

THE SHARES OF GRANDMOTHERS AND GRANDFATHERS

26.1 The Grandmothers

26.1.1 Grandmothers who inherit and those who do not inherit

Every grandmother who is directly linked to a residuary (*'aṣabah*) or a sharer (*ṣāhib al-farīdah*) is entitled to be an heir. For example, mother's mother, father's mother, father's mother's mother, mother's mother's mother, father's mother's mother, father's father's mother will all inherit, because a father does not intervene between two mothers in these links. This type of grandmother is called a "true grandmother."

Every grandmother who is not directly linked to a residuary (*'aṣabah*) or a sharer (*ṣāhib al-farīdah*) is not entitled to be an heir. A grandmother in whose link to the deceased a father intervenes between two mothers does not inherit. The reason is that the mother's father is not a residuary (*'aṣabah*) nor is he a sharer (*ṣāhib al-farīdah*). For example, mother's father's mother cannot inherit, because a father intervenes in the link. This type of grandmother is called a "false grandmother."

26.1.2 The grandmother's share

The grandmother is a sharer. Her share is not mentioned in the Qur'ān, but is established through a well known (*mashhūr*) *sunnah* and the consensus (*ijmā'*) of the Companions (God be pleased with them).

A grandmother alone is entitled to $\frac{1}{6}th$. When there are two at the same level they share the $\frac{1}{6}th$ equally.

26.1.3 The order of inheritance for grandmothers

The grandmother who is closer to the deceased is entitled to the $\frac{1}{6}th$ as compared to the grandmother who is remote, irrespective of the grandmother being from the mother's side or the father's side.

The mother, if present, excludes all the grandmothers by agreement, irrespective of the grandmother being from her side or from the father's side.

The father, if present, does not exclude the grandmother from the mother's side, but he does exclude the grandmother from his own side.

Thus, the father's mother does not inherit in the presence of the father, but the mother's mother does inherit.

26.2 The Grandfathers

26.2.1 The grandfather and his share

The grandfather is one who is linked to the deceased through male relatives without the intervention of a female. Such a grandfather is also called a "true grandfather." Thus, father's father, father's father's father and so on are all true grandfathers. Any other grandfather, like mother's father, is a "false grandfather."

The grandfather stands in the place of the father (see rules for father §24.2), but there are two views in the school as follows:—

1. Abū Ḥanīfah's view: The father's father (grandfather) stands in the place of the father, in his absence. He, thus, excludes all brothers and sisters of the deceased of whatever type. The exception are two cases: (i) Where the deceased leaves behind a husband, a mother and a grandfather; and (ii) Where the deceased leaves behind a wife, a mother and grandfather. In both cases, according to this view, the mother gets $\frac{1}{3}rd$ of the entire estate. If the father had been present in the case of the grandfather, she would be assigned $\frac{1}{3}rd$ of the remaining wealth.
2. Abū Yūsuf and Muḥammad: The father's father (grandfather) stands in the place of the father as if the father was participating in the inheritance with the children of the deceased. He excludes uterine brothers and sisters of the deceased, but he does not exclude the germane brothers and sisters with whom he shares like a male participant in the inheritance.

Abū Ḥanīfah's view is the view of the school.

26.2.2 Ordinary cases of the inheritance of the grandfather

The share of the grandfather, like the father, is $\frac{1}{6}th$. Consequently, when there is a child among heirs, the share of the grandfather is $\frac{1}{6}th$.

When the deceased is survived by a mother, and a grandfather, the mother gets $\frac{1}{3}rd$, while the grandfather gets $\frac{2}{3}rd$, that is, he takes the remaining as a residuary.

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

26.2.3 Cases for the grandfather mentioned by Imām Muḥammad

Imām Muḥammad mentioned six cases in the *Book of Farā'id*. These are cases that show the complication of the issue of the grandfather excluding the brothers. A number of Companions did not uphold exclusion of the brothers and sisters by the grandfather, as has been upheld by the Ḥanafī school. The cases are described in subsections below for academic interest.

