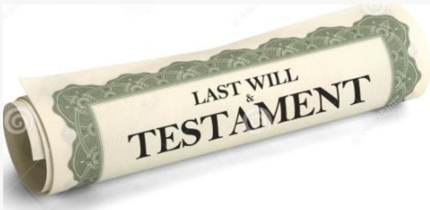
Kitaabul-Meeraath

THE BOOK OF INHERITANCE



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INTRODUCTION

Kitaabul Meeraath (The Book of Inheritance) is an attempt to explain Islamic Inheritance to ordinary Muslims. This subject which concerns every Muslim is about the most neglected branch of Islamic Knowledge. Most Muslims are grossly ignorant of the Ahkam (laws) of inheritance. Even pious and learned people commit grave errors in this matter.

Muslims largely ignorant of the Shariah's demands pertaining to inheritance, direct the distribution of their estates in accordance with the unfettered freedom or in terms of certain restrictions of western Kuffar law. Having opted ignorantly for some western matrimonial property system, Muslims are precluded from drawing up Islamic Wills. Others again, simply do not care of the dire consequences awaiting them in the Akhirah, hence they bequeath their estates as directed by their whimsical desires.

Kitaabul Meeraath deals with both the Shar'i legal and moral aspects pertaining to inheritance. It is hoped that Allah Ta'ala will make this humble effort a means of hidayat (guidance) for Muslims so that they understand the gravity of their transgressions in the sphere of inheritance.

Although effort has been made to simplify this subject, we are aware that many Muslims will find it difficult to comprehend the many rules of inheritance. Undoubtedly Meeraath is a difficult subject with its numerous different cases, classes and categories being somewhat confusing. While this book will assist in giving a better understanding of the workings and importance of Meeraath, it is necessary for the layman to consult with an Alim who is proficient in this subject, before effecting the distribution of the estate.

The Qur'an Majeed and the Ahadith of Rasulullah (Sallallahu Alayhi Wassallam) apply great emphasis on the importance of Meeraath. It does, therefore, not behove the Muslim to depart from this transitory abode with the accursed burden of the transgression which he has loaded onto himself by way of his unjust violation of Allah's orders of inheritance.

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ILMUL FARA-IDH

(Knowledge of Inheritance)

Fara-idh is the plural of Fareedhah which literally means something which has been fixed or determined. Since the Qur'an Majeed has fixed the shares of the different heirs in the estate of the Murith (the deceased whose estate they inherit), this branch of knowledge is called Fara-idh. Inheritance is called Meeraath.

The Qur'an and Hadith place great emphasis on the knowledge of Meeraath and Fara-idh. Rasulullah (Sallallahu alayhi wasallam) exhorted much the acquisition and teaching of Ilmul Fara-idh. In this regard he said:

"I shall be taken away. Learn Fara-idh and teach it (to others). The time is near for the door of Wahi to be closed. The time for the disappearance of knowledge will dawn when two persons will dispute regarding a necessary mas'alah (deeni question) and they will find no one to decide the dispute."

Speaking on the virtues of Fara-idh, Rasulullah (Sallallahu alayhi wasallam) said:

"O people! Learn Fara-idh. It is half of knowledge."

In view of the importance and significance of inheritance, its knowledge is described as 'half of knowledge'.

Regarding the disappearance of this knowledge, Rasulullah (Sallallahu alayhi wasallam) predicted:

"The first (branch of) knowledge which will be taken away from my Ummah will be Ilmul Fara-idh."

Emphasising the importance of Ilmul Fara-idh, Hadhrat Umar (radhiallahu anhu) said:

"O people! Learn Fara-idh with the same concern and effort with which you learn the Qur'an."

"O Muslims! Learn Fara-idh. It is an essential part of the knowledge of your Deen."

Hadhrat Abu Musa (radhiallahu anhu) said:

"Whoever has learnt the Qur'an, but not Fara-idh is like a head without a face."

Allah Ta'ala, by his infinite mercy brought man into existence from the state of pure non-existence and placed him on earth to live here for a short while. For his earthly sojourn, his Creator, Rabbul Alameen, bestowed a variety of material provisions to him. These provisions for sustaining his earthly life have been awarded to man temporarily. The wealth, property, garments and whatever have been assigned to his custody are not his property. He is not the owner of these divine bestowals. Their only owner is Allah Azza Wajal, the Creator, Sovereign and Owner of the Universe. Nothing in man's possession belongs to him.

When man's term of life comes to an end, the bounties which were on loan to him revert back to Allah Ta'ala, The Original and True Owner. Hence, man is not permitted to dispose of his estate according to his wishes and desires. His outer facade of ownership of 'his' possession ceases with death. Man, therefore has no right of operating in the wealth which was bestowed to him for his benefit in this earthly sojourn. Upon his death the rights of others - the heirs - become automatically related to the estate he left behind.

Thus, it is an act of grave transgression for a man to attempt to assert his non-existing right and authority in the estate which he will be leaving behind. In doing so, he is guilty of two great sins and acts of transgression, namely:

(1) Usurping the Huqooq (rights) of the rightful (heirs).
(2) Flagrant violation of Allah's command pertaining to Inheritance.

The divine punishment for such flagrant transgression is severe in the Akhirah. According to one Hadith, Rasulullah (Sallallahu alayhi wasallam) said that there are some people who spend a lifetime in acts of worship and obedience, however, on the eve of their meeting with Allah Ta'ala, i.e. when about to die, they usurp the rights of the heirs. In consequence, they are despatched directly to Jahannam. Heirs are either deleted from the testator's will or their divinely-fixed shares are tampered with.

Rasulullah (Sallallahu alayhi wasallam) also said that whoever deprives an heir of his rightful due, will be deprived of Jannat. Thus, the Muslim who violates the Shariah's laws of Inheritance is destined for the chastisement of the Fire before he can enter Jannat. Violation of the divine laws of Meeraath is akin to Kufr, hence the Qur'an declares the punishment for such flagrant violators in the following very stern and severe tone and terms:

"Allah will cast him into the Fire; forever will he dwell therein; and for him will be a disgraceful punishment."

Extension of one's transgressions to even the period after death is not a transgression of small measure. The sin is vile in the extreme. There is no pleasure in the perpetration of this flagrant sin, the effect of which will manifest itself after the death of the perpetrator. While he has destroyed his life of the hereafter by his wretched sin of defrauding and depriving the divinely appointed heirs of his estate, he derives no nafsani pleasure from his evil commission.

As a result of greed, baseless hopes and deficiency of Iman, most people fail miserably in the execution of the Shariah's laws of Meeraath. Their attachment to the worldly possessions in their custody blinds their rational and spiritual faculties, constraining them to make a vain attempt to extend this worldly love even to their lives in Barzakh (the state of life after earthly death and before Qiyamah). In a futile endeavour they seek to control what never belonged to them, even after death. Indeed, this evil attitude indicates an evil death.

When the Mu'min departs from this transitory abode, he should be liberated from all worldly encumbrances. However, it is observed that numerous people depart with a heavy load of sin – such sin for which there is no hope of repentance. When man had bequeathed his estate in flagrant violation of the Shariah's code of Meeraath, this transgression while having been enacted in his lifetime, comes into effect after his maut. He thus is denied the opportunity to make amends, to rectify this usurpation of rights and to repent. Unlike all other sins for which there is always the opportunity to set right the wrong and for repentance, there is no such opportunity to rectify the injustice and violation from a Haram testament made by the Mayyit (deceased). Hell-Fire being the destination of such an oppressor should, therefore, be easily understandable.

ABUSE AND VIOLATIONS

A man writing out his last Will and testament abuses the rights of the heirs and violates the sacred command of Allah Ta'ala regarding inheritance in several ways:

1. *By deleting an heir:* Some people attempting to supersede the wisdom and command of Allah Ta'ala consider it unnecessary to include in their Will the names of daughters, especially if they happen to be married to wealthy husbands. A disobedient child is also excised from the Will.

2. *By reduction in the fixed shares:* Sometimes, a man feels that a certain heir is not deserving of the share granted to him/her by the Shariah. The testator, therefore, tampers with the fixed share and reduces it according to his fancy. Thus, a daughter's share or a disobedient son's share is reduced. The affluence of a married daughter and the disobedience of a child are not recognised by the Shariah as valid grounds for tampering with the Shar'i shares in any way whatsoever.

3. *By the imposition of un-Islamic restrictions:* Those leaving behind large estates are generally the perpetrators of this violation. They stipulate that the estate's winding up be prolonged for years. Heirs are denied immediate possession of their shares. Baligh (adult) heirs are treated as minors because they have not reached the kuffar age of adulthood, viz. 21 years. Men lacking in Deeni knowledge, bereft of taqwa and deficient in Iman are appointed as executors and administrators who impose on the heirs the norms and restrictions of a kafir law and life-style.

4. *By discriminating in the assets of the estate:* Some people discriminate in the assets of their estates. Part of the estate is bequeathed to an heir while the remainder is subjected to the Shariah's law of inheritance, e.g. the house is bequeathed to the wife and the rest of the estate is distributed according to the law of inheritance.

5. *By the introduction of non-heirs into the distribution:* Some people implying to have more mercy than Allah Ta'ala (Nauthubillah!) consider it essential to bequeath the share of a deceased son to his children (i.e. the grandchildren of the testator). Some again feel the need to regard an adopted child as an automatic heir on par with their own children or in the absence of their own children, as their own child.

6. *By bequeathing more than a third to an outsider, i.e. one who is not an automatic heir:* A wasiyyat (bequest) in excess of one third the value of the estate to an outsider is neither permissible nor valid.

7. *By denial of the rights of creditors:* No provision is made for the paying of creditors who have no legal right of claiming according to the law of the land. The debt having been incurred in a fictitious arrangement such as a limited company or close corporation is overlooked in spite of the right of the creditors being related to the estate of the deceased.

The aforementioned examples are all grave violations of Islam's laws of inheritance and constitute flagrant acts of transgression which invoke the wrath and severest punishment of Allah Ta'ala.

It does not behove the servant of Allah Ta'ala to submit the issue of inheritance to his understanding. The All-Wise Creator knows what is best for all. He says in the Qur'an Majeed:

"Your fathers and your sons – you do not know who among them is closer to you in regard to benefit (for you). (These Shares are) Shares fixed by Allah. Verily, He is fully aware and wise."

MEERAATH IS NOT DISCRETIONARY

Meeraath (Inheritance) is not an act which has been assigned to the volition and discretion of man. The Muslim has absolutely no choice in the disposal of his assets after his demise. Even the one third in which he is allowed to bequeath to non-heirs, is by divine dispensation. Allah Ta'ala, by His Volition, permitted the Mu'min to act by his discretion in one third of the bounties (assets) in his possession.

Inheritance is a right which is confirmed for the heirs without the directive of the murith (testator) and without the volition and acceptance of the heirs. The heirs assume ownership of their shares simultaneously with the death of the murith. Regardless of the pleasure or displeasure of the testator or of his heirs, the latter become the owners of their respective Shar'i shares. Even if a heir voices his dissociation from his share of the inheritance, he/she remains the owner of his/her respective share.

If a man for some reason says that he does not wish to be the heir of his murith, his wish is of no significance. His wish does not cancel his right of inheritance. He automatically becomes the owner of his share whether he accepts or rejects it. Example: A man in an argument with his murith, said: "If I accept anything from you by way of inheritance then my wife is divorced." On the death of the murith, this person (the heir) automatically becomes the owner of his share of inheritance and the talaq comes into effect whether he accepts his share or not.

If a man refuses his share of inheritance, it is not transferred to the other heirs. The Qadhi or ruler will deliver the heir's share to him and compel him to accept. If necessary, the Qadhi will order forceful entry into his home to deliver his share of the estate. Once the wealth gained by inheritance has been placed in the heir's custody and possession, he/she may do with it as he/she pleases.

It should now be clear that every Will, testament or codicil drawn up in conflict with the Shariah is haraam and not valid.

WHAT TO DO IF THE WILL IS UN-ISLAMIC

When a man has left a Will which contravenes the Shariah, the heirs should understand that they are accountable to Allah Ta'ala for any usurpation of the rights of the other heirs who have been wronged by the mayyit. It devolves on them as an incumbent duty to rectify the injustice directed in the Will. The heirs should fear Allah Ta'ala and understand that according to the Quran Majeed they will be devouring haraam and consuming fire if they rob and defraud any heir of his/her rightful share. There is no difference between a robber/thief and one who robs the heirs of their proper Shar'i shares. In fact, the latter is worse in that he transgresses in his final worldly act before meeting Allah Ta'ala. Rasulullah (Sallallahu alayhi wasallam) said:

"Actions will (be judged) with the end (i.e. final deed)."

When life closes with flagrant transgression, the destination is only Jahannam. The Qur'an Majeed is categoric in this assertion:

"Allah will cast him into the Fire; forever will he dwell therein, and for him will be a disgraceful punishment."

The law of the land of the kuffar requires the distribution of the deceased's estate according to the directive of the testator. Notwithstanding this unlawful directive and demand of the kuffar law, there is no way in which the haraam distribution could be enforced on heirs who opt to submit to the Law of Allah Ta'ala. Among themselves they should arrange the distribution of the estate in terms of the Islamic laws of inheritance while signing the fictitious documents required by the non-Muslim authorities.

DISPOSING OF THE ESTATE DURING ONE'S LIFETIME

If for some reason a person wishes to dispose of his estate during his lifetime by distributing his assets among his heirs, this may be done. However, he should bear in mind the following two important requisites:

a. The motive for disposal of his estate should not be to deprive any heir. Allah Ta'ala has fixed the heirs and their shares by His wisdom. It is most unworthy of a Muslim to attempt any interference in this divine dispensation. Any plan aimed at depriving a heir is an unholy conspiracy which is tantamount to a flagrant act of rebellion against Rabbul Aalameen (The Creator and Sustainer of all the worlds). The consequence of such a satanic scheme is stated in the Qur'an:

   "Allah will cast him into the Fire; forever will he dwell therein, and for him will be a disgraceful punishment."

b. Sons and daughters should be given in equal measure. While a son inherits twice the share of a daughter, this rule should not be adopted when making gifts to one's children during one's lifetime. During one's lifetime discrimination in gifts to one's offspring is not permissible although valid. Sons and daughters should be given gifts of equal value.

   In spite of such discrimination in gifts being sinful, the gifts made will have legal validity in the Shariah, i.e. the one to whom the gift is made becomes the owner thereof. But, such discrimination is a punishable offence in the Akhirah.

WEALTH EXCLUDED FROM INHERITANCE

Certain types of wealth although in the possession of a man does not form part of his estate because the Shariah does not recognise his ownership of such wealth. Only such wealth of which a man is the true owner in terms of the Shariah, is the subject of Meeraath. Wealth excluded from inheritance are:

1. Wealth acquired by haraam means, e.g. gambling, prostitution, bribery, misappropriation, theft, riba, etc. Such wealth does not enter into a man's ownership. If the rightful owner or his/her heirs are living, the wealth should be compulsorily restored to them. If the owners or their heirs are no longer living or contact with them is not possible, the money or assets should be compulsorily given as Sadqah to the Muslim poor on behalf of the untraceable owners.

2. An asset pledged as security for a debt by the deceased. If there are insufficient funds in the estate to release the pledged asset, it can be sold to recover debt. Any amount in excess of the debt will form part of the inheritance.

3. Insurance/Endowment policies are riba contracts which are haraam. Only the actual sum of premiums paid by the mayyit forms part of the inheritance. The excess, i.e. the amount more than the total premiums, is riba which should be compulsorily eliminated by distributing it in avenues permitted by the Shariah. Such permissible avenues for elimination of this riba are: the poor; public works, e.g. public toilets, wells, boreholes; payment of government taxes; rates on property; death-duty levied by the government.

In view of some difference of opinion among the Ulama on the question of disposal of riba funds in one's possession, the best option is to give the money to the poor since there exists unanimity of our Ulama regarding this avenue of disposal of interest funds.

4. Funds acquired from a government pension belong to the estate only if possession was taken by the mayyit. If a pension cheque is received after a man's death, such money will not form part of his estate. Whoever the beneficiary of the fund is after the person's death, will be the owner of such funds.

5. Rights are not the subject of Meeraath. The business partnership between the existing partners and the deceased partner dissolves with his death. The heirs do not inherit any right of partnership. Their rights are related to only the share of their murith in the assets of the partnership enterprise. They have no rights in future profits of the business.

A lease automatically lapses with death. The lease is not inherited by the heirs.

There are, however, certain exceptions to which the rights of inheritance are extended. Such rights are rights inextricably connected to a fixed property, e.g. a common access road to a house or farm; the right of drawing water from a borehole, etc. owned by several partners.

Haqq-e-Shufah (the preemptive right of purchasing an adjacent property) is not inherited by the heirs. If a man sells his fixed property, his immediate neighbour has the first right to purchase it at the price asked by the owner. If the owner sells his property to a person other than the one enjoying the preemptive right of purchasing, the latter has a legal right to apply for the cancellation of the sale. However, if he dies, this right is not inherited by his heirs. But if the owner offers the building for sale, then the new owners, viz the heirs, will have the Shufah right to purchase. They gain this right not by way of inheritance, but by virtue of them having become the owners of the property.

The right to use a borrowed item is not inherited by the heirs, e.g. a man borrowed an item for a month's use. However, before expiry of the month he dies. The item has to be returned to the owner immediately.

An option to purchase is not inherited by the heirs. If an item was purchased with the option of returning it within a specified period, e.g. three days, and the purchaser dies before the expiry of the specified period, the heirs cannot return the item. The option of returning it lapses with the death of the purchaser. However, the item may be returned if it is defective.

WEALTH WHICH WAS NOT ALIENATED

Any wealth or asset set aside for a particular period or specific person remains part of the mayyit's estate as long as it has not been finally alienated from his ownership in the way of alienation stipulated by the Shariah. If a man sets aside, for example, a sum of money for his Hajj, but dies before he was blessed with the opportunity of performing Hajj, this money forms part of his estate for distribution among his heirs.

If he sets aside money for the purpose of making a gift thereof to any of his children or anyone else, but before handing the money to the intended beneficiary, he dies, then this money forms part of the estate.

If he sets aside money for building a Musjid or contributing it to a Madrasah or any other charitable institution, but dies before assigning the money to the trustees of these institutions, then such money forms part of his estate.

If for example, jewellery or garments are purchased for a particular daughter soon to marry, but before she takes possession of the items, her father dies, then all these items form part of his estate. She cannot claim these as being her property.

If money is set aside as Zakat, but before it is given to the poor (masakeen), the man dies, then this money forms part of the mayyit's estate.

PRIOR RIGHTS

There are three things which have priority over Meeraath. The distribution of the mayyit's estate will take place only after execution of these three rights. These are:

1. Burial Expenses
2. Debts
3. Bequests (wasaya)

BURIAL EXPENSES

This is the first item of expenditure related to the mayyit's estate. The burial expenses will be taken from the estate. However, waste and unnecessary expense are not permissible. Only the amount required for the Masnoon Kafan and necessary attendant expenses such as the bricks/timber to be used in the Qabr, the transport cost if a vehicle has to be hired to transport the mayyit to the qabrustan, paying the ghasil (the one who bathes the mayyit) if no one else is prepared to render this service, price of the grave, etc.

It is not permissible to spend anything from the mayyit's estate for any function whatsoever. In fact, it is not permissible to organise any function such as the innovations in vogue. Care should be taken to spend only what is necessary for the burial.

If an heir utilises the funds of the estate for an unnecessary expense, he is liable for the misappropriation and is obligated to pay into the estate the amount spent unnecessarily.

The cost for transporting the mayyit to another town for burial is an unnecessary expenditure which may not be taken from the mayyit's estate. Since it is not permissible to transport the mayyit unnecessarily to another city or town for burial, the expenses incurred for such transport are wasteful and expended sinfully.

The prohibition of spending unnecessarily from the funds of the mayyit's estate is so severe that if the estate is insolvent (i.e. the liabilities exceed the assets), then the creditors are entitled to authorise only two sheets for the male mayyit's Kafan instead of the masnoon three sheets. Since the assets in an insolvent estate belong to the creditors, they have the right to prohibit any excess expenditure.

Burial expense is a prior and an incumbent claim on the mayyit's estate whether solvent or insolvent. Thus, if someone offers to pay these expenses, it is not obligatory on the heirs to accept even if the estate is heavily in debt. The creditors cannot compel the heirs to accept such aid nor can they debar the heirs from taking the necessary burial expenses from the funds of the estate. However, it is permissible for the heirs to accept outside aid.

If some of the heirs are nabaligh (minors), acceptance of outside aid will be incumbent. But, if the baligh (adult) heirs agree not to take anything from the shares of the minors for the burial expenses, it will be permissible for them to refuse the aid offered.

The burial expense of a female mayyit is the responsibility of her husband. Only if she has no husband, may the expenses be taken from her estate.

If the mayyit is a pauper, leaving behind no estate whatsoever, the responsibility of providing the burial expenses devolves firstly on his heirs in proportion to their respective rights of inheritance, e.g. if he leaves behind three sons, a daughter and a wife, these heirs will bear the expenses in the following proportions:

His wife will contribute one eighth, each son two eighths and the daughter one eighth. It is permissible for any one or more of them to provide the full burial expenses.

In the absence of relatives, the burial expense of the pauper will be the responsibility of the people of the neighbourhood.

QARDH (DEBT)

After the provision of burial expenses, the mayyit's creditors have a prior right on the assets in his estate.

THE KINDS OF QARDH

1. Such debt which is confirmed by a statement of a man made before his maradhul maut (the last illness in which he died), or by the testimony of witnesses, or which is common knowledge.

2. Such a debt which is confirmed by only a statement made by a man during his maradhul maut. There are neither witnesses nor is the debt common knowledge.

PAYMENT OF THE DEBT

a. If the debt is only of the first kind, it will be simply paid from the mayyit's estate.

b. If the debt is only of the first kind and there is only one creditor, but the estate's assets are insufficient to pay the debt, after deduction of burial expenses, the balance of the estate will be given to the creditor. He may either waive the balance of the unpaid debt or he may retain his claim for the hereafter. Payment of the debt is not incumbent on the heirs. Should they willingly pay the debt, it will be an act of merit.

c. If the debt is only of one kind and there are several creditors, but the estate's assets are insufficient to satisfy the full amount of the debts, then the assets will be distributed among the creditors in proportion to their claims. Example: The mayyit has four creditors, **A**, **B**, **C** and **D**. The amount owing **A** is R6,000; **B** R3,000; **C** R2,000 and **D** R1,000. The value of the estate is R6,000 which will be distributed among the creditors as follows:

A will receive R3,000 because his claim is 50% of the total debt of R12,000.

B will receive R1,500 because his claim is 25% of the total debt of R12,000.

C will receive R1,000 because his claim is $16\,{}^{2}/_{3}\%$ of the total debt of R12,000.

D will receive R500 because his claim is $8\,{}^{1}/_{3}\%$ of the total debt of R12,000.

d. If the qardh (debt) is of both kinds (the first and second kind mentioned above) and the assets of the estate are insufficient to satisfy all the debts, then the creditors of the first kind will firstly be paid. After this payment, if there are still assets left, the creditors of the second kind will be paid proportionately.

e. If the assets of the estate are not sufficient for even the first kind of debt, all the assets will be divided among the creditors of the first kind proportionately. The creditors of the second kind will not receive anything in this case. These creditors may either forgive the mayyit and acquire reward (thawab) or postpone their claim for the Akhirah. Payment cannot be demanded from the heirs. It is, however meritorious for the heirs to liberate the mayyit from the burden of debt. Rasulullah (Sallallahu alayhi wasallam) said:

"The Shaheed (martyr) will be forgiven all his sins, but debt."

f. The mahr of the wife is exactly like the debt owing to others.

If the necessary conditions of the first kind of debt apply, it (the mahr) will be classified as qardh of the first category, otherwise of the second kind, i.e. the excess, more than the Mahr-e-Mithl will be a debt of the second class. (Mahr-e-Mithl is the stipulated or customary Mahr amount of the woman's family/tribe).

Example: During his maradhul maut, the husband declared that he is indebted to his wife for the amount of R5,000 being her Mahr. If there is no sound evidence (witnesses, common knowledge) to confirm this declaration, only the Mahr-e-Mithl amount will be a debt of the first kind. If, for example, the Mahr-e-Mithl is R1,000, then R1,000 will be a debt of the first kind and R4,000 will be assigned to the second category of debt.

THE THIRD CATEGORY OF DEBT

The third kind of qardh is a debt which is owed to Allah Ta'ala. Such debts are:

1. Outstanding Zakat
2. Outstanding Fitrah
3. Unfulfilled Qur'bani
4. Kaffarah
5. Fidyah for Salat and Saum which could not be executed due to extreme old-age or illness

Payment of the debts of this category is dependent on the wasiyyat (directive/bequest) of the mayyit. If the man had directed payment of these debts, it will be classified as Wasiyyat. After payment of burial expenses and satisfying creditors, the Wasiyyat will be discharged from one third the value of the remaining estate.

If a third of the remaining estate is insufficient to pay these debts, it is not incumbent on the heirs to pay from their shares. They are, however, permitted to pay the full debt from their shares or from any of their own wealth. They may not utilise any of the funds of minor heirs even if the minors consent. The consent of minors is not valid.

WARNING ON INCURRING DEBT UNNECESSARILY

The ahadith have issued severe warnings of punishment for those who leave behind unpaid debts. Rasulullah (Sallallahu alayhi wasallam) would refrain from conducting the Janazah Salat of such debtors who left insufficient assets to cover their debts. He would instruct others to perform the Salat. In this way would the deceased debtors be deprived of the blessings of Rasulullah's duas.

According to the Hadith, the Rooh of the Mu'min is prevented from entering Jannat as long as his creditors have not been satisfied. Once a Sahabi said:

"O Rasulullah (Sallallahu alayhi wasallam)! My brother has died and has left small children. Should I spend money on them (rather than pay his debts)?"

Rasulullah (Sallallahu alayhi wasallam) replied:

"Your brother is imprisoned on account of his debt. Pay his debt."

There are many similar narrations warning of the dire consequences of debt which is left unpaid.

ADVICE TO THE HEIRS

It has already been mentioned that if the heirs refrain from paying the debts of the mayyit if there are insufficient or no assets in his estate, they are not obliged to pay the creditors. However, the demand of their relationship of love with the mayyit, constrains them to discharge the debts so that the mayyit be set free from the awful burden in the Akhirah.

The claims of creditors will extend into the Akhirah and will be presented in the Court of Allah Ta'ala. The heirs should, therefore, endeavour their best to satisfy the creditors.

ADVICE TO THE CREDITORS

The reward of waiving debt is vastly more and superior to giving charity. Hence, it will be in their own everlasting interests to waive the debt of a mayyit whose estate lacks assets to discharge the liability.

Although creditors are entitled to postpone their claims for the Hereafter and acquire the good deeds of the debtor in lieu of their debt, they should understand that by waiving the debt here on earth, the tremendous thawab which they will gain will surpass the value of the thawab they could acquire by claiming the debtor's good deeds in the Akhirah. Undoubtedly, the best option is to waive the debt.

It is reliably narrated that there was a wealthy trader who had instructed his employees to be lenient to his debtors who would be freely granted extended time should they be unable to meet their commitments on due-date, and if they were unable to pay, the debt should be waived. When this trader died, he had no goodness to his name besides his leniency and kindness to his debtors. Solely on this account did Allah Ta'ala forgive him. Thus he was granted Jannat.

The Qur'an Majeed exhorts creditors to adopt one of the following options to relieve hard-pressed debtors:

1. Waive the whole debt if this is affordable.
2. Waive part of the debt if waiving the whole debt is not affordable.
3. Grant extension of time to the debtors if any of the above options is not affordable.

MARADHUL MAUT

(The last illness in which death occurs)

Before presenting the explanation of wasiyyat which is the third priority to be executed prior to the distribution of the residue of the estate among the heirs, it is appropriate to firstly discuss Maradhul Maut.

Allah Ta'ala has granted man full freedom to act and operate in the bounties of wealth during his state of health. Whilst sound and healthy, he is permitted to dispose his estate within the confines of the Shariah at will and wish. He enjoys the right to gift away his property to relatives, friends and foes according to his discretion. Once the beneficiary takes possession of the asset/item/property given to him during the state of health of the benefactor, the gift is complete and final, having left the ownership of the benefactor.

However, when man approaches the last stage in his earthly sojourn, hovering between life and death, the Shariah curtails his former unfettered freedom of disposing his estate. At this stage the rights of the heirs in his estate are activated. The rights of the heirs become applicable to the estate from the day that Maradhul Maut commenced. Maradhul Maut is the illness from which a man does not recover. His death occurs in the duration of this final sickness. Henceforth the Shariah does not recognise man's unrestricted freedom of operation in what is commonly known to be ‘his’ estate.

Some operations of a man in his final sickness are valid and will be given effect. Some of his operations are null and void while some operations are partly valid and partly void. This third category of partly valid operations is described as

Wasiyyat. These different types of operations in his estate by a man in his Maradhul Maut will be more fully explained later with specific examples, Insha'Allah.

While a man still breathes life, it is not possible to know whether the particular illness in which he is, will be his Maradhul Maut or not. He may well recover. Only death determines Maradhul Maut. All operations in his wealth during an illness from which he recovers will be valid regardless of the severity of this indisposition. The freedom of his operation is curtailed only in the illness in which he dies, the date of the curtailment being the first day of such last illness.

An illness which endures for a year or more will not be Maradhul Maut. The last illness of such a person will be from the time the illness deteriorated. Thus, deterioration leading to death, will be the determining factor of Maradhul Maut in cases of prolonged illness of a year or more. A year in the context is an Islamic year. All operations in his wealth prior to the date of deterioration will be fully valid.

Similarly, an illness which does not confine a person to bed, is not Maradhul Maut. If during the illness, he is able to perform Salat as usual and attend to other duties and activities, such a sickness will not be Maradhul Maut. His Maradhul Maut commences from the day he becomes bedridden, ultimately dying in that illness.

When disaster strikes a ship or aircraft, the Maradhul Maut of passengers will commence from the time when hope of life vanishes. All operations in their wealth in this state of hopelessness will be considered to be operations in Maradhul Maut, hence subject to the restrictions of the Shariah. If, however, the ship or aircraft survives the disaster or the passengers emerge safely, then all operations effected during the state of hopelessness will be valid.

When a man is sentenced to death, his Maradhul Maut commences from the moment he is led to the gallows. This moment commences from the minute he is taken from his place of imprisonment to the place of execution. All operations effected by him in his wealth during this time will be operations in Maradhul Maut. However, if for some reason, at this eleventh hour the death sentence is commuted or the execution is stayed or the prisoner escapes, then Maradhul Maut will be negated and all operations made during this time will be fully valid.

The Maradhul Maut of a woman who dies while giving birth will be from the time her pangs commence.

The Maradhul Maut of people dying in a plague will be from the time the disease strikes them. Unlike normal, everyday sickness, their participation in daily activities will not negate Maradhul Maut for persons caught in a plague, e.g. smallpox, cholera, etc.

THE EFFECTS OF TASARRUFAT (OPERATIONS) DURING MARADHUL MAUT

1. If during Maradhul Maut a man acknowledges a right/obligation which is common knowledge or evidenced by witnesses, then such acknowledgement will be fully valid and its discharge will be just as incumbent as all other rights and obligations which were confirmed prior to Maradhul Maut.

