قانون الميراث الاسلامي

وتطبيقه في افريقيا الجنوبية

The Islamic Law of Succession

MS OMAR

قانون الميراث الاسلامي

وتطبيقه في افريقيا الجنوبية

The
Islamic Law of Succession

and its application in South Africa

by

Mahomed Shoaib Omar

BComm (Dbn Westville) LLB (Univ of Natal)
Certificate in Tax Law and Estate Planning (UNISA), Certificate in Islamic Law (Darul Uloom Karachi)
Attorney of the Supreme Court of South Africa

IN THE NAME OF ALLAH THE ALL-COMPASSIONATE

1st September 2008

INTRODUCTION TO THE AUTHOR

This is to confirm that I personally know Sheikh Muhammad Shoaib Omar. Apart from being a competent lawyer, he has travelled twice to Darul Uloom Karachi and had privately studied the Arabic language, literature, fiqh, usul-fiql, mantiq, tafsir and usul al ifta from competent and experienced teachers here at Darul Uloom Karachi. He thereafter continued to study higher books of hadith such as Sahih-ul-Bukhari under Mufti Jalil Qasemi Saheb in South Africa. All his efforts has enabled him to benefit and draw from original authentic Arabic authorities and works in the Islamic Sciences. Despite his work engagements in the legal field, he has authored and published a number of useful and beneficial Islamic texts, which have been well-received by scholars and the general public. May Allah give him tawfiq to serve the Muslims according to the way of pious elders of the Ummah.

(Ret) Justice Mufti Muhammad Taqi Usmani
Ex-Member Shariat Appellate Bench
Supreme Court of Pakistan
Vice President Darul Uloom Karachi
Chairperson of Shariah Panel of (AAOIFI)
Accounting and Auditing Organization
For Islamic Financial Institutions

We wish to express our gratitude to
MAULANA MANSUR AL-HAQ (Senior Lecturer, Darul Uloom, Karachi)
who was responsible for the Arabic calligraphy.

Preface

The first part of this book has been written primarily for practitioners in the legal and accounting fields who are instructed to draw wills and administer estates on behalf of Muslim clients. Inaccurate and incorrect drafting of wills, by reason of lack of knowledge of the Islamic Law of Succession, in many instances, has caused problems. Hence, the need was felt for a book on the subject and it is hoped that this humble attempt will prove useful as a source of quick reference.

The second part, which endeavours to set out the substantive rules of the Islamic Law of Succession in a simple and concise manner, will be of interest and benefit to both the practitioner and non-practitioner alike. This part is based on perhaps the most authoritative work on the subject ever written – a small and concise textbook in Arabic known as SIRAJIYYAH which was first translated into English in 1792 by Sir William Jones and subsequently annotated by the English barrister, Rumsey. The latter in his preface interestingly remarks as follows:

> *The Islamic Law of Inheritance comprises beyond question the most refined and elaborate system of rules for the devolution of property that is known to the civilised world.*

Errors and omissions are solely my responsibility.

Mahomed Shoaib Omar
January 1988

Contents

Preface *v*

Part 1
The Islamic Law of Succession within the South African legal system

Chapter

1. Introduction: Basic aspects of the Islamic Law of Succession *3*
2. Conflict between South African Law and Islamic Law: Some problems *5*
3. Bequest not exceeding one-third *7*
   3.1 Example: adopted children *8*
   3.2 Example: bequest to charity *9*
   3.3 Example: grandchildren *10*
4. Marriage out of community of property *11*
   4.1 Example *11*
5. Marriage in community of property *13*
6. Change from community of property to out of community of property: Section 21 of Matrimonial Property Act 1984 *17*
   6.1 Order prayed *17*
   6.2 Launching affidavit of H *18*
   6.3 Annexure "B" to launching affidavit: statement of assets of joint estate *19*
   6.4 Annexure "C" to launching affidavit: post-nuptial contract *19*
   6.5 Supporting affidavit of W *21*
   6.6 Procedure and practical points *21*
7. Testamentary Trust *23*
8. Miscellaneous: Unregistered marriages and payment of minors' shares *25*
   8.1 Marriage not solemnized under Marriage Act 25 of 1961 *25*
   8.2 Payment of minors' shares *25*

Part 2
The substantive rules of the Islamic Law of Succession

Chapter

9. Categories of heirs *29*
10. General principles *31*

Chapter

11. Quranic heirs *35*
- 11.1 Father *37*
- 11.2 Husband *39*
- 11.3 Wife *40*
- 11.4 Daughters *41*
- 11.5 Sons' daughters *43*
- 11.6 Mother *46*
- 11.7 Full sisters *49*
- 11.8 Consanguine sisters *51*
- 11.9 Uterine brother *53*
- 11.10 Uterine sister *53*
- 11.11 True grandmother *55*
- 11.12 True grandfather *57*

12. Residuaries *59*
- 12.1 Residuaries in their own right *59*
- 12.2 Residuaries in another's right *63*
- 12.3 Residuaries together with another *65*

13. Quranic heirs and residuaries: Some examples *67*
- 13.1 Example *67*
- 13.2 Example *67*
- 13.3 Example *68*

14. Uterine relations *69*
- 14.1 Class One *69*
- 14.2 Class Two *74*
- 14.3 Class Three *75*
- 14.4 Class Four *76*

15. Devolution of vested inheritance *77*

16. The doctrine of return *83*

17. The doctrine of increase *87*

18. Exclusion *89*

19. Miscellaneous cases *93*
- 19.1 Unborn child *93*
- 19.2 Simultaneous deaths *93*
- 19.3 Illegitimate children *93*

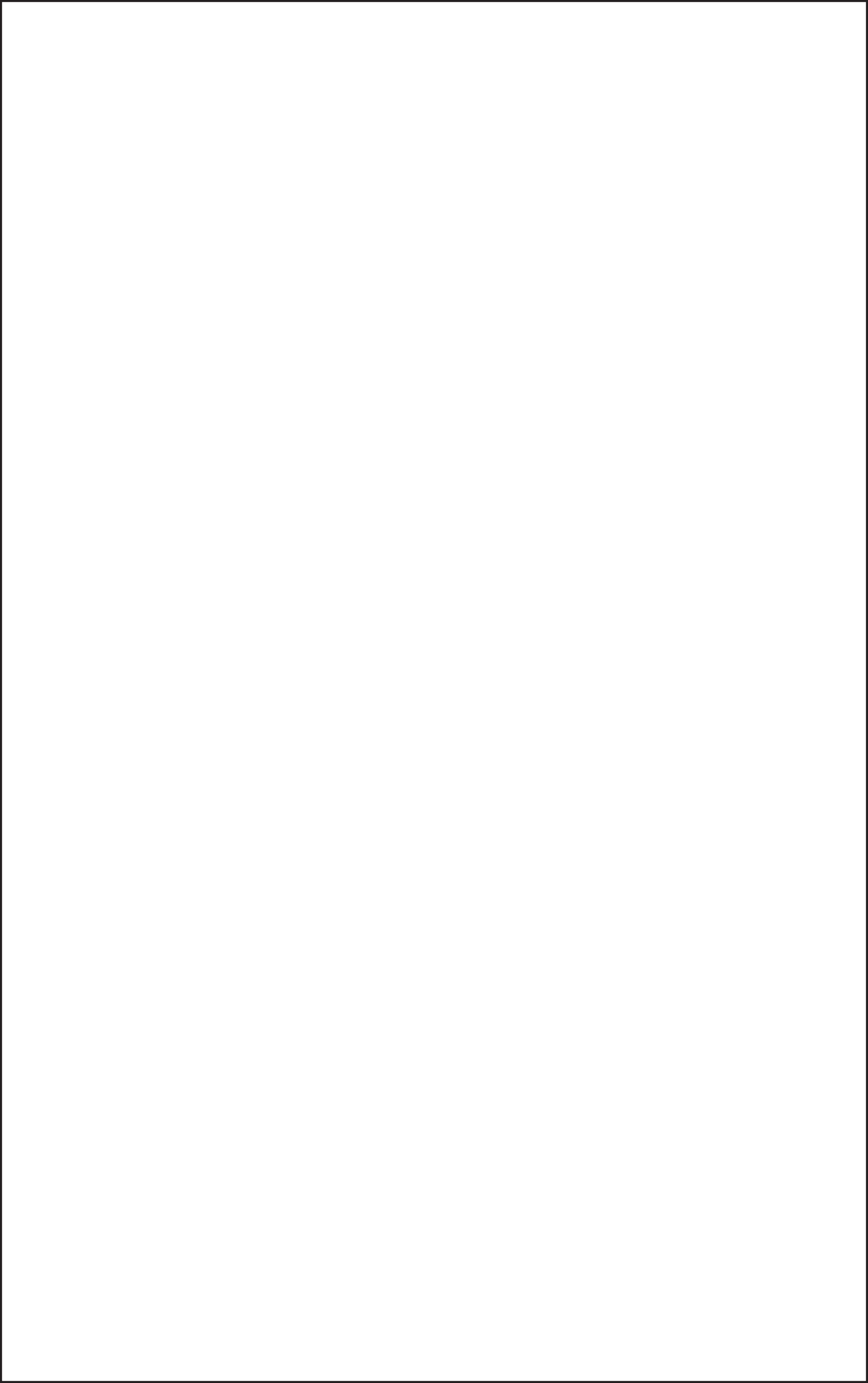
20. The Executor *95*

Table of Quranic heirs *99*

Bibliography *101*

Index *103*

THE ISLAMIC LAW OF SUCCESSION WITHIN THE SOUTH AFRICAN LEGAL SYSTEM



Introduction: Basic aspects of the Islamic Law of Succession

CHAPTER I

The Law of Succession is an extremely important branch of Islamic Law, which covers every facet of life. The Quran, the revealed word of God, has itself framed the Law of Succession and has imposed an absolute obligation on Muslims to follow and abide by this law. Failure to implement the law is attendant with divine penalties, and is regarded as a serious transgression of the rights of fellow men.

The purpose according to the Quran of prescribing the rules of succession is to ensure a fair and just distribution of the deceased's estate, which cannot be achieved if the framing of the rules of succession is left to opinion and subjective discretion. In view of the fact that opinions would differ as to the criteria on which distribution and entitlement should be based, as appears from differences in the succession law systems of various countries, the principle of freedom of testation is not recognized.

The Islamic Law of Succession consists of two parts: voluntary and compulsory. The voluntary aspect[1] relates to the right of every Muslim to bequeath up to one-third of his estate to third parties (for example, for charitable, religious or educational purposes) who do not qualify at the time of his death as his legal heirs under the Islamic Law of Succession. The remainder automatically and compulsorily devolves upon his legal heirs determined at the time of his death in accordance with, and in the proportions prescribed by, the rules of the Islamic Law of Succession. If the right to bequeath up to one-third to outsiders is not exercised, the whole estate would after payment of debts devolve upon the prescribed heirs.

The Islamic Law of Succession is based on blood relationship. The principle governing the system is that the closer relatives exclude the remoter ones – that is, the nearer in degree to the deceased exclude the more remote. According to this principle, the surviving spouse, both parents and the children of the deceased constitute the first class of heirs who can never be excluded under any circumstances. The surviving spouse inherits by reason of marriage.

1 See ch III which deals with the rules governing bequests to third parties.

The rule of proximity of relationship means that in principle succession by representation is not recognized. For example, grandchildren (the children of a predeceased child) are excluded by the sons of the deceased.

Part 1 of this work deals with the scope and application of the Islamic Law of Succession within the South African legal system. Part 2 deals with the substantive rules of the Islamic Law of Succession.

Conflict between South African Law and Islamic Law: Some problems

CHAPTER II

The conflict between Islamic and South African systems of succession law has given rise to serious problems and has sometimes produced harsh and unjust consequences.

For instance, where a Muslim dies intestate the rules of the South African law of intestate succession materially differ from that of the Islamic Law of Succession. In the result, both the identity of the heirs and the shares that they would receive would differ, depending upon which system of law is applied. For example, the deceased is survived by only his parents and two sons. Under South African intestate law, each son would receive half of his estate, the parents being excluded. In terms of Islamic law, each parent would take one-sixth, and the balance of two-thirds would devolve in equal shares upon the sons. Similarly, having regard to the provisions of the Succession Act, 1934, serious differences arise where the deceased leaves a surviving spouse. If the sole surviving relatives, for example, are the surviving wife and a brother's son, then the wife is the sole intestate heir in terms of section (1) (d) of the Succession Act 1934. Under Islamic law, a quarter would devolve upon the wife and the remainder upon the brother's son. In appropriate cases the problem could be resolved by way of a redistribution agreement which provides for a distribution according to Islamic law.

