

GENERAL RULES AND CATEGORIES OF HEIRS

2.1 *All financial claims of an individual who has died are related to his estate*

22.1.1 **Claims by the estate**

When a human being dies all amounts due to him are to be claimed by his estate. The estate (*tarakah*) comprises all financial claims. As for pure rights, some are inherited, while others are not inherited. An amount owed to the deceased on account of *diyah* or *ṣulḥ* is part of the estate.

22.1.2 **Claims upon the estate**

All claims upon the estate are satisfied from the estate, beginning with rights in the order of their strength. The first claim on the estate of the deceased is that of the deceased's preparation for burial, shroud, and burial. If a person dies having no wealth at all, the expenses of his burial are to be borne by the Muslims, that is, the treasury (*bayt al-māl*). The *bayt al-māl* is not to pay off his debts.

After the burial, his debts are to be given priority over his bequest if any. If the debts are not paid they prevent the execution of the bequest and distribution of inheritance.

After the debts have been satisfied, the bequest is to be executed and it prevents the distribution of inheritance up to a third of the estate. What is beyond one-third is not prevented, unless the heirs agree to the execution of what is beyond one-third.

After burial, satisfaction of debts and execution of bequest, the estate is to be distributed among the heirs.

2.2 *Causes that lead to inheritance and those that prevent it*

Besides *uṣūbah* (state of belonging to the *aṣabah* or being a residuary), the causes that lead to inheritance are three: *nikāḥ* (marriage), *raḥm* (womb), and *walā'*. *Walā'* is of two types: *walā'* resulting from

emancipation of slaves and *walā'* arising from a contract of friendship between the deceased and another person (*muwālāt*).

The causes that prevent inheritance are three: slavery, difference of religion and unjustified homicide.

22.3 *The categories of heirs*

Heirs (*aṣḥāb al-mawārīth*) fall into three categories:—

- (a) The *'aṣabāt* (agnates) who inherit on the basis of *'uṣūbah*, which is the state of being related to the male side of the family either directly or in conjunction with other agnates. They are referred to as the residuaries.
- (b) The *aṣḥāb al-farā'id* or those for whom fixed fractional shares have been identified in the sources. They are called the sharers.
- (c) The *dhawū 'l-arḥām* are relatives who are related to the deceased through a female whether on the mother's side or the father's side. They are defined as "close relatives who are not entitled to inheritance on the basis of *farīdah* (being sharers) or on the basis of *'uṣūbah* (being residuaries), whether these relatives are males or females." They are considered the outer family even though they may be closely related to the deceased. They usually inherit in the total absence of the above two categories, with the exception of the case of one of the spouses with whom they may share under certain circumstances. Legal disputes are more likely to arise in the case of this category.

22.4 *The 'aṣabāt or the agnates*

The *'aṣabāt* are not counted by number rather they are reckoned by category. According to category, the *'aṣabāt* are divided into three categories: (a) *'aṣabah bi-nafsihi* (agnate by himself); (b) *'aṣabah bi-ghayrihi* (agnate by another); and (c) *'aṣabah ma' ghayrihi* (agnate along with another).

22.4.1 *'Aṣabah bi-nafsihi* (agnate by himself)

'Aṣabah bi-nafsihi (agnate by himself) is a male who is linked to the deceased through a link that has no intervening female between them, like the son or his son. The closest *'aṣabāt* in this category are: the son,

son's son how low soever; the father, the father's father (grandfather) how high soever; real brother (same father and mother), paternal brother (same father), son of real brother, son of paternal brother; uncle of father and mother, paternal uncle of father; son of uncle of father and mother. In these relationships, the son has greater *qarābah* (nearness) to the deceased than the father, and the father is nearer than the grandfather. The nearness is established through the number of links, thus, the brother is linked to the deceased through a single link, while the uncle is linked through two links.

22.4.2 *'Aṣabah bi-ghayrihi* (agnate by another)

The *'aṣabah bi-ghayrihi* (agnate by another) is a female who becomes *'aṣabah* through a male who is at the same level as a male *'aṣabah*, like the daughter of the deceased with her brother.

22.4.3 *'Aṣabah ma' ghayrihi* (agnate along with another)

The *'aṣabah ma' ghayrihi* (agnate along with another) is like sisters of the deceased who become *'aṣabah* along with the daughters of the deceased. The difference between this and the previous type is that the *'aṣabah* whom they are joining are not *'aṣabah* by themselves.

The meaning of becoming *'aṣabah* is that like the *'aṣabah bi-nafsihi*, they may exclude some of the more remote *'aṣabah* even when there is no male heir.

22.5 *The aṣḥāb al-farā'id* or the sharers

The *'aṣḥāb al-farā'id* are those heirs whose fractional shares have been fixed and established by the Book, the *Sunnah* or *ijmā'* (consensus). These shares cannot be fixed through analogy as *qiyās* has no role to play in this area.