2. If during Maradhul Maut a man acknowledges a right/obligation in favour of non-heirs, which is neither confirmed by common knowledge nor evidenced by witnesses, then this acknowledgement too is valid. This obligation will also have to be incumbently discharged before the distribution of the mayyit's assets among his heirs.

   There is, however, one difference. The debt/obligation of the first kind will be discharged first. After this, if there are assets available, the second class of obligations/liabilities will be paid.

3. If during Maradhul Maut a man makes an acknowledgement of any obligation in favour of an heir or he makes a gift of an asset to an heir, it will have no validity. These operations are null and void. However, if all of the adult heirs uphold the operation, the obligation will be executed from the assets remaining after funeral expenses and payment of debts.

4. If a person who is an heir of the testator ceases to be his heir, the acknowledgement in his favour will be valid. This will happen if the beneficiary of the acknowledgement predeceases the testator. In view of him dying first, he no longer remains an heir, hence the acknowledgement of debt/obligation in his favour is valid and the debt/obligation will be paid to the heirs of the predeceased former heir.

   If the acknowledgement is confirmed by common knowledge or evidenced by witnesses, it will constitute a debt of the first category of Qardh. In the absence of such evidence, the obligation will be assigned to the second class of Qardh.

5. All charitable acknowledgements and endowments of a non-obligatory nature made during Maradhul Maut come within the scope of Wasiyyat.

6. Directives issued regarding payment of compensation (Fidyah/Kaffarah) for unfulfilled Salat, Saum, Hajj, Qasam (oath), etc. also come within the scope of Wasiyyat. (Wasiyyat will be explained in a separate chapter, Insha'Allah).

7. If a man divorces his wife during Maradhul Maut, whether by Talaq Ba-in or Talaq Raj'i, the Talaq is effective. If the man dies before expiry of her iddat, she remains his heir and will inherit in his estate. If he dies after the expiry of the iddat, she will not inherit in his estate.

8. If during her Maradhul Maut a woman enters into a Khula' contract in which she pays her husband a sum of money, the Khula' will be valid.

9. If a man marries during Maradhul Maut and the Mahr fixed is the normal Mahr-e-Mithl of the woman's family/tribe, such Mahr will be a valid debt on the mayyit. If the Mahr fixed is more than Mahr-e-Mithl, the excess will be in the category of Wasiyyat.

10. During Maradhul Maut a man purchased an asset and paid for it. This purchase and payment are valid provided it is borne out by witnesses or common knowledge. Documentary evidence such as title deeds,

official receipts and other instruments of proof will be accepted as valid evidence.

11. If a man during Maradhul Maut acknowledges that he has misappropriated or destroyed the property/amanat (an item held in trust) of a certain heir and that he is liable for payment of compensation, then this acknowledgement will constitute a debt of the first category provided that there is evidence to confirm this acknowledgement of debt.

12. If during Maradhul Maut a man declares that a certain debt owing to him, i.e. a debt which he gave prior to his Maradhul Maut, has already been paid by the debtor, then such declaration is valid provided the debtor is not one of his heirs.

13. If during Maradhul Maut a man makes an acknowledgement of debt/obligation in favour of a non-heir and the heirs accept this declaration, then the acknowledgement will be valid even in the absence of evidence.

14. If during Maradhul Maut a man marries a woman after having acknowledged a debt in favour of her, then this acknowledgement is valid. If there is no evidence to corroborate his statement, the debt will be of the second category.

15. If during Maradhul Maut an insolvent man waives debt owed to him, then such a waiver is not valid. The creditors can claim the debt from his debtor.

16. If during Maradhul Maut a woman says that she has already received her mahr or she waives her mahr, then both acts are invalid. However, if there is evidence to support her in the claim of having received her mahr, her statement will be valid. If the heirs uphold the waiving of her mahr, the waiver too will be valid.

17. If during Maradhul Maut an insolvent man accords preferential treatment to a particular creditor by making a payment to him, such an act is not valid. The rights of all creditors are equally related to his estate which will be distributed among the creditors in proportion to the respective amounts owing. The preferential payment made will be reclaimed by the creditors.

18. The same rule pertaining to preferential treatment as mentioned in No. 17 above, will apply if a man pays his wife's mahr during his Maradhul Maut or if he pays any outstanding wages/fees owing to employees. The payment thus made will not be valid.

    NOTE: A payment of debt will only be described as preferential on the death of the debtor. While he is living, all payments made by him are valid since it cannot be claimed with certitude that his illness is in fact Maradhul Maut. However, on his death it will be conclusively established that the illness was in fact Maradhul Maut, hence the other creditors are entitled to annul the preferential payments.

19. A gift made to a non-heir in Maradhul Maut will be in the category of Wasiyyat. If the value of the gift is less than the value of one third of the estate or equal to

one third, it will be valid. Any amount in excess of one third the value of the estate, is not valid and will be reclaimed by the heirs.

WASIYYAT

A bequest made by a person for part of his wealth to be contributed after his death to a person or institution is termed Wasiyyat.

The Shariah permits a Wasiyyat of one third or less of a man's estate. It is not permissible to make a Wasiyyat of more than one third. The amount in excess of a third of the value of the estate is not valid.

The following acts of a person come within the classification of Wasiyyat:

1. Contributions made during Maradhul Maut, e.g. gifts, waiving debt, charity.

2. Relating any disbursement or contribution of wealth to his maut (death), e.g. a sum should be contributed to a Musjid, Madrasah, etc. or a certain amount should be given to a non-heir or a specific sum should be spent on feeding the poor, etc.

3. Payment of Fidyah (compensation) for Salat, Saum and Hajj which were not executed during the lifetime of the deceased.

4. Payment of Kaffarah (penalty) for violated oaths, fasts, etc.

MASAA-IL

1. When a man makes a Wasiyyat, it devolves as an incumbent duty on the heirs to execute the Wasiyyat. The obligation of fulfilling the mayyit's Wasiyyat is incumbent only up to one third the value of the total assets in the estate. It is not incumbent to pay the amount in excess of one third, e.g. the mayyit had made Wasiyyat for R5,000 to be contributed to a Musjid. However, the total value of his estate is R9,000. Thus only R3,000 will be given to the Musjid.

2. If all the heirs voluntarily accede to execute the full Wasiyyat even in excess of one third, it will be permissible. However, the consent of minor heirs is not valid. Hence, nothing may be taken from their shares for payment towards the excess.

3. The 'third' in this context refers to one third of the value of the estate's assets after payment of funeral expenses and debts.

4. The consent of an adult heir who is absent cannot be assumed. Hence, nothing may be taken from the absent heir's share for the execution of the excess Wasiyyat.

5. When requesting the consent of an absent heir, it is essential to furnish full details of the Wasiyyat and the amount. His consent without him having been informed of the details of the Wasiyyat is not valid.

6. Only the consent which heirs give after the death of their murith is valid. If during the lifetime of the

mayyit the heirs had consented to a Wasiyyat more than a third, but withdrew such consent after the death of the murith, then the initial consent will be invalid.

7. When a person has neither heirs nor creditors and he makes a Wasiyyat for all his wealth to be contributed as he directs, then such a Wasiyyat will be valid.

8. The Wasiyyat will be valid only if the Musi (the one who makes the bequest) is sane and an adult.

9. The Wasiyyat will be discharged only if there are assets after payment of funeral expenses and debts.

10. The Wasiyyat will remain valid even if the beneficiary of the Wasiyyat dies before he accepts the benefit of the Wasiyyat. The Wasiyyat amount will be paid to the heirs of the beneficiary. The essential condition is that the beneficiary should be alive at the time the Wasiyyat is made in his favour. Thus, if a Wasiyyat is made in favour of a deceased person, the amount will not be paid to the heirs of the deceased in whose favour the Wasiyyat was made since such a Wasiyyat is not valid.

11. The subject of Wasiyyat should be an object or a right which can be owned, e.g. a fixed property, a vehicle, garments or the right to live in a house for a specific time, e.g. 5 years. If a right (i.e. a right which is valid in the Shariah) is bequeathed, the asset (e.g. house) will remain the property of the heirs while the beneficiary of the Wasiyyat will enjoy the right of occupying the house for whatever time specified in the Wasiyyat.

12. A Wasiyyat in favour of an heir is not valid. However, if all the adult heirs uphold the Wasiyyat it will be valid. But, nothing will be taken from the shares of minor heirs to fulfil the Wasiyyat in excess of one third which the adult heirs have accepted to uphold.

13. A Wasiyyat is not valid for such a person who happens to be an heir on the death of the murith. Sometimes a person becomes an heir in the absence of closer heir, e.g. a grandson (son's son). If a man is survived by a grandson and no sons of his own, the grandson will become an heir. But, if a son is living, the grandson will not inherit. Thus, if at the time of the murith's death the person is not an heir, the Wasiyyat in his favour will be valid. Another example is a brother who is not an heir if the mayyit is survived by either his father or sons. A Wasiyyat in favour of a brother will, therefore, be valid. However, if the mayyit has no father, sons or grandsons (i.e. son's son), then the brother will be an heir, hence a Wasiyyat for him will not be valid.

14. A Wasiyyat for a non-Muslim is valid although there are no ties of inheritance between Muslims and non-Muslims.

15. The beneficiary of the Wasiyyat is termed Musa Lahu. Both the acceptance and rejection of a Wasiyyat during the lifetime of the Musi (the one who makes the Wasiyyat) are not valid. The Musa Lahu's acceptance or rejection is valid only after the death of the Musi.

THE KINDS OF WASIYYAT

There are four kinds of Wasiyyat: Wajib, Mustahab, Ja-iz and Haram.

WAAJIB WASIYYAT (COMPULSORY)

1. It is obligatory for a person to make a Wasiyyat if he has liabilities to discharge. He should declare his liabilities verbally to witnesses or reduce these to writing so that rights of others are not plundered or lost after his death. Such liabilities are debt, articles of trust (Amanat) in his possession or any other right owing to others.

2. It is obligatory for a person to make a Wasiyyat in regard to Fardh Salat, Zakat, Fardh Saum, Kaffarah etc. which he had not discharged.

   It is a grave sin to refrain from a Wajib Wasiyyat.

MUSTAHAB WASIYYAT (PREFERABLE)

1. It is Mustahab to make Wasiyyat that the kafan (burial shrouds) and dafan (burial) be in conformity with the Sunnah and that no un-Islamic and bid'ah customs be organised.

2. If one's assets are considerable, it will then be Mustahab to bequeath any sum up to one third the value of the estate to charitable works, e.g. Musjid, Madrasah, etc. However, if one's estate is not considerable it will not be Mustahab to make a Wasiyyat for charity since such a Wasiyyat will prejudice the heirs. It is more meritorious

to leave the entire estate to the heirs if the estate is small and the heirs are needy.

JA-IZ WASIYYAT (PERMISSIBLE)

It is permissible to make Wasiyyat of all things which are permissible, e.g. a certain person should conduct the Janazah Salat, etc.

HARAM WASIYYAT (UNLAWFUL)

It is haram to make Wasiyyat of anything which is not permissible in Islam, e.g. to bury one's body in another city; to bequeath wealth to such a person or institution which will utilise the funds in haram activities; making a Wasiyyat which interferes in any way whatsoever with the shares of the heirs.

It is also haram to dispose of one's estate during one's lifetime if the intention is to deprive one's heirs. A man who has no sons sometimes is averse to his brothers or step-brothers inheriting. In such an attitude he shows displeasure with the decree of Allah Ta'ala. Consequently, he either disposes of his assets in his lifetime or he makes haram bequests to deprive the rightful heirs. This type of transgression will be severely punished in the Akhirah.

A Wasiyyat in favour of a person who has committed murder of the benefactor (i.e. the Musi or the one who makes Wasiyyat) is not valid whether the killing was by design or by error. Example: A man bequeaths a sum of money to his friend Zaid. After the Wasiyyat was made, Zaid kills his friend. The Wasiyyat which was made for Zaid now becomes null and void.

EXECUTING THE WASIYYAT

1. The Wasiyyat will be attended to after payment of the funeral expenses and debts.

2. A Wasiyyat is executed in one third of the value of the estate. After payment of funeral expenses and debts i.e. in one third of the remaining estate.

3. The amount of a Wasiyyat in excess of one third is not valid unless voluntarily approved by the adult heirs. The approval of minor heirs is not valid. The excess shall be paid from the shares of only the consenting adult heirs.

4. If more than one Wasiyyat have been made for an amount in excess of one third and the heirs refuse approval of the excess, the Wajib (compulsory) Wasiyyat will be attended to first.

   Example: A man made a Wasiyyat of R10,000 for a Musjid as well as Wasiyyat to pay R5,000 as Fidyah for his Fardh Salat which he had not discharged. However, after payment of funeral expenses and debts, the value of his assets is R30,000. One third is R10,000 which is insufficient to execute both Wasiyyats in full, therefore, the Wajib Wasiyyat being the Fidyah of R5,000 will be paid first and the remaining R5,000 will be given to the Musjid.

If a third is sufficient for only the Wajib Wasiyyat, the Mustahab Wasiyyat (e.g. for the Musjid) will be cancelled.

5. When the third is insufficient for execution of more than one Wasiyyat, priority will be accorded to the Wasiyyat of greater importance.

   Example: Wasiyyat was made to pay the Fidyah for unfulfilled Salat/Saum and unfulfilled Qur'bani. Since Salat/Saum is more important than Qur'bani, payment of the Fidyah of Salat/Saum has priority. Salat and Saum are Fardh whereas Qur'bani is Wajib.

6. When all the Wasiyyats are of equal category, the Wasiyyat which was made first will be discharged and the others will be cancelled, i.e. if the third cannot accommodate them.

   Example: Wasiyyat was made to pay the Fidyah of Saum and Fidyah of Salat. Both these are in the same category of importance. Since the third is insufficient, the Fidyah of the Saum will first be paid because the mayyit had made this Wasiyyat first. If there remains anything of the third after payment of the Fidyah of the Saum, it will be used for paying the Fidyah of the Salat.

   Example: Wasiyyat was first made to give a sum to the Musjid and a sum to the Madrasah. Both these are in the same category. If the third is insufficient for both, the Wasiyyat for the Musjid will be attended to first because the mayyit had made this Wasiyyat first.

7. If Wasiyyat was made to perform Hajj, it should be from the mayyit's hometown. If the third is insufficient for the

expenses from the mayyit's hometown, the Hajj should be performed from any other place from where the amount of the third will suffice. A person should be appointed at that place to perform the Hajj.

8. If Wasiyyat of equal amounts were made for two persons and the third is insufficient to execute both Wasiyyats, the third will be equally shared between the two.

9. If the Wasiyyat of different amounts were made for several persons and the third is insufficient to execute all the Wasiyyats, the third will be distributed among the beneficiaries proportionately.

   Example:

   (i) R1,000 was bequeathed to Zaid, R2,000 to Amr and R3,000 to Bakr. However, after payment of the mayyit's funeral expenses and debts, there remained only R9,000. The third of R3,000 will be distributed among the beneficiaries as follows:

Zaid	$^1/_6$	=	R500
Amr	$^2/_6$	=	R1,000
Bakr	$^3/_6$	=	R1,500
			<u>R3,000</u>

   (ii) R3,000 was bequeathed to Zaid and R5,000 to Amr. The third is insufficient for both Wasiyyat and the adult heirs refuse to approve of the excess. Therefore, the third will be divided proportionately as follows: Zaid will receive $^3/_8$ of the third and Amr $^5/_8$.

(iii) R1,500 was bequeathed to Zaid and R500 to Amr. However, after payment of the funeral expenses and debts, the value of the remaining assets is R3,000. One third, therefore, is R1,000 which is insufficient for the Wasiyyats (R1,500 + R500 = R2,000). The R1,000 will, therefore, be shared proportionately by the two beneficiaries as follows:

Zaid's bequest	R1,500
Amr's bequest	R500
	= $\underline{\text{R2,000}}$
Zaid's proportionate share	$= \frac{1500}{2000} \times \frac{1000}{1}$
	$= \frac{1500}{2}$
Zaid	= R750
Amr	= R250

10. A Wasiyyat in favour of the children, will be shared equally by male and female children. Example: The mayyit had bequeathed R2,000 for the children of Zaid who has two sons and three daughters. Each one of Zaid's children will receive R400.

11. If the Wasiyyat stipulates that an item of a specific value be given, it will be permissible to give that value in lieu of the item, e.g. the mayyit had made a Wasiyyat that R500 worth of rice, etc. be given to the

poor. It is not binding to execute the Wasiyyat by giving rice, etc. The amount of R500 in cash could also be given to the poor.

Similarly, if the Wasiyyat stipulates a sum of cash to be given, it is not binding to give the beneficiary cash. The amount may be given in kind as well.

12. The heirs are bound to hand over to the beneficiary of the Wasiyyat the specific asset which was bequeathed for him/her, e.g. the mayyit had bequeathed a certain vehicle to his friend Zaid. The heirs are not entitled to retain the vehicle and give Zaid the value of the vehicle in cash. The heirs are bound to hand over the vehicle to Zaid.

13. The sum in excess of the amount necessary for the execution of the Wasiyyat is the property of the heirs, e.g. the mayyit had bequeathed R8,000 for Hajj to be performed on his behalf. However, if the Hajj could be performed with R6,000, the excess of R2,000 belongs to the heirs.

14. The Wasiyyat of a mayyit who is insolvent shall not be executed because all the assets of the estate belong to the creditors.

15. If a man says to his debtor: “After my death you are absolved of the money you owe me”, this will be in the category of Wasiyyat and the debt up to one third of the value of the estate will be waived.

NOTE:

1. In any Wasiyyat of more than one third the value of the remaining estate, the excess can be executed with the approval of the adult heirs.

2. The consent of the minor heirs is not valid.

3. The excess (i.e. more than one third) will be paid from the shares of only those adult heirs who have given their voluntary approval.

4. The Shariah does not oblige the heirs to approve the excess amount.

REVOKING A WASIYYAT

1. While the Musi (the one making a Wasiyyat) is alive, he has the right of revoking a Wasiyyat he has made. When revoking a Wasiyyat, it is essential that the Musi uses such terms which clearly indicate that the Wasiyyat has been revoked, e.g.

   ‘I am revoking this Wasiyyat'
   ‘I am cancelling this Wasiyyat'
   ‘I have cancelled/revoked this Wasiyyat'

   The mere denial of the Wasiyyat will not constitute a cancellation. Thus, if the Musi says: ‘I don't know anything about the Wasiyyat you are talking about’, it will not cancel the Wasiyyat which is confirmed by the testimony of witnesses. If he has no intention of honouring the Wasiyyat, he should revoke it in clear terms.

2. An operation which indicates that the Musi has revoked his Wasiyyat, constitutes cancellation of the Wasiyyat, e.g. After having bequeathed a plot of land to Zaid, the Musi erects a building on the plot or sells it. This action constitutes cancellation of the Wasiyyat.

THE WASI (Executor)

The executor or administrator whom the mayyit had appointed to attend to his estate is called the Wasi.

1. A person becomes a Wasi by his acceptance or by acting in a way implying acceptance. Once he has accepted, the post becomes incumbent on him.

2. As long as the appointer of the Wasi, namely, the Musi is alive, the Wasi is entitled to resign.

3. If two Wasis (Executors) were appointed, any one of them cannot act unilaterally. Besides the funeral arrangements and the necessary expenses for the mayyit's dependents, all other acts and decisions regarding the mayyit's estate must be effected jointly by the two appointed executors.

4. It is not permissible to appoint a kafir or a fasiq to be one's Wasi.

FACTORS WHICH DEPRIVE HEIRS OF INHERITANCE

There are four factors which deprive a person from inheriting. These are:

1. Killing the Murith
2. Difference of religion
3. Slavery
4. Difference of country of domicile

KILLING THE MURITH

1. When a person kills his Murith (the one in whose estate one inherits), the heir is deprived of inheriting in his estate. Whether he had killed by design or by mistake, he is deprived of his inheritance.

2. An insane person and a minor will not be deprived of their inheritance if they had killed their Murith.

3. If the heir killed the Murith in self-defence, e.g. the Murith attacked and the heir defended himself, then he will not be deprived of his inheritance.

4. If the heir is the executioner in an Islamic state and is ordered to execute his Murith who has been justly sentenced to death by a properly constituted Islamic court, then this executioner will not be deprived of his inheritance for having killed his Murith. Islamic state refers to a state which is governed according to the Shariah. Since there are no longer any such Islamic states, the rule explained here will not apply to state executioners. In the present times if a state executioner

executes his Murith, he will be deprived of inheritance in the estate of his Murith.

5. If a man kills his wife whom he caught in the act of committing zina (adultery), he will not be deprived from inheriting in her estate provided that the crime of the woman is evidenced by witnesses.

   Although it is not permissible for a man to kill his wife whom he apprehends in the act of zina, nevertheless, the extreme provocation and infidelity of the wife mitigate in his favour, hence the Shariah does not deprive him of his inheritance.

DIFFERENCE OF RELIGION

1. There are no ties of inheritance between Muslims and non-Muslims.

2. If a Muslim has no Muslim survivors and he has not made a Wasiyyat for the disposal of his estate, all his assets will go to the Baitul Mal (Islamic State Treasury). Where there is no such Baitul Mal, the Muslim community should distribute his wealth to Islamic charity.

3. That portion of a murtad's estate which he had acquired while he was a Muslim, will be inherited by his heirs and the portion which he acquired during his state of irtidad will be handed to the Baitul Mal.

A person who renounces Islam after having been a Muslim is termed murtad. His condition of Kufr after having reneged from Islam is called irtidad.

If a female becomes a renegade (murtaddah), her entire estate will be inherited by her Muslim heirs whether she had acquired the assets/wealth during her state of Islam or state of irtidad.

The estates of the murtad and murtaddah will be distributed as mentioned above when any of the following occurs:

a. He/she links up with the Kuffar.
b. He/she dies or is put to death.

SLAVERY

Since a slave cannot own anything, he can neither be a murith nor a warith (heir).

DIFFERENCE OF COUNTRIES

This factor applies to only non-Muslims. We shall, therefore, not present any discussion on this issue. As far as Muslims are concerned, domicile in different countries does not deprive them of inheritance. Even if the Murith lives and dies in the east and the heirs are in the west, they will inherit in his/her estate.

SIMULTANEOUS DEATHS

When people (in this context close relatives) die in a common tragedy, e.g. plane-crash, shipwreck, fire, etc., and there is no way of establishing who had died first, it will be decreed that the deaths were simultaneous. The one will not inherit in the estate of the other in view of the moments of their respective deaths being unknown. Their estates will be inherited by those heirs who are alive.

Example: Zaid (father) and Abdullah (son) were both killed in an accident. It could not be ascertained who had died first, hence it will be said that both had died at the same time. The question of inheritance between the father and son thus does not arise.

On the otherhand, if it was established that the father, Zaid had died even a minute before his son, Abdullah, then the latter inherits in his father’s estate. Since he too has died, his share of inheritance will be transferred to his (Abdullah's) heirs.

NUBUWWAT

Nubuwwat also deprives heirs of inheritance. Neither could a Nabi inherit nor could his heirs inherit in his estate. (This is mentioned only by way of interest. Since Nubuwwat has ended, this factor of deprivation no longer exists in practice).

FACTORS WHICH DO NOT DEPRIVE HEIRS OF THEIR INHERITANCE

MARRIAGE OF A WIDOW

In some places a widow is deprived of her inheritance in her husband's estate if she marries again. This is a callous misdeed which is an exhibition of flagrant displeasure for Allah's Decree. A widow is free to marry and the family has absolutely no right of preventing her from marriage nor of depriving her of her inheritance in her husband's estate.

DISOBEDIENCE

Disobedience of children does not disqualify them from their inheritance. If one son was disobedient to his father his entire life while another son was obedient and served his parents, both will inherit equally in their father's estate. The disobedient son cannot be deprived of his inheritance on account of his disobedience.

If there is a valid reason for the desire to deprive an heir, it will be proper to distribute the assets of one's estate during one's lifetime, leaving nothing for distribution after one's death. However, when distributing the assets during one's lifetime, such distribution will be by way of gift, not by way of inheritance, hence it will be necessary to make equal gifts to both sons and daughters. It is not permissible to discriminate between sons and daughters when making gifts.

When distributing one's assets during one's lifetime, the intention should not be to deprive any heirs for no valid reason. A valid reason would be the gross disobedience of a child who has taken to evil ways, dissociating himself/herself from his/her parents.

A person who deprives any heir for no valid Shar'i reason, will find himself deprived of Jannat according to the Hadith of Rasulullah (Sallallahu alayhi wasallam).

It should be well understood that an act of depriving any heir, even a grossly disobedient son or a flagrant transgressor, cannot be effected after one's death. Thus, a Will containing any clauses of deprivation is not valid in the Shariah.

INFANCY

Infancy does not deprive the child of its inheritance. The infant will inherit in exactly the same way as adults. Even the unborn child in its mother's womb will inherit. This will be explained later, Insha'Allah.

HUJUB (DEPRIVATION)

Heirs are sometimes deprived of inheritance, not because of any defect or impediment in themselves, but on account of the presence of others who may be heirs inheriting or non-inheriting heirs. This deprivation as the result of the presence of others is termed Hujub.

There are two types of Hujub – *Hujub Nuqsan* and *Hujub Hirman*.

HUJUB NUQSAN

In this type, the heirs are partially deprived. On account of the presence of certain relatives, the shares of heirs decrease. The following are the heirs who suffer *Hujub Nuqsan*:

Mother: The mother’s share is reduced from one third to one sixth if the mayyit is survived by also sons, daughters or grandchildren. Grandchildren in this context refers to son's children.

The mother’s share is likewise reduced to one sixth if there happens to be more than one brother or sister of the mayyit, even if in certain circumstances the brothers and sisters do not inherit.

The mother’s share is also reduced if the mayyit is survived by his father and wife or by her father and husband. In this case there are no children. Instead of obtaining one third of the estate, she will receive one third of the balance remaining after subtracting the husband's/wife's share. This will be further explained, Insha'Allah.

Husband: In the presence of the wife's children or grandchildren (i.e. son's children), the husband's share decreases from one half to one quarter.

Wife: In the presence of the husband's children or grandchildren (i.e. son's children), the wife's share decreases from one quarter to one eighth.

Granddaughter (Son's daughter): If the mayyit has one daughter and one granddaughter, the latter's share decreases from one half to one sixth because of the presence of the daughter.

Al-lati Sister: In the presence of a true sister, an *Al-lati sister's share decreases from one half to one sixth.

TYPES OF RELATIONSHIP BETWEEN BROTHERS AND SISTERS

There are three types of brothers and sisters. These are known as Haqeeqi, Al-lati and Akhyafi.

Haqeeqi are true or full brothers and sisters, i.e. children of the same mother and father.

**Al-lati* are children of one father and different mothers.

Akhyafi are children of one mother and different fathers. Such brothers and sisters are termed Akhyafi.

HUJUB HIRMAN

Hujub Hirman is the total deprivation of an heir from inheritance. The following persons suffer *Hujub Hirman*:

AKHYAFI BROTHERS AND SISTERS:

These are totally deprived if the mayyit leaves behind sons or daughters or grandchildren (son's children) or father or paternal grandfather.

GRANDCHILDREN (SON'S CHILDREN):

These are deprived in the presence of a son.

GREAT-GRANDCHILDREN (SON'S SON'S CHILDREN):

These are deprived in the presence of a grandson.

GRANDDAUGHTER (SON'S DAUGHTER):

The granddaughter is deprived if the mayyit leaves behind two daughters.

PATERNAL AND MATERNAL GRANDMOTHERS:

All of these are deprived in the presence of the mayyit's mother.

PATERNAL GRANDMOTHER:

She is deprived in the presence of the mayyit's father.

BROTHERS AND SISTERS:

All of these, be they Haqeeqi, Al-lati or Akhyafi, are deprived if the mayyit is survived by children or grandchildren (son's children) or a father or grandfather.

AL-LATI SISTER:

She is deprived if the mayyit leaves two Haqeeqi sisters or one Haqeeqi brother on condition she is not an Asbah (this will be explained in the section dealing with Al-lati sisters, Insha'Allah).

PATERNAL GRANDFATHER:
He is deprived in the presence of the mayyit's father.

BROTHER'S SON:
They are deprived in the presence of the mayyit's father or brother or son or grandson (son's son).

PATERNAL UNCLE:
He is deprived in the presence of the mayyit's father or grandfather or great-grandfather or son or grandson or brother or brother's son.

RELATIVES WHO ARE NOT HEIRS

The following relatives are not heirs. They will inherit only if a Wasiyyat is made for them.

1. There are no ties of inheritance between a stepmother/stepfather and her/his stepchildren.

Examples:

a) A woman's children from a previous marriage will not inherit in the estate of her other husband (i.e. the children's stepfather). Similarly, this stepfather will not inherit in the estates of his stepchildren.

b) A man's children from one wife will not inherit in the estate of their father’s other wives (i.e. their stepmothers). Similarly, their stepmothers will not inherit in their estates.

c) The relatives of the husband do not inherit in the estate of his wife nor do the relatives of the wife inherit in the estate of her husband.

d) Zina (fornication/adultery) does not create ties of inheritance. Thus, an illegitimate child will not inherit in the estate of its biological father nor will such a man inherit in the estates of his illegitimate offspring. Such children will, however, inherit in their mother's estates and their mother will inherit in their estates. They will also inherit from one another. They will also inherit in the estates of their mother's other children who are legitimate.

ADOPTION

Adoption does not bring about any of the ties and effects created by blood-relationship. Adapted children do not inherit in the estates of their foster parents nor do these parents inherit in the estates of their adopted children. However, a Wasiyyat may be made for adopted children and foster parents.

It should be remembered that the rules of Purdah/Hijab apply fully to adopted children.

AN ESTRANGED WIFE

A wife who is estranged from her husband will inherit in his estate as long as she remains in his nikah regardless of whose fault the cause of the estrangement is. Whether she was expelled from the marital home by the husband or whether she wilfully abandoned the home, she will remain an heir in her husband's estate as long as she remains in his nikah even if the separation endured for a lifetime.

THE ILL-BEGOTTEN CHILDREN OF AN ESTRANGED WIFE

The children which an estranged wife begets by way of adultery will be considered to be the legitimate children of her husband. As such, they will inherit in his estate and he in their estates.

Since the mother of such ill-conceived offspring is in the nikah of her husband, these children are regarded as legitimate by the Shariah even if the woman has not been living with her husband for years and her illicit affairs with other men are common knowledge.

The husband should understand that it is not proper to refuse talaq to a woman on account of his desire to spite and punish her. In the end, this dishonourable attitude rebounds on him. He will share the blame for her misconduct. Furthermore, children which she begets by way of adultery will bear his name. They have equal rights with his true children. Therefore, if there is no hope of a reconciliation, the man should honourably set the woman free by means of talaq. As Allah Ta'ala commands in the Qur'an Majeed:

"Maintain (her) beautifully or set (her) free with kindness."

THE MAYYIT'S ESTATE

The rights related to the estate of the mayyit (deceased) are listed hereunder by order of priority:

1. Janazah (funeral and burial) expenses
2. Payments of debts
3. Payments of Wasiyyat
4. Distribution of the balance of the estate to the heirs

The rights of the heirs are in the balance of the mayyit's assets remaining after payment of Janazah expenses, debts and Wasiyyat.