On the other hand, the consequences are extremely far reaching where a Muslim contracts a marriage according to Islamic law and fails to solemnize that marriage in accordance with the prescribed formalities laid down in the Marriage Act 25 of 1961. It is trite law that such a marriage is void and the children thereof illegitimate. The surviving spouse does not qualify as a legal wife. Accordingly, if such Muslim dies intestate, and in the absence of an order declaring the marriage putative, his surviving wife[2] and children are excluded under the rules of intestate succession.

2 Even if the marriage is declared a "putative marriage", the surviving wife would not qualify as a legal wife and would therefore be excluded. The true importance of a "putative marriage" – which is not a marriage – is that the children thereof are legitimate and therefore qualify as intestate heirs upon the death of the natural father. *Moola and Others v Ausebrook NO and Others* 1983 1 SA 687 (N).

Bequest not exceeding one-third

CHAPTER III

As stated before, a Muslim may bequeath not more than one-third of his estate to a third party or third parties[3] who do not qualify as his heirs in terms of the rules of Islamic Law of Succession. The remainder of the estate devolves forcibly by operation of law and without their consent to the heirs[4] determined at the time of death in accordance with, and in the proportions prescribed by, the rules of the Islamic Law of Succession.

The bequest may be made to natural persons (who, of course, are not the heirs of the deceased) such as adopted children and needy relatives, or to juristic persons. The bequest is frequently made to poor and needy persons and to charitable, religious and educational institutions.

The bequest may consist of a specific thing, or a specified sum of money. It may even consist of a proportion of the deceased's estate provided that in all cases the value of the bequest must not exceed the value of one third of the deceased's estate after payment of debts (debts ranking before such bequests). For example, if the value of the estate is R100 000 and debts amount to R10 000, then the value of the bequest must not exceed R30 000.

The rule that a bequest cannot be made to an heir is strict. The heirs of the deceased are determined at the time of death and not at the time of the making of the will. Hence, the validity of the bequest in terms of Islamic law must be considered at the time of death. For example, a testator, whose son and only child is alive at the time of the making of a will, makes a bequest to his brother. The son dies thereafter in the lifetime of his father. The brother thereupon on the testator's death becomes his heir, and the bequest to him is void. The reason for the rule prohibiting bequests to an heir is to prevent the testator from preferring by way of bequests some heirs to the prejudice of others.[5]

---

3 See generally, leading authorities such as *Durr-Ul-Mukhtār* ("Selected Pearl") by Muhammad Ala-Ud-Din Haskafi.

4 An heir may freely renounce his share in favour of another but only after the death of the deceased.

5 For example, if the sole surviving relatives are two sons, A and B, and the testator bequeaths 20% to A, then A would receive in addition half of the remainder of 80%, namely 40%. In the result, A would take 60%, 20% more than B.

A bequest to an heir would be valid if the remaining major heirs, with full knowledge of their rights, consent thereto after the deceased's death. Consent in the lifetime of the testator is invalid because the heirs only acquire vested rights in the inheritance upon the death of the deceased. Hence, consent prior to the acquisition of such rights is of no force or effect. If some heirs consent and others refuse, the bequest will take effect against the shares of the former which would be reduced proportionately. Similarly, a bequest to a third party exceeding one-third of the estate may be validated after the death of the testator if consented to by the heirs.

The person to whom the bequest is made has, under Islamic law, a right of election upon the death of the testator. He may adiate or repudiate. If he dies after the death of the testator without adiating, his interest in the bequest is transmitted to his heirs. If he predeceases the testator, and in the absence of a contrary indication in the will, the bequest will fail and form part of the residue of the estate to be divided amongst the specified heirs determined at the time of death in the prescribed proportions.

The application of these rules in South African law, which recognizes the principle of freedom of testation, may be illustrated by way of a few simple examples.

3.1 Example: adopted children

You are consulted by testator A. He has a wife, and an adopted daughter. No children were born from his marriage. He instructs you to draw a will according to Islamic law making maximum provision therein for the adopted daughter. The material provisions of his will should read as follows:

I hereby give, devise and bequeath my entire estate and effects as follows:

(a) One-third of my estate shall devolve to my adopted daughter X. In the event of her predeceasing me, such share shall devolve upon her children in equal shares, and failing children, the share shall devolve acording to the provisions of sub-paragraph (b) hereof;

(b) the rest and residue of my estate and effects shall devolve upon my heirs to be determined at the time of my death in accordance with, and in the proportions prescribed by, the Islamic Law of Succession. A certificate furnished by an expert in the said law setting forth my heirs and their shares shall be final and binding.

Notes

(a) Because the Islamic Law of Succession is based on blood relationship, the adopted child does not qualify as an heir. Hence, it is permissible to bequeath up to one third of the estate to such child.

(b) The residue, that is, two-thirds, will be distributed to the testator's heirs determined at the time of his death in the prescribed proportions according to Islamic law.

(c) Whilst the testator's heirs at the time of the making of the will could be determined, if he were to die at that point of time, it is preferable not to specify the heirs and their shares in the will in order to avoid amendment at a later stage. For instance, if the wife predeceased the testator she would be excluded and the will would then have to be amended if the heirs and their *pro rata* shares were specified therein.

(d) The testator could easily have bequeathed a sum of money or a specific asset, or even a child's share if he had natural legitimate children, to the adopted child provided that the value of the bequest does not exceed one-third of his estate.

3.2 Example: bequest to charity

You are consulted by testator T who has a wife and two sons. T has an estate valued at R500 000. T wishes to make a bequest of R50 000,00 for charitable, religious and educational purposes. Draft the clause giving effect to his intention in this regard.

I hereby bequeath my entire estate and effects as follows:

(a) I bequeath the sum of R50 000,00 to such charitable, religious or educational institutions, or to poor and needy persons, as my executors may in their absolute discretion determine. In the event of the sum of R50 000,00 exceeding the value of one-third of my estate at the time of my death, the said sum shall be reduced to an amount equivalent to one-third of my estate;

(b) I bequeath the balance or residue of my estate to my heirs to be determined at the time of my death in accordance with, and in the proportions prescribed by, the Islamic Law of Succession. A certificate furnished by an expert in the Islamic Law of Succession setting out therein my heirs and their proportionate shares shall, unless the contrary is proved, be final and binding.

Notes

(a) Because the validity under Islamic law of a bequest must be determined at the time of death, and not at the time of the making of the will, the proviso to the effect that the amount of R50 000 must be reduced if it exceeds the value of one-third has been inserted as a precaution, and in order to avoid amendment if T's estate should be reduced by reason of misfortune.

(b) The bequest to charity represents 10% of his estate and could be increased up to 33⅓ % in terms of Islamic law.

(c) If the bequest to charity were not made, the whole estate would have devolved upon the Islamic law heirs in terms of sub-paragraph (b).

(d) Assuming that upon T's death, his sole surviving relatives are his wife and two sons and he has no debts, then his estate would be divided as follows:

Value of estate	R500 000
Debts	Nil
	500 000
Less: bequest to charity	50 000
	R450 000
Distributed to heirs:	
wife – 2/16	R 56 250
son – 7/16	196 875
son – 7/16	196 875
	R450 000

3.3 Example: grandchildren (children of a predeceased child)

At the time of the making of the will, testator A has three sons, and a grandson (the son of a predeceased son). A wishes to leave a legacy of R25 000,00 to the grandson. The material provisions of A's will would read as follows:

> After payment of my lawful debts, I hereby bequeath the residue of my estate and effects as follows:
> (a) The sum of R25 000,00 shall devolve upon my grandson X. If the said sum exceeds one-third of the value of the said residue of my estate as at the date of my death, it shall be reduced to an amount which equals one-third of such residue.
> (b) The balance shall devolve upon my heirs to be ascertained at the time of my death in accordance with, and in the proportions prescribed by the Islamic Law of Succession. A certificate issued by an expert in that law stating my heirs and their shares shall be final.

Notes

(a) Because of the rule governing blood relationship, that the nearer in degree to the deceased excludes the more remote, the children of a predeceased child of the testator are excluded if one or more sons of the testator survive him.

(b) Hence, the testator should specifically provide for the grandchild or grandchildren out of the legal one third, as in this example.

(c) T could have bequeathed to the grandson, instead of R25 000,00, the share which would have been inherited by his predeceased son if he had survived T. Provided of course, that such share must not exceed one-third of the estate after payment of debts. For example, if such provision is made, and T is survived by only his three sons and the grandson, then his estate, after payment of debts, would be distributed equally amongst them. In such event, the grandson would take 25%, which is less than a third.

Marriage out of community of property

CHAPTER IV

The principle of individual ownership is, as a general rule, recognized and protected under Islamic law. The owner of property has, subject to the constraints of law, full contractual capacity to deal with property as he or she pleases.

It follows that the system of community of property, with or without the marital power, is contrary to Islamic law.

A marriage out of community in terms of an antenuptial contract which excludes community of property, community of profit and loss, the accrual system and the marital power, accords with Islamic law. Section 11 of the Matrimonial Property Act 1984, in any event, abolishes the marital power in respect of marriages entered into after the commencement of that Act.

In the light of the principle of freedom of testation, a spouse married out of community is able to bequeath his or her estate by valid will according to the Islamic Law of Succession. If the will is carefully drawn, no problems should arise.

4.1 Example:

Take the following example: H and W are married out of community of property in terms of a duly executed antenuptial contract. They have a son and daughter. H who has substantial assets wishes to draw his will. H does not wish to make a bequest to outsiders out of one-third of his estate. The material portion of his will would read as follows:

> I hereby bequeath my whole estate to my heirs to be determined at the time of my death in accordance with, and in the proportions specified by, the Islamic Law of Succession. A certificate furnished by an expert in that law, or a qualified Muslim theologian, setting forth my heirs and their respective shares according to the Islamic Law of Succession, shall be final and binding.

Notes

(a) Again, it is desirable not to specify the heirs and their shares because their identity and entitlement are determined at the time of death, and not at the time of making the will.

(b) It is desirable that provision be made for a certificate by an expert to avoid the validity of the will being challenged on the ground of incorporation by reference.

Inaccurate drafting, in seeking to give effect to the Islamic Law of Succession, may have the opposite effect. For example, a testator may say:

> I hereby give, devise and bequeath my entire estate to my children in the proportions fixed by the Islamic Law of Succession.

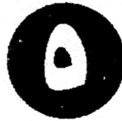
In such a situation, the surviving spouse and surviving parents, who are entitled to inherit under Islamic law, are excluded on the testator's death because the court is bound to give effect to the intention of the testator as expressed in his will.

A similar situation arose in *Momeen v Bassa NNO*,[6] where the testator, who was inter alia survived by three wives to whom he was married according to Islamic law, provided in his codicil that:

> From the income of my estate . . . my administrators shall pay for the education, maintenance and support of *my wife* and minor children.

Under Islamic Law of Succession, all three wives would have qualified as heirs. In this instance, however, the testator had not solemnized two of his marriages by civil law and upon proper construction of the will, the court held that the words "my wife" referred to his legal civil wife only.

6 1976 4 SA 338 (D).



Marriage in community of property

CHAPTER V

We have stated in the previous chapter that the system of community of property, which arises in the absence of an antenuptial contract upon solemnization of the marriage, is contrary to the basic principles of Islamic law.

Community of property creates a joint estate in which the assets and liabilities of the spouses are merged, and are held by them in equal undivided shares irrespective of the value of their financial contributions. Death terminates the community, and the joint estate after payment of debts charged thereon is divided equally between the surviving spouse and the heirs of the deceased.

As regards succession, community of property frustrates the scheme of distribution fixed by Islamic law. Under Islamic law, the spouses are deemed to be married out of community of property, and succession takes effect on the separate estate of each spouse.

The effect of a marriage in community of property on the Islamic Law of Succession may be illustrated by the following simple example: H and W are married in community of property. The net value of the joint estate is R16 000,00. The whole amount has been contributed by H. W has made no financial contribution to the joint estate. H dies testate and is survived by his only relatives, namely W and a son S. The will of H provides that:

> I bequeath my entire estate and effects to my heirs to be determined at the time of my death in accordance with, and in the proportions specified by, the Islamic Law of Succession.

According to Islamic law, W receives one-eighth (R2 000), and the balance of seven-eighths (R14 000) devolves upon S. Under South African law, W retains half of the joint estate (R8 000) by reason of the marriage in community of property, and will in addition take one-eighth of the balance. Hence, W receives a total of R9 000 instead of R2 000 as envisaged by Islamic law. Similarly, S will receive R7 000 instead of R14 000.