1. *Al-Khuraqā'* (the Tatters): called so because of excessive disagreement among the Companions (God be pleased with them). It is also called 'Uthmāniyyah and Ḥajjājiyyah. The deceased leaves behind a germane sister (or a consanguine sister), a grandfather and a mother. There are seven views about it from the Companions (God be pleased with them), a few of which are: (i) The mother gets $\frac{1}{3}rd$ and the rest goes to the grandfather. The sister gets nothing. (ii) The mother gets $\frac{1}{3}rd$, the sister $\frac{1}{2}$ as sharer, while the grandfather gets $\frac{1}{6}th$. (iii) The mother gets $\frac{1}{3}rd$, and the rest is shared by the grandfather and the sister in the ratio of two shares for the male and one for the female. (iv) The sister gets $\frac{1}{2}$, the mother $\frac{1}{6}th$ and the rest goes to the grandfather. (v) The estate is shared by them equally. The view of the school is that the sister is excluded by the grandfather, which is the first view.

2. *Akdariyya*: The deceased leaves behind a germane sister (or a consanguine sister), a grandfather, a mother and a husband. There are five views about it from the Companions (God be pleased with them), a few of which are:

(i) The husband gets $\frac{1}{2}$, mother $\frac{1}{3}rd$, the grandfather $\frac{1}{6}th$, and the sister gets $\frac{1}{2}$. This is then subjected to 'awl (reduction) as follows:

Heir	Orig. Share	Common Den.	Reduced Share
Ger. Sister	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{9}$
Grandfather	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{1}{9}$
Husband	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{9}$
Mother	$\frac{1}{3}$	$\frac{2}{6}$	$\frac{2}{9}$

	Orig. Share	Com. Den. 1	Inc. Share
Heir		$\frac{3}{6}$	$\frac{3}{5}$
Ger. Sister	$\frac{1}{2}$	$\frac{2}{6}$	$\frac{2}{5}$
Mother	$\frac{1}{3}$	$\frac{1}{6}$	$\frac{1}{5}$

The sum of the numerators is 5, therefore, this is made the denominator so as to divide the entire wealth into five parts. The second method is followed by the jurists.

26.3.1.2 THE SITUATION WHERE THE HEIRS INCLUDE A PERSON TO WHOM "RETURN" IS DENIED

In this case too both methods are shown for purposes of illustration, but the second is followed by the jurists:—

- (a) If a woman leaves behind a husband, mother and daughter, then the husband is entitled to $\frac{1}{4}th$, the daughter $\frac{1}{2}$ and the mother $\frac{1}{6}th$. One share out of 12 is left, which is $\frac{1}{12}th$. This has to be returned to the mother and daughter, but not to the husband. The method is to multiply 12 by 4 giving 48 shares. Out of this 12 are to be given to the husband, 27 to the daughter and 9 to the mother.

Heir	Orig. Share	Com. Den. 1	Com. Den.2	Inc. Share
Husband	$\frac{1}{4}$	$\frac{3}{12}$	$\frac{12}{48}$	
Daughter	$\frac{1}{2}$	$\frac{6}{12}$	$\frac{24}{48}$	$\frac{27}{48}$
Mother	$\frac{1}{6}$	$\frac{2}{12}$	$\frac{8}{48}$	$\frac{9}{48}$
	Balance	$\frac{1}{12}$	$\frac{4}{48}$	

The balance of $\frac{1}{12}$ is difficult to allocate between daughter and mother in the ratio of 3:1, but the balance $\frac{4}{48}$ can easily be allocated to get the increased share.

- (b) By the second method, the share of the husband is first allocated, and the shares of the daughter and mother are then increased.

Heir	Orig. Share	Com. Den.	Inc. Share	Final share
Husband	$\frac{1}{4}$			$\frac{4}{16}$
Daughter	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{4}$	$\frac{9}{16}$
Mother	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{1}{4}$	$\frac{3}{16}$

The remaining estate is divided into four parts for allocation between the daughter and mother. The daughter is to get 3 shares and the mother 1 share of the remaining after the increased allocation. After allocating to the husband $\frac{3}{4}$ th of the whole estate was left, therefore, we multiply by the shares of the daughter and mother by this fraction to get their shares. These come to $\frac{9}{16}$ and $\frac{3}{16}$, that is, a total of $9+3=12$ shares out of sixteen. The remaining 4 belong to the husband. As stated, the second method is preferred by the jurists.

Heir	Orig. Share	Com. Den.	Inc. Share	Final share
Wife	$\frac{1}{8}$			$\frac{4}{32}$
Daughter	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{4}$	$\frac{21}{32}$
Mother	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{1}{4}$	$\frac{7}{32}$

$\frac{3}{4} \times \frac{7}{8} = \frac{21}{32}$; $\frac{1}{4} \times \frac{7}{8} = \frac{7}{32}$. $21+7=28$, which leaves 4 shares for the husband, that is, $\frac{4}{32}$.