THE HEIRS

There are different classes of heirs in order of priority as follows:

1. Zawil Furoodh – Heirs with fixed shares
2. Asbat Nasabiyyah – Heirs entitled to the residue (balance)
3. Asbat Sababiyyah – Emancipators of slaves
4. Radd, i.e. Redistribution to the Zawil Furoodh
5. Zawil Arham – Such relatives who are not members of class (1) and (2) above
6. Maula Muwalat – Heirs by a contract of friendship
7. Muqar lahu bin-nasab alal ghair – An acknowledged relative
8. Musa lahu bi-jami-il mal – Beneficiary by bequest of the entire estate
9. Baitul Mal – Islamic State Treasury

These classes of heirs/beneficiaries will, Insha'Allah, be discussed in detail in the ensuing pages.

ZAWIL FUROODH

Zawil Furoodh are those heirs whose shares of inheritance have been fixed by the Shariah. There are thirteen Zawil Furoodh. Four are males and nine are females.

THE MALES:
Father, paternal grandfather, Akhyafi brothers and husband.

THE FEMALES:
Wife, mother, daughter, son's daughter, Haqeeqi sister, Al-lati sister, Akhyafi sister, paternal grandmother and maternal grandmother.

IMPORTANT: It should be remembered that the relatives mentioned throughout this book are the relatives of the mayyit (deceased).

FATHER:

The father's share is never less than one sixth. Regarding the father's inheritance, there are three states:

1. *Only one sixth*: When the mayyit is also survived by a son or son's son (grandson), the father's share is one sixth.

2. *One sixth and remaining balance of estate*: If the mayyit has not left any sons or grandsons (son's

sons), the father in addition to his one sixth, will acquire whatever remains of the estate after the inheriting members of the Zawil Furoodh have received their shares. In this case the father inherits as a member of Zawil Furoodh as well as an Asbah. (Asbat are those relatives who will claim the balance of the estate remaining after the Zawil Furoodh have obtained their shares.)

3. *Only Asbah*: If the mayyit has neither son nor daughter nor any grandchildren (son's children), then the father will inherit only in his capacity as an Asbah, i.e. he will receive the balance of the estate remaining after the Zawil Furoodh have obtained their shares. In this case the father does not receive one sixth. The balance which the father will receive in this third case, will be more than one sixth.

IMPORTANT: Grandson (son's son) in this context of this book is not restricted to only the son's son, but refers to also all grandsons lower down, e.g. great-grandson, great-great-grandson, etc.

In the same way, paternal grandfather is not confined to only father's father, but refers to even the great-grandfather (father's father's father) and above. The same explanation applies to the maternal grandmother.

PATERNAL GRANDFATHER:

It should be well remembered that the paternal grandfather inherits only in the absence of the father. If the mayyit leaves both his father and grandfather, the latter will not inherit.

The presence of the father will always deprive the grandfather of inheritance.

The grandfather's states are exactly the same as the state of the father. The three states described of the father apply to the paternal grandfather as well. See the three states in the section dealing with the father's inheritance.

However, there is a difference between the father and the grandfather in one instance. This applies when the mayyit is survived by either:

i) Only wife and parents or
ii) Husband and parents

After giving the shares of the husband/wife, the mother will receive one third of the balance. Whatever remains thereafter, will be taken by the father, but if the mayyit leaves his grandfather instead of his father, then in this instance the former (i.e. grandfather) while also inheriting the remaining balance, will in actual fact get less because now the mother will inherit one third of the whole estate, not one third of the balance after paying the shares of the husband/wife as mentioned earlier.

The great-grandfather's state is exactly the same as the state of the grandfather, however, if the grandfather is also living, the great-grandfather will not inherit. Just as the presence of the father deprives the grandfather of inheritance, so too does the presence of the grandfather deprive the great-grandfather.

AKHYAFI BROTHERS:

Akhyafi as has already been explained are such brothers and sisters who have the same mother but different fathers. Akhyafi brothers as well as Akhyafi sisters have three states:

1. One sixth if there is only one Akhyafi brother (or Akhyafi) sister.

2. If more than one, whether one Akhyafi brother and one Akhyafi sister, or any other number, they will jointly receive one third which they will share equally among themselves. Males and females will receive equal shares. Thus if there are, for example, 2 Akhyafi brothers and 3 Akhyafi sisters, one third of the estate will be divided into five equal shares, each one of them receiving one share.

3. DEPRIVED: If the mayyit is survived by any of the following relatives, all Akhyafi brothers and sisters are totally deprived of inheritance: son, grandson (son's son), daughter, son's daughter, father and paternal grandfather.

HUSBAND:

The husband has two states:

1. The deceased has neither children nor any grandchildren (son's children). In this case the husband inherits half the estate.

2. The mayyit is survived by children or grandchildren. In this case the husband's share is one quarter.

It is not necessary that the children of the deceased wife be the children of the inheriting husband. Even if they are the children of a previous marriage or children which she begot out of wedlock, then too, the husband's share of inheritance will be one quarter.

If a husband has children by one wife and no children from the deceased wife, then he will inherit half her estate since the children he has are not the children of the mayyit.

WIFE:

The wife has two states of inheritance:

1. If the deceased husband has neither children nor grandchildren, the wife's share is one quarter.

2. If the husband is survived by children or grandchildren, the wife's share is one eighth.

   It is not necessary that the children be the offspring of the surviving wife. As long as the husband has legitimate children by even another wife, whether still in his nikah or not, his wife who has no children by him will inherit one eighth of his estate.

Wives will share equally in either the one quarter (case No. 1) or the one eighth (case No. 2) which they inherit. If there are two wives, the one quarter or one eighth will be shared equally between them. If there are three wives, the one quarter or one eighth will be divided into three equal shares, each wife taking one share. If there are four wives, the one quarter or one eighth will be divided into four equal shares, each wife taking one share.

If a man divorces his wife and then dies before expiry of her iddat, she will inherit in his estate.

If the nikah was ended by way of Khula' in which the wife paid her husband a sum of money for her release or he gave her Talaq Ba-in on her request, then she will not be entitled to inheritance even if the husband dies before expiry of her iddat.

MOTHER:

The mother has three states:

1. *One sixth*: If the mayyit has children or son's (or son's son's) children, the mother's share is one sixth.

   One sixth: If the mayyit has more than one brother or sister of any kind, be they Haqeeqi, Akhyafi or Al-lati, the mother's share is also one sixth. This state (one sixth) will apply whether the brothers/sisters inherit or not.

2. *One third of the balance*: If a man is survived by his wife and parents or a wife is survived by her husband and parents, the mother's share is one third of the balance remaining after deducting the wife's/husband's share, i.e. first the wife's or husband's share will be deducted from the estate. Of the balance remaining, one third will be the share of the mother.

3. *One third of the whole estate*: If the mayyit has none of the relatives mentioned in No. 1 and No. 2 above, the mother will inherit one third of the whole estate. This will apply in the following cases:

i) The mayyit has no children, sons (or son's son's) children;

ii) The mayyit does not have more than one brother or sister;

iii) The mayyit's parents and husband not having survived together or the mayyit's parents and wife not having survived together.

DAUGHTERS:

Daughters have three states:

1. *Half*: If the deceased has no sons and only one daughter, she will inherit half the estate.

2. *Two thirds*: If there are two or more daughters and no sons, they will jointly inherit two thirds which they will share equally among themselves.

3. *Asbat*: If the mayyit has sons too, even if only one, then the daughters will become Asbat together with the sons. They (sons and daughters) will receive the balance of the estate. Each daughter will receive half the share of a son. If, for example, there are two sons and three daughters, the balance of the estate will be divided into seven equal shares of which each son will receive two and each daughter one. If there are five

sons and two daughters, the balance of the estate will be divided into twelve equal shares of which each son gets two and each daughter one share.

All the daughters and sons (i.e. legitimate ones) of a man are equal in the matter of inheritance whether they are the children of existing wives, deceased wives or divorced wives.

While illegitimate children do not inherit in the estate of the man who has fathered them, they do inherit in their mother’s estate.

GRANDDAUGHTERS:

Granddaughters refer to son's daughters or son's son's daughters, no matter how low down.

Granddaughters have six states:

1. *One half*: If the deceased has only one granddaughter and no children, she inherits half the estate.

2. *Two thirds*: In the absence of children, if there are two or more granddaughters, they will jointly inherit two thirds which will be shared equally among them.

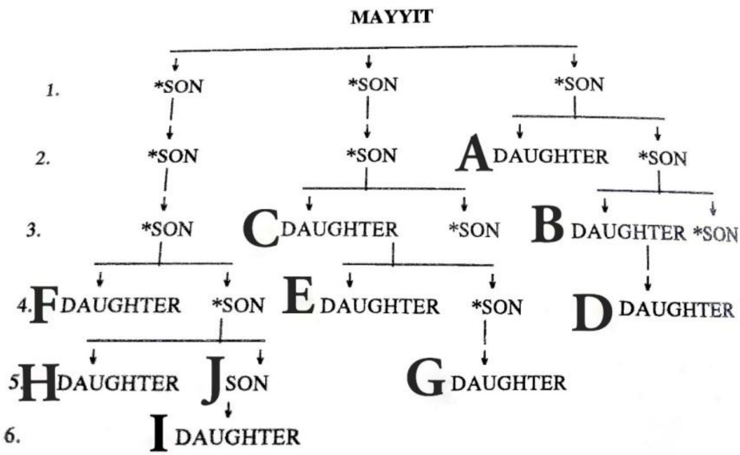
3. *One sixth:* If the mayyit has one daughter and one or more granddaughters, they will inherit one sixth which they will share equally among themselves.

4. *Deprived*: If the mayyit has two or more daughters, granddaughters are deprived of any inheritance.

5. *Deprived*: If the mayyit has a son, granddaughters will not inherit.

6. *Asbat*: A grandson (son's son or son's son's son) in line with the granddaughters or below them, will transform the granddaughters into Asbat. They will then inherit jointly with the grandson/s and each granddaughter will receive half the share of a grandson.

The great-grandson does not always transform the females in a previous generation into Asbat as the following diagram illustrates:



All deceased sons are indicated with an asterisk *. The only son alive is **J**. All daughters (i.e. grand and great, etc. granddaughters) are alive. The mayyit's estate will be distributed as follows:

i) Daughter (granddaughter) **A** inherits one half.

ii) Daughters **B** and **C** inherit one sixth jointly, which they will share equally.

iii) Son **J** and daughters **D**, **E**, **F**, **G**, and **H** will receive the balance of the estate which will be divided into 7 parts. Son **J** will receive 2 parts and each of the daughters (**D**, **E**, **F**, **G**, and **H**) will obtain one part. Daughter **I** who is below son **J** will not inherit.

HAQEEQI (TRUE OR FULL) SISTERS

(of the same mother and father):

Haqeeqi sisters have five states:

1. *One half*: If the mayyit has one sister and no children or grandchildren (son's children), the sister will inherit half the estate.

2. *Two thirds*: If there are two or more sisters and no children or grandchildren, the sisters will receive two thirds, which they will share equally among themselves.

3. *Asbat*: If the mayyit has Haqeeqi (full) brothers, one or more, the Haqeeqi sisters will become Asbat with them and the balance of the estate will be taken by them (brothers and sisters). A sister will receive half the amount a brother gets.

4. *Asbat*: If the mayyit has daughters or son's daughters (or son's son's daughters), the sisters will become Asbat and claim the balance of the estate which they will share equally among themselves.

5. *Deprived*: Sisters will not inherit if the mayyit has any of the following relatives: father, paternal grandfather (or great-grandfather), son or grandson (or great-grandson).

AL-LATI SISTERS

(Same father, different mothers):

Al-lati sisters have seven states:

1. *Half*: If the mayyit has only one Al-lati sister, she will inherit half the estate.

2. *Two thirds*: If there are two or more Al-lati sisters, they will jointly inherit two thirds which will be shared equally by them.

3. *One sixth*: If the mayyit has one Haqeeqi sister, the Al-lati sisters will receive one sixth which they will share equally among themselves.

4. *Deprived*: If the mayyit has two or more Haqeeqi sisters, then the Al-lati sisters will not inherit.

5. *Asbat*: If the mayyit has Al-lati brothers also, then the Al-lati sisters will become Asbat with the Al-lati brothers. They all (Al-lati brothers and Al-lati sisters) will receive the balance of the estate. An Al-lati sister will receive half the share of an Al-lati brother.

6. *Asbat*: If the mayyit has daughters or granddaughters (son's daughters), the Al-lati sisters will become Asbat and claim the balance which they will share equally.

7. *Deprived*: If the mayyit has a son or grandson or great-grandson, father or grandfather or great-grandfather or Haqeeqi brother, then the Al-lati sisters will not inherit.

   Also, when the mayyit's Haqeeqi sister becomes an Asbah, then Al-lati sisters (in fact, even Al-lati brothers) will be deprived. The mayyit's Haqeeqi sister becomes an Asbah if the mayyit has daughters or son's daughters even if it be one daughter or one granddaughter.

AKHYAFI SISTERS

(Same mother, different fathers):

The state of Akhyafi sisters is exactly the same as that of Akhyafi brothers. For the shares of Akhyafi sisters see the explanation on Akhyafi brothers on page 67.

GRANDMOTHER:

There are two kinds of grandmothers who are among the Zawil Furoodh, viz paternal grandmothers and maternal grandmothers.

Paternal grandmother is not only the father's mother. The paternal grandfather's mother and the paternal grandmother's mother are also paternal grandmothers who inherit. Thus, a single mayyit can have several paternal grandmothers.

There are two principles governing the eligibility of grandmothers to inherit, these are:

(i) The grandmothers should be Saheehah (Proper);

(ii) The grandmother closer to the mayyit will inherit. The closer one will deprive the others.

There are two kinds of grandmothers in general – Saheehah and Fasidah. Grandmothers who are described as Fasidah are among those relatives known as Zawil Arham. They are not among the Zawil Furoodh.

A Saheehah grandmother is one in whose relationship to the mayyit there is no maternal grandfather. Thus, the mother of the maternal grandfather (although a grandmother) is not Saheehah, hence she is not among the Zawil Furoodh. The following are Saheehah grandmothers:

Father's mother, paternal grandfather's mother, paternal grandmother's mother, mother's mother, maternal grandmother’s mother.

The following are the states of grandmothers:

1. *One sixth*: Saheehah grandmothers, whether one or more, will jointly inherit one sixth which they will share equally on condition that they are in the same line.

   Grandmothers closer to the mayyit will displace those farther away, e.g. if the mayyit is survived by a maternal grandmother (his mother’s mother), a paternal grandmother (his father’s mother) and his great-grandmother (e.g. maternal grandmother’s mother), then his two immediate grandmothers will inherit one sixth which they will share equally. The great-grandmother will not inherit because of the presence of the two grandmothers who are closer to the deceased.

2. *Deprived*:

(i) If the mayyit's mother or father is living, all paternal grandmothers will be deprived of inheritance.

(ii) If the mayyit's mother is living, all kinds of grandmothers, both paternal and maternal will be deprived.

The mayyit's father or grandfather does not displace maternal grandmothers. They will inherit even in the presence of the mayyit's father or grandfathers.

The mayyit's grandfather (paternal) will deprive the paternal grandmothers of inheritance except the following:

Father's mother, father's maternal grandmother, father's mother's maternal grandmother and father's maternal grandmother's maternal grandmother. These four grandmothers are not displaced by the grandfather although they all are displaced by the father.

ASBAT

Asbat is the plural of Asbah. There are two kinds of Asbat: Asbat-e-Nasabiyyah and Asbat-e-Sababiyyah.

Asbat are those relatives who inherit the balance of the mayyit's estate after the Zawil Furoodh have taken their shares. The Asbat inherit only the balance of the estate. Whatever remains of the estate after the Zawil Furoodh have acquired their shares, belongs to the Asbat. In the absence of Zawil Furoodh, the Asbat will claim the whole estate.

ASBAT-E-NASABIYYAH

There are three categories of Asbat-e-Nasabiyyah as follows:

Asbah binafsihi, Asbah bighayrihi and Asbah ma'a ghayrihi.

ASBAH BINAFSIHI

Asbah binafsihi is every such male who is related to the mayyit without the medium of a female, i.e. there is no female intermediary connecting him to the mayyit. Asbah binafsihi is divided into four classes as follows:

1. Sons or son's sons, no matter how low down the line.
2. Father or paternal grandfather or great-grandfather.
3. Brothers or brother's sons or their sons, no matter how low down the line.
4. Father's brothers (paternal uncles) or their sons, no matter how low down the line.

The Asbat closer in relationship to the mayyit will have a prior claim on the balance of the estate. The closest Asbat will displace the Asbat further away in relationship to the mayyit. Thus, if the mayyit has any of the first class of Asbat, viz sons, then all the other classes will not be the Asbat for claiming the balance of the estate.

If the mayyit has any of the second class (i.e. father/grandfather), but none of the first class, then the second class will be the Asbat to inherit the balance of the estate. The third and fourth classes will be deprived.

If the mayyit has none of either the first or second class Asbat, but has members of the third and fourth class, then the third class of Asbah binafsihi will claim the balance of the estate, depriving the fourth class.

The fourth class of Asbah binafsihi (paternal uncles or their sons) will inherit the balance only if there are no Asbah binafsihi of the first, second or third class.

Then, in any given class of Asbah binafsihi, those closer to the mayyit will be the Asbah to inherit, depriving those further from the mayyit, e.g. if the mayyit has sons and grandsons, the sons will be the inheriting Asbat and the grandsons will be deprived.

If the mayyit has no Asbat of the first class, but has Asbat of the second class, viz father and grandfather, then the father will be the Asbah binafsihi to inherit the balance of the estate. The grandfather will not inherit.

If the mayyit has no Asbat of the first two classes, but has brothers and brother's sons (i.e. the third class), then the brothers will be the Asbah binafsihi who will inherit the balance of the estate and the brother's sons will be deprived.

If the mayyit has no Asbat of the first three classes, but has father’s brothers and their sons (i.e. the fourth class), then only the father's brother will be the Asbah binafsihi claiming the remainder of the estate while the father's brother's sons (viz cousins) will be deprived.

Among the Asbah binafsihi, those who have a double relationship with the mayyit, will have a prior right to inherit as Asbat than those who have a single link with the mayyit. Thus, if the mayyit has both Haqeeqi and Al-lati brothers, the Haqeeqi brothers will constitute the inheriting Asbat and the Al-lati brothers will be deprived.

Similarly, if the mayyit has only the sons of Haqeeqi brothers and sons of Al-lati brothers, then the inheriting Asbat will be only the sons of the Haqeeqi brothers (Haqeeqi as explained earlier is a brother/sister of the same mother and father whereas Al-lati is of the same father but different mothers). Thus, the Haqeeqi brother has two links with the mayyit while the Al-lati brother has one link.

ASBAH BIGHAYRIHI

Asbah bighayrihi consists of four females who become Asbat together with their brothers.

These females are actually among the Zawil Furoodh, but in the presence of their brothers they are not regarded as among the Zawil Furoodh, but become Asbat with their brothers. They and their brothers together will claim the remainder of the estate. Each female will receive half the share of the male.

These four females are daughter, granddaughter (son's daughter), Haqeeqi sister and Al-lati sister. In the section dealing with the Zawil Furoodh, the occasions when these females become Asbat have already been explained.

Those females who are not among the Zawil Furoodh do not become Asbat along with their brothers who are among the

Asbat, e.g. the mayyit's paternal uncle (father's brother) is an Asbah. However, his sister (the mayyit's paternal aunt or father's sister) does not become an Asbah with her brother because she is among those relatives known as the Zawil Arham.

The Zawil Arham inherit only in the absence of the Zawil Furoodh and Asbat. As long as there are any Zawil Furoodh or any Asbat, the Zawil Arham will not inherit.

Similarly, the mayyit's nieces (brother's daughters) do not become Asbat with their brothers (i.e. the mayyit's brother's sons – his nephews). While the nephews (brother's sons) do become Asbat, the nieces do not because they are among the Zawil Arham.

ASBAH MA'A GHAYRIHI

Asbah Ma'a Ghayrihi refers to those females who become Asbah in the presence of other females. Such Asbat are the mayyit's Haqeeqi and Al-lati sisters. They become the Asbat when the mayyit has daughters or granddaughters and no son or any other male Asbah. In this case the sisters become the Asbat while the daughters or granddaughters will remain among the Zawil Furoodh.

If there are both Haqeeqi and Al-lati sisters, only the Haqeeqi sisters will become the Asbat.

When the Haqeeqi sister becomes an Asbah, the Al-lati brothers too are deprived.

ASBAT SABABIYYAH

This category refers to Maula Itaqah (i.e. the master who has emancipated a slave). If the emancipated slave has no heirs among the Zawil Furoodh and Asbah Nasabiyyah, then the Maula Itaqah will inherit. If the mayyit (the emancipated slave) has Zawil Furoodh, but no Asbah Nasabiyyah, then after the Zawil Furoodh have acquired their inheritance, the remainder of the estate will be inherited by the Maula Itaqah.

If the Maula Itaqah is not living, his Asbat will inherit the remainder of the mayyit's estate. However, among the Asbat of the Maula Itaqah, females will not inherit as they do when they are in the category of Asbah Nasabiyyah.

Since this class of Asbah Sababiyyah does not exist in our times, the category will not be further discussed.

FURTHER EXPLANATION ON THE ASBAT BY WAY OF EXAMPLES

1. When the mayyit has a daughter or daughters (but no sons) and also Haqeeqi or Al-lati sisters, then these sisters, on account of the daughters, become Asbat and will inherit the remainder of the estate. It should, however, be remembered that in this case the daughters remain Zawil Furoodh and will inherit their stipulated share, i.e. if one daughter, her share will be half the estate. If two or more, they will jointly inherit two thirds which they will share equally. The sisters alone become the Asbat in this case.

2. When the sisters become Asbat (as mentioned in number one above) and there are both Haqeeqi and Al-lati sisters, only the Haqeeqi sisters will be the Asbat. The Al-lati sisters do not inherit in the presence of the Haqeeqi sisters.

3. When the mayyit is survived by daughters as well as sons, then the daughters will not remain among the Zawil Furoodh, but will become Asbat with the sons. In this case the sons and daughters jointly inherit the balance of the estate. A daughter will receive half the amount a son receives.

4. When the mayyit is survived by grandsons (son's sons) and granddaughters (son's daughters) but no sons, then the granddaughters will become Asbat together with the grandsons, each grandson receiving twice the share of a granddaughter.

5. If the mayyit has Haqeeqi brothers as well as Haqeeqi sisters, then these sisters become Asbat together with the brothers. Each sister will receive half the share of a brother.

6. If the mayyit is survived by both Haqeeqi and Al-lati brothers and sisters, the Al-lati brothers and sisters will not inherit.

7. It should always be understood that among the four categories of Asbat (see page 78) if members of the first class are present, the Asbat of all the other classes are deprived. If members of the first class are absent (i.e. they were not alive at the time of the death of the mayyit), then only will the second class Asbat inherit. Similarly, when there are any Asbat of a higher class, then all Asbat of the lower classes are deprived.

8. It should also be remembered that if there are several Asbat of a class, then the Asbat closer to the mayyit will inherit and those further away will be deprived, e.g. if the mayyit has both sons and grandsons, the sons alone will inherit. If the mayyit has brothers as well as brother's sons, then the brothers alone will be the Asbat, not their sons. If the mayyit has both father and grandfather, the Asbah will be only the father, the grandfather being deprived by the father's presence.

9. Presence of an heir means that he/she is alive at the time of the death of the mayyit. If the heir dies before distribution of the estate's assets, his/her share will be transferred to his/her heirs.

10. A son who dies during the lifetime of his father, does not inherit. He is simply regarded as non-existent. His supposed share is not transferred to his children (i.e. the mayyit's grandchildren). Grandchildren inherit only if the mayyit has no sons. However, a person may bequeath something for his grandchildren. Such a Wasiyyat (bequest) may, however, not exceed one third the estate's value (see explanation in the section dealing with Wasiyyat).

11. If a mayyit is a female and she is survived by sons from different husbands or even illegitimate children, then all of them will inherit in her estate. They all will jointly be her Asbat, each son receiving twice the share of a daughter.

12. While the daughter's of the mayyit become Asbat with the mayyit's sons, they do not become Asbat with the mayyit's grandsons (son's sons). If the mayyit has no sons, but has daughters and grandsons, the daughters will remain Zawil Furoodh and the grandsons will be the Asbat.

13. While a son cannot deprive the mayyit's daughters, his presence deprives the granddaughters.

14. If any factor which deprives an heir of inheritance exists in a son, then he will be regarded as non-existent. His presence will not deprive any Asbah of a lower class, e.g. the mayyit is survived by a son and a grandson. However, the son is a kafir. In this case, the son is deprived of inheritance and the grandson becomes the Asbah.

15. The presence of a Haqeeqi sister together with daughters will deprive the Al-lati brothers. Thus, if the mayyit has only daughters, Haqeeqi sisters and Al-lati brothers, the remainder of the estate will go to the Haqeeqi sisters who become the Asbah by virtue of the mayyit's daughters. In this case, the Al-lati brothers are deprived. But, if the mayyit has Haqeeqi brothers as well, then the Haqeeqi sisters become Asbat together with their brothers.

16. If the mayyit has Al-lati brothers as well as Haqeeqi brothers' sons (Haqeeqi nephews), then the Al-lati brothers become the Asbat, depriving the nephews.

17. Akhyafi brothers always remain among the Zawil Furoodh. At no stage do they ever become Asbat.

18. Nieces (i.e. brothers' daughters) are never among the Asbat. Even when the nephews (the mayyit's brothers' sons) become Asbat, their sisters (i.e. the mayyit's nieces) do not become Asbat along with them (nephews). Nieces are among the Zawil Arham.

19. Haqeeqi nephews (i.e. Haqeeqi brothers' sons) will deprive Al-lati nephews (i.e. Al-lati brothers' sons) of inheritance.

20. When the only Asbat living are paternal uncles (father's brothers), the paternal aunts (father’s sisters) will not become Asbat together with these uncles (viz their brothers). Paternal aunts are among the Zawil Arham. They never become Asbat.

21. In cases where paternal uncles become the Asbat and there happen to be both Haqeeqi and Al-lati paternal uncles, only the Haqeeqi paternal uncles will inherit.

22. The mayyit's female cousins (paternal uncle's daughters) do not become Asbat along with their brothers (paternal uncle's sons). While such male cousins become Asbat, the female cousins are among the Zawil Arham.

RADD

(REDISTRIBUTION)
(INCREASING THE SHARES)

If the mayyit has no Asbat whatsoever, then after the Zawil Furoodh have acquired their shares, the remainder of the estate will be redistributed among the Zawil Furoodh in the same proportion as their respective shares. Thus, the mother will receive one sixth of the remainder; the Akhyafi brother one sixth, the daughter one half and so on.

As long as there are those Zawil Furoodh to whom the rule of redistribution applies, the Zawil Arham will not inherit. The rule of redistribution applies to all members of the Zawil Furoodh category, except to the husband and wife. These two will not enjoy the benefit of redistribution.

The rule of redistribution is known as *Radd*.

EXAMPLES:

1. Heirs: Mother, sister, Akhyafi brother.

   All of these are Zawil Furoodh. The mayyit here has no Asbat, hence the rule of Radd will apply.

   The initial distribution is as follows:

   Mother one sixth, sister one half (three sixths); Akhyafi brother one sixth.

   $^1/_6 + {}^3/_6 + {}^1/_6 = {}^5/_6$*

   Therefore there is one sixth available for redistribution. Effect the distribution by dividing the entire estate into *fifths (five parts). Now give the mother one fifth (instead of one sixth); the sister three fifths (instead of three sixths) and the Akhyafi brother one fifth (instead of one sixth).

2. Heirs: Daughter, mother and no Asbat.

   Initial distribution: Daughter one half = three sixths; mother one sixth.

   $^3/_6 + {}^1/_6 = {}^4/_6$*

   Effect the distribution by dividing the estate into *fourths (four parts) and distribute as follows:

   Daughter three quarters; mother one quarter.

3. Heirs: Mother and two daughters, no Asbat.

   Initial distribution: Mother one sixth; 2 daughters two thirds = four sixths.

   $^1/_6 + {^4/_6} = {^5/_6}$*

   Effect the distribution by dividing by the estate into fifths* instead of sixths and distribute as follows:

   Mother $^1/_5$; 2 daughters $^4/_5$

In the above examples, it will be seen that the number marked with * is the actual number of shares into which the estate should be divided.

If among the Zawil Furoodh, the mayyit leaves also a wife/husband, but no Asbat, then after giving the wife's or husband's share, the remainder will be redistributed among the other Zawil Furoodh. The husband and wife do not benefit from the Radd. However, if the mayyit has no Zawil Arham, then the estate will go to the spouse (husband or wife, as the case may be).

<u>EXAMPLES</u>:

1. **Heirs**: Wife, grandmother, 5 daughters.

   Initial distribution: Wife $^1/_8$; grandmother $^1/_6$;
   5 daughters $^2/_3$.

$$\frac{3}{24} + \frac{4}{24} + \frac{16}{24} = \frac{23}{24}$$

$$\left(\frac{1}{8} = \frac{3}{24}\ ;\ \frac{1}{6} = \frac{4}{24}\ ;\ \frac{2}{3} = \frac{16}{24}\right)$$

There remains $\frac{1}{24}$ for Radd.

Distribute as follows:

First give the wife her one eighth or three twenty fourths.

The remainder of the estate (viz $\frac{21}{24}$) should then be divided into *20 equal parts (twentieths). The grandmother receives $\frac{4}{20}$ and the five daughters together receive $\frac{16}{20}$.

*These 20 parts are acquired as follows:

Grandmother | 5 Daughters

$\frac{4}{24}$ | $\frac{16}{24}$

4 + 16
= 20

2. **Heirs**: Husband, mother, daughter.

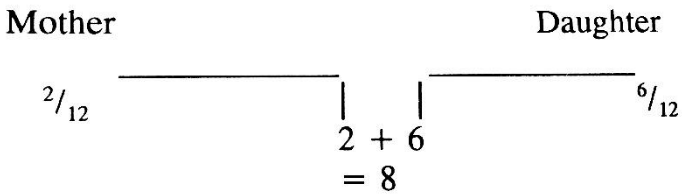
Initial distribution: Husband $\frac{1}{4} = \frac{3}{12}$; mother $\frac{1}{6} = \frac{2}{12}$; daughter $\frac{1}{2} = \frac{6}{12}$.

$$\frac{3}{12} + \frac{2}{12} + \frac{6}{12} = \frac{11}{12}$$

Therefore $\frac{1}{12}$ available for Radd.

After giving the husband his $\frac{3}{12}$, the remainder should be divided into *8 parts. Of these 8 parts, the mother will receive 2 (i. e. $\frac{2}{8}$) and the daughter 6 (i. e. $\frac{6}{8}$).

*These 8 parts are acquired as follows:



3. **Heirs**: Wife, 2 Akhyafi brothers and mother.