The problem becomes more complex where both spouses have made financial contributions to the joint estate. Say, for example, H has contributed R9 000 and W R7 000. Under Islamic law, the sum of R9 000 will only constitute the estate of H on his death to devolve in terms of that law. Whereas, in terms of South African law, H's estate will be R8 000

representing half of his share of the joint estate. The distribution would differ on H's death as follows:

Islamic law

amount available for distribution		R9 000
W takes 1/8	R1 125	
S takes 7/8	7 875	
	R9 000	R9 000

South African law

amount available for distribution		R8 000
W takes 1/8	R1 000	
S takes 7/8	7 000	
	R8 000	R8 000

The solution to the problem is for the parties to change their matrimonial property system from one of community of property to one of out of community of property in terms of section 21 of the Matrimonial Property Act 1984. This is dealt with in the next chapter.

Where the parties cannot afford the expense of an application under section 21, or for any other reason do not wish to bring such application, consideration can be given to the making of a joint will. In the first example above, where the value of the joint estate is R16 000,00, which constitutes the separate estate of H according to Islamic law, the material portions of the joint will will read as follows:

> In the event of the first dying of us being the wife, we hereby direct that her half share of the joint estate existing by reason of the marriage in community of property shall devolve to the husband.
> In the event of the first dying of us being the husband, we hereby give, devise and bequeath the whole joint estate to the heirs of the husband determined at the time of his death in accordance with, and in the proportions specified by, the Islamic Law of Succession. A certificate furnished by an expert in the Islamic Law of Succession setting forth his heirs and their pro rata shares in terms of this sub-paragraph shall be final and binding.

Notes

(a) The bequest of the wife's half share of the joint estate to the husband to take effect on her death accords with Islamic law because the "joint estate" was, in the circumstances, contributed by him, and therefore his separate property under Islamic law. Hence, the bequest of the joint estate to his heirs upon his death according to the Islamic Law of Succession.

(b) Because the husband has, upon his death, bequeathed the whole of the joint estate to his heirs, his surviving wife is put to an election: she may accept the benefits (her pro rata share in terms of the Islamic Law of

Succession) under the will of the first-dying or claim her half share of the joint estate. If she repudiates, she is entitled to her half share of the joint estate. As Steyn puts it:

> . . . Where either spouse, whether by mutual will or in a separate will, has clearly disposed of not only his or her own property, or his or her own half of the community, but also of that of his or her spouse, and the survivor adiates and elects to accept benefits under the will of the first-dying, he is . . . bound to give effect to all the dispositions including those of his own property, under the will of the first-dying.[7]

---

7 Quoted by Corbett *The Law of Succession in South Africa* at 214.

Change from community of property to out of community of property: Section 21 of Matrimonial Property Act 1984

CHAPTER VI

In view of the fact that the system of community of property is contrary to Islamic law, and generally prevents division according to the Islamic Law of Succession, a married couple should seriously consider changing from community of property to out of community of property in terms of a post-nuptial contract. This can be done by way of a joint application to the Supreme Court in terms of section 21 of the Matrimonial Property Act 88 of 1984.

The section provides that, before an order changing the matrimonial property system is made, the court must be satisfied as to the following:

(a) there are sound reasons for the proposed change;

(b) sufficient notice of the proposed change has been given to all the creditors of the spouses; and

(c) no other person will be prejudiced by the proposed change.

To illustrate how the section is applied in practice, take the following example:

H and W were married in community of property on 1 January 1980. The joint estate comprises two pieces of land, household furniture and effects, and jewellery. They wish to change to out of community of property in order that they may leave separate wills according to the Islamic Law of Succession. They have agreed to divide the joint estate as set out below:

6.1 Order prayed

1 The Applicants be and they are hereby granted leave to change their matrimonial property system from one of marriage in community of property to one out of community of property in terms of the notarial contract annexed to the launching affidavit and marked "C";

2 That the new matrimonial property system shall be effective from the date of registration of the said notarial contract;

3 That the change in the parties' matrimonial property system shall not prejudice the rights of any creditors whose claims arose before the registration of the said notarial contract whether their claims lie against the parties or the joint estate;

4 The registrar of deeds, Natal, be and is hereby authorised to register the said notarial contract.

6.2 Launching affidavit of H

I, do hereby make oath and say:

1 I am the first applicant in this matter.

2 The second applicant and I were married to each other in community of property on the 1 January 1980 and the said marriage still subsists. A true copy of our marriage certificate is annexed hereto marked "A".

3 (a) The second applicant and I reside at
  (b) The second applicant and I are domiciled within the area of jurisdiction of this court.

4 I annex hereto marked "B" a statement of the assets of the joint estate which was prepared by my auditors and which I confirm to be correct.

5 As appears from annexure "B", the joint estate is valued at R190 000,00.

6 The second applicant and I have agreed to a division of the joint estate on the basis that:
  (a) The second applicant would take over items 1, 2 and 3 referred to in annexure "B".
  (b) I would take over item 4 being the remaining asset listed on annexure "B".

7 (a) The second applicant and I have no liabilities or creditors, nor has the joint estate any liabilities or creditors.
  (b) Neither the second applicant nor I have ever been sequestrated.
  (c) There are no pending legal proceedings in which any creditor is seeking to recover payment of any alleged debt due by both or either of us.

8 The second applicant and I wish to change our matrimonial property system to one out of community of property for the following reasons:
  (a) In terms of Islamic law, each spouse retains his or her separate estate at the time of marriage. The Islamic law position accords with the case of a marriage concluded out of community of property, with the exclusion of the marital power. There is in Islamic law no accrual or merger of the respective estates of the spouses. The second applicant and I wish to observe the provisions of Islamic law in this regard which are mandatory.

If our matrimonial property system is changed, each of us would be able to bequeath by valid will, his or her respective estate according to the Islamic Law of Succession.

(b) To avoid an inextricable mixing of our financial affairs and business interests so as to enable each of us to handle and administer his or her own affairs.

(c) To avoid any potential or possible future liability of each of us to creditors of the joint estate in respect of debts contracted by the other spouse.

9 I annex hereto marked "C" a draft of the post-nuptial contract which the second applicant and I propose to conclude subject to the sanction of this court.

10 In the light of the fact that no person will be prejudiced by the proposed change, I respectfully submit that we are entitled to change our matrimonial property system in the manner set out in the draft contract annexed hereto.

WHEREFORE I pray for an order in terms of the order prayed contained in the notice of motion annexed hereto.

____

DEPONENT

6.3 Annexure "B" to launching affidavit: statement of assets of joint estate

Item	Description	Value
1	Lot X held under Deed of Transfer No	R100 000,00
2	Household furniture and fittings .	R 10 000,00
3	Jewellery	R 5 000,00
4	Lot Y held under Deed of Transfer No	R 75 000,00

6.4 Annexure "C" to launching affidavit: postnuptial contract

Protocol No:

POST-NUPTIAL NOTARIAL MATRIMONIAL CONTRACT

Executed in terms of section 21 of the Matrimonial Property Act 1984.

BE IT HEREBY KNOWN that on this the .... day of 1987 before me, ..., Notary Public, practising at

Pietermaritzburg, in the Province of Natal came and appeared ....
.... he being duly authorised by a Power of Attorney dated the .... day of .... 1987 and granted to him by ....

(Identity Number ....) married in community of property to .... (hereinafter referred to as "the husband") and ....
(Identity Number ....) married in community of property to .... (hereinafter referred to as "the wife")

which Power of Attorney remains filed in my protocol.

AND THE APPEARER DECLARED THAT:

WHEREAS the parties were married to one another, in community of property, on the ...., which marriage still subsists;

AND WHEREAS the parties have applied to the Supreme Court of South Africa, Durban and Coast Local Division, and have obtained from such Court, leave in terms of section 21 of the Matrimonial Property Act 1984 to change their matrimonial regime and to enter into a contract in terms thereof.

NOW THEREFORE the parties agree and contract with each other as follows:

1 It is hereby recorded that the joint estate existing prior to the registration hereof has been divided as follows:
   (a) the husband shall take over the following assets:
   (b) the wife shall take over the following assets:
2 THAT from the date of registration of this notarial contract:
   (a) There shall be no community of property or profit and loss henceforth between them;
   (b) That the marital power which the husband heretofore possessed over the wife is hereby excluded;
   (c) That neither party shall be responsible for the debts of the other party;
   (d) Each party shall have the exclusive and uncontrolled administration and alienation of all property and effects settled upon the parties in terms of the settlement of the joint estate, and over any other property which they may respectively acquire hereafter.
3 That the accrual system as provided for in terms of chapter 1 of the Matrimonial Property Act 88 of 1984 is expressly excluded.
4 THAT the provisions of this contract shall not prejudice the rights of any creditors whose claims arose before registration hereof whether their claims lie against the parties or the joint estate.

SIGNED in triplicate original in .... on the day, month and year first aforewritten in the presence of the subscribing competent witnesses.

AS WITNESSES TO
BOTH SIGNATURES

1 ______________________

2 ______________________

____
QUOD ATTESTOR
NOTARY PUBLIC

6.5 Supporting affidavit of W

I, the undersigned ...., do hereby make oath and say:

1 I am the second applicant herein and I reside at ....

2 I have read the affidavit of the first applicant and I confirm the contents thereof.

3 I further confirm that I wish to enter into the notarial contract being annexure "C" to the affidavit of the first applicant.

WHEREFORE I join with the first applicant in seeking an order prayed contained in the notice of motion prefixed hereto.

____
DEPONENT

6.6 Procedure and practical points

In *Ex parte Lourens et uxor*,[8] MARAIS J laid down certain guidelines as to procedure which must be adhered to, save in exceptional circumstances. They may be summarized as follows:

(a) In view of the fact that the post-nuptial contract must be registered in a deeds registry, a copy of the application papers must be served on the registrar of deeds in question in order that he may submit to the court a report thereon in terms of section 97 (1) of the Deeds Registries Act 1937.

(b) Notice of intention to make the application must be published in the *Government Gazette* and two newspapers at least two weeks before the date on which the application will be heard. It is submitted that the notice must take in substance the following form:

1 Please take notice that an application will be made on behalf of the abovenamed applicants on the .... day of 1987 at 09h30

8 1986 2 SA 291 (C).

or so soon thereafter as counsel may be heard for an order in the following terms:

(a) The applicants be and they are hereby granted leave to change their matrimonial property system from one of marriage in community of property to one out of community of property in terms of the notarial contract annexed to the launching affidavit marked "C".

(b) That the new matrimonial property system shall be effective from the date of registration of the said notarial contract.

(c) That the change in the party's matrimonial property system shall not prejudice the rights of any creditors whose claims arose before the registration of the said notarial contract whether their claims lie against the parties or the joint estate.

(d) That the registrar of deeds, Natal, be and is hereby authorized to register the said contract.

2 Any person who wishes to object to the proposed change, or to make any representations in that regard, may do so by notifying the registrar of this court in writing and sending a copy thereof to the applicants' attorney, or by appearing in court on the day of the hearing.

3 Copies of the application papers and the said notarial contract which it is proposed to register are available for inspection by any person during office hours at the following addresses:

(a) The Registrar of the Supreme Court, Masonic Grove, Durban.

(b) X, being the offices of the applicants' attorneys.

(c) If there are creditors (usually bondholders), a list thereof verified by affidavit, shall be included in the application and proof that such notice has been given to them must be provided by an affidavit to which are annexed the relevant certificates of posting. If any material change in the parties' financial position occurs before the application is heard, a supplementary affidavit reflecting such change must be filed.

(d) The application should ordinarily be brought in the court in whose area of jurisdiction the parties are domiciled and ordinarily resident.

The hypothetical example above, it is submitted, complies with the remaining guidelines prescribed in *Ex parte Lourens*. Once the order is obtained, the contract must be executed and registered in a deeds registry within three months of date of execution in terms of section 87 (1) read with section 89 of the Deeds Registries Act 1937.

Testamentary trust

CHAPTER VII

The heirs of the deceased under the Islamic Law of Succession, as stated in the first chapter, are determined at the time of his death. The position is analogous to intestate succession in the sense that both the determination of the heirs and vesting take place on date of death. Hence, where an heir dies after the testator's death, his interest in the inheritance is transmitted to his own heirs determined at the time of death according to the Islamic Law of Succession. This must, as appears below, be noted in the drafting of testamentary trusts.