22.5.1 The twelve sharers

The sharers are twelve in all. Four of these are men, while eight are females. The men are: the father, the grandfather, the husband, and the uterine brother (with the same mother but not the same father). The females are: mother, grandmother, daughter, son's daughter, real sister (same mother and father), consanguine sister (same father), uterine sister (same mother), and wife.

22.5.2 Those who maintain their position

Six of these sharers maintain their position of sharer under most cases. These are: the husband, uterine brother (same mother), mother, grandmother, uterine sister, and wife.

22.5.3 Those who shift their position

The remaining six shift their position between *farīdah* (having a fixed share) and *'uṣūbah* (being a residuary). These are: the father, grandfather, daughter, son's daughter, real sister (same father and mother), and germane sister (same father). (See previous section about the types of *'aṣabāt*).

THE CHILDREN OF THE DECEASED

23.1 *The Children*

23.2 *A single son may in some cases take the entire estate*

When the deceased leaves behind one son as the only child, the son inherits the entire estate.

The position of the eldest son, under the *sharī'ah*, is not like his position that existed during the Jāhiliyyah. When there are two or more sons, as the only children, the estate is divided equally between them.

All other residuaries are excluded in the above cases.

23.3 *A single daughter as the only child inherits one-half of the estate*

When the deceased leaves behind one daughter as the only child, she inherits one-half of the entire estate.

When there are three or more, they inherit two-thirds of the estate according to the text of the Qur'ān.

When there are only two they inherit two-thirds of the estate according to most of the Companions (God be pleased with them) and according to most jurists (God bless them).

23.4 *When the heirs are sons and daughters, the division is based upon the ratio: for the male two shares of the female*

When the deceased leaves behind sons and daughters as heirs, the estate is divided among them according to the Qur'ānic rule: "For the male two shares of the female." The daughters become *'aṣabah bi-ghayrihi* in this case.⁶⁸

68. Women have sometimes been deprived unlawfully of their legitimate share of inheritance. The Supreme Court, in the well known case *Ghulam Ali et al. v. Mst. Ghulam Sarwar Naqvi* PLD 1990 SC 1, has held that in cases of inheritance

All other residuaries are excluded.

23.5 When there are no immediate heirs, but children of children, the children of the son represent the immediate heirs and share accordingly

When the deceased leaves behind children of a son and children of a daughter, when the sons and daughters have died, the children of the son stand in the place of the immediate children and inherit accordingly, that is, according to the Qur'ānic rule: "For the male two shares of the female."

The children of the daughter do not inherit as they are treated as distant kindred. The Muslim Family Laws Ordinance, 1961 alters this rule.

23.6 When the deceased leaves behind a son and daughters and the children of a predeceased son, the children of the predeceased son do not get anything according to traditional law

When the deceased leaves behind immediate children and children of a predeceased son, and there is a son among his immediate children, the children of the predeceased son—whether males alone, females alone, or both combined—do not get anything from the estate as they are excluded by the son.

The doctrine of exclusion or *ḥajb* operates in this case. The Muslim Family Law Ordinance, 1961 alters the rule stated in subsection (1) above.

brothers cannot legally claim "adverse possession" against their sister to "oust" her. Relinquishment of inheritance by a female without consideration, being void and against public policy, leads to the presumption that such relinquishment was not on account of natural love but on account of social constraints. Consequently, brothers of a female were required by law to protect the rights of their sister if ever they come into possession of their land in any capacity.

§23.7
23.7 *When there is no immediate son but just one daughter, and there is no son among the children of the predeceased son, the daughter of the predeceased son shares with the daughter of the deceased*

When the deceased leaves behind no son, but just a daughter, and there is no son among the children of the predeceased son, the daughter gets one-half of the estate, while the grand-daughter gets one-sixth to complete the two-thirds to which the daughters collectively are entitled.

If the deceased leaves behind two daughters, they get two-thirds of the estate and there is nothing for the daughter of the predeceased son.

23.8 *When the deceased leaves behind two daughters and children (male and female) of a predeceased son, the daughters get their share and the rest is shared by the children of the predeceased son*

When the deceased leaves behind two daughters and children, both male and female, of a predeceased son, the daughters get two-thirds of the estate. The remaining one-third is shared by the children of the predeceased son in the ratio of two shares of the female for the male.

If the deceased leaves behind one daughter and children, both male and female, of a predeceased son, the daughter gets one-half of the estate. The remaining one-half is shared by the children of the predeceased son in the ratio of two shares of the female for the male.

When the deceased leaves behind two daughters, son's daughter, son of a son of a son, the *zāhir* opinion in the school is that the remaining one-third is shared by the son's daughter and the son of a son of a son according to the ratio of two shares for the male and one share for the female.