Intitial distribution: Wife $\frac{1}{4} = \frac{3}{12}$; 2 Akhyafi brothers $\frac{1}{3} = \frac{4}{12}$; mother $\frac{1}{6} = \frac{2}{12}$.

$$\frac{3}{12} + \frac{4}{12} + \frac{2}{12} = \frac{9}{12}$$

Therefore $\frac{3}{12}$ available for Radd.

Distribute as follows:
First give the wife her $\frac{1}{4}$ or $\frac{3}{12}$.

Divide the remainder of the estate into *6 equal parts and distribute as follows:

2 Akhyafi brothers 4 parts, i.e. $^4/_6$ of the remainder.
Mother 2 parts, i.e. $^2/_6$ of the remainder.

*These 6 parts are acquired as follows:

2 Akhyāfi brothers — Mother

$^4/_{12}$ — $^2/_{12}$

4 + 2
= 6

It should always be remembered that when there are any Asbat or any one of the Zawil Furoodh besides husband and wife, the Zawil Arham will not inherit.

If the mayyit's only heir is a wife or husband, then in spite of these being Zawil Furoodh, they will not deprive the Zawil Arham.

After the wife or husband has taken his/her share, the remainder of the estate will go to the Zawil Arham since there are no Asbat and no such Zawil Furoodh to whom the rule of Radd applies. The husband and wife as mentioned earlier do not benefit from the rule of Radd.

AUL

(DECREASING THE SHARES)

In the previous section it was explained that when there are no heirs besides the Zawil Furoodh, there remains a balance of assets which is redistributed among the Zawil Furoodh in proportion to their respective shares. In effect, the shares of the Zawil Furoodh are proportionally increased.

The rule of Aul is the opposite of Radd. When the share-fractions of the heirs add up to more than one, the shares are proportionally decreased to accommodate all the heirs, e.g.:

$$\underbrace{1/8 + 1/6 + 1/6 + 2/3}$$

$$3/24 + 4/24 + 4/24 + 16/24 = 27/24$$

Obviously the estate cannot be divided into $27/24$ (twenty seven twenty fourths). Hence, instead of twenty fourths, the estate will be divided into twenty sevenths. The new distribution will, therefore, be:

$$3/27 + 4/27 + 4/27 + 16/27 = 27/27$$

<u>EXAMPLES</u>:

1. **Heirs**: Wife, mother, father, daughters.

Initial distribution: Wife $^1/_8 = ^3/_{24}$; mother $^1/_6 = ^4/_{24}$; father $^1/_6 = ^4/_{24}$; daughters $^2/_3 = ^{16}/_{24}$.

$$^3/_{24} + ^4/_{24} + ^4/_{24} + ^{16}/_{24} = ^{27}/_{24}$$

The rule of Aul will apply because the estate cannot be divided into $^{27}/_{24}$. The shares are proportionally decreased. Hence, the estate is divided into 27ths (27 parts) and the new distribution will be as follows:

Wife $^3/_{27}$; mother $^4/_{27}$; father $^4/_{27}$; daughters $^{16}/_{27}$.

2. **Heirs**: Husband, 3 sisters, 2 Akhyafi brothers.

Initial distribution:

Husband $^1/_2 = ^3/_6$; 3 sisters $^2/_3 = ^4/_6$; 2 Akhyafi brothers $^1/_3 = ^2/_6$.

$$^3/_6 + ^4/_6 + ^2/_6 = ^9/_6$$

Since the fractions add up to more than one, the rule of Aul will apply, hence the shares will be proportionally decreased. Instead of sixths, the estate will be divided into ninths (9 parts). The new distribution will be as follows:

Husband $^3/_9$; 3 sisters $^4/_9$; 2 Akhyafi brothers $^2/_9$.

Rule: When the fractions add up to more than 1, the sum of the numerators will be the new denominator. (The denominator is the number of parts into which the estate will be divided.)

The top number in a fraction is termed the numerator and the bottom number the denominator.

$$\frac{23 = \text{numerator}}{24 = \text{denominator}}$$

In the following example, the fractions add up to more than 1:

$$^3/_6 + {}^4/_6 + {}^1/_6 = {}^8/_6$$

In the new distribution, the numerator 8 will be the denominator, i.e. the estate will be divided into 8 parts and the shares will be allocated as follows:

$$^3/_8 + {}^4/_8 + {}^1/_8 = {}^8/_8$$

ZAWIL ARHAM

Those relatives who are not members of the Zawil Furoodh and Asbat categories are known as *Zawil Arham*.

The Zawil Arham are divided into four categories as follows:

1. Those relatives directly related to the mayyit. They are the mayyit's daughters' sons and daughters and the mayyit's sons' daughters' children.

2. Those relatives who are the roots of the mayyit, i.e. such roots who are neither among the Zawil Furoodh nor among the Asbat. They are those grandfathers and grandmothers known as Fasid, i.e. not Saheeh. Among the Fasid grandmothers and grandfathers are the maternal grandfather (mother's father) and the paternal grandmother's father.

3. Such nephews and nieces who are not among the Zawil Furoodh and Asbat. They are sisters' children (nephews and nieces), brothers' daughters and the children of Akhyafi brothers.

4. Such uncles and aunts who are not among the Zawil Furoodh and Asbat. They are paternal aunts (father's sisters), Akhyafi uncles, maternal uncles (mother's brothers) and maternal aunts (mother's sisters).

   <u>Rule 1</u>: When there are Zawil Arham of the first category, those of the other three categories will not inherit. Similarly, if there are Zawil Arham of the second, third and fourth categories, but none of the first category, then the Zawil Arham of the second category will inherit while those in the third and fourth categories will not inherit.

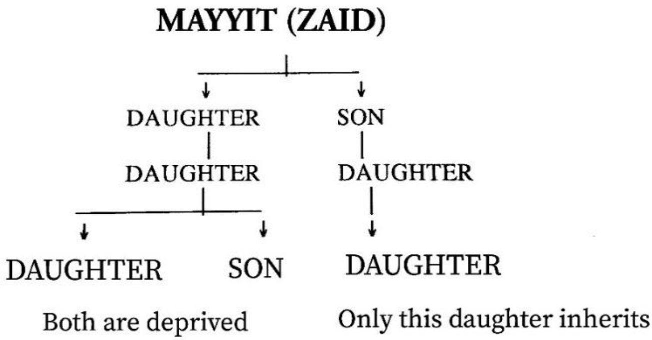
If there are only members of the third and fourth categories, then only those of the third category will inherit. The fourth category of Zawil Arham inherits only if there are none of the first, second and third categories.

Rule 2: In any one category, those closest to the mayyit will inherit, e.g. if the mayyit has daughter's children as well as son's daughter's children, only the daughter's children will be the inheriting Zawil Arham. The son's daughter's children will not inherit in this case, i.e. if the mayyit has neither Zawil Furoodh nor Asbat, then the mayyit's daughter's children only will inherit.

Rule 3: In certain cases, a member of the Zawil Arham will deprive other Zawil Arham on the same level. This happens if the depriving member's ancestor would have deprived the other Zawil Arham's ancestor if they both (i.e. both ancestors) were alive.

Example: Zaid died leaving neither Zawil Furoodh nor Asbat. However, he is survived by a son's daughter's daughter, daughter's daughter's son and daughter's daughter's daughter.

DIAGRAM A



In this case the son's daughter's daughter will inherit while the other two will be deprived. The reason for this is that if Zaid's daughter's daughter as well as son's daughter were alive, then the son's daughter would have inherited while the daughter's daughter would have been deprived because the son's daughter is among the Zawil Furoodh.

In this example, Zaid's son's daughter is the ancestor (mother) of the one daughter and Zaid's daughter's daughter is the ancestor (mother) of the other two Zawil Arham, viz Zaid's daughter's daughter's son and his daughter's daughter's daughter.

<u>Note</u>: Zawil Arham inherit only if there are no Zawil Furoodh (excluding wife and husband) and no Asbat. If the mayyit is survived by only husband/wife and Zawil Arham, then after giving the share of the husband/wife, the remainder of the estate will be taken by the Zawil Arham.

THE CATEGORIES OF ZAWIL ARHAM IN GREATER DETAIL

FIRST CATEGORY:

Class No. 1: This class consists of the mayyit's daughters' sons and daughters' daughters. In the presence of these members, all other Zawil Arham are deprived.

When the mayyit has neither Zawil Furoodh nor Asbat, the Zawil Arham of **Class No.1** of the first category will inherit the estate. A male will receive twice the share of a female.

N.B.: In the discussion on the Zawil Arham wherever it is said ‘the mayyit has no Zawil Furoodh', it will refer to all members of Zawil Furoodh except the husband and wife. It has already been mentioned that even if the husband or wife is living, the Zawil Arham will inherit.

Class No. 2: This class consists of the son's daughter's children.

If any member of **Class No. 1** is present, those of **Class No. 2** will not inherit.

1. When they inherit, a male will receive twice the share of a female.

2. If the members of this class are only male, they will share the estate equally among themselves.

3. If they are only females, then too, will the estate be shared equally among them.

4. If there is only one member of this class, male or female, he/she will inherit the whole estate.

Class No. 3: This class consists of the daughter's children's children.

If any member of either **Class No. 1** or **Class No. 2** is present, those of **Class No. 3** will not inherit.

1. If there is only one member of this class, male or female, he/she will inherit the whole estate.

2. If all the members in this class are the children of only the mayyit's daughter's daughter or daughters' daughters, then each male will receive twice the share of the female.

   Example: The mayyit is survived by only the children of three granddaughters (granddaughter here refers to daughter's daughter). These surviving children consist of 8 males and 6 females. The estate will be divided into 22 shares. Each female will receive one share, while each male receives two shares.

   If there are, for example, 10 males and 12 females, the estate will be divided into 32 shares. Each male receives two shares and each female one share.

3. If all the members in this class are the children of only the mayyit's daughter's son, whether these children are of one or more such grandsons, then too, the

estate will be inherited by these great-grandchildren. Each male will receive twice the share of a female in the same way as is explained in No. 2 above.

4. If the surviving great-grandchildren are the offspring of the mayyit's grandsons (i.e. daughter's sons) and granddaughters (i.e. the daughter's daughters), the estate will be divided into three shares. Two shares will be awarded to the children of the grandsons and one share to the children of the granddaughters. The children of the grandsons will jointly share the two thirds. Each male among them will receive twice the amount the female receives. Similarly, the children of the granddaughters will share the third awarded to them in the same way, viz, each son obtaining twice the share of a female.

   Example: Zaid (the mayyit) has neither Zawil Furoodh nor Asbat. He is survived only by the children of several grandsons (daughter's sons) and granddaughters (daughter's daughters) as follows:

   8 sons and 6 daughters of 3 grandsons and 6 sons and 8 daughters of 4 granddaughters. Since the heirs consist of the offspring of both grandsons and granddaughters, the mayyit's estate will be divided into three equal shares. Two shares will be awarded to the children of the grandsons (i.e. to the 8 males and 6 females). These two shares will be divided into 22 shares. Each son will receive two shares and each daughter one share.

$$8 \times 2 = 16 \text{ and } 6 \times 1 = 6 : 16 + 6 = 22$$

The remaining one share will be divided among the children of the granddaughters. (i.e. to the 6 sons and 8 daughters). This one share will be divided into 20 shares ($6 \times 2 = 12 + 8 = 20$). Each male will receive two shares and each female one share.

Illustration: Zaid (in the aforementioned example) left an estate of R33,000. Two thirds, namely, R22,000, will be awarded to the children of the grandsons. These children consist of 8 sons and 6 daughters. The R22,000 will be divided into 22 shares (8 sons = 16 shares + 6 shares of the 6 daughters, making a total of 22 shares). Each share, therefore, is R1,000 ($22 \times 1{,}000$). Each son receives R2,000 and each daughter R1,000.

Since two thirds (R22,000) were awarded to the grandsons' children, there remains R11,000 i.e. the remaining one third for distribution to the children of the granddaughters. There are 6 sons and 8 daughters. Thus, the R11,000 will be divided into 20 shares ($6 \times 2 = 12 + 8 = 20$). Each share therefore is R550 (R11,000 ÷ 20 = R550). Each son receives 2 × R550 = R1,100, and each daughter R550.

SECOND CATEGORY:

This category, as explained earlier, consists of Fasid grandfathers and Fasid grandmothers. In this category, there are four Zawil Arham, viz Fasid paternal grandfather, Fasid paternal grandmother, Fasid maternal grandmother, and all maternal grandfathers.

Class No. 1: In this class is the maternal grandfather (mother's father). He will inherit only in the absence of any

Zawil Furoodh, Asbat and Zawil Arham of the first category. In the absence of these heirs, he will inherit the whole estate.

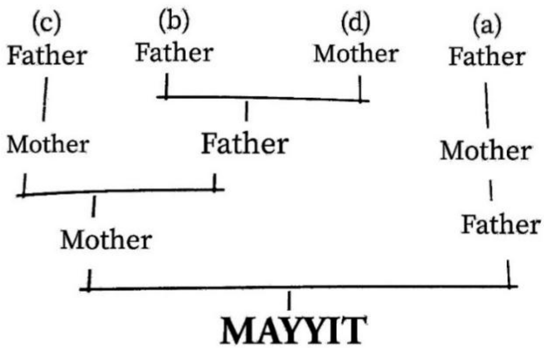
Class No. 2: There are three males and one female in this class.

a. The maternal grandfather of the mayyit's father, i.e. father's mother's father.

b. The paternal grandfather of the mayyit's mother, i.e. the mayyit's mother's father's father.

c. Mother's maternal grandfather, i.e. mother's mother's father.

d. Mother's paternal grandmother, i.e. mother's father's mother.



If class No. 1 is present, Class No. 2 will not inherit.

If there is only one member of Class No. 2, he/she will inherit the whole estate.

If there are more than one member of Class No. 2, they will jointly inherit the estate. The male will receive twice the share of the female.

Although there are further classes in the second category of Zawil Arham, these will not be discussed in view of their almost total non-existence in real life.

THIRD CATEGORY:

In this category are the offspring of sisters and those offspring of brothers who are not among the Asbat.

When there are no Zawil Furoodh, no Asbat and no members of the first two categories of Zawil Arham, the members of the Third Category of Zawil Arham will inherit the mayyit's estate.

Among the members of the Third Category, those who are closer to the mayyit will inherit, thereby depriving those further away. There are four classes on the Third Category.

Class No. 1: There are ten persons in this class. They are:

1. Haqeeqi sister's son
2. Haqeeqi sister's daughter
3. Al-lati sister's son
4. Al-lati sister's daughter
5. Akhyafi sister's son
6. Akhyafi sister's daughter
7. Haqeeqi brother's daughter
8. Al-lati brother's daughter
9. Akhyafi brother's son
10. Akhyafi brother's daughter

a. If there is only one member of this class, male or female, he/she will inherit the whole estate.

b. If there are several persons of this class who happen to be the offspring of only one person, then the estate will be shared among them according to the principle: A male receives twice the amount a female receives.

   Example: Zaid (mayyit) is survived by only 6 nephews (sister's sons) and 4 nieces (sister's daughters), the estate will be divided into 16 shares (6 × 2 = 12 + 4 = 16). Each nephew will get two shares and each niece one share.

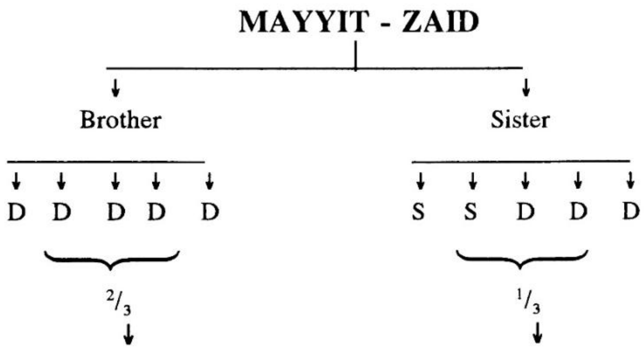
c. If the only heirs of the mayyit are the children of several persons in this class, those closest to the mayyit will inherit the estate, depriving the others.

   Example: Zaid (mayyit) is survived by the following relatives: Haqeeqi sister's sons and daughters, Al-lati sister's sons and Akhyafi sister's children. In this example, only the Haqeeqi sister's children will inherit the whole estate. All the others are deprived because the Haqeeqi sister has the closest links with the mayyit. The estate will be divided among her children in terms of the principle: A male receives twice the amount a female receives.

d. If the children are of a brother and sister of the same kind, the original shares of the brother and sister (if they had been alive) will be transferred to the offspring and distributed in terms of the principle: A male receives twice the amount a female receives.

Example: Zaid (mayyit) is survived by 3 daughters and 2 sons of his sister and 5 daughters of his brother. If Zaid's brother and sister were living, the estate would have been divided into three shares. The brother would have received two shares and the sister one share. This division will be maintained and the brother's two shares will be transferred to his 5 daughters. The sister's one share will be transferred to her 2 sons and 3 daughters. This one share will be divided into seven parts (2 × 2 = 4 + 3 = 7). Each son will receive two shares and each daughter one share.

The following diagram illustrates this division:



Of the estate to be shared equally

Of the estate to be divided into 7 shares. Each male receives twice the share of a female.

S = SON
D = DAUGHTER

Class No. 2 of the Third Category

There are twelve persons in this class:

1. Daughter of Haqeeqi brother's son
2. Daughter of Al-lati brother's son
3. The children of Akhyafi brother's son
4. The children of Haqeeqi brother's daughter
5. The children of Al-lati brother's daughter
6. The children of Akhyafi brother's daughter
7. The children of Haqeeqi sister's son
8. The children of Al-lati sister's son
9. The children of Akhyafi sister's son
10. The children of Haqeeqi sister's daughter
11. The children of Al-lati sister's daughter
12. The children of Akhyafi sister's daughter

a. As long as any member of Class 1 is alive, none of the members of Class 2 will inherit.

b. In the absence of all other heirs, if there is only one member of Class 2 living, male or female, he/she will inherit the whole estate.

c. If several members of Class 2 are living and they happen to be the offspring of only one person, then the estate will be shared by them in terms of the principle: A male receives twice the amount a female receives.

   Example: The only relatives of Zaid (the mayyit) are 6 children of an Al-lati sister's daughter. Among the 6, are 3 males and 3 females. The estate will be divided into 9 parts. Each son will receive 2 parts and each daughter 1 part.

d. If there are several members of Class 2, but they happen to be the children of different persons, the children of Asbat will enjoy a prior right of inheritance, depriving all others.

   <u>Example</u>: Zaid (mayyit) is survived by the following relatives: Children of Haqeeqi brother's daughter and children of Akhyafi brother's daughter. Here only the children of the Haqeeqi brother's daughter inherits. The others are deprived because the former are the offspring of an Asbah (Haqeeqi brother).

   <u>Example</u>: Zaid's relatives are only a daughter of his Haqeeqi brother's son and the children of an Akhyafi brother's son. Only the daughter of his Haqeeqi brother's son will inherit. The children of his Akhyafi brother's son will be deprived on account of the former being the daughter of an Asbah, viz brother's son.

e. If the surviving relatives are the children of different Asbat, only the children of the Asbah closer to the mayyit will inherit.

   <u>Example</u>: The relatives of Zaid (mayyit) are only two daughters of a Haqeeqi brother's son and four daughters of an Al-lati brother's son. The two daughters of the Haqeeqi brother's son will inherit the whole estate since they have closer links with the mayyit.

f. If none of the survivors of this class No. 2 are the offspring of an Asbah, the whole estate will be shared by all the survivors. However, the principle of a male receiving twice the amount of a female will not be employed initially. The respective shares of their inheriting parents (i.e. if the parents were alive) will be transferred to the children. Only after this transference will the division be according to the aforementioned principle.

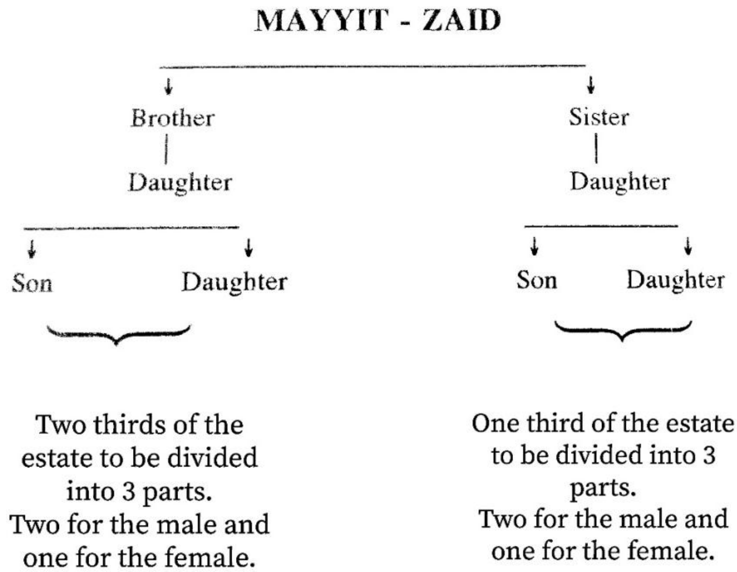
Example: Zaid (mayyit) leaves the following heirs: Son and daughter of his brother's daughter and son and daughter of his sister's daughter. All these survivors are of equal class and all of them are Zawil Arham. There are no offspring of Asbat.

If the brother's daughter had been living, she would have inherited two parts (two thirds) of the estate because she is the daughter of the mayyit's brother.

If the sister's daughter was alive, she would have received one part (one third) of the estate on account of her being the mayyit's sister's daughter. Thus, the brother's daughter's two thirds will be transferred to her son and daughter who will share two thirds of the estate in terms of the principle: a male receives twice the amount of a female.

The remaining one share will be taken by the son and daughter of the mayyit's sister's daughter and shared according to the principle: a male receives twice the amount of a female.

The following diagram illustrates this:



Class No. 3 and Class No. 4 of the Third Category

Since these Classes consist of very distant relatives, e.g. the mayyit's sister's children's children's children, the discussion on such heirs is omitted.

FOURTH CATEGORY:

This category consists of the following relatives of the mayyit:

Maternal aunts (mother's sisters), paternal aunts (father's sisters), maternal uncles (mother's brothers), Akhyafi paternal uncle (father's Akhyafi brother), the children of the daughter's of Haqeeqi and Al-lati paternal uncles, paternal aunts of the mayyit's parents, maternal aunts of the mayyit's parents and the parents' Akhyafi paternal uncles.

These members of the Zawil Arham are classified into three classes:

Class 1 of the Fourth Category

In this class are paternal aunts, maternal uncles, maternal aunts and Akhyafi paternal uncles. This class is divided into two as follows:

Class 1 (a):

1. Haqeeqi paternal aunt (father’s Haqeeqi sister)
2. Al-lati paternal aunt (father’s Al-lati sister)
3. Akhyafi paternal aunt (father's Akhyafi sister)
4. Akhyafi paternal uncle (father’s Akhyafi brother)

Class 1 (b):

5. Haqeeqi maternal uncle (mother’s Haqeeqi brother)
6. Haqeeqi maternal aunt (mother's Haqeeqi sister)
7. Al-lati maternal uncle (mother's Al-lati brother)
8. Al-lati maternal aunt (mother’s Al-lati sister)
9. Akhyafi maternal uncle (mother’s Akhyafi brother)
10. Akhyafi maternal aunt (mother's Akhyafi sister)

These two sub-classes of Class 1 consist of 10 members.

(i) If the mayyit has no heirs other than the Zawil Arham of the Fourth Category, then only will they inherit.

(ii) If the mayyit is survived by only one member of the Fourth Category, then he/she will inherit the whole estate.

(iii) If there are more than one member of the same kind, the estate will be shared equally by them.

Example: The mayyit is survived by 5 Haqeeqi paternal aunts. The estate will be divided into 5 equal shares. Each aunt will obtain one share.

Example: The mayyit is survived by 7 Haqeeqi maternal uncles. The estate will be shared equally by the 7 uncles.

(iv) If there are several members of different kinds, all belonging to Class 1 (a), then No. 1 in Class 1 (a) will deprive all others.

If there are no members of No. 1, but there are No. 2, No. 3 and No. 4 of Class 1 (a), then No. 2 will deprive No. 3 and No. 4.

If there are only members of No. 3 and No. 4, then both No. 3 and No. 4 will jointly inherit the whole estate. Both males and females will receive equal shares.

(v) If there are several members of different kinds, all belonging to Class 1 (b), then No. 5 and No. 6 will deprive all the other members of Class 1 (b).

*If No. 5 and No. 6 members are not present, but there are No. 7, No. 8, No. 9 and No. 10 members, then No. 7 and No. 8 will deprive No. 9 and No. 10.

No. 9 and No. 10 will inherit only in the absence of all other members.

When No. 5 and No. 6 inherit, the principle of a male receiving twice the amount of a female will apply.

Example: Zaid (mayyit) is survived by three Haqeeqi maternal uncles (i.e. No. 5), four Haqeeqi maternal aunts (i.e. No. 6), two Al-lati maternal uncles (i.e. No. 7), two Al-lati maternal aunts (i.e. No. 8), four Akhyafi maternal uncles (i.e. No. 9) and one Akhyafi maternal aunt (i.e. No. 10). In this case, only No. 5 and No. 6 will inherit while the rest are deprived. Since there are three No. 5's and four No. 6's, the estate will be divided into ten equal shares. Each male (No. 5) will receive two shares and each female (No. 6) will receive one share.

Similarly, when No. 7 and No. 8 inherit as explained *above, they will share the estate in terms of the principle: A male receives twice the amount of a female.

However, when No. 9 and No. 10 inherit, this principle will not apply. Both male (No. 9) and female (No. 10) will share the estate equally.

N.B.: No. 5 does not deprive No. 6. They inherit jointly as described above. But, No. 6 who is a female will deprive all others just as No. 5 does to the others, viz No. 7, No. 8, No. 9 and No. 10. Similarly, No. 7 will not deprive No. 8. They inherit jointly. But, No. 8 will deprive No. 9 and No. 10 just as No. 7 deprives them.

(vi) If there are members of both Class 1 (a) and Class 1 (b), the estate will be divided into three parts. Two parts will be taken by the members of Class 1 (a) and one part by the members of Class 1 (b). The distribution will now take place exactly as described earlier in the discussion pertaining to Class 1 (a) and Class 1 (b). There is no difference whatsoever. The only change which has now occurred is that instead of one class inheriting the whole estate, both Class 1 (a) and Class 1 (b) inherit, the former acquiring two thirds of the estate and the latter one third.

Example: The only surviving heirs of Zaid are: No. 1, No. 2, No. 3, No. 5, No. 6, No. 7, No. 8 and No. 10.

No. 1, No. 2 and No. 3 are members of Class 1 (a).

No. 5, No. 6. No. 7, No. 8 and No. 10 are members of Class 1 (b).

Class 1 (a) receives two thirds of the estate and Class 1 (b) one third. However, the two thirds is acquired only by No. 1 since she deprives No. 2 and No. 3 of this class.

In Class 1 (b) No. 5 and No. 6 receive the one third. No. 7, No. 8 and No. 10 are deprived. The principle of a male receiving twice the share of a female applies in this example.

Class 2 of the Fourth Category

This class is subdivided into two:

Class 2 (a) and Class 2 (b)

Class 2 (a) consists of the following members:

1. The daughters of the Haqeeqi paternal uncle
2. The children (sons and daughters) of the Haqeeqi paternal aunt
3. The daughters of the Al-lati paternal uncle
4. The children (sons and daughters) of the Al-lati paternal aunt
5. The children of the Akhyafi paternal uncle
6. The children of the Akhyafi paternal aunt

Class 2 (b) consists of the following members:

7. The children of the Haqeeqi maternal uncle
8. The children of the Haqeeqi maternal aunt
9. The children of the Al-lati maternal uncle
10. The children of the Al-lati maternal aunt
11. The children of the Akhyafi maternal uncle
12. The children of the Akhyafi maternal aunt

(i) If the only surviving heirs are members of Class 2 (a), they will inherit the entire estate.

(ii) If the surviving heirs consist of members of both Class 2 (a) and Class 2 (b), the estate will be divided into three parts. Class 2 (a) will acquire two parts (i.e. two thirds of the estate) and Class 2 (b) one part.

(iii) The daughters (whether one or more) of the Haqeeqi paternal uncle, namely, No. 1 of Class 2 (a), will deprive all members in Class 2 (a), but not in Class 2 (b). If there are several members of Class 2 (a) No. 1, they will share the estate equally among them where they inherit the whole estate. They inherit the whole estate if there are no members of Class 2 (b). If there are Class 2 (b) members, then Class 2 (a) No. 1 members will share two thirds of the estate equally among them. One third goes to Class 2 (b).

(iv) If there are no members of Class 2 (a) No. 1, but there are No. 2, No. 3, No. 4, No. 5 and No. 6, then No. 2 members will deprive the others of Class 2 (a). No. 2 members of Class 2 (a) will acquire their inheritance in terms of the principle: A male receives twice the amount of a female.

(v) If there are neither Class 2 (a) No. 1 nor Class 2 (a) No. 2 members, but there are No. 3, No. 4, No. 5 and No. 6, then No. 3 will deprive the others of Class 2 (a), i.e. No. 4, No. 5 and No. 6, will not inherit in the presence of No. 3. The members of Class 2 (a) No. 3 will share their inheritance equally. If there is only one, she will receive the whole inheritance of either the whole estate or two thirds of the estate as the case may be (as described in (ii) above).

(vi) When there are no Class 2 (a) No. 1, No. 2 and No. 3 members, then only will Class 2 (a) No. 4 members inherit. If there happens to be only one member of Class 2 (a) No. 4, he/she will acquire the entire inheritance allocated to this class, namely, two thirds or the whole estate as mentioned in (ii) above. If there are males and females of No. 4, the principle of a male receiving twice the amount of a female will apply.

(vii) If the mayyit is survived by only No. 5 and No. 6 members of Class 2 (a), then all of them will inherit and share the inheritance equally whether males or females or whether males and females. In this case, the principle of a male receiving twice the amount of a female will not apply. Both males and females of this Class (i.e. No. 5 and No. 6 of Class 2 (a)) will receive equal shares. Also, No. 5 does not deprive No. 6. They inherit jointly.

N.B.: It should be well understood that while some members of Class 2 (a) deprive some members of this same class, they do not deprive any members of Class 2 (b) as stated above in (ii).

(viii) If there are no members of Class 2 (a), but there are Class 2 (b) members, the whole estate will be acquired by them. If there are Class 2 (a) members as well, then Class 2 (b) will receive one third of the estate. This third or the whole estate, as the case may be, will be divided among the members of Class 2 (b) in the manner described hereunder.

(ix) If there are any No. 7 or No. 8 members, then No. 9, No. 10, No. 11 and No. 12 will not inherit. However, No. 7 does not deprive No. 8.

(x) If there is only one No. 7 or one No. 8 member, he/she will acquire the whole inheritance whether it happens to be one third or the whole estate.

(xi) If there are several No. 7 members and No. 8 members, then the third or the whole estate (as the case may be) will be shared by them in terms of the principle of a male receiving twice the amount of a female.

(xii) Similarly, if there are several No. 8 members and no No. 7 members, then they will share among themselves the third or the whole estate in terms of the principle of a male receiving twice the amount of a female.

(xiii) When there are both No. 7 and No. 8 members, the inheritance (one third or the whole estate) will be divided into three equal parts. Two thirds will go to No. 7 members. These two parts will be shared by them in terms of the principle of a male receiving twice the share of a female.