For example, testator A bequeaths his estate to his trustees to be administered for the benefit of his heirs according to Islamic law. His will must in order to properly give effect to the Islamic Law of Succession contain the following provisions:

(a) The income of the trust shall after payment of necessary expenses be divided amongst my said heirs determined at the time of my death in accordance with and in the proportions prescribed by the Islamic Law of Succession.
(b) The corpus of the trust shall on termination be divided amongst my said heirs in the said proportions.
(c) In the event of any heir dying before the date of termination of the trust, the share of income and capital due to such deceased heir ("the deceased") shall be divided amongst the heirs of the deceased according to and in the proportions prescribed by the Islamic Law of Succession.

If in the hypothetical example (above), A's sole heirs are two sons B and C; and B dies before the termination of the trust (that is, during its existence) leaving a wife and a son then B's share of income and capital must be divided in the prescribed proportions between his wife and son who are his sole Islamic law heirs at the time of his death. The point to note is that because B's interest in the inheritance has vested on A's death, it is transmitted upon his death to his heirs (wife and son) according to the Islamic Law of Succession. If B's share were left only to his son, and his wife were to be excluded, that would constitute a serious breach of Islamic law.

A note of caution must be sounded: normally testamentary trusts are not allowed in Islamic law and can only be created in cases of necessity – such as where the heirs are minors; or in the case of the heir who is unable to properly manage his affairs owing to mental defect or for some other reason.

Miscellaneous: Unregistered marriages and payment of minors' shares

CHAPTER VIII

8.1 Marriage not solemnized under Marriage Act 25 of 1961

Frequently, parties contract a marriage according to Islamic law but for certain reasons do not convert that marriage into a valid civil marriage under the Marriage Act 1961. Because the marriage according to Islamic law is void on the grounds of public policy, as was reaffirmed by the Appellate Division recently in the case of *Ismail v Ismail*,[9] the bequest provisions of the wills of the parties to such a union must be carefully drawn. In view of the fact that the surviving spouse of such an unregistered marriage does not qualify as a legal spouse, it would be safer to specifically refer to him or her in the will. An example of a clause in the will of the husband of such a union is as follows:

> I hereby give, devise and bequeath my entire estate and effects to my heirs to be determined at the time of my death in accordance with, and in the proportions prescribed by, the Islamic Law of Succession. Provided that the word "heirs" shall include, without limiting the generality thereof, my wife, Fatima, and any children born of my marriage to her who may survive me at the time of my death. I direct that a certificate issued by an expert in the Islamic Law of Succession setting forth therein my heirs and their pro rata shares according to the Islamic Law of Succession shall be final and binding.

8.2 Payment of minors' shares

The question arises as to the time when the share of a minor must be paid or delivered to him. The trustees according to Islamic law are obliged to make payment when they are of the opinion that the minor is able to properly manage his affairs and can reasonably enter into ordinary commercial transactions; and further that there is no danger of the minor losing his inheritance by extravagance or prodigality. No specific age has been fixed because the

9 1983 1 SA 1006 (A).

circumstances of each case differs. But, the discretion vested in the trustees must be carefully exercised. For, if the trustees make payment recklessly and the minor loses his inheritance, they are personally liable to make good the loss.

Under South African law, the age at which a minor attains majority has been fixed at twenty-one (section 1 of the Age of Majority Act 1972). It follows that payment cannot be made before the age of twenty-one. The testator on the other hand may direct that payment be made at twenty-one, or at a specific age after twenty-one, or may give the trustees a discretion as to the time of payment. In practice, however, the granting of a discretion (absolute or limited) could lead to abuse and must therefore be weighed against the certainty achieved by prescribing a specific age on the attainment of which payment must be made.

A standard clause dealing with the shares of minor children is as follows:

> The share accruing to any minor heir under this will shall not be paid into the guardians fund but shall be held in trust by my said executors until such minor attains the age of twenty-one years whereupon it shall be paid to him. My executors shall be empowered during the course of such minority to invest such shares in such investments as they may in their absolute discretion determine and may utilize any portion of the income or if necessary the capital for maintenance, education, advancement or any other benefit of the minor.

THE SUBSTANTIVE RULES OF THE ISLAMIC LAW OF SUCCESSION

Categories of heirs

CHAPTER IX

The estate of a deceased Muslim, after payment of debts and legacies (if any) referred to in Chapter 3 above, is divided amongst his legal heirs in the manner prescribed by the Islamic Law of Succession. These heirs fall into three categories: "the Quranic heirs"[10] are the heirs who receive the prescribed portion; "the residuaries"[11] are the heirs who take up the residue after the shares of the Quranic heirs have been allotted to them;[12] and "the uterine relations"[13] are the heirs who are neither Quranic heirs nor residuaries.

The Quranic heirs are twelve heirs (four males and eight females) whose shares are specified in the Quran. A residuary heir is generally that male relative (for example son or son's son) between whom and the deceased no female intervenes.[14] A uterine relation on the other hand is a relative who is neither a Quranic heir nor a residuary heir and is generally related to the deceased through a female (for example daughter's son).

For example, the sole surviving relatives of the deceased are a husband, H, a son, S, and a granddaughter, G, the daughter of a predeceased daughter of the deceased. To determine priority, the Quranic heir H takes his allotted share of one-quarter. S as the nearest male agnate or residuary heir takes the residue of three-quarters. G who is a uterine relation is excluded.

The overwhelming majority of cases relate to Quranic heirs and residuaries. The rules relating to these two categories are dealt with in Chapters 11 and 12. Chapter 13 deals with examples which illustrate the application of these rules.

Chapter 16 deals with the case where the estate is under-subscribed in the sense that the only relatives are Quranic heirs whose prescribed shares

---

10 Quranic heirs are technically referred to as AHL AL-FARĀ'ID ("those entitled to the prescribed portions").
11 Residuaries are technically referred to as AṢABA ("male agnate relatives")
12 If they exist alone – in the absence of Quranic heirs – they take the entire estate, to the exclusion of the uterine relations.
13 Uterine relations are technically referred to as DHAWŪ'L – ARHĀM ("the possessors of uterine relationship").
14 This means descent through male links from a common ancestor.

do not exhaust the estate and there is no residuary heir to take the surplus.[15] Conversely, Chapter 17 deals with the case where the estate is oversubscribed in the sense that the sum of the fractional portions of Quranic heirs exceed unity and fall to be reduced proportionately.

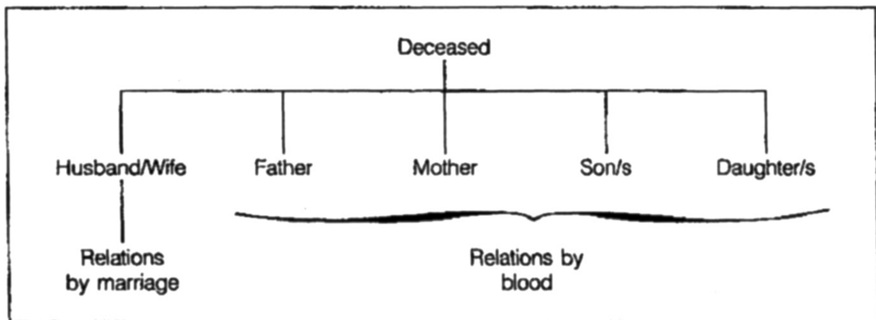
15 When this occurs the surplus must be returned to the Quranic Heirs (excluding the surviving spouse) pro rata to their shares – to the exclusion of any uterine relations who may exist.

General principles

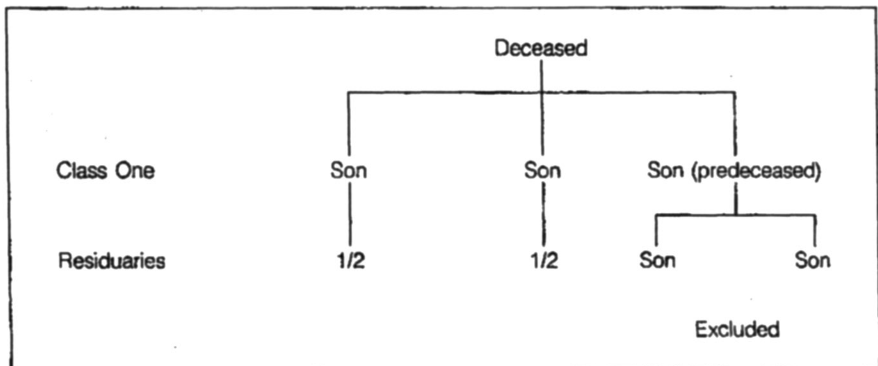
CHAPTER X

The general principles of succession law may be summarized as follows:

10.1 The first parentela (or the primary heirs) consist of descendants and ascendants, namely, the parents, the surviving spouse/s, and the children of the deceased, who cannot under any circumstances be excluded.[16]



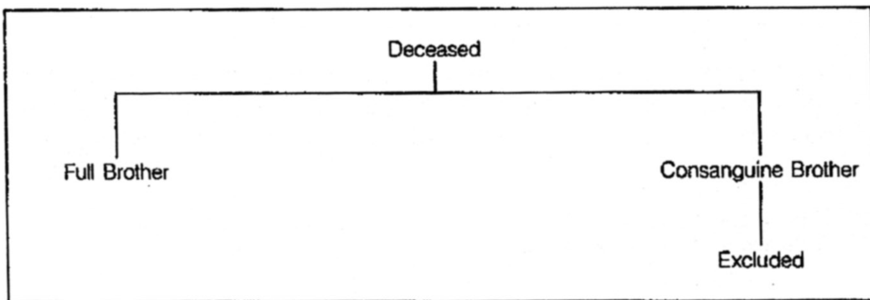
10.2 There is no representation *per stirpes*, the distribution being based on the principle that the nearer excludes the more remote. This is so because a potential beneficiary only acquires rights in the estate upon the death of the deceased. Consequently, a descendant of a predeceased person cannot take the place of such predeceased person as the latter possesses no vested rights that can be transmitted to such descendant.[4]



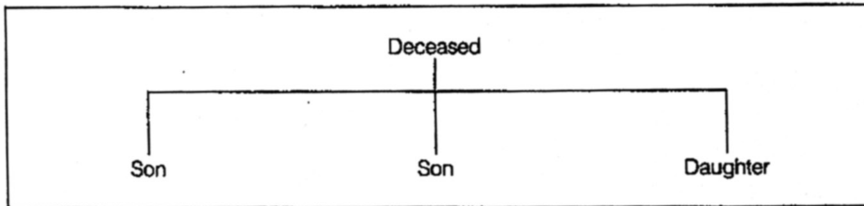
16 Except on grounds of unworthiness such as murder.

In this example, the two sons of the predeceased son of the deceased are excluded because of the application of the rule in the case of residuaries[17] that, within a particular class, the nearer in degree excludes the more remote. In view of the fact that the grandsons cannot take their father's place by representation, the estate devolves upon the surviving sons of the deceased who inherit in equal shares.[18]

10.3 In the case where relatives are connected equally in degree to the deceased, relations by full blood exclude relations by half blood.[19] For example, a full brother of the deceased excludes a consanguine one. (i.e. half brother on father's side).



10.4 As a general rule, the male heir receives twice that of the female heir of the same class, degree and strength of blood tie. For example, the daughters by themselves are Quranic heirs but when they exist alongside sons, they are converted into residuaries. In this case, the male would take twice that of the female.



In this example the estate would be divided into five shares, each son receiving two shares and the daughter one share.

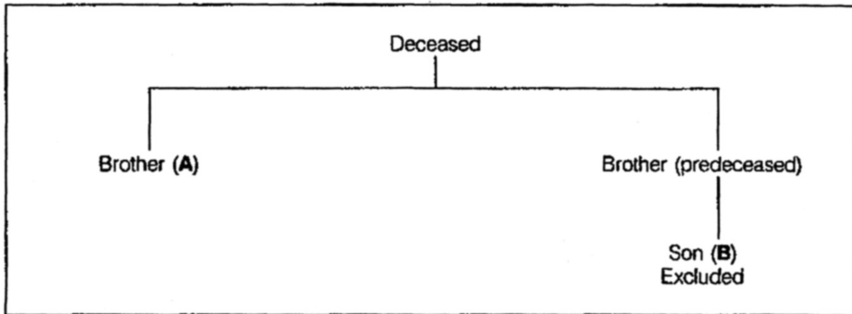
---

17 See ch 12: the first class of residuries are the sons and grandsons (however low) of the deceased.

18 The deceased may however leave up to one third of his estate to the grandsons: see ch 3 on bequests to outsiders.

19 In the case of residuaries of the same degree, preference will be determined by the strength of the relationship in accordance with the statement of the Holy Prophet Muhammed PBUH, "Relations by the same father and mother shall be preferred to relations by the same father only."

