 AH/687 CE
   A Companion of the Prophet (ﷺ) who was an outstanding scholar of Qur'anic exegesis of his time. His name occurs frequently in the laws of inheritance.
2. 'Abdullâh bin Mas'ûd (ﷺ), d. 32 AH/653 CE
   One of the most learned Companions of the Prophet (ﷺ).
3. Abû Bakr, 'Abdullâh bin 'Uthmân (ﷺ), d. 13 AH/634 CE
   One of the most prominent and trusted Companions of the Prophet (ﷺ) and the first Caliph of Islâm.
4. Abû Ḥanîfah (رحمه الله), d. 150 AH/767 CE
   Real name was Nu'mân bin Thâbit bin Zutâ. Founder of the *Ḥanafî* school of law in Islâm. See page 21.
5. Abû Yûsuf Ya'qûb bin Ibrâhîm (رحمه الله), d. 182AH/798 CE
   Famous scholar and student of Abû Ḥanîfa.
6. Aḥmad bin Ḥanbal(رحمه الله), d. 241AH/855 CE
   Founder of the *Ḥanbalî* school of law in Islâm. See page 23.
7. 'Â'ishah bint Abû Bakr (ﷺ), d. 241AH/855 CE
   The daughter of Abû Bakr (ﷺ) and a wife of the Prophet (ﷺ) as well as one of the most knowledgeable individuals of the Muslim community.
8. 'Alî bin Abû Ṭâlib (ﷺ), d. 40AH/661 CE
   Cousin and son-in-law of the Prophet (ﷺ). Also fourth Caliph of Islâm.

9. 'Âmir bin Shurahbîl Al-Sha'bî (رحمه الله), d. 103 AH/721 CE.
   Famous scholar of Kûfah.
10. Muḥammad Ismâ'îl Al-Bukhârî (رحمه الله), d. 26AH/876 CE
    Regarded as the most famous traditionalist of Islam, whose work is one of the six most authentic collections of *Ḥâdîth*, generally considerd by Muslims to be the "soundest book after the Book of Allâh".
11. Muḥammad bin Yazîd Ibn Mâjah (رحمه الله), d. 273AH/887 CE
    Compiled one of the six most authentic collections of *Ḥadîth* in Kitâb Al-Sunan.
12. Muḥammad Ibn Sîrîn (رحمه الله), d. 110AH/729 CE
    A noted scholar of Basrah.
13. Mâlik bin Anas bin 'Âmir (رحمه الله), 179 AH/795 CE
    Founder of the *Mâlikî* school of law in Islâm. See page 22.
14. Muḥammad bin Al-Hasan Al-Shaybânî (رحمه الله), d. 189AH/804 CE
    Famous scholar and student of Abû Ḥanîfah (رحمه الله).
15. Muḥammad bin Idrîs Al-Shâfi'î (رحمه الله), d. 204AH/819 CE
    Founder of the *Shâfi'î* school of law in Islâm. See page 20.
16. Muḥammad bin 'Îsa At-Tirmidhî (رحمه الله), d. 279AH/892 CE
    Compiled one of the six most authentic collections of *Ḥadîth* in Kitâb Al-Sunan.
17. Muslim bin Al-Hajjâj Al-Nîsâbûrî (رحمه الله), d. 261 AH/875 CE
    One of the greatest scholars of *Ḥâdîth*, whose work is

one of the six most authentic collections of *Ḥadîth* and ranks second in importance only to that of Al-Bukhari.

18. 'Umar Al-Khaṭṭâb (ﷺ), d. 23AH/644 CE
The second Caliph of Islâm.

19. 'Uthmân bin 'Affân (ﷺ), d. 35AH/656 CE
The third Caliph of Islâm.

20. Zaid bin Thâbit (ﷺ), d. 45AH/665 CE
One of the most knowledgeable Companions and the scribes of the Prophet (ﷺ). He was particularly knowledgeable in the laws of inheritance.

CALCULATED EXAMPLES

These examples are not a substitute for reading the book but a supplement to illustrate the principles and provide a quick reference for common situations.

As in all cases of *Mîrâth* the debts of the deceased must be settled, funeral expenses paid and the deceased's will executed before distribution of the remaining estate.

All the examples assume that there are no impediments to inheritance for any of the heirs. The heirs stated in each example are the only surviving heirs/claimants.

The results shown in these calculated examples **$A_1$1 to $Y_6$12** are applicable to all the four Sunni *Fiqh*.

Note on siblings

All siblings (Bf, *Sf*, Bc, *Sc*, Bu and *Su*) are totally excluded by the presence of S, SS, SSS etc.

All siblings are also totally excluded by the presence of F, FF, FFF etc. according to the *Ḥanafî Fiqh*.

Situations where a sibling (Bf, *Sf*, Bc, *Sc*, Bu and *Su*) coexists with S, SS, SSS are not mentioned in these examples as all the siblings would be totally excluded in such situations.

Note on grandparents

For the purposes of the *Ḥanafî Fiqh*, in all the examples in this section father (F) can be substituted by the paternal grandfather (FF) in the absence of the father (F) unless otherwise stated. See sections 16.2, 16.3 and 19.2.1 for details.