One part of the inheritance (i.e. one third of the inheritance of No. 7 and No. 8) will be acquired by No. 8 members who will share it in terms of the principle of a male receiving twice the amount of a female.

(xiv) When there are no No. 7 and No. 8 members, then No. 9 and No. 10 will inherit. No. 9 and No. 10 inherit jointly. No. 9 and No. 10 deprive No. 11 and No. 12.

(xv) The same methods of distribution explained regarding No. 7 and No. 8 apply to No. 9 and No. 10. There is absolutely no difference in the procedure of division. The same explanation stated in (x) to (xii) will apply to No. 9 and No. 10. No. 9's share will be like No. 7's and No. 10's like No. 8's.

(xvi) No. 11 and No. 12 will inherit only when there are no other heirs of any category above them. If there is only No. 11 or No. 12, he/she will take the whole inheritance whether it happens to be a third or the whole estate, as the case may be.

(xvii) If there are more than one member of Class 2 (b) No. 11 or No. 12, then the inheritance will be equally shared by them, whether male or female. The principle of a male receiving twice the amount of a female will not be applied to No. 11 and No. 12. Also, No. 11 and 12 inherit jointly. No. 11 does not deprive No. 12.

In the absence of Class 2 (a) and Class 2 (b) of the Fourth Category, their children will inherit in exactly the same way as their parents inherit. However, those having closer links to the mayyit will deprive those who are more distant, e.g. both the granddaughter and great-granddaughter of the mayyit's paternal aunt are present. Since there are no other relatives other than these two, the granddaughter of the paternal aunt will inherit the whole estate and the great-granddaughter will be deprived.

Similarly, the grandson of the maternal aunt will not inherit in the presence of the maternal aunt's son.

Class 3 of the Fourth Category:

This class consists of twenty members which are divided into four divisions as follows:

Class 3 (a):

1. Father's Haqeeqi paternal aunt
2. Father’s Al-lati paternal aunt
3. Father’s Akhyafi paternal uncle

4. Father's Akhyafi paternal aunt

Class 3 (b):

5. Father's Haqeeqi maternal uncle
6. Father’s Haqeeqi maternal aunt
7. Father's Al-lati maternal uncle
8. Father's Al-lati maternal aunt
9. Father's Akhyafi maternal uncle
10. Father's Akhyafi maternal aunt

Class 3 (c):

11. Mother's Haqeeqi paternal aunt
12. Mother's Al-lati paternal aunt
13. Mother's Akhyafi paternal aunt
14. Mother's Akhyafi paternal uncle

Class 3 (d):

15. Mother's Haqeeqi maternal uncle
16. Mother’s Haqeeqi maternal aunt
17. Mother's Al-lati maternal uncle
18. Mother’s Al-lati maternal aunt
19. Mother’s Akhyafi maternal uncle
20. Mother’s Akhyafi maternal aunt

Class 3 will inherit if there are no relatives of any other category or class from above.

(i) If there is only one member of Class 3, he/she will inherit the whole estate.

(ii) If there are several members but all are of the same kind, e.g. three maternal uncles of the father, they will share the estate equally.

(iii) If there are several members of different kinds but all belong to Class 3 (a), then No. 1 will displace Nos. 2, 3 and 4 of Class 3 (a).

No. 2 will displace Nos. 3 and 4. But, No. 3 will not displace No. 4. No. 3 and No. 4 of Class 3 (a) inherit jointly and will share the inheritance equally. The rule of a male inheriting twice the amount of a female will not apply to No. 3 and No. 4.

(iv) If there are no members of 3 (a), but there are several members of 3 (b) of different kinds, e.g. 3 (b) Nos. 5, 6, 7, 8, 9, 10, then No. 5 and No. 6 will inherit and the others will be deprived. No. 5 and No. 6 will share the inheritance in terms of the *rule of a male receiving twice the amount of a female.

Similarly, No. 7 and No. 8 inherit jointly and the above mentioned *rule will apply. No. 7 and No. 8 or only any one of them will deprive No. 9 and No. 10. No. 9 and No. 10 inherit jointly in the absence of those above and they (i.e. No. 9 and No. 10) will share the inheritance equally, not in terms of the *abovementioned rule.

(v) If there are several members of different kinds belonging to Class 3 (c), the same procedure explained in (ii) above will be adopted.

(vi) If there are no members of Class 3 (c), but there are several members of Class 3 (d) of different kinds, e.g.

3 (d) Nos. 15, 16, 17, 18, 19, 20, then the same procedure explained in (iii) above, will be adopted, i.e. No. 15 and No. 16 will displace the others of this class and share the estate in terms of the principle of a male receiving twice the share of a female.

(vii) If there are members from both the father's and mother's side, namely, 3 (a), 3 (b), 3 (c) and 3 (d) members, the estate will be divided into three parts. The members on the father's side (i.e. 3 [a] and 3 [b]) will receive two parts and the members on the mother's side (i.e. 3 [c] and 3 [d]) will obtain one part. The respective parts will be shared among the members according to the procedure explained in (ii), (iii), (iv), and (v) above.

N.B.: Class 3 (a) and (b) members do not deprive any member in 3 (c) and 3 (d).

(viii) If there are no members of Class 3 (a), (b), (c) and (d), then their offspring will inherit. The division will be according to the method explained in Class 2 of the Fourth Category.

KHUNTHA

(Hermaphrodite)

Khuntha is a person who is born with the deformity of having both male and female organs. Such a person whose sex cannot be determined is described as *khuntha mushkil*.

If the sex can be determined by virtue of the dominance of either the male or female organs, the person will be classified accordingly, i.e. if the male organ is dominant, the person will be classified a male and if the female organ predominates, the person will be a female.

All attempts will be made to classify the khuntha either as a male or female. Only when such classification is impossible will the person be classified as khuntha mushkil.

The principle of *obtainal of the lesser share* applies to the inheritance of the khuntha mushkil. According to this rule, the khuntha mushkil will receive the share of either a male or a female, whichever is the lesser of the two.

<u>Example</u>: The mayyit is survived by one son, one daughter and one khuntha mushkil. Now, if the khuntha mushkil is assumed to be a male, the estate will be divided into five parts. In this case, the khuntha mushkil will obtain $^2/_5$ (two fifths) of the estate.

If the khuntha mushkil is assumed to be a female, the estate will be divided into four parts. In this case, the khuntha's share will be $^1/_4$ (one quarter).

A quarter is less than two fifths, hence in terms of the rule of *obtainal of the lesser share*, the khuntha mushkil, in this example, will be given the share of a female, viz one quarter.

<u>Example</u>: The mayyit is survived by the following heirs: Mother, wife, khuntha mushkil and a paternal uncle.

If the khuntha mushkil is assumed to be a male, the division will be as follows:

Mother $^{1}/_{6}$, wife $^{1}/_{8}$, khuntha mushkil, the balance.

Divide the estate into 24 parts. The shares will be:

Mother $^{1}/_{6} = {}^{4}/_{24}$; wife $^{1}/_{8} = {}^{3}/_{24}$; khuntha balance = $^{17}/_{24}$

Thus, if the khuntha mushkil, in this example, is assumed to be a male, the share will be $^{17}/_{24}$ and the uncle is deprived.

If the khuntha is assumed to be a female, the division will be as follows:

Mother $^{1}/_{6} = {}^{4}/_{24}$; wife $^{1}/_{8} = {}^{3}/_{24}$; khuntha balance $^{1}/_{2} = {}^{12}/_{24}$ and the balance of $^{5}/_{24}$ will be taken by the paternal uncle.

$^{12}/_{24}$ is less than $^{17}/_{24}$, hence the khuntha in this example, will be given $^{12}/_{24}$ of the estate since this $(^{12}/_{24})$ is the lesser amount.

THE UNBORN BABY

1. When the wife of the mayyit is pregnant, it is advisable to postpone distribution of the estate until the birth of the child so as to ascertain its sex. The child may also be stillborn, hence it will not be an heir.

   Sometimes twins, triplets or quadruplets may be born.

If the estate is divided prior to the birth of the unborn child/children, the division will not be valid. A redistribution will have to be effected. It is, therefore, best to delay the distribution until the child/children have been born. However, if the heirs decide on immediate distribution, the unborn should be assumed a male and the share of one male should be held in trust.

When the child is born a male, the distribution already effected will remain valid. If the child is a female, the distribution will be correctly re-arranged.

Example: The following are the heirs of a mayyit:

A pregnant wife, two sisters and mother. The heirs decide to distribute the estate before the birth of the child who is assumed to be a male. The division will, therefore, be as follows:

Mother $^1/_6 = {}^4/_{24}$; wife $^1/_8 = {}^3/_{24}$; The assumed son receives the balance of $^{17}/_{24}$ and the two sisters are deprived. Now, if the child is in actual fact a boy, this distribution will remain valid. However, if the child is a girl, the actual division will be as follows:

Mother $^1/_6 = {}^4/_{24}$; wife $^1/_8 = {}^3/_{24}$; daughter $^1/_2 = {}^{12}/_{24}$. The two sisters will receive the balance of $^5/_{24}$.

2. The procedure described above is not restricted to only the unborn child of the mayyit. The same rule will apply

to any unborn child who can become the heir of the mayyit.

Example: The mayyit, Zaid, is survived by the following heirs: Wife and mother. The mayyit's pregnant daughter-in-law is also alive, her husband having predeceased his father (Zaid). The heirs decide to distribute the estate immediately although the grandchildren, in this case, are also the heirs of Zaid. The procedure explained in No. 1 above will be adopted in this example as well.

Example: Amar (the mayyit) has the following heirs:

Pregnant mother, a sister and a nephew (brother's son). The estate is immediately distributed as follows:

Mother $^1/_6$; the remaining $^5/_6$ are divided into three parts. One part will be for the sister and two parts will be held in trust for the unborn child who has been assumed to be a male.

The division is simplified by dividing the whole estate into 18 parts. These 18 parts will be divided as follows:

Mother $^1/_6 = {}^3/_{18}$; sister $^5/_{18}$ and the unborn child assumed to be a male, $^{10}/_{18}$. The nephew is deprived because of the presence of the (assumed) brother.

If the unborn child is a girl, the distribution will change as follows:

Mother $^1/_6$; two sisters jointly inherit $^2/_3$ and the balance is taken by the nephew who becomes the Asbah.

The shares will be as follows:

Mother $^1/_6$; sister No. 1) $^2/_6$; sister No. 2) $^2/_6$; nephew $^1/_6$.

3. It should be remembered that the share held in trust for the unborn child will be its property only if it is born alive. If it is born dead, it is not entitled to any inheritance. The distribution will then have to be re-arranged.

Example: Zaid (mayyit) is survived by the following:

Pregnant wife, mother and brother. The unborn child is assumed a boy, hence the division is:

Wife $^1/_8$; mother $^1/_6$ and unborn child (boy) the balance. Divide the estate into 24 parts and distribute as follows:

Wife $^1/_8 = {}^3/_{24}$; mother $^1/_6 = {}^4/_{24}$; unborn boy $^{17}/_{24}$.

The brother does not inherit in this case. At birth it transpired that the child was dead. His existence will be disregarded and the estate redistributed as follows:

Wife $^1/_4$; mother $^1/_3$; balance to the brother.

Wife $^{1}/_{4} = {}^{3}/_{12}$; mother $^{1}/_{3} = {}^{4}/_{12}$;
balance = $^{5}/_{12}$ to the brother who becomes the Asbah.

4. If a share was held in trust for the unborn child, but after birth it was realised that the child was not an heir, then the distribution will be re-arranged.

Example: Zaid is survived by the following persons:

Mother, two daughters and a pregnant wife of his deceased brother. Since the unborn child is assumed to be a male, the distribution will be as follows:

Mother $^{1}/_{6}$; two daughters $^{2}/_{3}$; the balance to the unborn boy (brother's son) who is the Asbah.

Mother $^{1}/_{6}$; two daughters $^{4}/_{6}$; brother's son $^{1}/_{6}$.

If the child is born a girl, the distribution will be as follows:

Mother $^{1}/_{6}$; two daughters $^{4}/_{6}$; since there is no Asbah to claim the balance, the remaining $^{1}/_{6}$ will be taken by the mother and daughter in proportion to their respective shares (see section on Radd). Thus, the estate will be divided into 5 parts. The mother receives 1 part $\left(^{1}/_{5}\right)$ and each daughter 2 parts or $^{2}/_{5}$. The girl will not inherit because a brother's daughter is among the Zawil Arham.

5. If two girls are born and they are heirs, then the distribution will remain intact since the share of a male has been set aside. The two girls will share the sum set aside equally.

6. If a boy and a girl or two boys or triplets, etc. are born, the first distribution of the children will be cancelled and the shares will be correctly re-allocated.

   Example: Zaid is survived by the following heirs:

   Mother, father, pregnant wife, two sons and a daughter. The unborn child is assumed a boy. The division is as follows:

   Mother $^1/_6$; father $^1/_6$; wife $^1/_8$; balance to be divided into 7 shares (3 sons – includes the unborn assumed son – and 1 daughter). Each son receives twice the share of the daughter. However, if at birth a boy and a girl were born, the balance of the estate will be divided into 8 shares (3 sons and 2 daughters).

   If two boys were born, the balance will be divided into 9 shares (4 boys and 1 daughter).

   If two boys and a girl (triplets) were born, the balance will be divided into 10 shares (4 boys and 2 girls).

   If the triplets are three girls, the balance will be divided into 8 shares (2 sons and 4 daughters).

   Example: Bakr is survived by his mother, one daughter and a pregnant wife. The unborn child is assumed a boy, hence the distribution will be as follows:

Mother $^1/_6$; wife $^1/_8$; balance to be divided into 3 shares. The daughter gets 1 share while 2 shares are held in trust for the unborn who has been assumed a boy. Thus, the initial distribution is as follows:

Mother $^1/_6 = {}^4/_{24}$; wife $^1/_8 = {}^3/_{24}$;
balance = $^{17}/_{24}$

Later when the child is born it was a girl. The distribution will be re-arranged as follows:

Mother $^4/_{24}$; wife $^3/_{24}$; 2 daughters jointly inherit $^{16}/_{24}$. $^{16}/_{24}$ is $^2/_3$ which is the share of 2 girls.

$^4/_{24} + {}^3/_{24} + {}^{16}/_{24} = {}^{23}/_{24}$. There remains $^1/_{24}$. This $^1/_{24}$ has to be distributed to the mother and 2 daughters (see section on Radd). Thus, after the wife is given her one eighth of the estate, the balance of seven eighths has to be divided into 20 shares (See Radd to understand how we have derived the number 20). From these 20 parts, the mother will receive 4 and the 2 daughters together obtain 16 parts.

7. A child who dies after having been born or a child who dies after half its body has emerged, inherits its full share which will, in turn, be inherited by his/her heirs.

8. For the unborn child to be entitled to inheritance, the maximum period of waiting is two years from the date of death of the mayyit. This period of two years relates to

the foetus of the mayyit, i.e. the mayyit's wife gives birth within the specified period of two years. If the child is born after two years, he/she will not be entitled to any inheritance. In this case, the child will not be regarded as being the offspring of the mayyit. The first distribution will then remain valid.

If the unborn child does not belong to the mayyit but to someone else, e.g. the pregnant woman is the mayyit's mother or the wife of the mayyit's deceased son, then the maximum period for the child's entitlement to inherit is six months. If the child is born within six months from the date of the mayyit's death, he/she will inherit. If the child is born after six months, he/she will not inherit in the mayyit's estate although the relationship of the child to the mayyit will be legitimate.

9. If a man dies leaving a pregnant wife who gives birth before six months from the date of nikah, the child will not inherit in the mayyit’s estate. This child will not be legitimate.

MAULA MUWALAT

A certain kind of relationship between friends creates ties of inheritance in certain circumstances. This relationship of friendship is called *Muwalat*. The inheriting friend is called *Maula Muwalat*.

This kind of friendship comes into existence between a person of unknown parentage and a person who agrees to assume responsibility for his crimes. The person of unknown parentage says to another:

"Assume responsibility for my crimes, paying the Diyat[1] *on my behalf and after my death you will inherit my entire estate."*

If the other person agrees, the contract of Muwalat comes into existence. The 'other person' who accepted becomes the heir of this person of unknown parentage by virtue of this agreement.

If this person of unknown parentage dies without leaving any heirs, then his Maula Muwalat will inherit the whole estate. If he has children, they will inherit his estate, not the 'friend'.

If he/she leaves behind only a spouse, then after the spouse receives his/her share, the balance of the estate will go to the friend (Maula).

MUQAR LAHU BIN NASAB ALAL GHAIR

This is a person whose kinship the mayyit had acknowledged. The acknowledgement made by the mayyit in favour of a complete stranger also implies the extension of the kinship (relationship) to another person who has not accepted or does not accept this claim. Such an acknowledged kinsman is termed *Muqar Lahu*.

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[1] *Diyat is the monetary compensation which the Shariah orders the criminal to pay for commission of certain forms of injury to life and limb.*

The following four conditions are necessary for a person to be recognised as a Muqar Lahu of this kind:

1. The acknowledgement (Iqrar) should be valid in the Shariah. If the Iqrar is not valid according to the Shariah, the Muqar Lahu will not be entitled to inherit in the mayyit's estate. Thus, if the mayyit makes an admission of kinship, declaring that a certain man of his father's age is his (the mayyit's) brother or that a certain man whose parentage is well-known, is his brother, then these admissions will not be valid and the acknowledged person will not be a Muqar Lahu and will not be entitled to inheritance in this mayyit's estate.

2. The lineage of the person who has been acknowledged should also extend to another person, e.g. the mayyit had acknowledged that Zaid is his brother. This admission implies that Zaid is the son of the mayyit's father. Thus, the lineage of the acknowledged person by implication extends to another person.

   If the lineage does not extend to another person, the acknowledgement will not be valid and the person will not be classified as a Muqar Lahu for the purpose of inheritance, e.g. Bakr is a man of unknown lineage. The mayyit declares that Bakr is his son. Bakr, by virtue of this declaration, will be recognised as the mayyit's son, not as a Muqar Lahu. In this case, the lineage of Bakr refers to only the mayyit and not another person. Bakr will, therefore, inherit normally just as children inherit in their father's estate.

3. The other person to whom the lineage of the acknowledged person is implied, rejects the admission of the mayyit. If the other person also acknowledges the kinship, then he (the acknowledged person) will not be a Muqar Lahu. On the

contrary, he will be regarded as either among the Zawil Furoodh or Asbat and inherit in their categories.

4. The mayyit had upheld his admission until his death. In other words, until the last he had not retracted his acknowledgement.

If any of the above conditions are lacking, the acknowledged person will not qualify for inheritance in the mayyit's estate.

The following regarding the Muqar Lahu should be noted:

(i) When the Muqar Lahu qualifies to inherit, he/she inherits from only the one who had made the acknowledgement of kinship.

The Muqar Lahu does not inherit in the estates of the other relatives of the one who had made the acknowledgement, e.g. The mayyit had acknowledged Khalid (an unknown person/a stranger) as his brother. However, the mayyit's relatives had rejected this claim. The mayyit on his death is survived by only Khalid (the Muqar Lahu). There are no other relatives. Khalid will inherit in the mayyit's estate only, not in the estates of any other relatives of the mayyit.

This situation could arise in the following instances:

a. Zaid (son) and Bakr (father) die simultaneously in an accident. There are no Zawil Furoodh, Asbat or Zawil Arham relatives living. However, Khalid is Zaid's Muqar Lahu. Zaid's estate will be inherited by Khalid. But Khalid will not inherit in Bakr's estate in spite of him (Khalid) being implied as Bakr's son by virtue of Zaid's admission.

b. Khalid is Zaid's Muqar Lahu, Zaid having made the admission that Khalid (an unknown person) is his brother. Bakr (Zaid's father) or Ahmad (Zaid's brother) dies before Zaid. Khalid (Muqar Lahu) will not inherit in either Bakr's or Ahmad's estate.

(ii) The Muqar Lahu's kinship with the relatives of the one who has made the admission will not be recognised.

(iii) The Muqar Lahu becomes the inheritor only if there are no relatives of the one who had made the acknowledgement of the Muqar Lahu's kinship.

(iv) The Muqar Lahu will inherit along with the spouse of the mayyit.

Examples:

a. The mayyit is survived by only his wife and his Muqar Lahu. The wife's share is one quarter of the estate. The Muqar Lahu receives three quarters.

b. The mayyit is survived by only her husband and her Muqar Lahu. Her husband's share is half her estate while the other half goes to the Muqar Lahu.

MUSA LAHU

Musa Lahu is a person in whose favour the mayyit had made a bequest. Here it refers to a beneficiary to whom the mayyit had bequeathed his entire estate.

1. If the mayyit has no relatives and is survived by only the Musa Lahu, then he will acquire the entire estate.

2. If the mayyit leaves other relatives as well, then the Musa Lahu's share will be one third while the balance will be inherited by the other relatives of the mayyit.

3. If the mayyit leaves only a spouse and the Musa Lahu, then the balance of the estate after the spouse's share, will be taken by the Musa Lahu.

BAITUL MAL

Baitul Mal refers to the state coffers of the Islamic State.

When the mayyit has absolutely no heirs of any category whatsoever, the estate will be given to the Baitul Mal.

In the present age, there is no true Islamic State. Kuffar laws and systems have been imposed on the Muslim populace. Therefore, should the mayyit have absolutely no inheritor, his entire estate should be distributed to the Fuqara (Muslim poor and destitute).

DEATH OF THE MUSAFIR

When a Musafir (traveller) dies in a foreign land, it is not permissible for the people in that land to simply give the mayyit's belongings to charity. It is incumbent on them to institute exhaustive enquiries to establish if he/she has any next of kin. Only after such enquiries will it be necessary to give the Musafir's belongings to charity, i.e. if no relatives could be traced.

THE LA-WARITH

La-warith is a person who dies leaving no heirs whatsoever. The estate of the La-warith has to be distributed among the Fuqara. If the La-warith has such poor relatives who are not heirs, then they enjoy a prior right. By virtue of their family links with the mayyit, the estate should be distributed among them. This distribution is not by way of inheritance, hence they cannot claim the estate although they enjoy a prior right. They too are Fuqara. It is therefore, improper to distribute the estate to other Fuqara when the mayyit's own non-inheriting relatives are poor and destitute.

Among the non-inheriting relatives are step-mothers, Ridhai brothers and sisters*, step-children, adopted children, the wife's relatives, etc.

It is incumbent on the La-warith in the present age whether living in a Muslim or Kafir country, to write his will. If he/she fails to execute this obligation, his/her estate will be misdirected and misused by the Kafir and Fasiq state authorities.

If the La-warith happens to be a convert to Islam, the estate will be given to non-Muslim relatives who do not inherit in terms of the Shariah.** Even in the lands of the Muslims, the Fussaq and Kuffar state authorities will not ensure a Shar'i solution for the estate of the La-warith. He should, therefore, bequeath his wealth to Deeni charities which will prove beneficial for him in the Akhirah.

**Ridhai brothers and sisters: The children of a woman who had breastfed another child. The ties of milk give rise to milk-brothers and sisters.*

*** That is, if this convert La-warith did not leave a will which is valid in the Shariah.*

THE MAFQOOD

A person whose whereabouts are unknown and it is not known whether he/she is dead or alive is called *Mafqood*.

1. The Mafqood is considered to be alive with regard to his estate. Thus, his estate will not be distributed among his heirs by way of inheritance as long as his death is not confirmed or decreed by a Shar'i court.

2. The Mafqood's death will be confirmed by way of reliable information. If no such information is forthcoming, his death will be decreed by a Shar'i court (or a Shar'i committee in the absence of a court) when his age has reached 90 Islamic years.

3. At the age of 90 years when he will be legally decreed to be dead, his estate will be distributed by way of inheritance among his existing heirs. Only the heirs who are alive on the date the Mafqood becomes 90, will inherit. Those who had died before this date, will not inherit in the Mafqood's estate.

4. With regard to the estates of others, the Mafqood is considered to be dead. In other words, he does not inherit in the estates of such deceased persons whose heir he would have been if his whereabouts were known on the occasion of their deaths. However, in spite of him not inheriting, his share will be set aside and held in trust because of the possibility of his return before he has reached 90 years.

   When the Mafqood's death is pronounced at 90, the assets which were held in trust for him have to be distributed to the heirs who were alive on the occasion of the death of the person from whose estate the share was set aside for the Mafqood. At the age of 90, it will be deemed that the Mafqood was not alive on the occasion of the death of his murith (the deceased from whom one inherits).

   <u>Example</u>: Amar went missing on 20th Safar 1350. On that day he was 35 years old. Ten years later his wife died leaving the following heirs:

   Mother, daughter and son. Her estate will be divided as follows:

   Mother $^1/_6$; Mafqood husband $^1/_4$ (to be held in trust); balance to be divided into 3 parts. 1 part for the daughter and 2 parts for the son.

Mother $^1/_6 = ^2/_{12}$; Mafqood husband $^1/_4 = ^3/_{12}$; balance $^7/_{12}$ to be divided into 3 shares (2 for son and 1 for daughter).

The $^3/_{12}$ or $^1/_4$ of the estate will be held in trust. Should the Mafqood return before the age of 90, his share will be given to him. If he has not returned by 19th Safar 1405 when his age will be 90, the $^3/_{12}$ will be returned to the heirs of his deceased wife, i.e. those who have inherited from her when she had died. They were her mother, daughter and son. The mother's share is $^1/_6$ and the balance of $^5/_6$ will be divided into 3 parts. The son will receive 2 parts and the daughter 1 part.

This division will be illustrated with a further example. The value of the deceased wife's estate is R144,000. The shares of the heirs are:

Mother $^2/_{12}$ ($^1/_6$)	=	R24,000
Mafqood $^3/_{12}$ ($^1/_4$)	=	R36,000
Balance $^7/_{12}$ (for son and daughter)	=	R84,000
		R144,000

The Mafqood husband’s share of R36,000 will be kept in trust until he reaches the age of 90 years. If he has not returned by this time, the R36,000 which was set aside for him will revert to his deceased wife's estate. Her heirs on the occasion of her death were her mother, son and daughter.

The division of the R36,000 will be as follows:

Mother $^{1}/_{6}$ = R6,000 ; the balance, viz; $^{5}/_{6}$ = R30,000 will be divided into 3 parts. Thus each part is R10,000. The son receives R20,000 and the daughter R10,000.

THE MURTAD

A Muslim who renounces Islam – Allah Forbid! is termed a *murtad* (renegade).

1. A murtad (male renegade) and murtaddah (female renegade) are deprived of inheritance. They neither inherit from Muslims nor from murtads.

2. The estate of renegades (both male and female) will be inherited by their Muslim heirs.

3. The estate of the murtad will be taken by his/her heirs when the following circumstances occur:

a. The death of the murtad
b. The execution of the murtad
c. When he/she seeks asylum in Darul Harb (Kafir country) and the Islamic court issues a decree confirming this event

MUNASAKHAH

Sometimes the mayyit's estate is not expeditiously wound up. The matter is allowed to continue indefinitely. If such delay is due to neglect, those responsible are guilty of a serious crime. It is essential to finalise the distribution as quickly as possible so that the rightful heirs obtain their rights.

Many people ignorant of the Shariah and attached to this world and its worthless material seek to extend temporary hold over their worldly possessions even beyond the grave. They resort to a variety of haram devices to delay the winding up of their estates. By taking assistance from the laws of non-Muslim governments, they draw up such 'legal' documents which block the expeditious distribution of their estates – or of what they falsely believe to be their wealth. In so doing, they violate the law of the Shariah, infringe on the rights of the heirs and cause them difficulties.

The Muslim should fear Allah Ta'ala and know that it is not permissible to introduce in his will any measure which will impede the quick winding-up of his/her estate. It does not behove him to enter his grave with the burden of such a dastardly sin which he has committed on the eve of his meeting with Allah Ta'ala. He should not depart from this earth with his heart clinging to the miserable and fleeting affairs of a perishable world. His gaze should be focused on his original and true home which is Jannat. Rasulullah (Sallallahu alayhi wasallam) said:

"Verily, the world has been created for you while you have been created for the Akhirah."

Numerous people are guilty of such inordinate delay in finalising the affairs of the mayyit that sometimes some heirs die before the estate of their murith has been finalised. The shares of these deceased heirs have to be transferred to their respective heirs.

The transference of the shares of inheritance from the estate of the first mayyit to the heirs of the subsequent deceased who were the heirs of the first mayyit, is called *Munasakhah*.

Example: Zaid died leaving a wife, mother, eight sons and one daughter. Before Zaid's estate was distributed, one of his sons died leaving a wife, mother, one sister and seven brothers as his heirs.

Two estates are now involved – the estate of Zaid and the estate of his deceased son. The estate of Zaid (first mayyit) has to be distributed as follows:

Wife $^{1}/_{8}$; mother $^{1}/_{6}$; balance of the estate to be divided into 17 parts. Each son will receive 2 parts and the daughter 1 part. The value of Zaid's estate is R240,000.

To simplify the calculation, divide the estate into 24 parts (i.e. twenty fourths). The share will be thus:

Wife $^{3}/_{24}$ which is $^{1}/_{8}$ = R30,000

Mother $^{4}/_{24}$ which is $^{1}/_{6}$ = R40,000

Balance $^{17}/_{24}$ goes to eight sons and one daughter. This balance has to be divided into 17 parts.

The balance is R170,000 divided by 17.

The amount of each share is therefore R10,000. Each son gets 2 × R10,000 = R20,000 and the daughter R10,000.

The second mayyit (Zaid's son) inherited R20,000 from the estate of his father Zaid. The R20,000 has to be transferred to the heirs of the second mayyit. They are his wife, mother, seven brothers and one sister.

Wife $^1/_4 = {}^3/_{12}$; mother $^1/_6 = {}^2/_{12}$; the balance of $^7/_{12}$ is to be divided into 15 parts. Each brother will receive 2 parts and the sister 1 part.

THE ESTATE OF THE MAYYIT

Every item which belongs to a person is part of his estate regardless of its insignificant value. Garments, furniture, household items, vehicles, fixed property, stock-in-trade, fittings, equipment (in his business), cash, savings in the bank, monies owed to him, animals of whatever kind (even pets such as tropical fish, caged birds, etc.) and whatever else belonged to a person form part of his estate for distribution among his Shar'i heirs after his death.

With the advent of Maut, the rights of all heirs are immediately confirmed in every item of the mayyit's estate right down to the worn pair of shoes and socks of the mayyit. No heir can claim any particular asset himself/herself by virtue of having a greater share in the mayyit's estate or because of any closer links which he/she had enjoyed with the mayyit.

If one heir has half share and another one eighth share, the one with the greater share does not have the right to arbitrarily appropriate any asset of the estate and pay out the smaller shareholder. The one who has one eighth share is fully entitled to refuse selling his/her one eighth share. Thus, every heir has his/her proportionate share in the mayyit's garments, cash, stock-in-trade, vehicles, property and in every item of the estate.

THE MAYYIT'S CLOTHES

A common malpractice is to donate the mayyit's clothing to charity. A few heirs, usually his wife and children, take it upon themselves to alienate the mayyit's garments from the estate in this way without consideration for the rights of the other heirs.