10.5 As a general rule, the nearer in degree to the deceased excludes the more remote.[20]



In this example, the sole surviving relatives of the deceased are a brother, A, and a brother's *son, B. B is totally excluded from succession by the nearer descendant, his* uncle A as a result of the 'rule of priority by degree'.

20 That is, among relatives of the same class – in the case of residuaries – the nearer in degree to the deceased excludes the more remote. See ch 12.

Quranic heirs

CHAPTER XI

The Quran has fixed the shares[21] of twelve persons, four males and eight females.

The heirs are:

1 Father
2 Husband
3 Wife
4 Daughter
5 Son's Daughter, however low

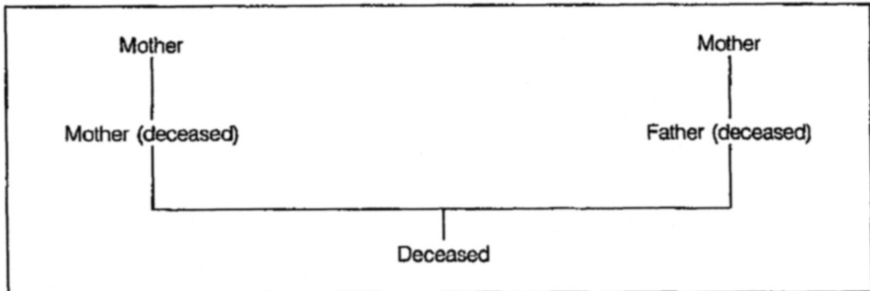
D1, D2 and D3 are sons' daughters in the second, third and fourth degrees respectively.

6 Mother
7 Full Sister
8 Consanguine Sister (half sister on the father's side)
9 Uterine Brother (half brother on the mother's side)

---

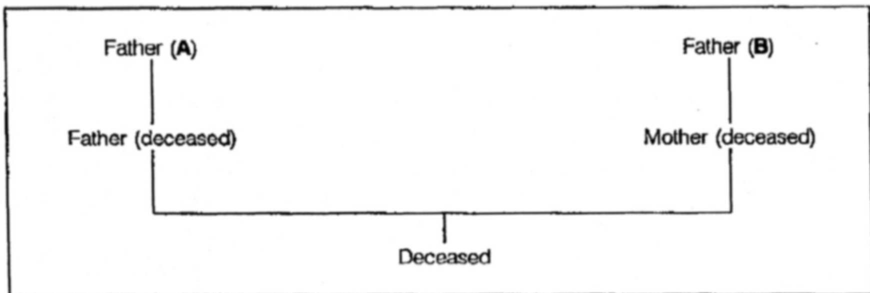
21 The Holy Quran has fixed six shares: ½, ¼, ⅛, ⅔, ⅓ and ⅙, formed by doubling and halving. See Quran (c 4: v 11-14).

10 Uterine Sister (half sister on the mother's side)
11 True Grandmother (a female ancestor between whom and the deceased no false grandfather intervenes.)[22]



The surviving relatives are mother's and father's mother as true grandmothers of the second degree.

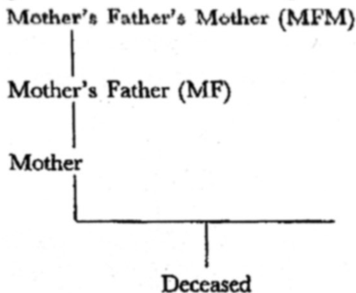
12 True Grandfather (father's father however high)



In this case, sole surviving relatives of the deceased are his father's father A, and mother's father, B. A is a true grandfather. B is a false grandfather because of the intervention of a female between him and the deceased.

---

22 A false grandmother is a female ancestor between whom and the deceased a false grandfather intervenes. Hence, the mother of the mother's father of the deceased is a false grandmother in the following illustration:



MF is a false grandfather, and MFM is a false grandmother.

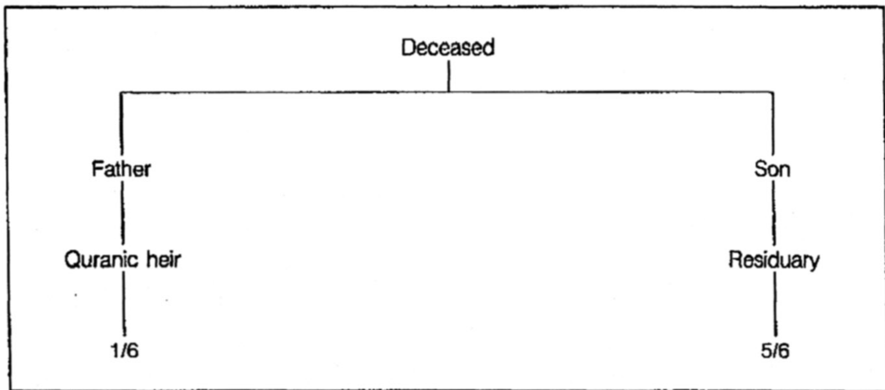
A short discussion of each of the Quranic heirs follows to determine their specific entitlement under different circumstances with regard to the substantive rules applicable. This will also enable one to view Islamic succession law in proper perspective.

11.1 Father

The father inherits in three capacities:
(a) Pure Quranic heir
(b) Quranic heir-cum-residuary
(c) Pure residuary

Pure Quranic heir

Under this heading, the father receives one-sixth when he exists with the son or son's son, however low.

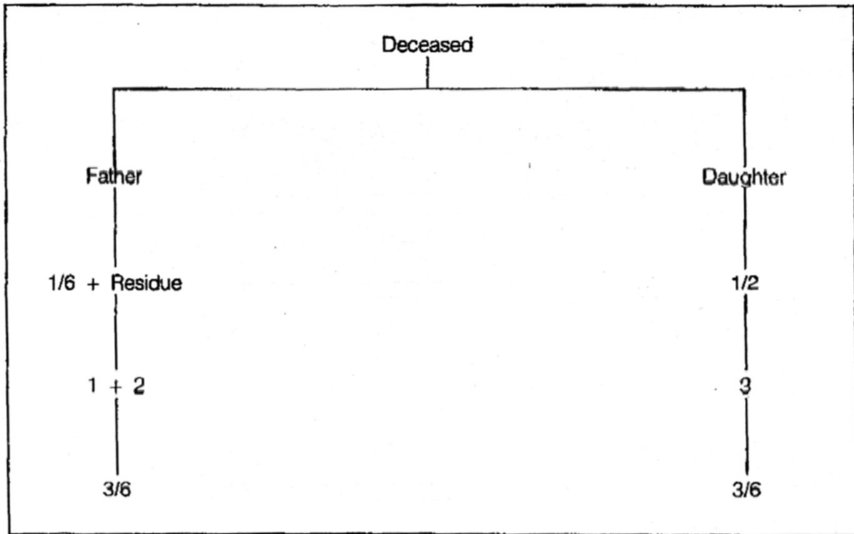


The sole surviving relatives of the deceased are a father and son. The father receives his one-sixth quota share whilst the son, as a class one residuary takes the residue, namely, five sixths. It must be noted that the father is also a class two residuary.

Accordingly, had he not been a Quranic heir, he would have been excluded, *in casu* by the operation of the rule of class whereby a higher class excludes a lower class.

Quranic heir-cum-residuary

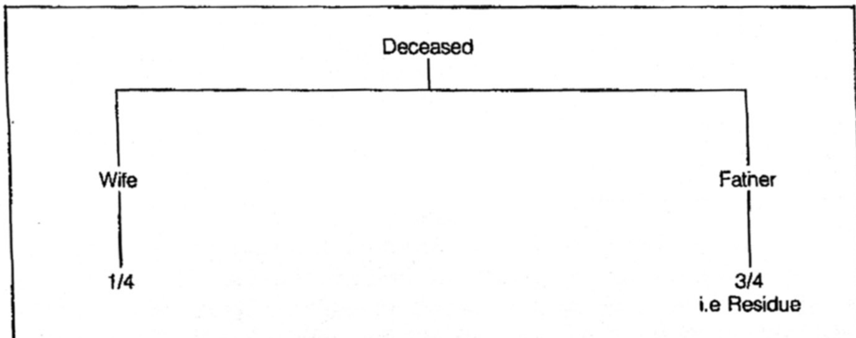
In this capacity, the father receives one-sixth as a Quranic heir and the remaining as residuary when he co-exists with a daughter or son's daughter however low. In other words, he is both sharer and residuary.



The sole surviving relatives of the deceased are a father and daughter. The daughter as Quranic heir inherits one-half in the absence of the son. Applying the lowest common denominator method of arithmetical calculation (hereafter referred to as the 'LCD method') the net estate would be divided into six shares, the father receiving three shares (one as Quranic heir and two as residuary) and the daughter taking three shares.

Pure residuary

In this capacity, the father takes as residuary in default of a child or son's child however low.

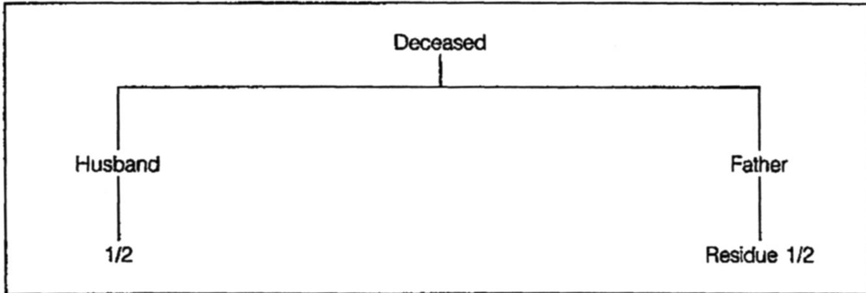


The sole surviving relatives are a wife and a father. The wife as Quranic heir receives one-quarter in the absence of the children of the deceased. Accordingly, the residue three-quarters devolves upon the father as residuary.

11.2 Husband

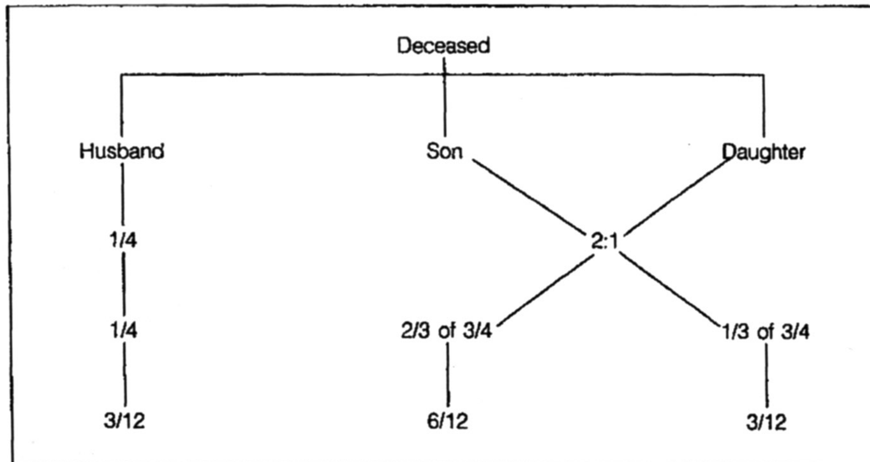
In respect of the husband:

(a) In the case where the deceased wife leaves no children or son's children however low, the husband receives one-half.



The sole surviving relatives are a husband and the father. The husband receives one-half and the father takes the residue as residuary heir.

(b) In the case where the deceased wife leaves children, or son's children however low, the husband inherits one-quarter.



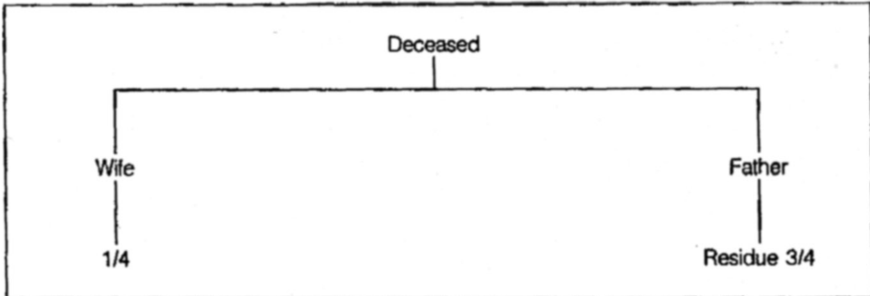
The surviving relatives of the deceased are a husband, son and daughter. The husband receives one-quarter in the light of the above principle. The daughter as Quranic heir is converted into a residuary by the son who receives twice that of the daughter. Accordingly, by applying the LCD method, the net estate is divided into twelve shares, the husband receiving three, the son six, and the daughter three.

