THOSE WHO SHARE WITH CHILDREN

24.1 Those who participate in inheritance with the children of the deceased are six persons

The persons who can participate in the inheritance with the children of the deceased are six persons: the father, the paternal grandfather how high soever, the mother, the maternal grandmother (mother's mother), paternal grandmother (father's mother) and the wife.

Persons other than these do not inherit with the son either as sharer or as residuary. Persons other than these do not inherit with the daughter as sharer, even though they can inherit as residuaries.

24.2 The father

The father has three states in inheritance: as sharer, as residuary, and as both.

He is a sharer when the deceased leaves behind a son, a son's son how low soever. He is a residuary when there is no child (male or female), child of the son (male or female). He shares in both capacities with the daughter and son's daughter.

His share is $\frac{1}{6}th$, which is not to be decreased except through the method of reduction ('awl), and is not to be increased in his capacity as sharer under any circumstances. Thus, when there is a child among heirs, the share of the father is $\frac{1}{6}th$.

When the deceased is survived by parents and no child, the mother gets $\frac{1}{3}rd$, while the father gets $\frac{2}{3}rd$, that is, he takes the remaining.

When the deceased leaves behind one daughter and a father, the father gets $\frac{1}{6}th$ as sharer, while the daughter gets $\frac{1}{2}$. The father then takes the remaining $\frac{1}{2}$ as a residuary.

The father excludes the brothers of the deceased from inheritance.

The share of the father is reduced due to the existence of the deceased woman's huband.

The grandfather (father's father) represents the predeceased father, except when sharing with a spouse, as will be explained later.

24.3   The mother

The mother is a sharer, and she has two types of shares in inheritance: $\frac{1}{6}$th or $\frac{1}{3}$rd. Her share is not to be reduced below $\frac{1}{6}$th, except in the case of reduction ('awl), and is not to be increased beyond $\frac{1}{6}$th, except in the case of return (radd).

She is entitled to $\frac{1}{6}$th when she shares with a child or with the deceased's brother.

She is entitled to $\frac{1}{3}$rd when there is no surviving child, and no one else besides the parents.

The share of the mother is not reduced due to the existence of the deceased woman's huband.

24.4   The grandmothers

The grandmother is a sharer, and her share is $\frac{1}{6}$th.

In this context, the paternal grandmother and the maternal grandmother are the same. If both are present, they share $\frac{1}{6}$th.

The share of the grandmother is not to be reduced below $\frac{1}{6}$th even when there is more than one grandmother, except in the case of reduction ('awl), and is not to be increased beyond $\frac{1}{6}$th, except in the case of return (radd).

24.5   The husband and wife

The husband is a sharer, and he has two types of shares:—

24.5.1 The husband

1. His share is $\frac{1}{2}$ in the absence of an immediate child and the absence of the child of the son, male or female.

2. His share is $\frac{1}{4}$ when there is a child of the deceased or the child of the son, male or female.

24.5.2 The wife

The wife is a sharer, and she has two types of shares:—

1. Her share is $\frac{1}{4}$ in the absence of an immediate child and the absence of the child of the son, male or female.

2. Her share is $\frac{1}{8}$ when there is a child of the deceased or the child of the son, male or female.

3. When there is more than one wife, the $\frac{1}{4}$ or $\frac{1}{8}$, as the case may be are shared equally by them.

24.5.3 Common rules for both

Reduction (*'awl*) and return (*radd*) apply to the spouses as well.

The husband and wife cannot be excluded by anyone on the basis of *hajb* (doctrine of exclusion). They are excluded from inheritance only in the case of killing the other spouse, committing apostasy, or if they become enslaved.

24.6 The Doctrine of Exclusion (Ḥajb)

The principle of exclusion (*hajb*) is of two types: *ḥirmān* (complete deprivation) and *nuqsān* (partial deprivation).

24.6.1 Ḥajb al-ḥirmān

Hajb al-ḥirmān is complete deprivation, like the deprivation from inheritance in the case of the grandfather who is excluded by the father, and the grandmother who is excluded by the mother.

24.6.2 Ḥajb al-nuqasān

Hajb al-nuqasān is partial deprivation, like the reduction of the share of a husband or wife in the presence of the child of the deceased or the child of the son of the deceased.

24.6.3 Exception

A person who has killed the deceased, has become a slave, or has committed apostasy cannot exlcude another person in both forms of the doctrine, because such a person is deemed to be dead for purposes of inheritance.

THE SHARES OF BROTHERS AND SISTERS

25.1 The meaning of the term kalālah

The term *kalālah*, by combining the implication of verses and traditions, means a person dying without leaving behind any children or father.

There is a disagreement whether *kalālah* applies to the deceased, who does not leave behind any parent or child, or whether it means the heirs, who do not have a parent or child among them. This disagreement does not affect the shares of the heirs left behind.