It is haram to give away the mayyit's clothes without having acquired the happy and willing consent of all the heirs. In this regard, it should be remembered that the consent of minor heirs is not valid. Therefore, if all the adult heirs wish to give the mayyit's clothing to charity, the garments should be correctly valued. The correct value means the price one could get if the garments had to be sold.

The share of the minors should be calculated and the consenting adults will have to set aside the amount from their own finances. This amount has to be kept as Amanat (trust) for the minors until they reach adulthood.

Example: The value of the mayyit's garments which are to be given to charity is R2,400. The heirs and their shares are as follows:

Wife $^1/_8$; mother $^1/_6$; one minor and three adult daughters receive the balance of the estate.

Wife $^{1}/_{8}$ = $^{3}/_{24}$; mother $^{1}/_{6}$ = $^{4}/_{24}$; balance $^{17}/_{24}$ is the share of the one minor son and three adult daughters. This balance has to be divided into 5 parts. Each daughter receives 1 part and the son 2 parts.

The value of the garments is R2,400. The shares of the heirs are:

Wife: $^{3}/_{24}$ = R300

Mother: $^{4}/_{24}$ = R400

Balance: $^{17}/_{24}$ = R1,700 to be divided into 5 parts.

R1,700 ÷ 5 = R340. Each daughter's share of the garments is R340 and the minor son's share is R680.

Since the consent of the minor is not valid, the adult heirs have to pay R680 to the minor son. This amount will be held as Amanat for the son.

If any heir wishes to claim his share of the garments, it will be Wajib (incumbent) to work out the shares, correctly value the clothing and give him/her clothing equal to the value of his/her share.

THE MAYYIT'S BUSINESS

In most cases, gross neglect and disregard for the rights of the heirs are perpetrated by those heirs who are in control of the mayyit's business. An inventory of the mayyit's assets in the business is not made. There is no stock-taking. The business continues to flourish for years when suddenly, at the insistence of some heirs, the estate has to be finalised. But, on account of there being no records of the mayyit's assets, the result is discord and acrimony among the heirs. Some heirs rightly feel that the controlling heirs (usually the mayyit's sons) have usurped their rights.

A misconception among heirs is that all heirs have shares in the profit which the business generates even after the death of the mayyit. The daughters and the other heirs who are not active in the business believe themselves rightful shareholders in the business simply because the business had belonged to their deceased father/husband, etc. But, this is not correct.

While all heirs have their share in the assets left by the mayyit, they have no shares in the future profit yielded by the business. The profit belongs to those who conduct the business. The heirs conducting the business have appropriated the asset-shares of the other heirs either with or without their consent. If the consent was obtained, the use of the assets will be on the basis of a loan given by the other heirs. If consent was not obtained, the heirs conducting the business are guilty of misappropriation. However, in both cases, the profit belongs only to those who conduct the business.

The only way of obviating this malpractice is to take stock of the assets in the business immediately after the burial of the mayyit. The proper value of the stock, fixtures, fittings, equipment and vehicles should be recorded. Representatives of the heirs who are not partners in the business should be present at the stock-taking to eliminate any suspicion of dishonesty.

The share of the heirs should be calculated and arrangements should be made to pay them. They could be paid in cash or with stocks. If an heir demands immediate payment of his share of the business's assets, but there are no cash funds available, then he/she should be paid with stocks and other equipment. The heir cannot demand payment in cash only, because his/her share is related to every item in the mayyit's assets.

If the heir is not prepared to accept payment in instalments, those in control of the business are under Shar'i obligation to hand over to the demanding heir his/her share in the form of other assets. This is illustrated in the following example:

Zaid died leaving his wife and seven sons. Their shares are: Wife $^1/_8$ and each son $^1/_8$. One son demands immediate payment of his share in the assets of his deceased father's (Zaid's) business. However, there are insufficient cash funds available to pay his share in cash. The inventory of assets in the business are:

Cash	R10,000
Stock-in-trade	R84,000
Shelving	R12,000
Supermarket trollies	R3,000
Cash registers	R8,000
Vehicles	R36,000
Book debts	R4,000
Other equipment	R3,000
	R160,000

The son's $^1/_8$ share is related to all the assets listed above. In other words, he is entitled to $^1/_8$ of the cash, $^1/_8$ of the stock, $^1/_8$ of the shelving and so on ($^1/_8$ of every item). If the son is not prepared to accept payment of his share in instalments, he should be given $^1/_8$ of the cash i.e. R1,250; $^1/_8$ of the stock i.e. R10,500 worth of stock and so on, $^1/_8$ of all the assets. His share in the vehicles is also $^1/_8$. Thus, he owns R4,500 of the value of the vehicles. Some mutual agreement will have to be arranged to pay his R4,500 vehicle-share with stock or equipment or in any other way mutually agreed.

People become shareholders in the profits of a business by virtue of a partnership agreement. If no such agreement exists with the heirs whose assets have been appropriated or misappropriated by the controlling heirs, the former has no claim on the profits generated by the business.

IF STOCK WAS NOT TAKEN

In the event of the estate being wound up only years after the death of the mayyit and no records exist of the mayyit's assets, then the only option is Sulah (compromise). The heirs should agree to a mutual compromise to settle all outstanding issues. Those in a commanding position should fear Allah Ta'ala and refrain from prejudicing the rights of the weaker ones, especially of the females. A compromise as equitable as possible should be worked out.

THE MAYYIT'S VEHICLES

Much misappropriation regarding the mayyit's vehicles is committed by those heirs who have possession of the vehicles. They behave as if they are the sole owners. The vehicles are used solely by them to the exclusion of the other heirs.

On the death of the mayyit, the vehicles should be valued and every heir's share determined. Arrangements should be made to either pay out the others or they should be allowed the use of the vehicles in relation to their shares.

DISTRIBUTING THE ASSETS

After having completed the burial of the mayyit, the heirs should immediately commence taking stock of all the assets of the mayyit. Nothing – no matter how insignificant – should be excluded from the inventory. Every item should be correctly valued.

The assets may be shared physically by the heirs where such division is possible. When an asset cannot be physically divided into parts, it should be divided and shared in terms of value. In such matters, there is a need for understanding and co-operation. A measure of give and take is also necessary.

All heirs cannot, for example, share one vehicle in an orderly and fair manner. They will have to settle the matter like Muslims who understand the futility of this perishable world and their accountability in the Court of Allah Ta'ala.

The assets may be distributed item-by-item or a grand total be obtained for the value of all the assets. The heirs may arrange to sell their shares of the assets among themselves. If an heir has no need for a particular item, he/she could exchange it for another item of similar value with the consent of the other heirs. A redundant asset which none of the heirs wants will only be distributed the day it is sold or an heir decides to purchase it. The money obtained will then be distributed.

The moveable assets may also be made up into lots of equal value. Each heir can then take lots of such assets to the value of his/her share. In short, the heirs should go about the division of the assets fairly, justly and keeping in mind the rights of all.

FIXED PROPERTY

If the heirs decide to retain the fixed property, this is permissible. There is no incumbency to sell. A fair rental has to be fixed for the property. The net income derived from the rental has to be shared among the heirs in proportion to their respective shares of inheritance. The one whose share in the mayyit's estate is $^1/_8$, will receive $^1/_8$ of the rent (i.e. of the net rent after deducting expenses); the one whose share is $^1/_6$ will receive $^1/_6$ of the rent. Similarly with all other heirs.

It is not permissible for any heir or heirs to occupy the fixed property without paying a mutually agreed rent.

An heir may sell his share of the property. Should the heir decide to sell, he/she should first offer the share to the other shareholders in the property. If they refuse to buy or are not willing to pay the price the seller asks, then the share may be sold to an outsider.

The value of the property is the actual price acquired for it on the day it is sold. Thus, if the property is sold some years after the death of the mayyit, the price obtained for the property has to be divided among the heirs in proportion to their shares. It is wrong and not permissible for the controlling heirs to pay the heirs in terms of the value which had prevailed on the occasion of the mayyit's death. However, any heir is allowed to sell his share for a price mutually agreed. This price may be any amount agreed on by the buyer and seller. It need not be in terms of any valuation of the property. It could be more or less than the current market value. The parties can agree on any price.

The controlling heirs cannot arbitrarily pay out heirs for their shares in the property. Heirs cannot be compelled to sell their shares.

Registration of a property in the name of a person does not necessarily make that person the owner. Sometimes certain circumstances constrain a person to register a property in the name of another person. If it is known that the property had belonged to the mayyit, an heir in whose name it is registered cannot claim it as his property. If there exists no clear evidence to substantiate the claim of ownership, the property remains an asset in the mayyit's estate.

If the property is encumbered by debt (e.g. bond which is the usual case), then whoever pays the debt will have a claim against the estate. Payment of the bond/debt does not entitle the payer to ownership of the property. He can claim only the amount he has paid.

THE MUSLIM'S LAST TESTAMENT

Rasulullah (Sallallahu alayhi wasallam) said that it is not proper for a Muslim to allow two days to pass without him having a Will. This directive has greater meaning and emphasis in the present age of moral corruption and total absence of any Shar'i government or authority which could ensure the Shar'i distribution of one's estate.

It is Wajib (compulsory) to draw up a Will which should specify that the estate should be distributed in accordance with Islamic Law of the Ahlus Sunnah Wal Jama'ah school of thought. Islamic Will forms have been prepared by the Mujlisul Ulama of South Africa. These are available from the Y.M.M.A. P.O. Box 18594, Actonville, Benoni, 1506, South Africa.

The Will prepared by the Mujlisul Ulama of South Africa has been designed to circumvent the secular laws of this country to ensure the Shar'i distribution of the mayyit's estate. Muslims in other countries should not rely on this Will form. They should consult a lawyer to ascertain the validity and legality of the Will in their respective countries. If needs be, an Islamic Will should be prepared in consultation with a lawyer. The purpose of consulting a lawyer is only to ensure the validity of the Will in terms of the law of the land. The aim of enlisting the services of a lawyer is not to ensure the Shar'i validity. For ascertaining the Shar'i validity, it is imperative to consult the Ulama.

ADVICE FOR SOUTH AFRICAN MUSLIMS

According to South African law, there are four types of marital relationships. These are:

1. Community of Property
2. Antenuptial Contract which includes the accrual system
3. Antenuptial Contract which excludes the accrual system
4. Illicit 'Marital' relationships

The discussion captioned, THE MATRIMONIAL ACT – HOW IT AFFECTS MUSLIMS, explains the first three marital systems mentioned above.

Regarding the fourth type, viz Illicit 'Marital' relationships, so far, Islamic marriages are classified invalid and the resultant offspring illegitimate. Thus, if the marriage is not legally (in terms of Kufr law) registered, the effect will be:

a. The estate of the Muslim dying intestate (i.e. without a Will) cannot be claimed by spouses and children. The state will award the estate to those relatives whom it regards to be the 'next of kin'. Since the 'unregistered' Islamic marriage is not recognised, the wife/husband is not accepted as a legal spouse and the children are regarded as illegitimate. They are, therefore, disinherited by the Kufr law of the land.[2]

   In such a situation, if the 'next of kin' who acquire the mayyit's estate, are conscious of Allah Ta'ala, there is

[2] This position most probably will change in the near future.

no problem. They will ensure the correct Shar'i distribution and not plunder the rights of the heirs. But, in most cases in this age of corruption, plundering rights is the norm. It is, therefore, vital for those whose Islamic marriages are not registered, to draw up an Islamic Will.

b. An Islamic Will is accepted as valid. The state will ensure the Shar'i distribution of the mayyit's estate.

   In view of this situation, it will be a major sin if the Muslim has not drawn up an Islamic Will due to negligence.

   There is no Shar'i incumbency to register one's Nikah although there are some benefits in such registration. However, the incumbency pertains to the Islamic Will. One should be certain of having prepared an Islamic Will.

THE MATRIMONIAL ACT – HOW IT AFFECTS MUSLIMS

This Matrimonial Act affects Muslims in South Africa. Muslims in other countries should study the Matrimonial laws of their respective countries so that they may circumvent impediments of the law which nullify Islamic Wills.

Since 1st November 1984, the new Matrimonial Act has come into operation. The marriage laws of the country, like all other laws of non-Muslims, are in conflict with the Shariah of Islam. Muslims are adversely affected by such laws which prevent Muslims from conducting their lives in accordance with the Shariah. However, there are usually loopholes and provisions in these man-made laws which we can manipulate in a way to permit the operation of the Shariah. It is, therefore, necessary for Muslims to understand this new marriage law, the prime purpose for such understanding being the need to ensure that a Muslim subjects his estate to the Islamic laws of **Meeraath** or inheritance.

Several options exist in the new Matrimonial Act. If the correct option is selected, a Muslim will be able to draw up an Islamic Will which will be valid in even the law of the land. Since it is obligatory to distribute the deceased's estate in accordance with the Shariah, it is incumbent upon Muslims to choose the correct option which allows them to distribute their estates in terms of the Shariah.

In regard to the new Matrimonial Property Act, we shall touch on only those aspects which affect the Muslim's Islamic right and obligation of bequeathing his estate in terms of the Shariah.

One of the most significant aspects of the new Marriage Act is the 'accrual system'. This simply means the equal distribution on dissolution of the marriage of the assets accrued by the spouses during their marriage. From 1st November 1984, the accrual system will be automatically included under the Antenuptial Contract (ANC). Until now (i.e. 1st November), the estates of the spouses were totally separate under ANC. However, the Act provided an option to exclude the accrual system.

Antenuptial Contract marriages prior to November 1st, remain unchanged. There is no automatic change to the accrual system.

It is essential to understand that:

1. Islamic Wills drawn up by couples whose marriage is in Community of Property (CoP) are not valid according to the law of the land.

2. Islamic Wills drawn up by couples married under ANC prior to 1st November 1984 are valid in the law of the land.

3. Islamic Wills drawn up by couples married under ANC **excluding the option of accrual** from November 1st onwards, are valid in the law of the land.

Important: If the system of accrual is not specifically excluded, it will be automatically included under ANC. An Islamic Testament will then be invalid.

Distribution of the estate of the mayyit (deceased) in accordance with the Shariah is **Fardh** or compulsory. It is, therefore, not permissible to select an option from the new Matrimonial Property Act, which disallows distribution of the deceased's assets in terms of the Shariah.

The only option which will enable the Muslim couple to bequeath their respective estates in accordance with the Shariah is an ANC which excludes the accrual system. **It is, therefore, Waajib for those who register their marriages to choose an Antenuptial Contract which excludes the accrual system.**

According to the Shariah, it is not permissible to register the marriage in Community of Property nor under Antenuptial Contract which includes the accrual system.

Although it is permissible according to the Shariah to have one's marriage registered in terms of the Antenuptial Contract system which excludes the accrual clause, an Islamic Will remains Waajib because in the absence of a Shar'i Will, the state will not ensure distribution of the estate according to the Shariah's laws of inheritance. Irreligious spouses and children will not be bothered with the correct Shar'i distribution. Therefore, there exists the strong likelihood of them depriving Shar'i heirs.

IMPORTANT:

It is essential to remember that when a marriage is registered in terms of the law of the land, the registration is automatically in Community of Property which is Haraam. Therefore, before attempting to register the marriage, first sign an Antenuptial Contract which excludes the accrual clause. This has to be effected through the offices of an attorney. Almost all those who register their marriages are unaware of the automatic effect of Community of Property on registration.

Those who are already registered in Community of Property should have this system cancelled. This has to be done through the office of an attorney who will apply to the court for a cancellation of the Community of Property. To do so is Waajib.
P

MISCELLANEOUS

1. Even if a person distributes his entire estate during his lifetime to his Shar'i heirs in an endeavour to facilitate the issue, all heirs will remain heirs in whatever wealth he happens to leave on his death. The prior distribution does not in any way whatsoever alienate their right of inheritance.

2. The age of Buloogh (adulthood) according to the Shariah is 15 Islamic years. The western concept of 21 years is not accepted by Islam. It is, therefore, not permissible to direct in one's Will that the winding up of the estate be delayed until the children have reached the age of 21.

3. A common malpractice is the transference of a predeceased son's 'share' to his children, i.e. the mayyit's grandchildren. This is not permissible. When a child dies during the lifetime of his/her parents, he is considered to be non-existent in relation to the share which he would have acquired in his parent's estate if he had been alive on the occasion of their demise. The mayyit's other children will inherit even the share of the predeceased son.

4. If any of the spouses dies prior to the consummation of the marriage, the ties of inheritance will still apply. Even if one of the spouses dies immediately after the Nikah and before having consummated the marriage, he/she will inherit in the estate of the deceased spouse.

5. If a person near to Maut embraces Islam, his estate will be subjected to the Shariah's law of inheritance.

INHERITANCE BY DUAL RELATIONSHIP

A person can sometimes inherit twice from the same mayyit by virtue of a double relationship. The same person could be among the Zawil Furoodh as well as among the Asbat at the same time.

Example: Saeedah is married to her paternal cousin (father's brother's son). When she died, the only surviving heirs were her husband and another paternal cousin. Her husband (Khalid) inherits half her estate. The other half is taken by her Asbat who are her other paternal cousin (Bakr) and her husband (Khalid). Khalid and Bakr are brothers. The other half of the estate is shared by Khalid and Bakr. Thus, Khalid inherits from Saeedah firstly as her husband and secondly as her Asbah.

Example: The mayyit (Zaid) is survived by only the following relatives: His wife who is also his paternal uncle's daughter (his cousin) and two other daughters of his paternal uncle. The cousins are of the Zawil Arham category. They acquire the remainder of the estate after the wife's share. Zaid's wife gets $^1/_4$ and the remaining $^3/_4$ are equally shared by the three cousins. Thus, the one cousin who is also Zaid's wife receives $^1/_2$ the estate since she inherits first as a wife, then as a cousin.

WHEN AN HEIR CANNOT BE IDENTIFIED

When a person is unable to identify a relative, the ties of inheritance between them are cancelled. The following are examples of such cases:

1. At birth, the baby was removed from the mother and kept apart in an incubator. The baby was wrongly tagged and neither the mother nor the nurses are certain of the identity of the baby. The mother either did not see the baby before it was taken from her or she did not see it properly, hence she was unable to identify it. The nurses too created a dispute regarding its identity. There will be no ties of Meeraath between the child, the woman and her husband, etc. as long as there remains uncertainty of the child's identity.

2. A mother dumped her newborn illegitimate baby in the Musjid's courtyard at night in the hope of someone taking the child. Coincidentally, another mother also dumped her newborn illegitimate baby in the same place. Both babies were found alive and taken to a place of safety. The one woman regretted her dastardly act, came forward, confessed and wanted to retrieve her baby. When both babies were shown to her, she was unable to identify her baby. Nevertheless, she offered to take both. Both children were cared for by her. None of them inherits from her nor does she inherit from any of them.

   Should these children after growing up die without leaving heirs (wives/husband or children), their estates will be deposited in the Baitul Mal. In the absence of the Baitul Mal (as in the case nowadays), their estates will be distributed among the Fuqara and Masakeen (Muslim poor).

Even if this woman takes custody of the two babies, it is the obligation of the Muslim state to support them. In the absence of a Muslim state, the obligation passes to the Muslim community.

3. An infant was placed in the custody of a woman who also had her own infant. She died. No one could identify with certitude which infant was her child. None of the two inherits in her estate nor in her husband's estate.

EXAMPLES FOR ALL

Although an effort has been made to simplify the subject of inheritance, there will remain difficulties and even confusion in the minds of the layman in determining who the heirs are and what their shares are. It is, therefore, essential to consult the Ulama when the winding up of the mayyit's estate has reached the practical stage of execution. The slightest misunderstanding can lead to serious discrepancies in awarding shares and determining heirs. Heirs could be deprived or their shares reduced or increased by any misunderstanding. To obviate such errors, a variety of examples are presented here. Everyone will, Insha'Allah, find an example which will be identical to his/her situation.

"X" denotes that the person does not inherit
"C.D." denotes the fractions with a common denominator

1.

Relatives	**Shares**	**Fractions with a common denominator**
Wife	$^1/_8$	= $^3/_{24}$
Mother	$^1/_6$	= $^4/_{24}$
6 Sons 4 Daughters	} Balance of estate	= $^{17}/_{24}$

The balance of $^{17}/_{24}$ to be divided into 16 parts. Each son receives 2 parts and each daughter receives 1 part.

Brother	X
2 Paternal cousins	X
Paternal uncle	X

2.

Relatives	**Shares**		**C.D.**
Wife	$^1/_8$		= $^3/_{24}$
1 Daughter	$^1/_2$		= $^{12}/_{24}$
Mother	$^1/_6$		= $^4/_{24}$
2 Sisters (Asbah)		Balance	= $^5/_{24}$
Maternal grandmother	X		

The $^5/_{24}$ will be shared equally by the two sisters.

3.

Relatives	**Shares**		**C.D.**
Wife	$^1/_8$		= $^3/_{24}$
1 Daughter	$^1/_2$		= $^{12}/_{24}$
Mother	$^1/_6$		= $^4/_{24}$
1 Sister (Asbah)		Balance	= $^5/_{24}$
3 Akhyafi sisters	X		
1 Akhyafi brother	X		

4.

Relatives	**Shares**	**C.D.**
Wife	$^1/_8$	= $^3/_{24}$
Mother	$^1/_6$	= $^4/_{24}$
3 Sons 4 Daughters	} Balance	= $^{17}/_{24}$

Balance into 10 shares. Each son receives 2 parts and each daughter receives 1 part.

2 Sisters	X
1 Brother	X
1 Paternal grandmother	X
3 Maternal uncles	X

5.

Relatives	**Shares**	**C.D.**
Wife	$^1/_8$	= $^3/_{24}$
Father	$^1/_6$	= $^4/_{24}$
Mother	$^1/_6$	= $^4/_{24}$
3 Sons 6 Daughters	} Balance	= $^{13}/_{24}$

Balance into 12 shares. Each son receives 2 parts and each daughter receives 1 part.

2 Sisters	X
Paternal grandmother	X
3 Paternal uncles	X
2 Al-lati brothers	X

6. **Relatives** | **Shares**

Relatives	**Shares**
Wife	$^{1}/_{4}$
Father (Asbah)	$^{3}/_{4}$
Haqeeqi sisters	X
2 Al-lati sisters	X

7.

Relatives	**Shares**
2 Wives	$^{1}/_{8}$
6 Sons 5 Daughters	} $^{7}/_{8}$ balance into 17 parts.
	Each son receives 2 parts and each daughter 1 part.

The two wives will share the $^{1}/_{8}$ equally.

8.

Relatives	**Shares**		**C.D.**
Husband	$^{1}/_{4}$	=	$^{3}/_{12}$
Father	$^{1}/_{6}$	=	$^{2}/_{12}$
3 Sons	Balance to be shared equally	=	$^{7}/_{12}$

9. | **Relatives** | **Shares** | **C.D.** |
|---|---|---|
| Husband | $^1/_4$ | = $^3/_{12}$ |
| 1 Daughter | $^1/_2$ | = $^6/_{12}$ |
| Mother | $^1/_6$ | = $^2/_{12}$ |
| Father | $^1/_6$ | = $^2/_{12}$ |
| 2 Grandsons (Son's sons) | X | |
| 2 Akhyafi sisters | X | |

The sum of the fractions:

$$^3/_{12} + {}^6/_{12} + {}^2/_{12} + {}^2/_{12} = {}^{13}/_{12}$$

Thus, the principle of *Aul* will apply in this case. Instead of twelfths, the estate will be divided into thirteenths (or 13 parts). The final distribution will be:

Husband $^3/_{13}$; Daughter $^6/_{13}$; Mother $^2/_{13}$; Father $^2/_{13}$

10. | **Relatives** | **Shares** | **C.D.** |
|---|---|---|
| Wife | $^1/_8$ | = $^3/_{24}$ |
| Paternal grandmother | $^1/_6$ | = $^4/_{24}$ |
| 1 Daughter | $^1/_2$ | = $^{12}/_{24}$ |
| 1 Sister (Asbah) | Balance | = $^5/_{24}$ |

11. **Relatives** | | **Shares** | **C.D.**

Relatives	Shares	C.D.
Wife	$\frac{1}{4}$	$= \frac{3}{12}$
Sister	$\frac{1}{2}$	$= \frac{6}{12}$
Maternal grandmother, Paternal grandmother	$\frac{1}{6}$	$= \frac{2}{12}$

$$\frac{3}{12} + \frac{6}{12} + \frac{2}{12} = \frac{11}{12}$$

There remains $\frac{1}{12}$ for further distribution to the heirs other than the wife (see explanation on *Radd*).

After giving the wife's $\frac{1}{4}$, divide the remaining $\frac{3}{4}$ into 8 parts. The sister will receive 6 parts and each grandmother 1 part.

12.

Relatives	Shares	C.D.
Husband	$\frac{1}{4}$	$= \frac{3}{12}$
Mother	$\frac{1}{6}$	$= \frac{2}{12}$
4 Sons	Balance to be shared equally	$= \frac{5}{12}$
2 Akhyafi brothers	X	
Paternal aunt	X	
Paternal grandfather	$\frac{1}{6}$	$= \frac{2}{12}$

13. **Relatives** | **Shares** | **C.D.**

Relatives	**Shares**	**C.D.**
Wife	$^1/_8$	$= {}^3/_{24}$
Father	$^1/_6$	$= {}^4/_{24}$
3 Grandsons (Son's sons)	Balance to be shared equally	$= {}^5/_{24}$
1 Daughter	$^1/_2$	$= {}^{12}/_{24}$
3 Sisters	X	

14. **Relatives** | **Shares**

Relatives	**Shares**
Wife	$^1/_8$
2 Daughters	$^7/_8$ which they will share equally

15.

Relatives	**Shares**	**C.D.**
3 Sisters	$^2/_3$	$= {}^8/_{12}$
2 Akhyafi sisters 1 Akhyafi brother	} $^1/_3$	$= {}^4/_{12}$
Maternal grandmother	$^1/_6$	$= {}^2/_{12}$
2 Al-lati brothers	X	

$$^8/_{12} + {}^4/_{12} + {}^2/_{12} = {}^{14}/_{12}$$

Since the fractions add up to more than 1, the rule of *Aul* (see explanation on Aul) will apply.

Divide the estate into 14 parts and distribute as follows:

3 Sisters: $^{8}/_{14}$ which they will share equally

2 Akhyafi sisters and 1 Akhyafi brother: $^{4}/_{14}$ which they will share equally

Maternal grandmother: $^{2}/_{14}$

16.

Relatives	**Shares**
Father	$^{1}/_{2}$
Husband	$^{1}/_{2}$
Maternal aunt	X
Paternal grandmother	X

17.

Relatives	**Shares**		**C.D.**
1 Sister	$^{1}/_{2}$	=	$^{3}/_{6}$
3 Akhyafi brothers	$^{1}/_{3}$	=	$^{2}/_{6}$
Maternal grandmother	$^{1}/_{6}$	=	$^{1}/_{6}$
2 Al-lati brothers	X		

18.

Relatives	Shares		C.D.
Wife	$^{1}/_{4}$	=	$^{3}/_{12}$
2 Sisters 1 Brother	} (Asbah) Balance into 4 parts	=	$^{7}/_{12}$
Maternal grandmother	$^{1}/_{6}$	=	$^{2}/_{12}$

19.

Relatives	Shares		C.D.
Father	Balance	=	$^{7}/_{12}$
Wife	$^{1}/_{4}$	=	$^{3}/_{12}$
Maternal grandmother	$^{1}/_{6}$	=	$^{2}/_{12}$
Brother	X		
Akhyafi sisters	X		

20.

Relatives	Shares		C.D.
Wife	$^{1}/_{8}$	=	$^{3}/_{24}$
Mother	$^{1}/_{6}$	=	$^{4}/_{24}$
2 Daughters	$^{2}/_{3}$ (to be shared equally)	=	$^{16}/_{24}$
Paternal uncle	Balance	=	$^{1}/_{24}$

21.

Relatives	**Shares**	**C.D.**
Wife	$^1/_4$	= $^3/_{12}$
Akhyafi sister	$^1/_6$	= $^2/_{12}$
Paternal uncle	Balance	= $^7/_{12}$
Paternal aunt	X	

22.

Relatives	**Shares**	
Wife	$^1/_8$	
3 Grandsons 2 Granddaughters	} Son's children	$^7/_8$ to be divided into 8 parts. Each grandson receives 2 parts and each granddaughter receives 1 part.
Sister	X	
2 Akhyafi brothers	X	

23.

Relatives	**Shares**	**C.D.**
Husband	$^1/_2$	= $^3/_6$
Maternal grandmother	$^1/_6$	= $^1/_6$
Brother	Balance	= $^2/_6$
2 Al-lati brothers	X	
2 Al-lati sisters	X	

24.

Relatives	**Shares**		**C.D.**
2 Wives	$^1/_8$ to be shared equally	=	$^3/_{24}$
Paternal grandmother	$^1/_6$	=	$^4/_{24}$
3 Sons 2 Daughters	} Balance into 8 parts. Each son receives 2 parts and each daughter receives 1 part.	=	$^{17}/_{24}$
5 Brothers	X		
2 Sisters	X		

25.

Relatives	**Shares**		**C.D.**
Husband	$^1/_2$	=	$^6/_{12}$
Father	Balance	=	$^4/_{12}$
Mother	$^1/_6$	=	$^2/_{12}$
2 Brothers	X		
3 Akhyafi sisters	X		

26. **<u>Relatives</u>** **<u>Shares</u>** **<u>C.D.</u>**

Wife	$^1/_8$	$= {}^3/_{24}$
1 Daughter	$^1/_2$	$= {}^{12}/_{24}$
Paternal grandmother Maternal grandmother	$\}$ $^1/_6$ (to be shared equally)	$= {}^4/_{24}$

$^3/_{24} + {}^{12}/_{24} + {}^4/_{24} = {}^{19}/_{24}$. There remains $^5/_{24}$ to be distributed proportionally among the heirs excluding the wife (see Radd).

After giving the wife $^1/_8$ $(^3/_{24})$, divide the balance of $^7/_8$ $(^{21}/_{24})$ into 16 parts.

Distribute these 16 parts as follows:

Each grandmother: 2 parts (2 × 2 = 4)
Daughter: 12 parts

27. **<u>Relatives</u>** **<u>Shares</u>** **<u>C.D.</u>**

Maternal grandmother	$^1/_6$	$= {}^2/_{12}$
5 Daughters	$^2/_3$	$= {}^8/_{12}$
4 Sisters	Balance to be shared equally	$= {}^2/_{12}$

28.

Relatives	**Shares**		**C.D.**
3 Wives	$^{1}/_{8}$ to be shared equally	=	$^{3}/_{24}$
2 Daughters	$^{2}/_{3}$ to be shared equally	=	$^{16}/_{24}$
Mother	$^{1}/_{6}$	=	$^{4}/_{24}$
2 Nephews (Brother's sons)	Balance to be shared equally	=	$^{1}/_{24}$
1 Niece (Brother's daughter)	X		

29.

Relatives	**Shares**	
Wife	$^{1}/_{8}$	
5 Sons 6 Daughters	$\}$ $^{7}/_{8}$	$^{7}/_{8}$ to be divided into 16 parts. Each son receives 2 parts and each daughter receives 1 part.

30.

Relatives	**Shares**		**C.D.**
Wife	$^{1}/_{4}$	=	$^{3}/_{12}$
Paternal uncle	Balance	=	$^{1}/_{12}$
2 Sisters	$^{2}/_{3}$ to be shared equally	=	$^{8}/_{12}$

31.