(Son = $2/3 \times 3/4 = 6/12$ and Daughter $1/3 \times 3/4 = 3/12$)

11.3 Wife

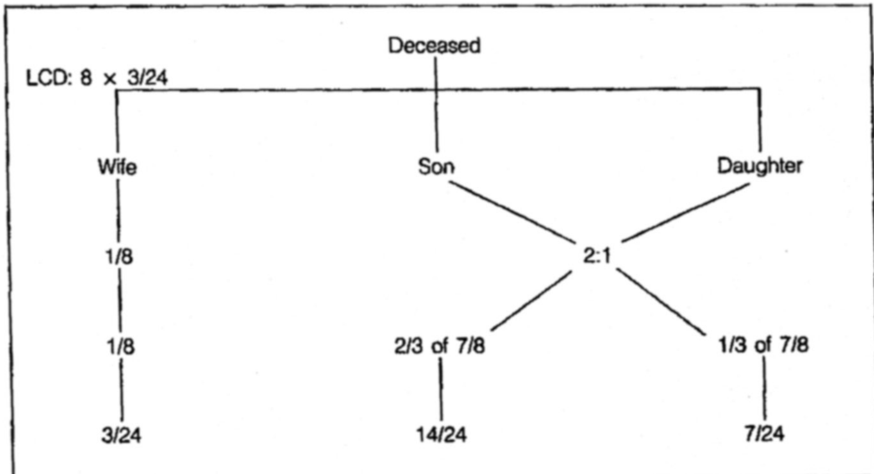
In respect of the wife:

(a) Where the deceased husband leaves no children or son's children however low, the wife is entitled to one-quarter.



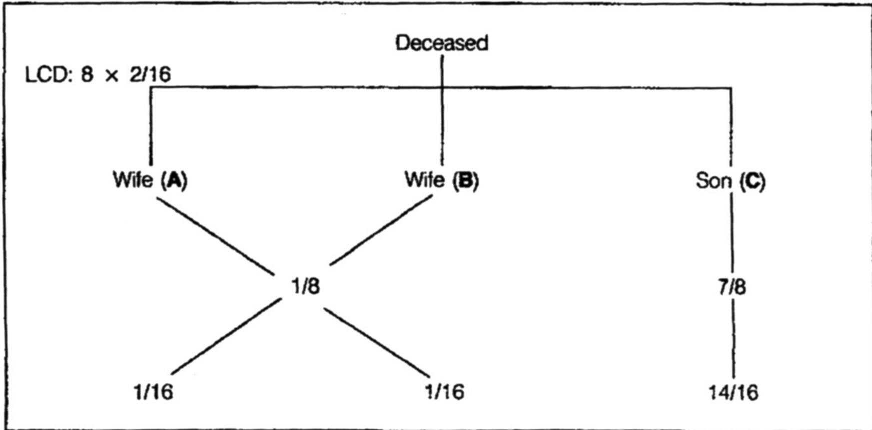
The surviving relatives are the wife and the father. The wife is entitled to her specific one-quarter share and the residue, being three quarters, devolves upon the father as the residuary heir.

(b) Where the deceased husband leaves children or son's children however low, the wife receives one-eighth.



The sole surviving relatives at date of death are the wife, son and daughter. The wife inherits one-eighth and the son and the daughter share in the proportion 2:1 respectively. In consequence, by applying the LCD method, the net estate is divided into twenty-four shares, the wife taking three, the son fourteen and the daughter seven shares. (Son 2/3 × 7/8 = 14/24 Daughter 1/3 × 7/8 = 7/24).

In the event of the deceased husband leaving a plurality of wives the said proportions of one-eighth and one-quarter must be equally divided *inter se*, as the case may be.

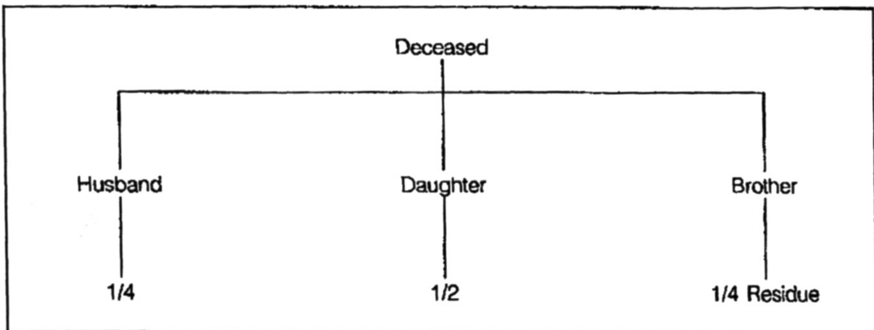


The sole surviving relatives are two wives, A and B, and C, a son. A and B receive one-eighth in equal shares and C inherits the residue being seven-eighths in his capacity as residuary heir of the first class. In the result, the net estate is divided into sixteen parts, one part for each wife, and the remaining fourteen parts for the son.

11.4 Daughters

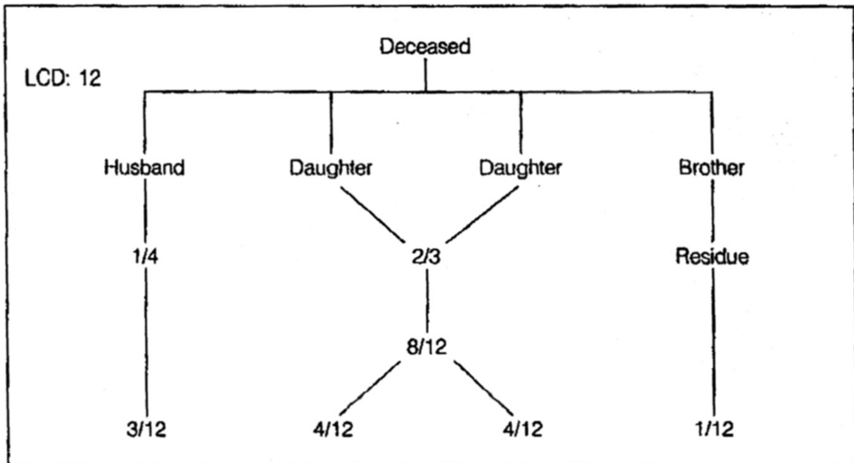
In the case of daughters of the deceased:

(a) If one daughter exists in the absence of sons, she inherits one-half.



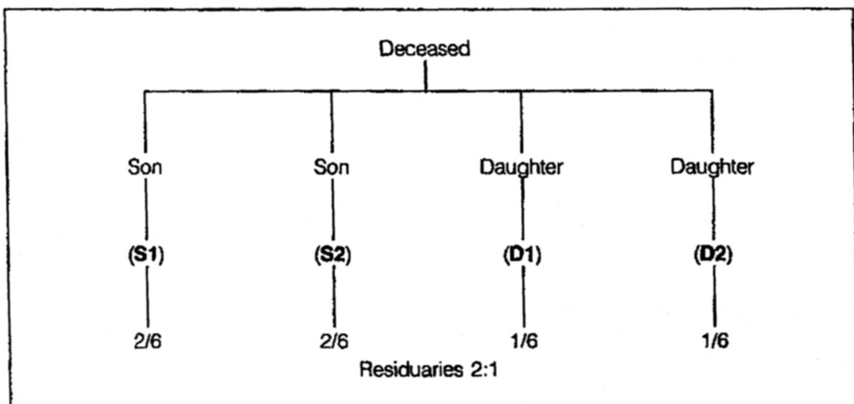
The surviving relatives of the deceased are a husband, daughter and a brother. The husband and the daughter receive their Quranic portions of one-quarter and one-half respectively. The residue of one-quarter devolves upon the brother as residuary of the third class.

(b) Where there exists two or more daughters in default of sons, they receive two-thirds to be divided equally amongst them.



The surviving relatives are a husband, two daughters and a brother. The husband receives his Quranic portion of one-quarter, and the daughters likewise receive their fixed two-thirds in common. The residue devolves upon the brother as nearest agnatic residuary. In the circumstances, the estate is divided into twelve shares, three for the husband, four each for the daughters and one share for the brother.

(c) Where they co-exist with sons, the rule that the male heir receives twice the share of the female applies. In such a case, the daughters are converted by the sons into residuaries and inherit as such.

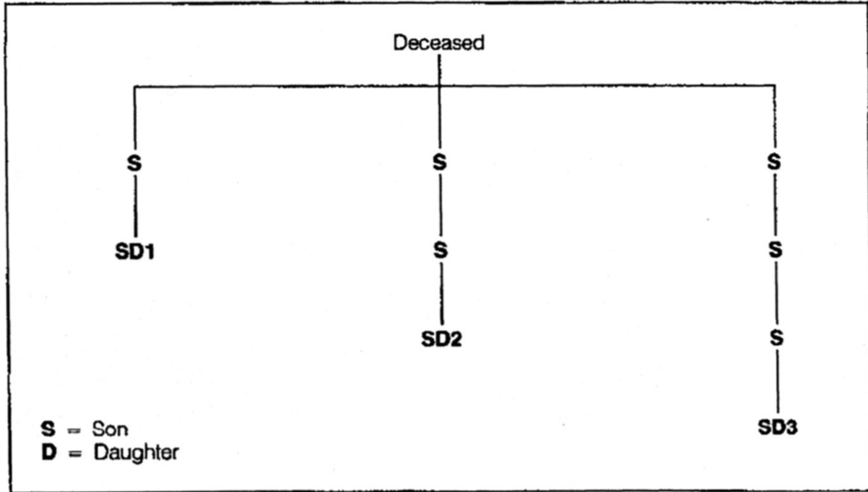


The sole surviving relatives of the deceased are two sons, S1 and S2, and two daughters, D1 and D2. S1 and S2 convert D1 and D2 into residuaries.

As a result, the proportion 2:1 applies. The net estate is, therefore, divided into six shares of which two shares each are given to S1 and S2 and one share each to D1 and D2.

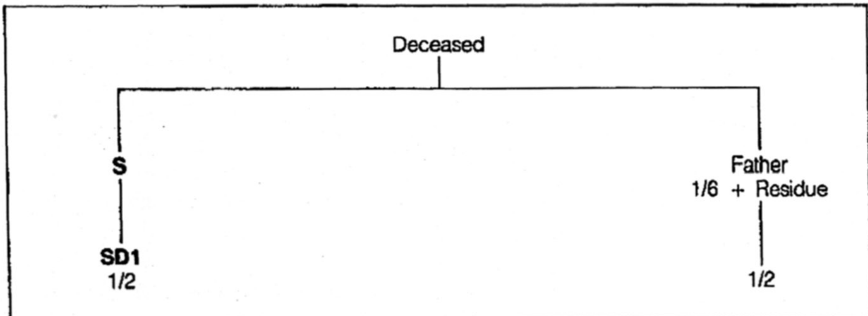
11.5 Sons' daughters

The sons' daughters are 'treated like the deceased's own daughters. The rule of degree whereby the nearer in degree excludes the more remote applies.



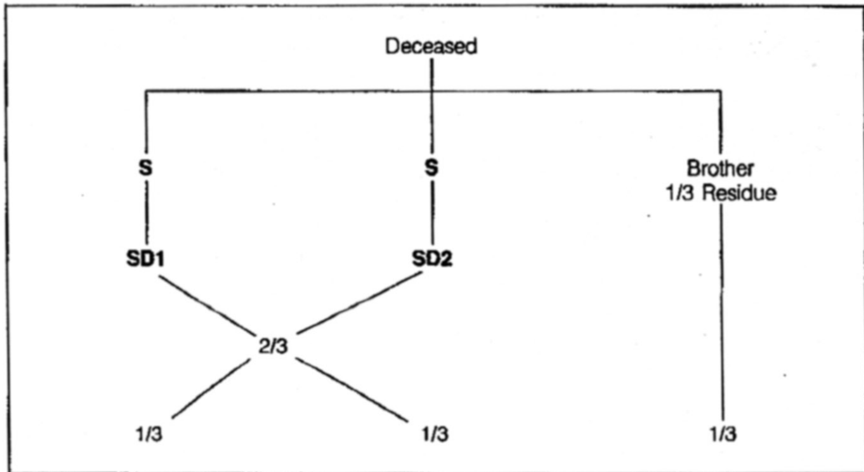
The surviving relatives are SD1, SD2, SD3. According to the rule of degree SD1 excludes SD2, and SD2 excludes SD3.