26.3.2 Illustrative cases of *radd* (return)

Radd (return) is made in the case of seven persons: daughter, son's daughter, mother, grandmother, germane sister, consanguine sister, uterine brother and uterine sister. In the cases encountered, there may be just one heir, two, three or four. These four situations are illustrated below:

26.3.2.1 JUST ONE SHARER

If a person dies leaving behind a daughter and no residuaries, she takes $\frac{1}{2}$ as a sharer and the remaining by *radd* (return). If a person dies leaving behind just his mother, she takes $\frac{1}{3}$ rd as a sharer and the rest by *radd* (return).

26.3.2.2 TWO SHARERS

If a person dies leaving behind a daughter and mother, the distribution is as follows:—

Heir	Orig. Share	Com. Den. 1	Inc. Share
Daughter	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{4}$
Mother	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{1}{4}$

26.3.2.3 THREE SHARERS

If a person dies leaving behind a germane sister, a consanguine sister and a uterine sister, the distribution is as follows:—

Heir	Orig. Share	Com. Den. 1	Inc. Share
G. Sister	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{5}$
Con. Sister	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{1}{5}$
Ut. Sister	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{1}{5}$

26.3.2.4 FOUR SHARERS

If a man dies leaving behind a wife, mother, daughter and son's daughter, the distribution is as follows:—

Heir	Orig. Share	Com. Den.	Inc. Share	Final Share
Wife	$\frac{1}{8}$			$\frac{5}{40}$
Mother	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{1}{5}$	$\frac{7}{40}$
Daughter	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{5}$	$\frac{21}{40}$
Son's Daughter	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{1}{5}$	$\frac{7}{40}$

$7+21+7=35$, which leaves 5 for the husband, that is, $\frac{5}{40}th$.

THE DISTANT KINDRED OR DHAWŪ 'L-ARḤĀM

27.1 The Different Classes of Distant Kindred

27.1.1 The *dhawū 'l-arḥām* or relations through the womb also called distant kindred

The *dhawū 'l-arḥām* are all those heirs who are neither the *'aṣabāt* (residuaries) or the *aṣḥāb al-farā'id* (sharers). Their entitlement is on the basis of the *raḥm* (womb) that is on the basis of links through female relatives and by standing as substitutes for nearness (*qarābah*).

The Mālikī and Shāfi'ī schools deny inheritance to the distant kindred altogether, although some of their later jurists are inclined to admit them as heirs. The Ḥanafīs and the Ḥanbalīs acknowledge them as heirs. The disagreement is based upon the disagreement among the Companions (God be pleased with them) and their Followers.

There are three methods of allotting shares to the distant kindred: the method of *tanzīl* (representation), the method of the *raḥm* (womb) and the method of *qarābah* (nearness). The Ḥanafī school follows the method of *qarābah*.

27.1.2 Confusion in *fiqh* sources about the classes of distant kindred and priorities

Most of the texts after the famous book known as *Sirājiyyah* (written around 690 A.H.) have relied on this popular source. It is suggested in one commentary that the author of this work was relying on the text (a few pages) written by the learned Alā' al-Dīn al-Samarqandī (d. 539 A.H.). There are very few earlier texts that explain the rules of inheritance clearly. The exceptions are Imām Muḥammad's own writings (which have not been published in full) and the book of the illustrious Imām al-Sarakhsī *al-Mabsūt*. Al-Qudūrī (d. 432 A.H) gives short, but very accurate statements about the distant kindred. There are differences between *Sirājiyyah* and *al-Mabsūt*, especially with respect to the *dhawū 'l-arḥām*.

The difference between the two sources is mainly on the following two points:—

- (a) The number of classes of the distant kindred.

(b) The priorities within the classes.

The two classifications are stated below and then a reconciliation is attempted.

27.2 *Classes of distant kindred and their priorities in the Sirājiyyah*

The *Sirājiyyah* divides the *dhawū 'l-arḥām* into four classes, and this classification is then followed in all later books. The classification is:—

- (i) **The First Class:** This class is linked to the deceased from the descendants, and includes the children of daughters and the children of the daughters of his son.
- (ii) **The Second Class:** This class is linked to the deceased from the ascendants, and includes the false grandmothers and false grandfathers, like the deceased's mother's father's mother or the deceased's mother's father's mother's mother.
- (iii) **The Third Class:** This class is linked to the deceased through his parents, and includes the children of the deceased's sisters, the children of the deceased's uterine brothers.
- (iv) **The Fourth Class:** This class is linked through the grandparents of the deceased, and includes the deceased's paternal aunts, uterine paternal uncles, maternal uncles and maternal aunts.