Relatives	Shares		C.D.
Wife	$^1/_8$	=	$^3/_{24}$
Daughter	$^1/_2$	=	$^{12}/_{24}$
6 Nephews (Brother's sons)	Balance to be shared equally	=	$^9/_{24}$
8 Nieces (Brother's daughters)	X		

32.

Relatives	Shares
Wife	$^1/_4$
Paternal aunt	$^3/_4$

33.

Relatives	Shares		C.D.
Wife	$^1/_8$	=	$^3/_{24}$
Mother	$^1/_6$	=	$^4/_{24}$
1 Grandson (Son's son)	Balance	=	$^{17}/_{24}$
2 Granddaughters (Daughter's daughters)	X		
1 Grandson (Daughter's son)	X		

34.

Relatives	**Shares**
Wife	$^1/_4$
Maternal grandmother	$^3/_4$
Daughter's son	X
Paternal aunt	X

35.

Relatives	**Shares**	**C.D.**
Husband	$^1/_2$	= $^3/_6$
2 Akhyafi brothers 1 Akhyafi sister	$^1/_3$ to be divided among the 3	= $^2/_6$
2 Al-lati brothers	Balance to be shared equally	= $^1/_6$
4 Sons of Al-lati brothers	X	

36.

Relatives	**Shares**	**C.D.**
Wife	$^1/_8$	= $^3/_{24}$
2 Daughters	$^2/_3$	= $^{16}/_{24}$
2 Al-lati sisters	Balance to be shared equally	= $^1/_{24}$
Paternal grandmother	$^1/_6$	= $^4/_{24}$
Maternal uncle	X	

37.

Relatives	**Shares**
Husband	$^1/_2$
3 Daughters of daughter	$^1/_2$
4 Nieces (Brother's daughters)	X

38.

Relatives	**Shares**
Maternal grandfather	X
3 Grandsons (Daughter's sons)	The whole estate to be shared equally
Paternal aunt	X
2 Maternal aunts	X

39.

Relatives	**Shares**	**C.D.**
Wife	$^1/_8$	= $^3/_{24}$
8 Sons 5 Daughters	} Balance to be divided into 21 parts. Each son receives 2 parts and each daughter receives 1 part.	= $^{17}/_{24}$
2 Sisters	X	
Mother	$^1/_6$	= $^4/_{24}$
Maternal grandmother	X	
3 Akhyafi brothers	X	

40.

Relatives	Shares	C.D.
Wife	$^1/_8$	$= {}^3/_{24}$
2 Granddaughters (Son's daughters)	$^2/_3$	$= {}^{16}/_{24}$
1 Great-grandson (Son's son's son)		$= {}^5/_{24}$
2 Great-granddaughters (Son's son's daughters)	Balance to be divided into 4 parts. The great-grandson receives 2 parts. Each great-granddaughter receives 1 part.	

41.

Relatives	Shares	C.D.
Husband	$^1/_4$	$= {}^3/_{12}$
Mother	$^1/_6$	$= {}^2/_{12}$
1 Daughter	$^1/_2$	$= {}^6/_{12}$
2 Granddaughters (Son's daughters)	$^1/_6$ (which they will share equally)	$= {}^2/_{12}$
3 Sisters	X	
2 Akhyafi brothers	X	

The sum of the fractions:

$$^3/_{12} + {}^2/_{12} + {}^6/_{12} + {}^2/_{12} = {}^{13}/_{12}$$

Therefore, the rule of *Aul* will apply.

Divide the estate into 13 parts and distribute as follows:

Husband	$^{3}/_{13}$	
Mother	$^{2}/_{13}$	
Daughter	$^{6}/_{13}$	
2 Granddaughters	$^{2}/_{13}$	to be shared equally

42.

Relatives	**Shares**	**C.D.**
Wife	$^{1}/_{8}$	= $^{3}/_{24}$
Mother	$^{1}/_{6}$	= $^{4}/_{24}$
1 Daughter	$^{1}/_{2}$	= $^{12}/_{24}$
2 Son's daughters	$^{1}/_{6}$	= $^{4}/_{24}$
3 Sisters	Balance to be shared equally	= $^{1}/_{24}$

43.

Relatives	**Shares**	**C.D.**
Wife	$^{1}/_{8}$	= $^{3}/_{24}$
Mother	$^{1}/_{6}$	= $^{4}/_{24}$
2 Daughters	$^{2}/_{3}$	= $^{16}/_{24}$
2 Son's daughters	X	
3 Sisters	Balance to be shared equally	= $^{1}/_{24}$

44.

Relatives	**Shares**	**C.D.**
Husband	$^1/_4$	= $^3/_{12}$
2 Son's daughters	$^2/_3$	= $^8/_{12}$
2 Sisters	Balance to be shared equally	= $^1/_{12}$

45.

Relatives	**Shares**	**C.D.**
Mother	$^1/_6$	= $^1/_6$
1 Al-lati brother	Balance	= $^3/_6$
2 Akhyafi sisters	$^1/_3$	= $^2/_6$
1 Maternal aunt	X	
2 Paternal aunts	X	
2 Nephews (Brother's sons)	X	

46.

Relatives	**Shares**
Wife	$^1/_4$
3 Sisters	$^3/_4$ to be shared equally

47.

Relatives	**Shares**	**C.D.**
Husband	$^1/_2$	$= \ ^3/_6$
2 Sisters	$^2/_3$	$= \ ^4/_6$
3 Akhyafi brothers	$^1/_3$	$= \ ^2/_6$

$^3/_6 + ^4/_6 + ^2/_6 = ^9/_6$

Thus, the rule of *Aul* will apply. Divide the estate into 9 parts (ninths) and distribute as follows:

Husband $^3/_9$; 2 Sisters $^4/_9$ to be shared equally;
3 Akhyafi brothers $^2/_9$ to be shared equally.

48.

Relatives	**Shares**	**C.D.**
2 Wives	$^1/_8$	$= \ ^3/_{24}$
Mother	$^1/_6$	$= \ ^4/_{24}$
Father	$^1/_6$	$= \ ^4/_{24}$
6 Daughters	$^2/_3$	$= \ ^{16}/_{24}$

$^3/_{24} + ^4/_{24} + ^4/_{24} + ^{16}/_{24} = ^{27}/_{24}$

Thus, the rule of *Aul* will apply. Divide the estate into 27 parts and distribute as follows:

2 Wives $^3/_{27}$ to be shared equally; Mother $^4/_{27}$; Father $^4/_{27}$; 6 Daughters $^{16}/_{27}$ to be shared equally.

49. **Relatives** **Shares**

Relatives	Shares
2 Brothers	X
2 Daughters	$^{2}/_{3}$
3 Son's sons 2 Son's daughters	} $^{1}/_{3}$ to be divided into 8 parts. Each male receives 2 parts and each female 1 part.

50. **Relatives** **Shares**

Relatives	Shares
Mother	$^{1}/_{6}$
Paternal grandfather	$^{1}/_{6}$
Son	$^{4}/_{6}$

51. **Relatives** **Shares**

Relatives	Shares
4 Daughters	$^{2}/_{3}$
3 Brother's sons	$^{1}/_{3}$ to be shared equally
2 Brother's daughters	X

52.

Relatives	**Shares**		**C.D.**
Husband	$^{1}/_{2}$	=	$^{3}/_{6}$
Maternal grandmother	$^{1}/_{6}$	=	$^{1}/_{6}$
2 Brothers	Balance to be shared equally	=	$^{2}/_{6}$
3 Brothers' sons	X		

53.

Relatives	**Shares**
Wife	Whole estate

54.

Relatives	**Shares**		**C.D.**
Mother	$^{1}/_{6}$	=	$^{2}/_{12}$
Father	$^{1}/_{6}$	=	$^{2}/_{12}$
Husband	$^{1}/_{4}$	=	$^{3}/_{12}$
2 Daughters	$^{2}/_{3}$	=	$^{8}/_{12}$
3 Sisters	X		

$$^{2}/_{12} + {}^{2}/_{12} + {}^{3}/_{12} + {}^{8}/_{12} = {}^{15}/_{12}$$

Thus, the rule of *Aul* will apply. Divide the estate into 15 parts and distribute as follows:

Mother $^{2}/_{15}$; Father $^{2}/_{15}$; Husband $^{3}/_{15}$;
2 Daughters $^{8}/_{15}$ to be shared equally

55.

Relatives	**Shares**
Father	$^1/_6$
2 Sons	$^4/_6$ to be shared equally
Mother	$^1/_6$

56.

Relatives	**Shares**		**C.D.**
3 Sisters	$^2/_3$	=	$^4/_6$
4 Brother's sons	Balance to be shared equally	=	$^1/_6$
Mother	$^1/_6$	=	$^1/_6$

57.

Relatives	**Shares**
Mother	Whole estate
Grandmother (Father's mother)	X

58.

Relatives	**Shares**		**C.D.**
Mother	$^1/_6$	=	$^1/_6$
2 Al-lati sisters	Balance to be shared equally	=	$^2/_6$
1 Daughter	$^1/_2$	=	$^3/_6$

59.

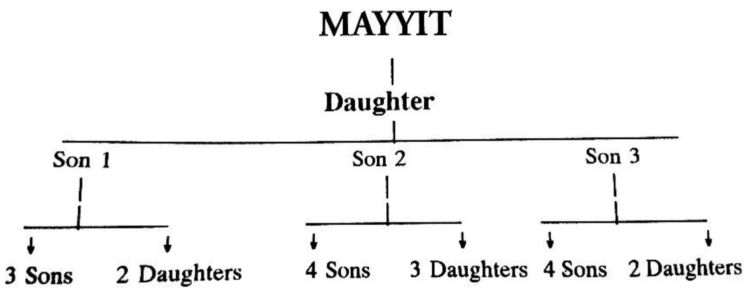
Relatives	**Shares**
Father	$^1/_6$
2 Grandsons (Son's sons) 2 Granddaughters (Son's daughters)	$^5/_6$ to be divided into 6 parts. Each grandson receives 2 parts and each granddaughter 1 part.

60.

Relatives	**Shares**
Wife	$^1/_4$
2 Grandsons (Daughter's sons) 2 Granddaughters (Daughter's daughters)	$^3/_4$ to be divided into 6 parts. Each grandson receives 2 parts and each granddaughter 1 part.
3 Great-grandsons (Daughter's daughter's sons)	X

61. Relatives	Shares
Husband	$^1/_2$
3 Sons of daughter's son No. 1	
2 Daughters of daughter's son No. 1	
3 Daughters of daughter's son No. 2	
4 Sons of daughter's son No. 2	$^1/_2$
4 Sons of daughter's son No. 3	
2 Daughters of daughter's son No. 3	

This is illustrated in the following diagram:

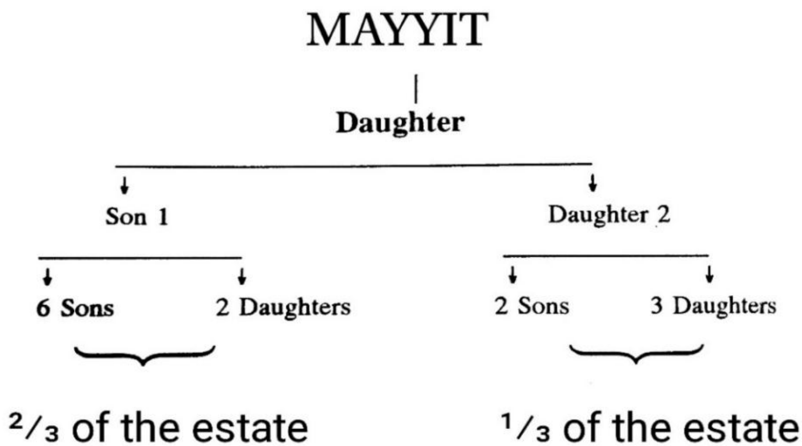


Half the estate goes to the great-grandchildren. This half will be divided into 29 parts. Each male receives 2 parts and each female receives 1 part.

62.

Relatives	**Shares**		**C.D.**
Wife	$^1/_8$	=	$^3/_{24}$
Mother	$^1/_6$	=	$^4/_{24}$
6 Sons 4 Daughters	} Balance to be divided into 16 parts. Each son receives 2 parts and each daughter receives 1 part.	=	$^{17}/_{24}$

63.



The only heirs are:

(i) 6 Sons and 2 daughters of a daughter's son
(ii) 2 Sons and 3 daughters of a daughter's daughter

The children of Son 1 will inherit $^2/_3$ of the estate. The $^2/_3$ will be divided into 14 parts. Each son receives 2 parts and each daughter receives 1 part.

The children of Daughter 2 will inherit $^1/_3$ of the estate. The $^1/_3$ will be divided into 7 parts. Each son receives 2 parts and each daughter receives 1 part.

64. **Relatives** | **Shares**

Relatives	Shares
Maternal grandfather (Mother's father)	Whole estate
3 Nephews (Sister's sons)	X
2 Nieces (Sister's daughters)	X
6 Nieces (Brother's daughters)	X

65. **Relatives** | **Shares**

Relatives	Shares
Wife	$^1/_4$
5 Nephews (Brother's sons)	$^3/_4$ to be shared equally
2 Nephews (Sister's sons)	X

66. **Relatives** | **Shares**

Relatives	Shares
3 Haqeeqi nephews (Haqeeqi sister's sons) 1 Haqeeqi niece (Haqeeqi sister's daughter)	The whole estate to be divided into 7 parts. Each male receives 2 parts and each female receives 1 part.
4 Al-lati nephews (Al-lati sister's sons)	X
2 Daughters of Haqeeqi brother's son	X

67.

Relatives	**Shares**
4 Nephews (Sister's sons) 2 Nieces (Sister's daughters)	} $^1/_3$ $^1/_3$ to be divided into 10 parts. Each male receives 2 parts and each female receives 1 part.
3 Nieces (Brother's daughters)	$^2/_3$ to be shared equally
6 Al-lati nieces (Al-lati brother's daughters)	X

68.

Relatives	**Shares**
3 Daughters of Al-lati brother's son	The whole estate to be shared equally
2 Sons of Al-lati brother's daughter	X
4 Daughters of Al-lati brother's daughter	X

69.

Relatives	**Shares**
1 Daughter of Haqeeqi brother's son	Whole estate
4 Daughters of Al-lati brother's son	X
2 Sons of Akhyafi brother's son	X

70. **MAYYIT** → BROTHER

SON SON SON

2 DAUGHTERS 3 DAUGHTERS 4 DAUGHTERS

The only heirs are the daughters of the brother's 3 sons. The estate will be divided equally among the 9 daughters.

71. SISTER ← **MAYYIT** → BROTHER

DAUGHTER DAUGHTER

SON DAUGHTER 2 SONS 3 DAUGHTERS

$^{1}/_{3}$ $^{2}/_{3}$

$^{1}/_{3}$ to be divided into 3 parts:

Two for the son and one for the daughter

$^{2}/_{3}$ to be divided into 7 parts:

Two for each son and one for each daughter

The only heirs of the mayyit, as shown above, are:

(a) 1 Grandson and 1 granddaughter of his sister
(b) 2 Grandsons and 3 granddaughters of his brother

$^1/_3$ of the estate goes to the heirs stated in (a) above, and
$^2/_3$ of the estate goes to the heirs stated in (b) above.

72.

Relatives	**Shares**		**C.D.**
Wife	$^1/_4$	=	$^3/_{12}$
Mother	$^1/_3$	=	$^4/_{12}$
1 Al-lati brother	Balance	=	$^5/_{12}$

73.

Relatives	**Shares**		**C.D.**
Husband	$^1/_2$	=	$^3/_6$
Mother	$^1/_6$	=	$^1/_6$
2 Brothers	Balance	=	$^2/_6$
Paternal grandmother	X		

74.

Relatives	**Shares**		**C.D.**
Wife	$^1/_4$	=	$^3/_{12}$
1 Akhyafi sister	$^1/_6$	=	$^2/_{12}$
Mother	$^1/_6$	=	$^2/_{12}$
1 Brother	Balance	=	$^5/_{12}$

75.

Relatives	Shares		C.D.
Husband	$^1/_4$	=	$^3/_{12}$
Paternal uncle	Balance	=	$^1/_{12}$
2 Akhyafi brothers	X		
1 Daughter	$^1/_2$	=	$^6/_{12}$
Maternal grandmother	$^1/_6$	=	$^2/_{12}$

76.

Relatives	Shares		C.D.
Husband	$^1/_4$	=	$^3/_{12}$
Mother	$^1/_6$	=	$^2/_{12}$
2 Daughters	$^2/_3$	=	$^8/_{12}$
Paternal grandmother	X		
1 Brother	X		

Since the sum of the fractions is $^{13}/_{12}$, the rule of *Aul* will apply. The estate will, therefore, be divided into 13 parts and distributed as follows:

Husband $^3/_{13}$; Mother $^2/_{13}$; 2 Daughters $^8/_{13}$ to be shared equally.

77.

Relatives	Shares	C.D.
Father	$^{1}/_{6}$	= $^{4}/_{24}$
Wife	$^{1}/_{8}$	= $^{3}/_{24}$
2 Sons 6 Daughters	}	Balance of $^{17}/_{24}$ to be divided into 10 parts. Each son receives 2 parts and each daughter 1 part.
Paternal grandmother	X	
1 Akhyafi sister	X	

78.

Relatives	Shares
1 Haqeeqi sister	$^{1}/_{2}$
1 Al-lati brother	$^{1}/_{2}$

79.

Relatives	Shares
2 Haqeeqi sisters	Whole estate to be shared equally
2 Al-lati sisters	X

80.

Relatives	Shares	C.D.
Wife	$^1/_8$	= $^1/_8$
1 Daughter	$^1/_2$	= $^4/_8$
1 Haqeeqi sister	Balance	= $^3/_8$
2 Al-lati brothers	X	
2 Al-lati sisters	X	

81.

Relatives	Shares
2 Haqeeqi sisters	$^2/_3$ to be shared equally
1 Akhyafi brother 1 Akhyafi sister	} $^1/_3$ to be shared equally

82.

Relatives	Shares	C.D.
Father	$^1/_6$	= $^2/_{12}$
Husband	$^1/_4$	= $^3/_{12}$
2 Daughters	$^2/_3$	= $^8/_{12}$
Maternal grandmother	$^1/_6$	= $^2/_{12}$

Since the sum of the fractions is $^{15}/_{12}$, the rule of *Aul* will apply. The estate will, therefore, be divided into 15 parts and distributed as follows:

Father $^2/_{15}$; Husband $^3/_{15}$; 2 Daughters $^8/_{15}$ to be shared equally; Maternal grandmother $^2/_{15}$.

83.

Relatives	Shares	
Wife	$^1/_8$	
5 Sons 6 Daughters	} $^7/_8$	$^7/_8$ to be divided into 16 parts. Each son receives 2 parts and each daughter 1 part.

84.

Relatives	Shares	
Wife	$^1/_4$	
2 Paternal aunts	$^1/_2$	$^1/_2$ to be shared equally
2 Maternal uncles 1 Maternal aunt	} $^1/_4$	$^1/_4$ to be divided into 5 parts. 2 parts for each male and 1 part for the female.

85.

Relatives	Shares	C.D.
Husband	$^1/_2$	= $^3/_6$
Mother	$^1/_6$	= $^1/_6$
Father	Balance	= $^2/_6$
2 Brothers	X	

86. **Relatives** **Shares** **C.D.**

Relatives	Shares		C.D.
Husband	$^1/_4$	=	$^3/_{12}$
Mother	$^1/_6$	=	$^2/_{12}$
Father	$^1/_6$	=	$^2/_{12}$
2 Daughters	$^2/_3$	=	$^8/_{12}$

Since the sum of the fractions is $^{15}/_{12}$, the rule of *Aul* will apply. The estate will, therefore, be divided into 15 parts and distributed as follows:

Husband $^3/_{15}$; Mother $^2/_{15}$; Father $^2/_{15}$;
2 Daughters $^8/_{15}$ to be shared equally.

87.

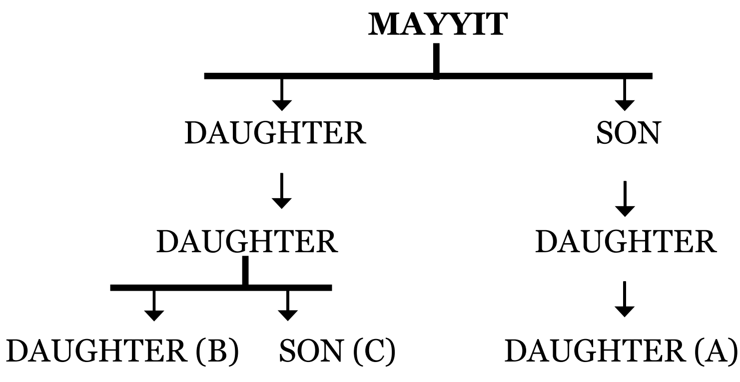
Relatives	**Shares**	
Wife	$^1/_4$	
Mother	$^1/_4$	Here the mother's share is $^1/_3$ of the balance after giving the wife's share.
Father	$^1/_2$	

88.

Relatives	**Shares**	
Husband	$^1/_2$	
8 Brother's sons	$^1/_2$	to be shared equally
6 Brother's daughters	X	

89.	**Relatives**	**Shares**	**C.D.**
	Wife	$\frac{1}{8}$	= $\frac{3}{24}$
	Mother	$\frac{1}{6}$	= $\frac{4}{24}$
	1 Daughter	$\frac{1}{2}$	= $\frac{12}{24}$
	2 Grandsons (Son's sons)	Balance to be shared equally	= $\frac{5}{24}$
	1 Grandson (Daughter's son)	X	

90. 1 Great-granddaughter (i.e. granddaughter of a son)
1 Great-grandson (i.e. grandson of a daughter)
1 Great-granddaughter (i.e. granddaughter of a daughter)



Great-granddaughter (A) inherits the whole estate. Great-granddaughter (B) and great-grandson (C) are deprived.

91.

Relatives	**Shares**		**C.D.**
Wife	$^1/_8$	=	$^3/_{24}$
1 Daughter	$^1/_2$	=	$^{12}/_{24}$
2 Son's daughters	$^1/_6$	=	$^4/_{24}$

Since the sum of the fractions is $^{19}/_{24}$, the rule of *Radd* (see explanation on Radd) will apply. Therefore, after giving the wife's $^1/_8$, the remaining $^7/_8$ will be divided into 16 parts. The daughter will receive $^{12}/_{16}$ and the 2 son's daughters will receive $^4/_{16}$ which they will share equally.

92.

Relatives	**Shares**
2 Granddaughters (Son's daughters)	$^2/_3$
3 Great-granddaughters (Son's son's daughters)	X
3 Nephews (Brother's sons)	$^1/_3$ to be shared equally
2 Nieces (Brother's daughters)	X

93.

Relatives	**Shares**
2 Wives	$^{1}/_{4}$ to be shared equally
8 Brothers	$^{3}/_{4}$ to be shared equally
1 Al-lati sister	X

94.

Relatives	**Shares**	**C.D.**
Husband	$^{1}/_{4}$	= $^{3}/_{12}$
Mother	$^{1}/_{6}$	= $^{2}/_{12}$
1 Granddaughter (Son's daughter)	$^{1}/_{2}$	= $^{6}/_{12}$
2 Al-lati sisters	Balance to be shared equally	= $^{1}/_{12}$

95.

Relatives	**Shares**	**C.D.**
Wife	$^{1}/_{4}$	= $^{3}/_{12}$
Mother	$^{1}/_{6}$	= $^{2}/_{12}$
3 Haqeeqi nephews (Haqeeqi brother's sons)	X	
2 Al-lati brothers	Balance to be shared equally	= $^{7}/_{12}$

96.

Relatives	**Shares**		**C.D.**
Wife	$^1/_4$	=	$^3/_{12}$
Mother	$^1/_6$	=	$^2/_{12}$
Paternal grandfather	Balance	=	$^7/_{12}$
2 Akhyafi brothers	X		
4 Nephews (Brother's sons)	X		

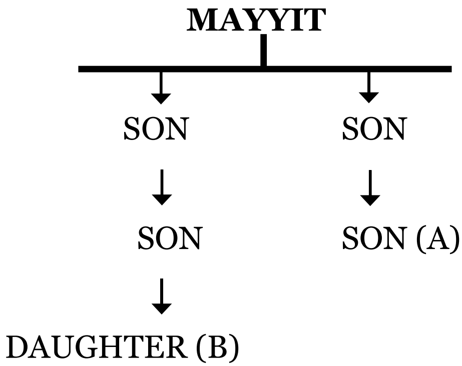
97.

Relatives	**Shares**		**C.D.**
Wife	$^1/_4$	=	$^3/_{12}$
Mother	$^1/_3$	=	$^4/_{12}$
Paternal grandfather	Balance	=	$^5/_{12}$

98.

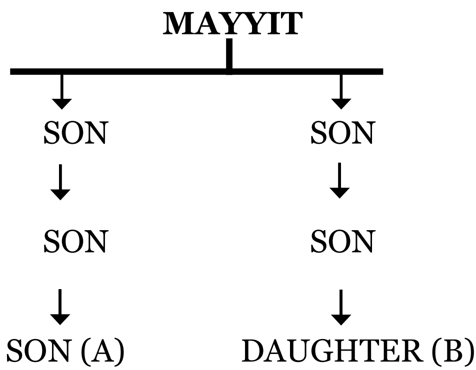
Relatives	**Shares**
Maternal grandfather	Whole estate
Paternal aunt (Father's sister)	X

99.



The only survivors are Son (A) and Daughter (B), i.e. the mayyit's grandson and great-granddaughter. Son (A) inherits the whole estate. Daughter (B) does not inherit.

100.



The only survivors are the mayyit's great-grandson 'Son (A)' and great-granddaughter 'Daughter (B)'. The estate will be divided into 3 parts. Son (A) will receive 2 parts and Daughter (B) will receive 1 part.

101.

Relatives	Shares		C.D.
4 Wives	$^1/_8$ to be shared equally	=	$^3/_{24}$
6 Daughters	$^2/_3$ to be shared equally	=	$^{16}/_{24}$
3 Nephews (Brother's sons)	Balance to be shared equally	=	$^5/_{24}$

102.

Relatives	Shares
Wife	$^1/_4$
2 Maternal aunts	$^3/_4$ to be shared equally

103.

Relatives	Shares		C.D.
2 Daughters of paternal uncle	$^2/_3$ (to be shared equally)	=	$^6/_9$
4 Sons of maternal uncle 3 Daughters of maternal uncle	} $^2/_9$	=	$^2/_9$

$^2/_9$ to be divided into 11 parts. Each son receives 2 parts and each daughter receives 1 part.

2 Sons of maternal aunt 1 Daughter of maternal aunt	} $^1/_9$	=	$^1/_9$

$^1/_9$ to be divided into 5 parts. Each son receives 2 parts and the daughter receives 1 part.

104.

Relatives	Shares	C.D.
Husband	$^1/_2$	= $^3/_6$
Mother	$^1/_6$	= $^1/_6$
1 Sister	$^1/_2$	= $^3/_6$
1 Al-lati brother	X	

Since the sum of the fractions equal $^7/_6$, the principle of *Aul* applies. The estate will be divided into 7 parts and distributed as follows:

Husband $^3/_7$; Mother $^1/_7$; Sister $^3/_7$

Although the Al-lati brother is Asbah in this example, there is no balance remaining after the Zawil Furoodh have obtained their shares, hence he does not inherit anything.

105.

Relatives	Shares
1 Daughter	$^1/_2$
1 Sister	$^1/_2$
1 Al-lati sister	X

106.

Relatives	Shares	C.D.
Wife	$^1/_8$	= $^1/_8$
1 Daughter	$^1/_2$	= $^4/_8$
1 Al-lati sister	Balance	= $^3/_8$

107.

Relatives	Shares	C.D.
Wife	$^1/_4$	= $^3/_{12}$
1 Sister	$^1/_2$	= $^6/_{12}$
1 Al-lati sister	$^1/_6$	= $^2/_{12}$

Since the sum of the fractions is $^{11}/_{12}$, the rule of *Radd* will apply. Therefore, after giving the wife's $^1/_4$, divide the remaining $^3/_4$ into 8 parts.

The sister will receive 6 parts and the Al-lati sister will receive 2 parts.

108.

Relatives	Shares	C.D.
Wife	$^1/_8$	= $^3/_{24}$
2 Daughters	$^2/_3$	= $^{16}/_{24}$
1 Sister	Balance	= $^5/_{24}$
1 Al-lati brother	X	

109.

Relatives	Shares		C.D.
Wife	$^1/_8$	=	$^1/_8$
1 Daughter	$^1/_2$	=	$^4/_8$
1 Sister	Balance	=	$^3/_8$

110.

Relatives	Shares		C.D.
Husband	$^1/_4$	=	$^3/_{12}$
2 Daughters	$^2/_3$	=	$^8/_{12}$
1 Sister	Balance	=	$^1/_{12}$
1 Akhyafi brother	X		

111.

Relatives	Shares		C.D.
Father	$^1/_6$	=	$^4/_{24}$
Wife	$^1/_8$	=	$^3/_{24}$
2 Sons 3 Daughters	}	=	$^{17}/_{24}$

The balance of $^{17}/_{24}$ to be divided into 7 shares. Each son receives 2 parts and each daughter 1 part.

112. **Relatives** | **Shares** | **C.D.**

Relatives	**Shares**		**C.D.**
Wife	$^1/_8$	=	$^3/_{24}$
2 Daughters	$^2/_3$	=	$^{16}/_{24}$
Mother	$^1/_6$	=	$^4/_{24}$
Paternal grandfather	$^1/_6$	=	$^4/_{24}$
3 Sisters	X		
2 Akhyafi brothers	X		

The sum of the fractions is $^{27}/_{24}$. Therefore, the rule of *Aul* will apply. Divide the estate into 27 parts and distribute as follows:

Wife	$^3/_{27}$
2 Daughters	$^{16}/_{27}$ to be shared equally. Each daughter receives $^8/_{27}$
Mother	$^4/_{27}$
Paternal grandfather	$^4/_{27}$

113.

Relatives	**Shares**		**C.D.**
Mother	$^1/_6$	=	$^2/_{12}$
2 Daughters	$^2/_3$ to be shared equally	=	$^8/_{12}$
1 Brother	Balance	=	$^2/_{12}$

114.

Relatives	Shares		C.D.
Husband	$^1/_2$	=	$^3/_6$
Mother	$^1/_6$	=	$^1/_6$
2 Akhyafi sisters	$^1/_3$ to be shared equally	=	$^2/_6$
2 Brothers	X		
2 Sisters	X		

115.

Relatives	Shares		C.D.
Wife	$^1/_4$	=	$^3/_{12}$
Mother	$^1/_6$	=	$^2/_{12}$
2 Akhyafi brothers	$^1/_3$ (to be shared equally)	=	$^4/_{12}$
2 Brothers 3 Sisters	} Balance	=	$^3/_{12}$

The balance of $^3/_{12}$ to be divided into 7 parts. Each male receiving twice the amount of a female.

116.

Relatives	Shares		C.D.
Mother	$^1/_3$	=	$^2/_6$
Paternal grandfather	$^2/_3$	=	$^4/_6$
Sister	X		

117.