(a) In regard to the son's daughters:
If they exist alone, in default of son's sons, they inherit one-half.



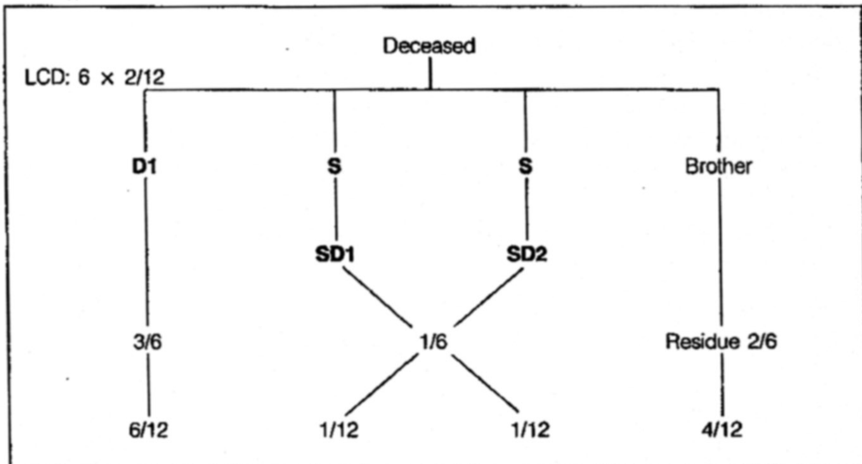
The surviving relatives of the deceased are a son's daughter, SD1, and a father. SD1 is entitled to one-half. The father receives his Quranic portion of one-sixth plus the residue of two-sixths thereby receiving a total of one-half.

(b) If the deceased is survived by two or more sons' daughters, they receive two-thirds to be divided amongst them equally, provided there are no daughters of the deceased.



The surviving relatives of the deceased are two sons' daughters, SD1 and SD2, and a brother. SD1 and SD2 receive two-thirds in common, thereby taking one-third each. The remainder being one-third devolves upon the brother as the nearest residuary.

(c) If they exist with a single daughter of the deceased, they inherit one-sixth.



The sole surviving relatives of the deceased are a daughter D1, two sons' daughters SD1 and SD2, and a brother. D1 inherits her Quranic portion of one-half. SD1 and SD2 receive one-sixth in equal shares so as to complete the two-thirds that normally devolve upon two or more daughters.

The residue of two-sixths devolves upon the brother. Applying the LCD method, the net estate is, therefore, divided into twelve parts with six parts for D1, one part each for SD1 and SD2 and four parts for the brother as nearest agnate.

(d) If they exist with two or more daughters of the deceased they are excluded save when a son's son however low converts them into residuaries.

Deceased
LCD: 3 × 5/15
D1 D2 S S S
SD1
2/3 S1 S2
1/3
5/15 5/15 1/15 2/15 2/15

The sole surviving relatives are two daughters, D1 and D2, a son's daughter, SD1, and two sons' sons, S1 and S2. D1 and D2 receive their specific Quranic portions of two-thirds in common. SD1 would have been excluded in default of S1 and S2 whose presence converts SD1 into residuary. Hence the proportion of 2:1 applies to S1, S2 and SD1 as residuary heirs. Consequently, the net estate will be divided into fifteen shares. D1 and D2 receive five shares each. S1 and S2 receive two shares each and SD1 inherits one share.

(e) If they are accompanied by sons, they are excluded.

Deceased
Son SD
Excluded

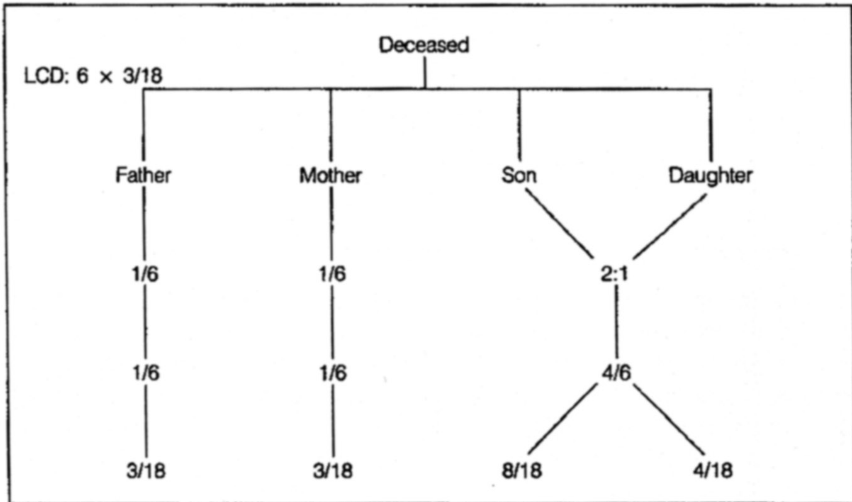
The sole surviving relatives of the deceased are a son and a son's daughter, SD. SD is excluded in the presence of the son and, consequently, the son inherits the entire net estate in his capacity as residuary heir of the first

class. The son, it must be noted, cannot be excluded from succession under any circumstances.

11.6 Mother

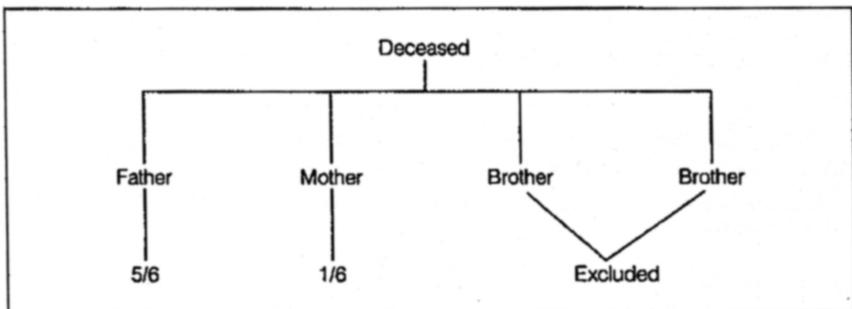
The mother inherits:

(a) One-sixth with a child (son or daughter) or son's child however low.



The sole surviving relatives of the deceased are a father, mother, son and daughter. The father and mother receive their Quranic portions of one-sixth each. The residue of four-sixths devolves upon the son and daughter in the proportion of 2:1. In the result, the net estate is divided into eighteen shares, the father and mother receiving three shares each, the son inheriting eight shares and the daughter four.

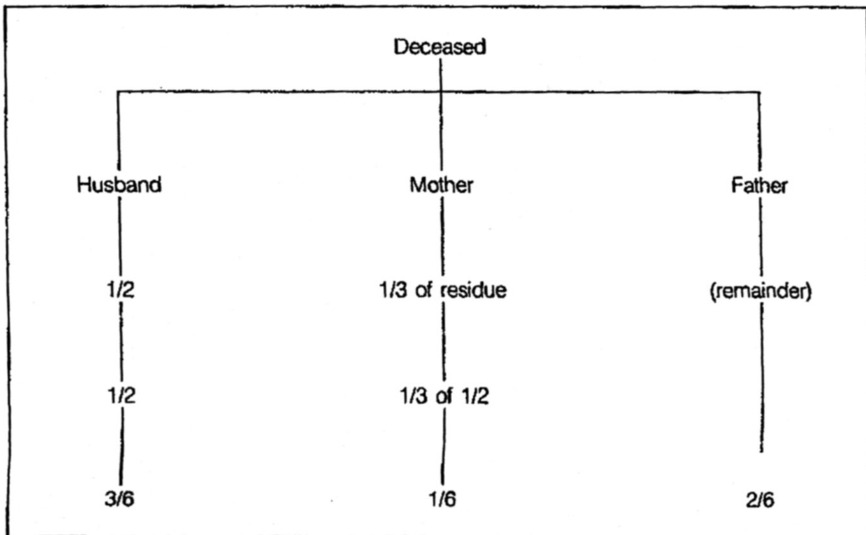
(b) One-sixth, with two or more brothers or sisters of the deceased whether of full or half blood.



The sole surviving relatives are a father, mother and two brothers. The mother is entitled to her specific Quranic portion of one-sixth and the remainder, five-sixths devolves upon the father in his capacity as pure residuary. The collaterals, namely the two brothers are excluded from succession by the operation of the rule of class whereby the father as class two residuary excludes the brothers as residuaries of the third class.

(c) One-third of the residue, after giving to the husband and/or the wife their respective shares, as the case may be, in the following two situations:

(i) Where the deceased wife leaves her husband together with both her parents.



The sole surviving relatives are a husband, mother and father.[23] The husband receives his Quranic portion of one-half. The mother takes one-third of the residue being half, thereby receiving one-sixth. The balance of the residue devolves upon the father who receives two-sixths.

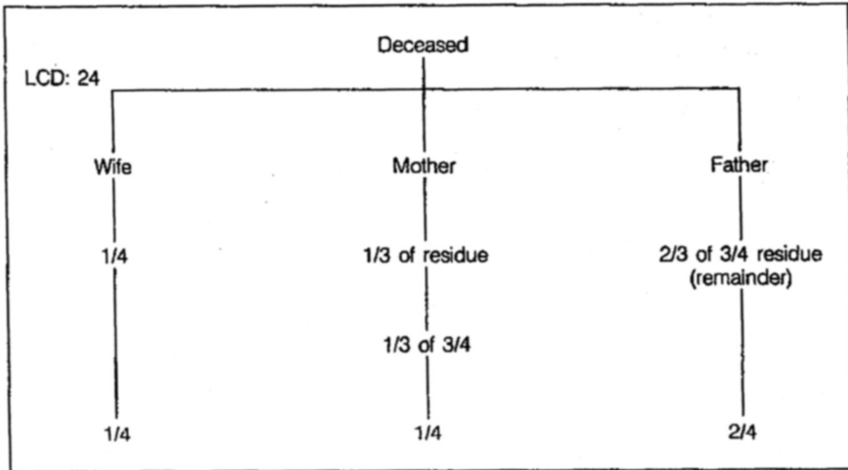
---

23 If the mother inherits with the surviving spouse and the grandfather (i e father's father) – in the place of the father – she takes one-third of the whole estate. For example, if the surviving relatives are the widow, mother and the father's father, the distribution would be as follows:

widow $\frac{1}{4}$ = $\frac{3}{12}$
mother $\frac{1}{3}$ = $\frac{4}{12}$
father's father (as residuary) $\frac{5}{12}$ = $\frac{5}{12}$

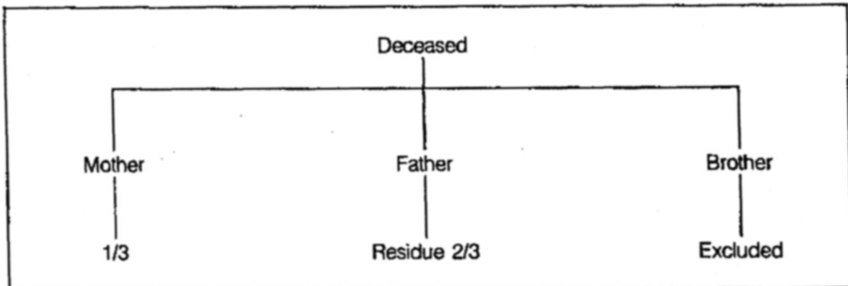
The well-known jurist ABU YUSUF differs and says that the mother takes one-third of the residue.

(ii) Where the deceased husband leaves a wife coupled with both parents.



The sole surviving relatives of the deceased are a wife, mother and father. The wife receives her fixed Quranic entitlement of one-quarter, the mother takes one-third of three-quarters being the residue and the father receives the balance of the residue, namely, two-thirds of three-quarters. Therefore, the net estate is divided into four parts of which one part is given to the wife, one part to the mother, and two parts to the father.

(d) One-third of the estate in cases where the above-mentioned relations,[24] under (a), (b), and (c) are absent.