Additional statement: The text then adds another category of "those who stand in their place." Commentators take this to mean the children of the last class.

Priorities for inheritance: The text states that for purposes of inheritance the priority among the classes is exactly in the order they have been stated above. Further, allocation cannot be made for the next class if there are any members of the prior class. In other terms, the inheritance is exhausted by one class. If there are no heirs in a prior class, allocation is to be made for the next class.

27.2.1 *Classification of the distant kindred and their priorities in al-Mabsūṭ*

Al-Mabsūṭ divides the distant kindred into the following seven categories:—

- (i) **First Class: The children of the daughters**, that is, the children of the daughters of the deceased or the children of the daughters of the sons of the deceased.
- (ii) **Second Class: Daughters of brothers and the children of sisters.** The link here is through females. This is the third class in *Sirājiyyah*.
- (iii) **Third Class: False grandfathers and false grandmothers.** This is the second class in *Sirājiyyah*.
- (iv) **Fourth Class: Deceased's father's uterine brother (uncle), aunts (father's germane sister, consanguine sister or uterine sister), maternal aunt (mother's sister), maternal uncle (mother's brother).** This is the fourth class in *Sirājiyyah* as well.
- (v) **Fifth Class: The children of the above.** This appears to be the category mentioned in the additional statement in *Sirājiyyah*.
- (vi) **Sixth Class: True grandfather's uterine brother (deceased's father's uncle), father's aunts, father's mother's brother, father's mother's sister.** This class is not mentioned in the *Sirājiyyah*. It just goes up one level in the family tree.
- (vii) **Seventh Class: The children of the above.** This is not mentioned either in the *Sirājiyyah*.

Priorities for inheritance: *Al-Mabsūṭ* relies on the *Zāhir al-Riwāyah* for the priorities. It does not say explicitly that a prior class must be missing before allocation of inheritance can move to the next, but the discussion does imply such an order for allocation.

27.2.2 Reconciliation between *al-Mabsūṭ* and *Sirājiyyah*

As far as authenticity and reliability are concerned, *al-Qudūrī* and *al-Mabsūṭ* are unmatched in Islamic law. In fact, both have served as mother books for all later books. Some of the statements in *Sirājiyyah* appear to have been taken from *al-Mabsūṭ*.

The first five classes mentioned in *al-Mabsūṭ* correspond to the four classes in *Sirājiyyah* when the additional statement is linked to the fourth class. Classes six and seven can easily be ignored as they are very high up in the order and are less likely to survive the deceased, unless the children in the seventh class are taken into account. *It is, therefore, better*

to follow the earlier jurists and undertake the analysis according to the seven classes in *al-Mabsūṭ*.

Al-Mabsūṭ and *al-Qudūrī* have given a higher priority to the children of sisters and daughters of brothers over the false grandparents. The only disagreement among *Abū Ḥanīfah* and the *Ṣāhibayn* is about the mother's father. The *Imām A'zam* gives higher priority to the maternal grandfather (mother's father) over the daughters of brothers and the children of sisters, while the *Ṣāhibayn* do not. This exception has been interpreted by *Sirājiyyah* to give priority to the whole class. The *Sirājiyyah* has been followed for many centuries in all subsequent manuals of *fiqh*, but this interpretation must be given up and the classification provided in *al-Mabsūṭ* is to be followed, and is followed in this book.

The compartmentalization followed in *Sirājiyyah* may generally be adopted for all the seven classes mentioned, while keeping the following two rules into account:—

- (a) The children mentioned in class five and class seven cannot be granted inheritance if their *uṣūl* (ancestors) from classes four and six respectively are present.
- (b) Priority may be given to the classes in the order mentioned, but the exceptions, if any, are to be noted. One such exception in the case of mother's father is mentioned above (will be explained further below).

(5) The rules and elaborations provided in *al-Mabsūṭ* need to be followed for a deeper understanding of *fiqh* and for refining the rules provided in the *Sirājiyyah*. This is the method followed in this book for the part on inheritance.