25.2 The categories of brothers and sisters

Brothers and sisters are classified into three categories as follows:

(a) Germane brothers and sisters, also called full brothers and sisters. In Islamic law, they are called Banū al-A'yān. These are brothers and sisters from the same parents, that is, the same mother and father.

(b) Consanguine brothers and sisters. In Islamic law, they are called Banū al-'Allāt. These are children of a man from different wives, that is, brothers and sisters who have the same father, but different mothers.

(c) Uterine brothers and sisters. In Islamic law they are called Banăl-Ahyāf. These are children of a woman from different husbands, that is, brothers and sisters from the same mother, but different fathers.

The first two categories, that is, the germane and consanguine brothers and sisters inherit as agnates or 'aṣabah. The uterine brothers and sisters inherit as sharers or aṣhāb al-farā'iḍ.

25.3 The Uterine Brothers and Sisters

25.3.1 The uterine brothers and sisters

The uterine brothers and sisters inherit as sharers or *aṣḥāb al-farā'iḍ* with each one entitled to $\frac{1}{6}$th whether male or female.

When there are more than two they are equal parters in $\frac{1}{3}$rd.

The individual share of the uterine brothers and sisters is not to be reduced below $\frac{1}{6}$th even when there is more than one brother or sister, except in the case of reduction ('*awl*), and is not to be increased beyond $\frac{1}{3}$rd, except in the case of return (*radd*).

The doctrine of *kalālah* applies to uterine brothers and sisters. Consequently, they do not inherit with four types of heirs: (a) child, male or female; (b) son's child, male or female; (c) father; and (d) grandfather (father's father).

25.3.2 The share of the uterine brothers and sisters is not reduced due to the existence of germane (full) brothers or sisters: the ḥimāriyyah

There is agreement that the share of the uterine brothers and sisters is not anulled due to the existence of germane or consanguine brothers and sisters. There is also agreement on the point that their share is not reduced due to the existence of consanguine brothers and sisters. There was a disagreement in early Islamic law about the reduction of their share due to the existence of germane brothers and sisters as explained below.

A woman died leaving behind a husband, mother, two uterine brothers and two germane brothers. The decision by some Companions (God be pleased with them) was that the husband will get $\frac{1}{2}$, the mother will get $\frac{1}{6}$th, the two uterine brothers will get $\frac{1}{3}$rd, while the two germane brothers will get nothing. The two germane brothers brought the problem to 'Umar (God be pleased with him), who thought that the decision was correct, so the brothers said: "Assume that our father was a donkey, are we not children of the same mother?" It is reported that 'Umar (God be pleased with him) said, "You have spoken in truth," and he permitted them to be partners in the share of the uterine brothers. This is is called the Ḥimāriyyah from the word ḥimār (donkey).

The opinion adopted by the Ḥanafī school is that of the other Companions (God be pleased with them) who do not give a share to the germane brothers in this case on the basis of the rule that the share of the uterine brothers cannot be reduced due to the existence of the germane or

consanguine brothers, because the sharers are to be allocated their share prior to the 'aṣabāt.

25.4 The Germane (Full) and Consanguine Brothers and Sisters

25.4.1 The germane (full) brothers and sisters

The Banū al-A'yān or the germane (full) brothers and sisters stand in the place of immediate children (sons and daughters) in their absence.

Thus, for example, if there is just one sister as heir, she will get $\frac{1}{2}$ of the remaining estate, while two or more will inherit $\frac{2}{3}$rd. If there is just one brother as heir, he will inherit the entire estate.

When there are brothers and sisters, they will share in the ratio "for the male two shares of the female."

25.4.2 The consanguine brothers and sisters

The Banū al-'Allāt or the consanguine brothers and sisters inherit like the son's children. This means that in the absence of germane brothers and sisters, the consanguine brothers and sisters stand in their place, just like the children of the son stand in the place of the immediate children in their absence.

The males stand in the place of germane males and the females stand in the place of germane females, inheriting like them.

They do not inherit when there is a male from the Banū al-A'yān, that is, a male germane. This rule is similar to the children of the son not inheriting when a son is present among the heirs. The Muslim Family Laws Ordinance, 1961 changed the rule for the children of the son, therefore, it needs to change this rule as well for the sake of consistency in fiqh.

25.4.3 Illustrations for the inheritance of germane and consanguine brothers and sisters

Some illustrations are as follows:—

1. If the deceased leaves behind a daughter, a germane brother and a consanguine sister, the daughter gets $\frac{1}{2}$ and the remaining is for the germane brother. The consanguine sister gets nothing.