Relatives	Shares	C.D.
Father	$^1/_6$ + Balance	= $^2/_6$
Maternal grandmother	$^1/_6$	= $^1/_6$
Paternal grandmother	X	
2 Sisters	X	
1 Daughter	$^1/_2$	= $^3/_6$

118.

Relatives	Shares	C.D.
Husband	$^1/_2$	= $^3/_6$
2 Akhyafi sisters	$^1/_3$	= $^2/_6$
2 Al-lati sisters	X	
2 Haqeeqi sisters	$^2/_3$	= $^4/_6$

The sum of the fractions is $^9/_6$. The rule of *Aul* will, therefore, apply. Divide the estate into 9 parts and distribute as follows:

Husband $^3/_9$; 2 Akhyafi sisters $^2/_9$ to be shared equally; 2 Haqeeqi sisters $^4/_9$ to be shared equally.

119.

Relatives	**Shares**
2 Great-grandmothers (Paternal) 1 Great-grandmother (Maternal)	$\left.\right\}$ $^1/_6$ to be shared equally
Paternal grandfather	$^5/_6$
1 Haqeeqi sister	X
1 Al-lati sister	X
1 Akhyafi sister	X

120.

Relatives	**Shares**	**C.D.**
Wife	$^1/_8$	= $^3/_{24}$
3 Daughters	$^2/_3$	= $^{16}/_{24}$
2 Son's sons	Balance to be shared equally	= $^5/_{24}$

121.

Relatives	**Shares**	**C.D.**
1 Daughter	$^1/_2$	= $^3/_6$
1 Son's daughter	$^1/_6$	= $^1/_6$

Since the sum of the fractions is $^4/_6$, the rule of *Radd* will apply. Divide the whole estate into 4 shares and distribute as follows:

Daughter $^3/_4$; Son's daughter $^1/_4$

122. **Relatives** | **Shares** | **C.D.**

Relatives	**Shares**		**C.D.**
1 Daughter	$^1/_2$	=	$^3/_6$
3 Daughters of son	$^1/_6$	=	$^1/_6$

Distribute exactly as in No. 121 above. The daughter inherits $^3/_4$, and the remaining $^1/_4$ to be shared equally by the 3 granddaughters.

123.

Relatives	**Shares**
1 Daughter	$^1/_2$
2 Daughters of son 1 Son of son	} $^1/_2$

The $^1/_2$ which the grandchildren inherit has to be divided into 4 equal parts. The grandson receives 2 shares and each granddaughter receives 1 share.

124.

Relatives	**Shares**
2 Daughters	Whole estate to be equally shared
1 Son's daughter	X

125.

Relatives	**Shares**
3 Daughters	$^2/_3$ to be shared equally
2 Sons of son	$^1/_3$ to be shared equally

126.

Relatives	**Shares**	
1 Daughter	$^1/_2$	
2 Brothers 3 Sisters	Balance	$^1/_2$ to be divided into 7 shares. Each brother obtains 2 shares and each sister obtains 1 share.

127.

Relatives	**Shares**	
3 Daughters	$^2/_3$	$^2/_3$ to be shared equally
2 Brothers 1 Sister	$^1/_3$	$^1/_3$ to be divided into 5 shares. Each brother inherits 2 shares and the sister inherits 1 share.

128.

Relatives	**Shares**
1 Daughter	$^1/_2$
1 Paternal uncle	$^1/_2$

129.

Relatives	Shares
3 Daughters	$^2/_3$ to be shared equally
2 Paternal uncles	$^1/_3$ to be shared equally

130.

Relatives	Shares
2 Paternal aunts of mother	$^1/_2$ to be shared equally
1 Maternal aunt of mother	$^1/_2$

131.

Relatives	Shares
1 Paternal aunt of father	$^1/_3$
1 Maternal uncle of father	$^2/_3$

132.

Relatives	Shares	C.D.
1 Haqeeqi sister	$^1/_2$	= $^3/_6$
2 Al-lati sisters	$^1/_6$	= $^1/_6$

Since the sum of the fractions is $^4/_6$, the rule of *Radd* will apply. Therefore, divide the estate into 4 parts. The Haqeeqi sister will receive 3 parts or $^3/_4$ and the 2 Al-lati sisters will jointly receive 1 part or $^1/_4$ which they will share equally.

133. **<u>Relatives</u>** **<u>Shares</u>**

Relatives	Shares
2 Sons of Haqeeqi brother's daughter 1 Daughter of Haqeeqi brother's daughter	} Group A
1 Son of Akhyafi brother's daughter 1 Daughter of Akhyafi brother's daughter	} Group B

Group B is deprived. The estate will be divided into 5 parts. Each son in Group A will receive 2 parts and the daughter in Group A receives 1 part.

134. **<u>Relatives</u>** **<u>Shares</u>**

Relatives	Shares
3 Sons of Haqeeqi sister's daughter 2 Daughters of Haqeeqi sister's daughter	} Group A
2 Sons of Akhyafi sister's son 3 Daughters of Akhyafi sister's son	} Group B

Group A inherits $^3/_4$ of the estate and Group B inherits $^1/_4$.

The $^3/_4$ should be divided into 8 shares. Each son in Group A will receive 2 of the 8 shares and each daughter in Group A will receive 1 share.

The $^1/_4$ of Group B should be divided into 7 shares. Each son receives 2 shares and each daughter receives 1 share.

135. **<u>Relatives</u>** **<u>Shares</u>**

Relatives	Shares
1 Son of Haqeeqi sister's daughter 2 Daughters of Haqeeqi sister's daughter	} Group A
2 Sons of Akhyafi brother's son 3 Daughters of Akhyafi brother's son	} Group B

Group A inherits $^3/_4$ which should be divided into 4 shares. The son in Group A receives 2 shares and each daughter receives 1 share.

Group B inherits $^1/_4$ which should be divided into 7 shares. Each son receives 2 shares and each daughter receives 1 share.

136. **<u>Relatives</u>** **<u>Shares</u>**

Relatives	Shares
1 Son of Akhyafi brother	$^1/_6$
1 Son of Haqeeqi sister	$^3/_6$ $(^1/_2)$

Since the sum of the fractions $(^1/_6 + {}^3/_6)$ is $^4/_6$, the rule of *Radd* will apply. The estate will, therefore, be divided into 4 parts. The son of the Akhyafi brother inherits $^1/_4$ and the son of the Haqeeqi sister inherits $^3/_4$.

137.

Relatives	Shares	C.D.
Wife	$^1/_8$	$= {}^3/_{24}$
Paternal grandmother	$^1/_6$	$= {}^4/_{24}$
2 Daughters	$^2/_3$	$= {}^{16}/_{24}$
6 Brothers 1 Sister	} Balance	$= {}^1/_{24}$

Balance to be divided into 13 parts. Each brother receives 2 parts and the sister receives 1 part.

138.

Relatives	Shares	C.D.
Wife	$^1/_8$	$= {}^3/_{24}$
4 Daughters	$^2/_3$	$= {}^{16}/_{24}$
2 Brothers 1 Sister	} Balance	$= {}^5/_{24}$

Balance to be divided into 5 parts.
2 parts for each brother and 1 for the sister.

139.

Relatives	Shares	C.D.
Husband	$^1/_4$	$= {}^3/_{12}$
2 Daughters	$^2/_3$	$= {}^8/_{12}$
3 Brothers 2 Sisters	} Balance	$= {}^1/_{12}$

Balance to be divided into 8 parts. Each brother receives 2 parts and each sister receives 1 part.

QUESTIONS AND ANSWERS

1. QUESTION:

After the death of our mother, one of the daughters claimed that mother had given certain items of gold jewellery to her, hence the said jewellery should now be given to her. Is she entitled to the jewellery?

ANSWER:

If the heirs are unaware of the alleged gift and the daughter has no evidence to substantiate her claim, then the jewellery will remain an asset in the estate of your mother. All heirs are entitled to their respective shares in the jewellery.

2. QUESTION:

In the estate of the mayyit was a shop with stock and other equipment. It was a running business. The three sons of the mayyit continued with the business after the death of their father. Stock was not taken when the father had died nor were the shares of the heirs worked out.

After 8 years, it was decided to wind up the estate and give the heirs their shares. How should the estate be divided? From the profits, the sons have built houses for themselves. Do the other heirs have any share in these houses seeing that the profits of the business were used? The relatives of the deceased are his wife, 3 sons, 4 daughters, father and 2 brothers.

ANSWER:

The estate of the mayyit consists of the assets in the shop and whatever else had belonged to him. The profit which the business yielded after the death of the father does not form part of his estate. Those who had conducted the business, viz the three sons, are the sole owners of the profit. Therefore, the houses which they had acquired belong to them alone. The other heirs have no rights in these houses.

A grave injustice was committed when the heirs or those in charge had neglected the obligation of taking stock of the mayyit's estate.

The only solution now is to honestly estimate the value of the assets. Accountability to Allah Ta'ala should be kept in mind.

The heirs and their respective shares are as follows:

Father	$^1/_6$	$= {}^4/_{24}$
Wife	$^1/_8$	$= {}^3/_{24}$
3 Sons 4 Daughters	} Balance	$= {}^{17}/_{24}$

Balance of $^{17}/_{24}$ to be divided into 10 shares. Each son receives 2 shares and each daughter receives 1 share.

The two brothers do not inherit in this instance.

3. QUESTION:

The mayyit had several insurance and endowment policies which yielded a very large sum of money. How does the Shariah's law of inheritance apply to insurance?

ANSWER:

All types of insurance are Haraam. Insurance is Riba. Only the amount which the mayyit had contributed towards policies is part of his/her estate. His actual contributions should be ascertained and distributed among his heirs. The excess, i.e. the amount over and above his contributions, should be given to charity. This type of money may not be given to a Musjid.

4. QUESTION:

My grandmother had loaned her gold jewellery to a relative who never returned it during my grandmother's lifetime. Now after more than 20 years the relative wishes to make amends. She no longer has the jewellery, having sold it years ago. What is the Shariah's ruling?

ANSWER:

The relative has to pay the heirs the full price of the jewellery. The current price of such jewellery should be ascertained, not the value of the jewellery at the time it was taken from your grandmother.

5. QUESTION:

When my father died, he left a vacant plot of land. My brother built a shop and a house on the land. He traded in the shop and lived with his family in the house. The other heirs (3 daughters and 3 sons, excluding himself) were never paid rent for the ground. The heirs are now demanding payment for the land. My brother says that the value of the land is its value at the time of the death of our father – that was 15 years ago. Is he right?

ANSWER:

The value of the land is the current market value or a price mutually agreed on. Your brother's claim is incorrect.

6. QUESTION:

Some of the heirs had occupied the mayyit's property for a number of years without paying rent to the other heirs. The heirs are now demanding the arrear rent for the past years. How should the rental be calculated?

ANSWER:

Although the occupying heirs are guilty of transgression for not having paid rent, arrear rent cannot be claimed from them if there was no agreement for them to pay rent. An agreement should now be entered into with the occupying heirs to pay rent. The occupying heirs could, however, arrange a compromise settlement (Sulah) with the other heirs.

7. QUESTION:

A man directed that the house in which his wife lives should not be sold while she is alive. Only after her death may the house be possessed by the other heirs who are several sons and daughters of the mayyit from another wife. What is the Shariah's view?

ANSWER:

This directive of the mayyit is not valid. The house belongs to all the heirs. The wife is entitled to her $^1/_8$ share. It is unlawful for her to possess the whole house against the wishes of all the heirs.

8. QUESTION:

A man made a wasiyyat (bequest) for his widowed daughter-in-law. He stipulated that if she does not marry again, she will be entitled to one third of his estate. After his death, she intimated that she will be getting married. What is the position of the wasiyyat?

ANSWER:

The stipulation that she refrains from marriage is not valid. If she accepts the wasiyyat, one third of the mayyit's estate has to be given to her. Such baseless conditions do not invalidate the wasiyyat.

9. QUESTION:

During his lifetime a man bequeathed a property to a friend. The value of the property exceeds one third the value of the estate. His heirs (children and wife) had given their consent for this wasiyyat. However after the death of the man, the heirs refute the excess wasiyyat. What is the Shariah's ruling?

ANSWER:

The consent which they gave during the lifetime of the Musi (the man who made the wasiyyat) is cancelled by their refusal to validate the excess. The consent given by the heirs after death of the Musi is the only valid consent. The wasiyyat will be executed in only one third the value of the estate.

10. QUESTION:

An illegitimate child does not inherit in the estate of his biological father although he inherits in the estate of his mother. If illegitimate twins are born, are there ties of inheritance between them?

ANSWER:

An illegitimate child has ties of inheritance with his/her twin brother/sister. Ties of inheritance of illegitimate children are not confined to twins. They extend to all children of the same mother, whether such children are legitimate or illegitimate.

Example: A woman has an illegitimate child as well as legitimate children. A legitimate child dies, leaving an estate and the following heirs:

Mother	$^1/_6$
1 Brother (legitimate) 1 Sister (legitimate) 1 Brother (illegitimate son of the mayyit's mother)	$^5/_6$

The $^5/_6$ will be divided into 5 shares. Each brother receives 2 shares and the sister receives 1 share.

11. QUESTION:

A man had bought a property with money which he had acquired from gambling. Is this property also to be inherited by his heirs?

ANSWER:

A haraam property or item is not inherited since the property does not belong to the mayyit. It is incumbent to eliminate this haraam property by either giving it to charity or selling it and giving the proceeds thereof to charity.

12. QUESTION:

Haraam monies are mixed in the wealth of a man. The money has also been converted into other assets. Some of the assets in the mayyit's estate have thus been acquired with such contaminated wealth. What is the ruling with regard to inheritance?

ANSWER:

It is necessary to contribute haraam money to charity. Although the contaminated assets will be inherited by the heirs, it is incumbent to alienate the amount of haraam wealth which was mixed with the halaal money. If the exact amount is not known, the heirs should estimate an amount bearing in mind accountability to Allah Ta'ala. The estimated amount should be contributed to charity.

13. QUESTION:

My father's mother left him some land in India. This land was in control of my grandfather (father's father). Now after my grandfather's death, my uncle (father's brother) has taken the land which he claims was given to him. Is he entitled to the land which was left for my father alone? My father too has died.

ANSWER:

Your grandmother (father's mother) erred in having left the land to your father. Your father does not own the whole land. Your grandmother's heirs were her husband (i.e. your paternal grandfather) and two sons (your father and uncle). The land belongs to the heirs as follows:

Husband	$^1/_4$		=	$^2/_8$
2 Sons	$^3/_4$	to be shared equally	=	$^6/_8$

Thus your father owns $^3/_8$ of the land.

On the death of your grandfather, his only heirs were his two sons (your father and uncle). Thus, his $^2/_8$ of the land has been inherited by the two sons. This means that your father owns half the land and your uncle owns the other half. One half the land belongs to your father's heirs.

14. QUESTION:

While my grandfather (father's father) was alive two of his sons had died leaving wives and children. On the death of my grandfather, he was survived by his wife, 3 sons and 6 daughters. His Will directs that the Islamic share of inheritance of the two sons who had predeceased him should be distributed to their wives and children in accordance with the Islamic principles of inheritance. Is this correct?

ANSWER:

Your grandfather's Will is in conflict with the Shariah. Predeceased sons do not inherit. In relation to inheritance, they are considered to be non-existing by the Shariah. They, therefore, have no share which could be transferred to their heirs. Your grandfather's heirs are only his wife, 3 sons and 6 daughters who were alive on the occasion of his death.

15. QUESTION:

When my father died, he had left a house. The children, 2 sons and 3 daughters, were all minors. My uncle (father's brother) was our guardian. He had the house demolished.

On the land he built a shop and above the shop a house in which we all (the children and our mother) lived. My uncle meanwhile traded in the shop. He would give my mother a monthly allowance which he said was the rent he was paying for occupying the shop. He said that my father had entrusted in his care a large sum of money which he had used to erect the building for our benefit. My father had registered the original house in my mother's name.

Now after my uncle's death, his wife claims that the property had belonged to her husband who had erected it and the monthly allowance which he would give my mother was in fact in lieu of the land on which he had erected the property. She demands that my mother transfers the property to her (i.e. my uncle's wife). She claims that according to the Shariah the property belongs to her children and to her. What is the Shariah's ruling?

<u>ANSWER</u>:

If you and your mother are certain of your facts as described by you, then your uncle's wife's claim is baseless.

The property belongs to your father's heirs who own it as follows:

Wife (your mother)	$^{1}/_{8}$	
2 Sons 3 Daughters	} $^{7}/_{8}$	$^{7}/_{8}$ to be divided into 7 shares. Each son receives 2 shares and each daughter 1 share.

16. QUESTION:

We (5 sons, 1 daughter and stepmother) inherited a property (a house) from our father. All the heirs wish to sell the property except our stepmother. Can we sell the property without her consent and pay her for her share? Her share, as we understand it, will be $^1/_8$ of the price obtained for the house. Presently, the whole family is occupying the house.

ANSWER:

Your stepmother owns $^1/_8$ of the house. You are permitted to sell $^7/_8$. It is not permissible to compel her to sell nor is it permissible to sell her share without her consent. If you can find a buyer who is prepared to purchase $^7/_8$, you can sell your shares, i.e. if your stepmother refuses to buy.

The best solution is to induce your stepmother to sell either by persuasion or by offering her a high price for her share. If she refuses, never commit the injustice of usurping her rights.

17. QUESTION:

A man bequeaths a sum of money for his wife. This is in addition to her eighth share of inheritance. It this permissible?

ANSWER:

It is not permissible. A wasiyyat for an heir is not valid. However, if all the heirs willingly uphold the wasiyyat, the bequest will then be valid. The consent of minor heirs is not valid. The additional sum to which the adult heirs agree will be paid from the shares of only the adult heirs.

18. QUESTION:

A common practice is to give the mayyit's clothes to charity. Is this a Shar'i requirement?

ANSWER:

The clothes too form part of the mayyit's estate. It is not permissible for some heirs to give the mayyit's clothes to charity without the consent of the other heirs. If all the adult heirs consent, then only may the garments be given away. However, the consent of minors is not valid. The garments should be valued and whatever sum is the share of the minors, should be held in trust for them.

19. QUESTION:

Before my mother passed away, she and my father paid a sum of money to release certain jewellery which my uncle (mother's brother) had pawned. He had pawned the jewellery to pay his own debts. The jewellery was the property of my grandmother (mother's mother) and by way of inheritance belonged to all the heirs who were 3 sons and 2 daughters. Of these heirs one daughter and two sons have already died. My mother and father after paying the pawn-broker took the jewellery into their own possession.

My aunt (one of the heirs) is demanding the jewellery which includes gold coins. But, my father refuses and says that the jewellery will be given as Lillah and Sadaqah Jariyah.

Twenty-five years have passed without this dispute being resolved. Who owns the jewellery according to the Shariah?

ANSWER:

The original owners of the jewellery are your grandmother's 3 sons and 2 daughters. The jewellery is to be divided into 8 parts. Each son owns $^2/_8$ (or $^1/_4$) of the jewellery and each daughter $^1/_8$. Your uncle who pawned the jewellery is liable for the debt incurred.

If your parents had paid the debt on the request of your uncle, they have a claim against him, not against the other heirs. If your parents had paid the pawnbroker of their own accord, not on request of your uncle or the other heirs, then the payment is an act of ihsan (favour). They cannot claim the paid amount from the heirs.

If your uncle had requested your parents to obtain the release of the jewellery by paying the pawnbroker, then they are entitled to claim $^1/_4$ of the jewellery, i.e. your uncle's share. If the $^1/_4$ share is more than the amount they paid to obtain the release of the jewellery, the excess has to be given to your uncle (or his heirs if he has already died). If the $^1/_4$ share is less than the amount paid to the pawnbroker, your parents can claim the balance from your uncle if he is alive, or from his estate if he has already died.

Your mother is entitled to her $^1/_8$ share of the jewellery. The other heirs too should be given their respective shares. If they have already died, their shares should be transferred to their heirs.

Your father has absolutely no right to keep the jewellery. In holding the jewellery, he is usurping the property of the heirs. He may not give the jewellery to charity – Lillah or Sadqah Jariyah. In fact, any such action far from being Lillah or Sadqah Jariyah, will be Athab-e-Jariyah (perpetual punishment).

20. QUESTION:

With regard to the above (i.e. Question 19), if the heirs are entitled to the jewellery can my father keep it and pay the heirs in instalments?

ANSWER:

No! The amount or value of their shares can neither be paid in cash nor in instalments because the original assets (the jewellery) still exist. Your father must give physical possession of the jewellery to the heirs. If, however, any heir willingly agrees to sell his/her share to your father, it will be permissible.

21. QUESTION:

The mayyit was married with no children. He left the following persons:

One wife, two sisters who are from one father but different mothers, three nephews (brother's sons) and two nieces (brother's daughters). Both brothers have died before the mayyit in the question.

The deceased's assets consist of the following:

1. A municipal house which is not fully paid for. The house was maintained by two nephews.
2. Some land in India
3. Cash money

The mayyit has also made a verbal wasiyyat in favour of non-heirs. How should the estate be distributed? What will be the value of the house according to the Shariah?

ANSWER:

If the mayyit has any debts, these should first be paid. Next, the wasiyyat has to be executed from one third the value of the whole estate which consists of all assets of the mayyit. The value of the mayyit's estate is the amount which remains after payments of debts, if any. After fulfilment of the wasiyyat, will come the distribution of the estate to the heirs.

In calculating the value of the estate for ascertaining if the wasiyyat is within the limit of $^1/_3$, the market-value of the house should be taken, i.e. the current market-value.

The following are the heirs and their shares:

Wife	$^1/_4$		$= {}^3/_{12}$
2 Al-lati sisters	$^2/_3$	which will be shared equally	$= {}^8/_{12}$
3 Nephews		Balance which will be shared equally	$= {}^1/_{12}$

The nieces do not inherit in this case.

The heirs will inherit in these proportions in every asset of the estate – in the house, land in India and in the cash money.

If the nephews had an agreement with the mayyit to charge him for maintaining the house, they will be entitled to claim from the estate the amount owing to them. Only after payment of the debt will the wasiyyat be executed.

If there was no such agreement, but they had maintained the house on behalf of the heirs, then too, they can claim from the estate. If their intention was merely to render a favour, then they cannot claim.

22. QUESTION:

When arranging the distribution of fixed property to the heirs, what value has to be considered?

ANSWER:

The need for valuing the property arises only when the mayyit had bequeathed assets/money to non-heirs. Since a wasiyyat is not valid in excess of one third the value of the estate, there is the need to value the property. The current market-value has to be obtained.

As far as the shares of the heirs are concerned, valuation is of no significance because the heirs simply own the property in proportion to their respective shares. Either they will occupy the property, rent it or sell it. If they choose to sell it, they can sell at any price they wish, whether more or less than the market-value. Similarly, a heir may sell his/her share for any price mutually agreed with the buyer. There is no incumbency to sell at the market-value.

23. QUESTION:

Is it permissible for a person who has inherited a share in a property to sell his share to any person, whether to the other shareholders or to outsiders?

ANSWER:
It is incumbent to first offer the share to the other shareholders in the property. If they refuse to buy or are not prepared to pay the price, then only could the share be offered to outsiders. When offering it to an outsider, it is not permissible to sell it at a price lower than the price quoted to the shareholders. If the new price asked is lower, it will be necessary to go back to the shareholders and offer the share to them at the lower price.

24. QUESTION:

The mayyit has left a large amount of money which included gold coins. The eldest son who had possession and control of the money had worked out the shares of the heirs according to the Shariah. He gave the sons their full shares, but gave the daughters only half the amount they were entitled to, saying that he is keeping the other half in safe custody, and that he would give it to them after six months. There was a burglary at the home of the eldest son and all the money was stolen. Now when the daughters are asking for the balance of their shares, the eldest son replies that the money has been stolen. What is the Shariah's ruling?

ANSWER:

As long as the entire estate has not been distributed, the division is not valid. Even if the sons had taken their full shares. The distribution is not valid because all the heirs were not paid their full shares. Thus, the stolen amount shall be deducted from the total sum of the estate's assets and the shares be re-distributed. All the heirs will have to bear the loss in proportion to their shares, e.g. the one whose share is $^1/_8$ will bear $^1/_8$ of the loss. Hence, the sons who had taken their full shares in terms of the earlier calculation must pay into the estate the loss in proportion to their shares.

25. QUESTION:

The mayyit is survived by his wife and two cousins (paternal uncle's sons). The one cousin also happens to be the mayyit's step-brother. The mayyit's mother had married her brother-in-law (husband's brother) after his (the husband's) death. How is the estate to be divided?

ANSWER:

The division will be as follows:

Wife	$^1/_4$	=	$^6/_{24}$
The cousin who is the mayyit's Akhyafi brother	$^1/_6$	=	$^4/_{24}$
The two cousins receive the balance which they will share equally		=	$^{14}/_{24}$

In this case, the cousin who is also the mayyit's Akhyafi brother inherits from two angles:

(i) as the Akhyafi brother, obtaining $1/_6$ $(4/_{24})$
(ii) as an Asbah

Thus, he acquires a further share which is $1/_2$ of the balance of $14/_{24}$. The total inheritance of this cousin, therefore, is $11/_{24}$.

26. QUESTION:

A man chased his wife out of his house. He told her: “Get out!” “Go live with your parents”. She was thus separated from him for several years. He never bothered to enquire about her. After his death, the woman claims that she is still his wife, hence entitled to inheritance in his estate which is of great value. Is she entitled to inheritance?

ANSWER:

The words: “Get out!” “Go live with your parents”, are known as Kinayah in regard to Talaq. These words will have the meaning of Talaq only if the husband declares that his intent was Talaq. Since there is now no way of ascertaining the husband's intention, this woman, according to the Shariah, is still his wife, hence she inherits her full Shar'i share irrespective of the period of separation.

27. QUESTION:

A man who discovered that his wife was having an illicit relationship, expelled her from his home. While she lived with her parents, she continued with the illicit affair. Although she had repeatedly asked her husband to divorce her, he refused solely to spite her. He said that he would never give her Talaq to ensure that she cannot marry again. Meanwhile her affair with the other man resulted in an illegitimate child. The husband has now died. Will this woman inherit in his estate?

ANSWER:

Yes, she as well as the child will inherit in her husband's estate. Since he had withheld Talaq she remained in his Nikah. Since the child was born while she was his lawful wife, the child is regarded by the Shariah to be legitimate regardless of the affair she was conducting. This child is regarded as her husband's child.

28. QUESTION:

A Sunni Muslim influenced by the Shiahs married a woman according to the Mut'ah system of the Shiahs. A child was born of this union. During the subsistence of this marriage the man died. Are the wife and child this man's heirs?

ANSWER:

The Shiah system of Mut'ah is not valid. It is an adulterous relationship. The woman never was his wife nor is the child legally his. Hence, there are no ties of inheritance. Both the woman and her illegitimate child do not inherit in the man's estate.

29. QUESTION:

A Sunni Muslim is married to a Qadiani. He dies leaving his wife and 3 sons. Do they inherit in his estate?

ANSWER:

Qadianis, Ahmadis and all followers of Gulam Mirza of Qadian are not Muslims. The Muslim woman's marriage to the Qadiani is, therefore, not valid. Her 3 sons are illegitimate. Neither she nor her sons inherit in the estate of the Qadiani.

30. QUESTION:

The mayyit is survived by only two female cousins who are the daughters of his maternal aunt. The one cousin happens to be his step-sister because his father had married his maternal aunt after his mother's death. How should his estate be distributed?

ANSWER:

The one cousin is his Al-lati sister also. Only she, i.e. the cousin who happens to be the mayyit's sister, inherits. She inherits the whole estate. The other cousin is deprived.

31. QUESTION:

The mayyit leaves the following relatives: Wife, 1 daughter and 2 male paternal cousins (father's brother's sons). One of the cousins also happens to be the mayyit's step-brother. The mayyit's mother had married her husband's brother after his death. How is the distribution of the estate to be effected?

ANSWER:

The one paternal cousin who also happens to be the mayyit's Akhyafi brother will not inherit as an Akhyafi brother. The presence of the daughter deprives him of being a dual inheritor. He will inherit only as an Asbah along with the other paternal cousin.

The division will be as follows:

Wife	$^1/_8$	= $^1/_8$
Daughter	$^1/_2$	= $^4/_8$
2 Paternal cousins	Balance which will be shared equally	= $^3/_8$

32. QUESTION:

A woman died leaving as her heirs her mother and one daughter. Her only property for distribution is cash of R8,000. The money remained in the custody of her mother and was not divided between the heirs. After some years the daughter too died, leaving as her heirs her mother's mother (who holds the R8,000) and 2 daughters. The grandmother now wants to give her 2 great-granddaughters their inheritance. What are the Shar'i shares of the heirs?

ANSWER:

Two estates are involved here – the estate of the living woman's daughter and granddaughter. When the daughter died her heirs and their shares were:

(i) Mother $^1/_6$; Daughter $^1/_2$ ($^3/_6$). Since the sum of the fractions is $^4/_6$, the rule of Radd will apply. The shares, therefore, are:

Mother $^1/_4$; Daughter $^3/_4$. Of the R8,000 the mother's share $^1/_4$ is R2,000 and the daughter's $^3/_4$ share is R6,000.

(ii) When the second person (the granddaughter) died, her heirs and their shares were:

Maternal grandmother $^1/_6$; 2 daughters $^2/_3$ ($^4/_6$). Since the sum of the fractions is $^5/_6$, the rule of Radd will apply. The estate will be divided into 5 parts and distributed as follows:

Maternal grandmother $^1/_5$; 2 Daughters $^4/_5$. Of the R6,000 which is the estate of this mayyit, $^1/_5$, i.e. R1,200 belong to the maternal grandmother and $^4/_5$, i.e. R4,800 belong to the 2 daughters.

The final distribution of the R8,000 will thus be:

The grandmother of the second mayyit receives:

R2,000 + R1,200 = R3,200.

The 2 daughters of the second mayyit receive R4,800 which they will share equally.

33. QUESTION:

Several years after a couple had married, it was established that both the man and the woman were breastfed during infancy by the same woman. The couple has meanwhile 3 children. What is the Shariah's ruling regarding this Nikah and ties of inheritance?

ANSWER:

The Nikah is Fasid (corrupt, not valid). The man should issue Talaq and they should separate. The children are legitimate and will inherit in the estates of their parents and vice versa.

34. QUESTION:

A brother and sister were given away for adoption during infancy. After many years the brother married his sister without realising that the girl was his sister. Years after marriage when 4 children were already born, did they discover that they were in fact brother and sister. What is the state of their Nikah and the Shariah's ruling regarding the children and ties of inheritance?

ANSWER:

The Nikah is Fasid. They should immediately separate. The children are legitimate and ties of inheritance apply. The children will inherit from their parents and vice versa.

"It is not lawful for a Mu'min nor for a Mu'minah to have any discretion in their affairs when Allah and His Rasool have decreed a matter." (Qur'an)

In the matter of inheritance, in fact, in all matters of the Shariah, Believers are not permitted to use their discretion and desire. The shares and the laws of inheritance have been finally decreed by Allah Ta'ala. Allah Ta'ala is the best Judge of our welfare and benefit. He says in the Qur'an Shareef:

"Your fathers and your sons – you do not know who among them are of greater benefit to you."