27.2.3 General rules for all classes of distant kindred

The basis of entitlement is nearness in relationship, which is primarily that of being an agnate, because of which a person can inherit the entire estate. The relative who is closer to the deceased is preferred over the remote. This nearness is judged through levels and is also supported by the strength of the link. Thus, being a child is considered stronger than being the father, even though both are equidistant from the deceased.

There is no disagreement that *radd* (return) is preferred over all the distant kindred. The distant kindred cannot inherit if the estate can be returned to the sharers. Those who do not accept *radd* usually do not give a right to the distant kindred to inherit, for example, the *Shāfi'ī* school.

The following rules are generally followed by the Ḥanafī school for the distant kindred to determine *qarābah* and priority:—

- (a) If the relationship of two distant kindred is of the same level (degree) depending upon proximity of the union with the deceased, but one of them is the child of a sharer or the child of a residuary, when the competing distant kindred is not, preference is given to the child of the sharer or the child of the residuary as the case may be. Thus, the daughter of the daughter of the son excludes the daughter of the daughter of the daughter, even though the level is the same. The daughter of a daughter is neither a sharer nor a residuary, while the daughter of the son is.
- (b) If one of these is the child of a sharer while the other is the child of a residuary, they are treated as equals. Thus, the daughter of the brother competing with the daughter of the sister cannot exclude each other.
- (c) If one of them is nearer than the other, the nearer in degree excludes the more remote, even if the more remote is child of a sharer or the child of a residuary when the one nearer is not. When there is a daughter of a daughter of a daughter competing with the daughter of the daughter of a son of the son, the former is closer to the deceased and excludes the other. Likewise, the daughter of the daughter of a sister is given priority over the daughter of the son of the son of the brother, because the former is closer.
- (d) Where actual *‘uṣūbah* (being an agnate) is equal in level, the one having a stronger link is given priority, like the child of the germane brother over the consanguine. When the level is different, the one nearer is preferred over the more remote.

27.3 *The Children of the Daughters: Class I*

27.3.1 **The first class of distant kindred**

The first class of the distant kindred includes the children of the daughter of the deceased and children of the daughter of the son of the deceased.

§4 of the Muslim Family Laws Ordinance, 1961, in violation of the structure of inheritance law in *fiqh*, treats the children of the daughter as residuaries rather than as distant kindred.

Grandparent	Daughter	Daughter	Daughter	Daughter
Parent	Daughter	Son	Daughter	Son
Child	Daughter	Daughter	Son	Son
Share	$\frac{2}{18}$	$\frac{4}{18}$	$\frac{4}{18}$	$\frac{8}{18}$

According to Abū Yūsuf, the division between them will be undertaken directly on the basis of two shares for the male and one for the female. In this case, the wealth will be divided into six shares and divided.

Grandparent	Daughter	Daughter	Daughter	Daughter
Parent	Daughter	Son	Daughter	Son
Child	Daughter	Daughter	Son	Son
Share	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{2}{6}$	$\frac{2}{6}$

If the grandparents, parents and children are all different, the distribution will first be based upon what the grandparents would have inherited. For example, if the deceased leaves behind a daughter of a daughter of a daughter; a daughter of a son of a son of a daughter; and a son of a daughter of a son of a daughter.

Great Grandparent	Daughter	Daughter	Daughter	Daughter
Grandparent	Daughter	Son	Son	Daughter
Parent	Daughter	Son	Daughter	Son
Child	Daughter	Daughter	Son	Son

In this case, the division is first among the grandparents, according to two shares for the male and one for the female. Thus the two son grandparents get $\frac{4}{6}th$ and the two daughter grandparents get $\frac{2}{6}th$. This is now divided among their children, that is, the parents above according to two shares for the male and one for the female. This means: $\frac{2}{6} \times \frac{1}{3}$; $\frac{4}{6} \times \frac{1}{3}$; $\frac{2}{6} \times \frac{2}{3}$; and $\frac{4}{6} \times \frac{2}{3}$. This is stated as $\frac{2}{18}$; $\frac{8}{18}$; $\frac{4}{18}$; and $\frac{4}{18}$ or $\frac{1}{9}$; $\frac{4}{9}$; $\frac{2}{9}$; and $\frac{2}{9}$. The parents are now grouped according to male and female. The share of the two son parents is $\frac{4}{9} + \frac{2}{9} = \frac{6}{9}$, while that of the female parents is $\frac{1}{9} + \frac{2}{9} = \frac{3}{9}$. The share of the children will be $\frac{3}{9} \times \frac{1}{3} = \frac{3}{27}$; $\frac{6}{9} \times \frac{1}{3} = \frac{6}{27}$; $\frac{3}{9} \times \frac{2}{3} = \frac{6}{27}$; $\frac{6}{9} \times \frac{2}{3} = \frac{12}{27}$. This is reflected in the table as follows:—