2. If the deceased leaves behind one germane sister and two consanguine sisters, the germane sister will get $\frac{1}{2}$ and the consanguine sisters $\frac{1}{6}$th to complete the $\frac{2}{3}$rd. If there were a consanguine brother

and sister in place of two consanguine sisters, they would have shared the remaining in the ratio of "for the male two shares of the female."

3. If in the above case the deceased left behind two or more germane sisters and consanguine sisters, the germane sisters will get $\frac{2}{3}rd$, while the consanguine sisters will get nothing. If, however, the two consanguine sisters had a brother with them, they would become 'aṣabah due to him, and would share the remaining estate in the ratio of 2:1.

4. If the deceased leaves behind one daughter or two daughters and a germane brother or a consanguine brother, the daughter will get $\frac{1}{2}$ and two will get $\frac{2}{3}rd$, while the brother (germane or consanguine) will get the remaining.

5. If the deceased leaves behind two daughters, two germane sisters, the sisters become 'aṣabah along with the daughters, therefore, they will get the remaining one-third.

6. If the deceased leaves behind a daughter, a germane brother and a consanguine sister, the daugher will get $\frac{1}{2}$, the germane brother $\frac{1}{2}$, that is, the remaining, while the consanguine sister will get nothing.

25.5   The Method of 'Awl (Reduction)

25.5.1 The allocation of inheritance is of three types
The allocation of inherited shares is of three types: farīḍah 'ādilah (balanced allocation); farīḍah qāṣirah (returned allocation); and farīḍah 'ā'ilah (reduced allocation).

1. Farīḍah 'ādilah (balanced allocation) means that the fractional shares allocated to the heirs are exactly equal to the fractional shares of the estate, thus, they balance out. The allocation is also balanced when any fractional part remaining in the estate, after allocation to the sharers, is allocated to the residuaries or 'aṣabah. If the deceased leaves behind two germane (full) sisters and two uterine sisters, the two germane sisters take $\frac{2}{3}rd$, while the uterine sisters share $\frac{1}{3}rd$. The estate is fully allocated.

2. *Farīḍah qāṣirah* (returned allocation) means that the shares allo-
cated to the sharers are less than the fractional shares available in
the estate, and there are no residuaries who can be allocated the re-
maining. If the deceased leaves behind two germane (full) sisters
and a mother, then the two sisters take $\frac{2}{3}rd$, while the mother takes
$\frac{1}{6}th$, and there are no residuaries who can take the remaining. The
remaining is then passed on, or "returned," to the existing heirs
through the method of *Radd* (return), which is discussed below.

3. *Farīḍah 'ā'ilah* (reduced allocation) means that the shares allo-
cated to the sharers are more than the fractional shares available in
the estate, as in the case of a deceased leaving behind a husband
and two germane sisters where the husband is allocated $\frac{1}{2}$, while
the sisters are allocated $\frac{2}{3}rd$. The shares will have to be reduced,
through the method of *'Awl*, to make a whole number.

25.5.2 The method of *'awl* or "reduction"

The literal meaning of *'awl* in the context of inheritance is "devia-
tion by excess from the limit of the inheritance." It is for this reason
that the term is translated as "increase." The term increase reflects the
excess fraction that has to be reduced and the decrease distributed pro-
portionately among the sharers. The term "reduction" is, therefore, pre-
ferred here. The method of *'awl*, or proportional reduction, reallocates
the shares to the sharers by reducing them proportionately so that the
sum of the new fractional shares amounts to a whole number or unity.

25.5.2.1 THE CALCULATIONS OF THE JURISTS

The method followed by the earlier jurists was based upon the analy-
sis of the existing shares in terms of a base share of $\frac{1}{6}th$ and working out
the excess fraction. This additional fraction was then reduced by deter-
mining the new denominator for the new proportionately reduced frac-
tions. For example, if a woman dies leaving behind a husband, daughter,
mother and father, the husband gets $\frac{1}{4}th$ (which is $1\frac{1}{2}$ shares in terms of
$\frac{1}{6}th$), the daughter gets $\frac{1}{2}$ (which is 3 shares in terms of $\frac{1}{6}th$), the mother
and father get $\frac{1}{6}th$ share each (which is 2 shares in terms of $\frac{1}{6}th$). The
shares in terms of $\frac{1}{6}th$ together come to $6\frac{1}{2}$, which means $\frac{1}{2}$ share is in
excess, which has to be reduced by proportionately allocating the loss
among the sharers. The figure $6\frac{1}{2}$, which is the same as $\frac{13}{2}$, yields the the
numerator 13, which will become the denominator for the new shares.
According to this method, the excess shares in different situations will
be: $\frac{1}{2}$ share, $\frac{3}{4}$ share, 1 share, $1\frac{1}{2}$ share, 2 shares, $2\frac{1}{2}$ share, 3 share, and

4 shares. All this has been mentioned for purposes of academic interest and to highlight the meaning of the text in earlier manuals.