Great Grandparent	Daughter	Daughter	Daughter	Daughter
Grandparent	Daughter	Son	Son	Daughter
Parent	Daughter	Son	Daughter	Daughter
Child	Daughter	Daughter	Son	Son
Share	$\frac{3}{27}$	$\frac{6}{27}$	$\frac{6}{27}$	$\frac{12}{27}$
Share	$\frac{1}{9}$	$\frac{2}{9}$	$\frac{2}{9}$	$\frac{4}{9}$

This type of hierarchy is not likely to occur in the present times, but it was possible when people used to get married at early ages. For Abū Yūsuf, the division will be as follows:—

Great Grandparent	Daughter	Daughter	Daughter	Daughter
Grandparent	Daughter	Son	Son	Daughter
Parent	Daughter	Son	Daughter	Son
Child	Daughter	Daughter	Son	Son
Share	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{2}{6}$	$\frac{2}{6}$

27.3.3 Further elaboration of allocation for first class of distant kindred

If there are eight individuals, four of whose grandparents are males, and four whose grandparents are females. They may be treated as two groups and allocations made accordingly. The result is as follows:—

D	D	D	D	D	D	D	D
D	D	D	D	S	S	S	S
D	D	S	S	S	S	D	D
D	S	D	S	S	D	D	S
$\frac{1}{27}$	$\frac{2}{27}$	$\frac{2}{27}$	$\frac{4}{27}$	$\frac{8}{27}$	$\frac{4}{27}$	$\frac{2}{27}$	$\frac{4}{27}$

What if there is a daughter of a daughter of a son of a son with these eight individuals? The answer is that a daughter of a son of a son is a sharer, and the child of a sharer in this case will exclude the rest.

What if there is a daughter of a daughter of a daughter with these eight individuals? The answer is that she is at a higher level than all eight and is entitled to all the wealth.

If in the previous case, there is a male with her, that is, a son of a daughter of a daughter, then the wealth will be shared between them according to two shares for the male and one for the female. The eight will get nothing.

If there is with them someone who is at a higher level like a daughter of a daughter, then the entire wealth will be given to her. If there is a male with her of her own level, they will share in the ratio of two shares for the male for one of the female.

27.3.4 Cases in which the kindred in this class have two links with the deceased

The deceased may leave behind a distant kindred, in this class, who is linked to him through two links.

The deceased may leave behind a daughter of a daughter of a daughter, who is also the daughter of a son of a daughter. This is possible where a man has two daughters and each of them has a daughter. The other may also have a son who marries the daughter of the other. If the union of these two is a daughter, she is the daughter of a daughter of a daughter and also the daughter of the son of a daughter. This daughter, according to Muḥammad, inherits by virtue of both links *per stirpes*. According to Abū Yūsuf she can inherit through both links, but *per capita*. The authentic narration from Abū Ḥanīfah is the same as that of Muḥammad.

If there is another daughter of a daughter of a daughter with the one mentioned in the previous subsection, then according to Abū Yūsuf, the one that has two supporting links gets $\frac{2}{3}rd$ and she is to be treated like two persons for a *per capita* distribution. According to Muḥammad, the distribution is first among the parents, thus, the one with two links will get $\frac{3}{4}th$ of the estate, while the one with a single link will get $\frac{1}{4}th$.

If there is another daughter with her with two links, then according to Abū Yūsuf the estate is divided equally between them. According to Muḥammad, the property is to be divided among the parents and then moves down to each.

27.4 Daughters of Brothers and Children of Sisters: Class II

27.4.1 The second class of distant kindred

The distant kindred in this category are of four types: they are either all of them the children of the germane brother and sister; the children of the consanguine brother and sister; the children of the uterine brother and sister; or they are a combination of these.

In the above categories some of them may be nearer kindred, while others may be remote, or they may be of the same level with reference to the deceased.

When they are at the same level, and one of them is a child of a sharer or residuary, he will be preferred over one who is not the child of a sharer or residuary, because the sharers and residuaries are closer to the deceased under the law. Preference will be on the basis of actual nearness (*qarābah*) or it will be on the basis of legal nearness.

If the kindred are equal with respect to being residuaries or sharers, but some are $\frac{1}{2}$ germane and some consanguine, then according to Abū Yūsuf's later view the division is on the basis of *per capita*. According to Muḥammad, the distribution is to be in relation to the grandparents.

27.4.2 Rules of allocation of shares for the second class of distant kindred when they are from one sub-class

If the deceased leaves behind a son of a sister and a daughter of a brother, when both are germane or consanguine, then according to Abū Yūsuf, the son of the sister gets $\frac{2}{3}rd$ and the daughter of the brother gets $\frac{1}{3}rd$. According to Muḥammad the allocation is reverse of this: the daughter of the brother gets $\frac{2}{3}rd$, while the son of the sister gets $\frac{1}{3}rd$, that is, he allocates the share to the parents and then passes them on to the children. This is based on the rule in subsection (4) of the previous section.

If both kindred, in the previous example, were uterine, then according to the *Zāhir al-Riwāyah*, the estate is shared by them equally. The preference of the male over the female is given due to analogy from the Qur'ānic text that prescribes participation for them.

27.4.3 Rules of allocation of shares for the second class of distant kindred when they are represented by two or more sub-classes

If the kindred under this class are from different sub-classes, like three daughters of brothers of different types—germane, consanguine, and uterine—then according to Abū Yūsuf, the estate passes on to the daughter of the germane brother. This is also the decision of Abū Ḥanīfah. According to Muḥammad, the uterine brother's daughter gets $\frac{1}{6}th$, and the remaining belongs to the daughter of the germane brother's daughter, while the consanguine brother's daughter gets nothing.

If the deceased leaves behind three daughters of sisters—germane, consanguine and uterine—then according to Abū Yūsuf, which is also a decision of Abū Ḥanīfah, the estate in its entirety passes on to the germane sister's daughter. According to Muḥammad, the wealth is divided among them on the basis of five shares in all. It is as if he is passing on

the estate to the sisters first and then this passes on to the daughters (that is, *per stirpes*).

If the deceased leaves behind a daughter of a germane sister and a son of a germane sister, the wealth is divided among them *per capita*, that is, two shares for the male and one for the female.

27.4.4 Cases in which the kindred in this class have two links with the deceased

The deceased may leave behind a distant kindred, in this class, who is linked to him through two links.

The deceased may leave behind a daughter of a uterine sister and she may at the same time be the daughter of a consanguine brother. This is possible when a man has a uterine sister and a consanguine brother and they are united in marriage, that is, the consanguine brother of this man marries his uterine sister, because there is no *qarābah* between the two.

If the deceased leaves behind the daughter of the uterine sister with a dual link, mentioned above, and another daughter of a consanguine brother, then according to Muḥammad the one who has two relations will get $\frac{1}{6}th$ on account of the relationship of the mother, and the remaining is shared by them in three shares on a *per capita* basis, the total division being through eighteen shares. According to Abū Yūsuf, the entire estate belongs to the one with two links due to the meaning '*uṣūbah* in her.

27.5 Paternal Aunts, Maternal Aunts and Maternal Uncles: Class IV and children

27.5.1 The fourth class of distant kindred

According to the school, paternal aunts are at the level of the paternal uncle, while maternal aunts are at the level of the mother. The rule is that when a female stands in the place of a male, she takes the place of the male at her own level, and she does not take the place of the male who is at a nearer or a more remote level.

When a deceased leaves behind a paternal aunt and a paternal uncle, they are either germane, consanguine or uterine. When the germane is present, the estate belongs entirely to such a paternal uncle, because they are agnates, and there is no share for the *dhawū 'l-arḥām* along with the agnates. Thereafter, those with two links are preferred over those with one.

If the deceased leaves behind paternal aunts—germane, consanguine and uterine—the estate belongs entirely to the germane paternal aunt,

as she is linked to the deceased through two bonds. The same applies to the children of such paternal aunts when some of them are closer in relationship.

If all the paternal uncles and aunts are uterine, the estate is divided among them according to two shares for the male and one for the female. According to a narration from Abū Yūsuf, the wealth is to be divided among them in equal parts due to the similarity of their bond with the deceased, that is, their closeness is linked through the mother.

Where the deceased leaves behind a maternal uncle and maternal aunt, the wealth is divided on a *per capita* basis: two shares for the male and one for the female. According to a narration from Abū Yūsuf, the wealth is to be divided among them in equal parts due to the similarity of their bond with the deceased, that is, their closeness is linked through the mother.