25.5.2.2 THE CALCULATION FOLLOWED TODAY

The method followed is to reduce the fractions in terms of a common denominator and then add the numerator to determine the new denominator. The old common denominator is then replaced by the new denominator. The illustrations given below are based upon the excess shares determined by the earlier jurists.

Where a woman dies leaving behind a husband, a daughter, a mother and a father, the allocation and reduction is as follows:

Heir	Orig. Share	Common Den.	Reduced Share
Husband	$\frac{1}{4}$	$\frac{3}{12}$	$\frac{3}{13}$
Daughter	$\frac{1}{2}$	$\frac{6}{12}$	$\frac{6}{13}$
Mother	$\frac{1}{6}$	$\frac{2}{12}$	$\frac{2}{13}$
Father	$\frac{1}{6}$	$\frac{2}{12}$	$\frac{2}{13}$

Note that $3+6+2+2=13$.

Where a man dies leaving behind a wife, 2 daughters, a mother and a father, the allocation and reduction is as follows:

Heir	Orig. Share	Common Den.	Reduced Share
Wife	$\frac{1}{8}$	$\frac{3}{24}$	$\frac{3}{27}$
2 Daughters	$\frac{2}{3}$	$\frac{16}{24}$	$\frac{16}{27}$
Mother	$\frac{1}{6}$	$\frac{4}{24}$	$\frac{4}{27}$
Father	$\frac{1}{6}$	$\frac{4}{24}$	$\frac{4}{27}$

This case is called the Minbariyyah. 'Alī (God be pleased with him) was asked this question while at the pulpit and he gave a spontaneous response elaborating the shares. He said, "Her eighth has become a ninth ($\frac{3}{27}$th)." The issue was given the name of al-Mas'alah al-Minbariyyah.

Where a man dies leaving behind 2 germane (full) sisters, 2 uterine sisters and a mother, the allocation and reduction is as follows:

Heir	Orig. Share	Common Den.	Reduced Share
2 Ger. Sisters	$\frac{2}{3}$	$\frac{4}{6}$	$\frac{4}{7}$
2 Ut. Sisters	$\frac{1}{3}$	$\frac{2}{6}$	$\frac{2}{7}$
Mother	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{1}{7}$

Where a man dies leaving behind 2 germane (full) sisters, 2 uterine sisters and a wife, the allocation and reduction is as follows:

Heir	Orig. Share	Common Den.	Reduced Share
2 Ger. Sisters	$\frac{2}{3}$	$\frac{8}{12}$	$\frac{8}{15}$
2 Ut. Sisters	$\frac{1}{3}$	$\frac{4}{12}$	$\frac{4}{15}$
Wife	$\frac{1}{4}$	$\frac{3}{12}$	$\frac{3}{15}$

Where a woman dies leaving behind 1 germane (full) sister, 2 uterine sisters and a husband, the allocation and reduction is as follows:

Heir	Orig. Share	Common Den.	Reduced Share
1 Ger. Sister	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{8}$
2 Ut. Sisters	$\frac{1}{3}$	$\frac{2}{6}$	$\frac{2}{8}$
Husband	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{8}$

Where a man dies leaving behind 2 germane (full) sisters, 2 uterine sisters, a wife and a mother, the allocation and reduction is as follows:

Heir	Orig. Share	Common Den.	Reduced Share
2 Ger. Sisters	$\frac{2}{3}$	$\frac{8}{12}$	$\frac{8}{17}$
2 Ut. Sisters	$\frac{1}{3}$	$\frac{4}{12}$	$\frac{4}{17}$
Wife	$\frac{1}{4}$	$\frac{3}{12}$	$\frac{3}{17}$
Mother	$\frac{1}{6}$	$\frac{2}{12}$	$\frac{2}{17}$

Where a woman dies leaving behind 2 germane (full) sisters, 2 uterine sisters, and a husband, the allocation and reduction is as follows:

Heir	Orig. Share	Common Den.	Reduced Share
2 Ger. Sisters	$\frac{2}{3}$	$\frac{4}{6}$	$\frac{4}{9}$
2 Ut. Sisters	$\frac{1}{3}$	$\frac{2}{6}$	$\frac{2}{9}$
Husband	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{9}$

Where a woman dies leaving behind 2 germane (full) sisters, 2 uterine sisters, a mother and a husband, the allocation and reduction is as follows:

Heir	Orig. Share	Common Den.	Reduced Share
2 Ger. Sisters	$\frac{2}{3}$	$\frac{4}{6}$	$\frac{4}{10}$
2 Ut. Sisters	$\frac{1}{3}$	$\frac{2}{6}$	$\frac{2}{10}$
Husband	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{10}$
Mother	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{1}{10}$