If the deceased leaves behind paternal aunts and maternal aunts and maternal uncles, then the paternal aunts are entitled to $\frac{2}{3}rd$, while the maternal aunts and maternal uncles are together entitled to $\frac{1}{3}rd$, which is further divided on a *per capita* basis. Number does not matter in this case. Thus, if the deceased leaves behind one paternal aunt and ten maternal aunts and uncles, the paternal aunt will get $\frac{2}{3}rd$, while the maternal aunts and maternal uncles will share the $\frac{1}{3}rd$ on a *per capita* basis. The same applies if there are ten paternal aunts and a single maternal aunt; the maternal aunt will get $\frac{1}{3}rd$.

Within the two sides, each having germane, consanguine and uterine members, the general rule is that the person with two bonds (germane) is preferred over those with one bond.

27.5.2 The children of the fourth class of distant kindred

This is the fifth class according to al-Sarakhsī, but is being discussed within the fourth.

If the parents in this class are present, the children are not entitled to inherit. In the absence of the parents, the nearer in degree has priority over the more remote. The jurists talk about one, two or more wombs to determine such nearness in degree.

If the deceased leaves behind a daughter of a maternal aunt, a daughter of a daughter of a maternal aunt, or daughter of a son of a maternal aunt, or a son of a son of a maternal aunt, the estate belongs to the daughter of the maternal aunt, as she is the closest in degree.

§27.6
If the deceased leaves behind daughters of a paternal aunt along with a son of a maternal aunt, the daughters of the paternal aunt will get $\frac{2}{3}rd$, while the son of the maternal aunt will get $\frac{1}{3}rd$.
Within the maternal and paternal sides, the person with two bonds will get priority over others in his own side. If the deceased leaves behind a daughter of a paternal germane aunt, a daughter of a paternal consanguine aunt, and a daughter of a paternal uterine aunt, the entire estate belongs to the daughter of a paternal germane aunt. The same applies within the maternal category.

27.6 *The sixth and seventh classes of distant kindred*

The sixth class of distant kindred includes the uncles and aunts of the parents of the deceased. The seventh includes the children of these distant kindred.

These two classes are not being discussed here due to the remoteness of this class of heirs. Such heirs could possibly exist where marriages were arranged at a very early age so that several generations could exist at the same time. Allah knows best.

27.7 *False Grandfathers and False Grandmothers: Class III*

27.7.1 **The third class of distant kindred**

The false grandfather is connected to the deceased through a mother, either his own mother or his father's mother and so on. The false grandmother is one in whose link a father intervenes between two mothers.

The nearer in degree excludes the more remote. The nearness in degree is based upon wombs or bodies. The grandfather who is linked to the deceased by one womb is just one and he is the mother's father or the deceased's maternal grandfather. Those who are linked through two wombs or bodies are three: mother's mother's father; mother's father's father; and father's mother's father. Among these is just one false grandmother and she is the mother's father's mother.

27.7.2 **The single case mentioned by Imām Muḥammad**

According to Imām al-Sarakhsī, only a single case has been mentioned by Imām Muḥammad. If the deceased leaves behind mother's father and father's mother's father, the father's mother's father will get $\frac{2}{3}rd$, while the mother's mother's father will get $\frac{1}{3}rd$. Jurists do discuss other cases too.

27.7.3 The special case of the maternal grandfather (mother's father) and priorities within classes

The maternal grandfather or mother's father is treated differently from the class of false grandparents.

There has been disagreement over whether the mother's father is to be given priority over the first class of distant kindred; namely, the children of daughters and the daughters of the son. The predominant view is that the first class is given priority.

There has been disagreement over whether the mother's father is to be given priority over the second class of distant kindred; namely, the daughters of brothers and the children of sisters. The predominant view is that the second class is given priority.

There is no disagreement that the mother's father has priority over the paternal aunt. It is, however, to be noted that if the deceased leaves behind a mother's father's father and along with him there is a paternal aunt, or a maternal aunt, then according to the school the paternal aunt, or maternal aunt, has priority over the mother's father's father. This amounts to preferring the fourth class over the third class or according to those who deem the false grandfathers to be the second class, the preferring of the fourth class over the second class.

It is for the above reason that al-Sarakhsī has discussed this class in the end, and we have done the same. The conclusion is that this class of distant kindred does not fit neatly into the compartmentalized classes.