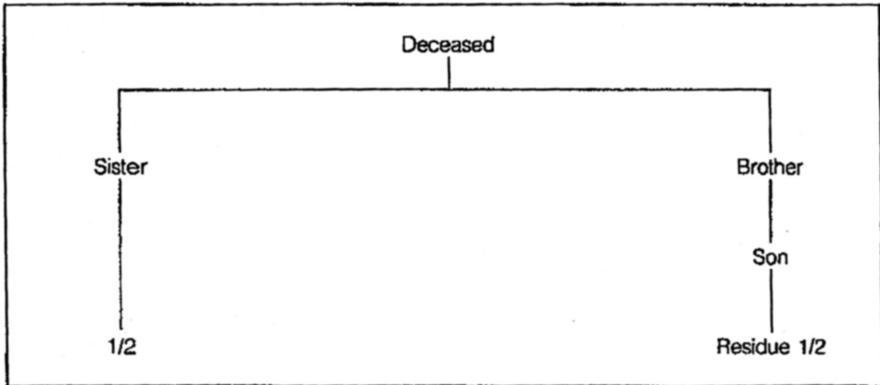
The surviving relatives are a mother, a father and brother. The mother takes one-third and the residue of two-thirds devolves upon the father as pure residuary. The brother is excluded from inheritance by the operation of the rule of class in the case of residuaries.

24 that is, in the absence of a child or son's child however low or two or more brothers and sisters.

11.7 Full sisters

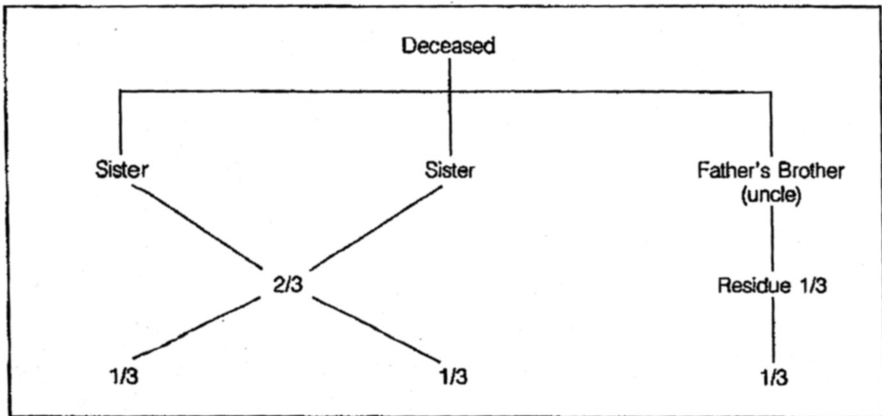
In the case of sisters:

(a) If a sister inherits alone in default of brothers of the deceased, she takes one-half.



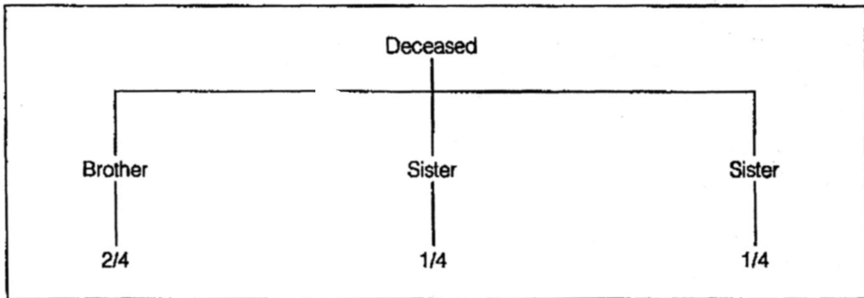
The deceased is survived by a sister and a brother's son. The sister inherits her specified Quranic portion of one-half in accordance with the above-mentioned rule. The residue of one-half devolves upon the brother's son as the nearest male agnate being a residuary of the third class.

(b) They are entitled to two-thirds in common where they are two or more, in default of brothers.



The deceased is survived by two sisters and a father's brother (full uncle). The two sisters receive a collective two-thirds in accordance with rule (b), thereby taking one-third each, and the remainder devolves upon the full uncle as residuary of the fourth class.

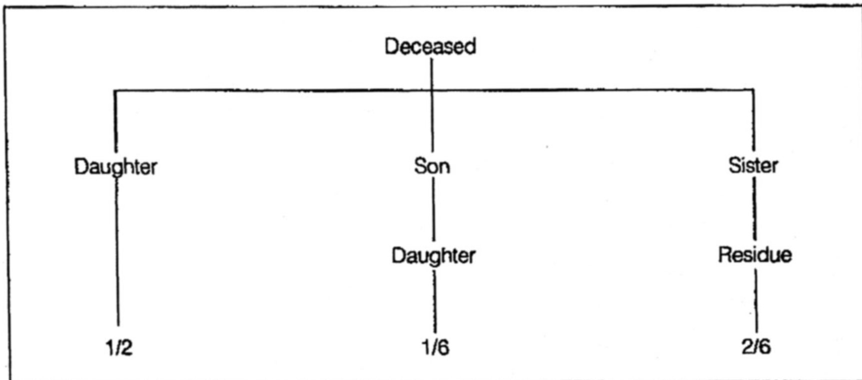
(c) Where they inherit with full brothers, they are converted into residuaries,[25] the male taking the share of two females.



The sole surviving relatives of the deceased are a brother and two sisters. The brother converts the sisters into residuaries and, accordingly, the proportion of 2:1 applies.

This means that the net estate is divided into four parts. Two parts is distributed to the brother and one part to each sister, in accordance with the above rule.

(d) They are entitled to the residue where they inherit with daughters or son's daughters.[26]



The deceased is survived by a daughter, a son's daughter and a sister. The daughter and son's daughter receive their allotted Quranic shares, namely, one-half and one-sixth respectively. The residue of two-sixths devolves upon the sister in terms of the above rule.

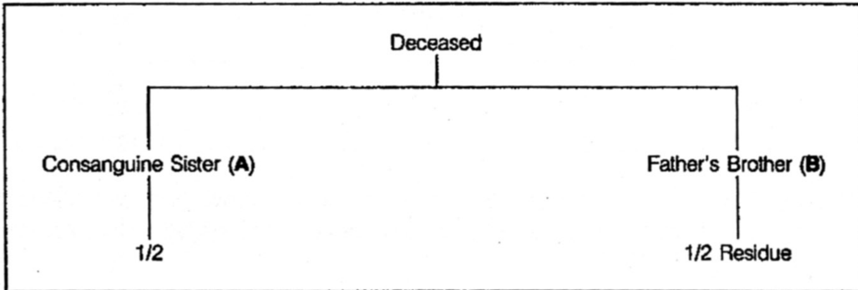
25 Because they are equal in degree of relationship to the deceased.
26 In accordance with a statement of the Holy Prophet Muhammed (PBUH), "Make sisters residuaries with daughters".

11.8 Consanguine sisters

The rules applicable to sisters are equally applicable to consanguine sisters, *mutatis mutandis.*[27]

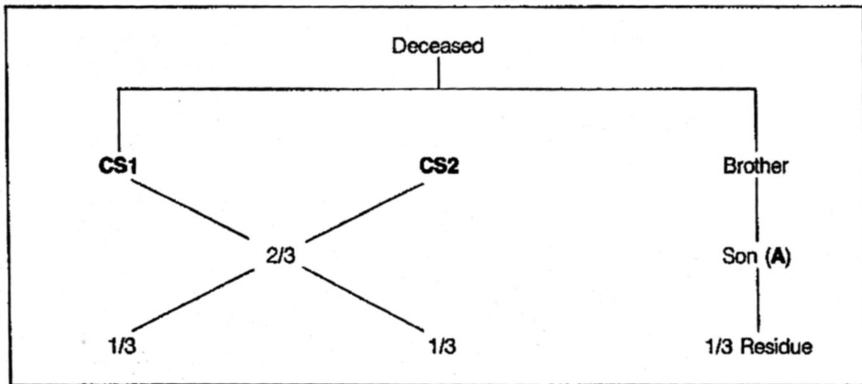
The consanguine sister, that is the sister by the same father, receives:

(a) In the case where she is alone, one-half.



The deceased is survived by a consanguine sister, A, and a full uncle, B. A receives one-half as Quranic heir in accordance with rule (a). The residue of one-half devolves upon B as nearest residuary.

(b) In the case where there are two or more, they receive two-thirds in the aggregate subject to the proviso that there are no full sisters.

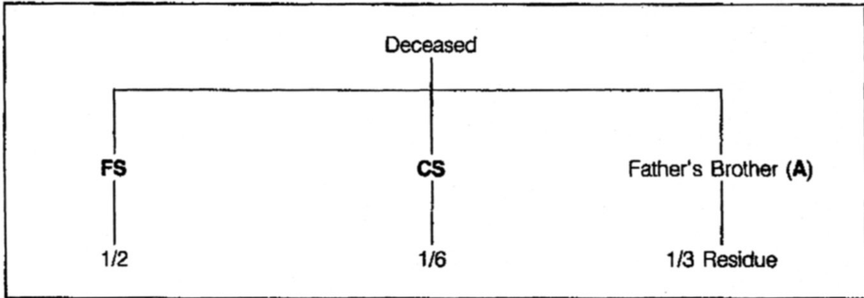


The sole surviving relatives of the deceased are two consanguine sisters, CS1 and CS2, and a brother's son A. CS1 and CS2 inherit their fixed Quranic portion of two-thirds in common, in conformity with rule (b), CS1

27 Full brothers and sisters and consanguine brothers and sisters, are by consensus of jurists excluded by the son and son's son however low and by the father of the deceased. Morever, consanguine brothers and sisters are excluded by full brothers and by full sisters where the latter take as residuaries.

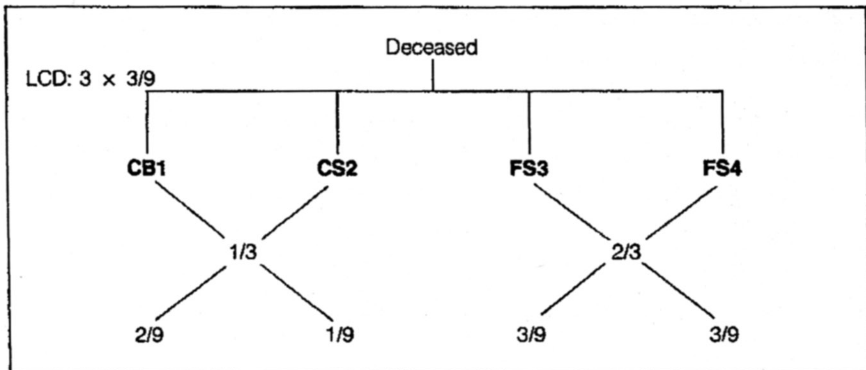
and CS2, therefore, receive one-third each. The residue of one-third devolves upon A as the nearest residuary.

(c) One-sixth where she co-exists with one full sister so as to bring about the total maximum of two-thirds.



The sole surviving relatives are a full sister, FS, a consanguine sister, CS and a full uncle A. FS and CS receive their Quranic portions, namely one-half and one-sixth respectively. The residue of one-third devolves upon A as nearest residuary.

(d) They don't inherit in the presence of two sisters by the same father and mother (full sisters) unless they co-exist with a consanguine brother who would convert them into residuaries. In such event, they would take the residue, the male (consanguine brother) taking two parts and the female (consanguine sister) taking one part.

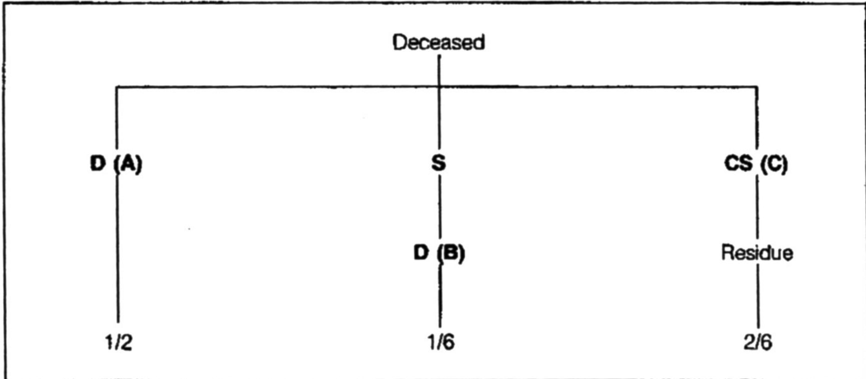


The surviving relatives of the deceased are a consanguine brother, CB1, a consanguine sister, CS2, and two full sisters FS3 and FS4. In default of CB1, CS2 would have been excluded by FS3 and FS4. However, the presence of CB1 converts CS2 into a residuary, enabling the proportion of 2:1 to apply.

In the result, FS3 and FS4 receive two-thirds in common with the balance devolving upon CB1 and CS2 in the ratio 2:1. Applying the LCD method, the net estate is divided into nine shares in accordance with the above rule (d).

CB1 and CS2 receive respectively two shares and one share. FS3 and FS4 receive three shares each.

(e) The residue in her capacity as residuary with daughters or son's daughters.

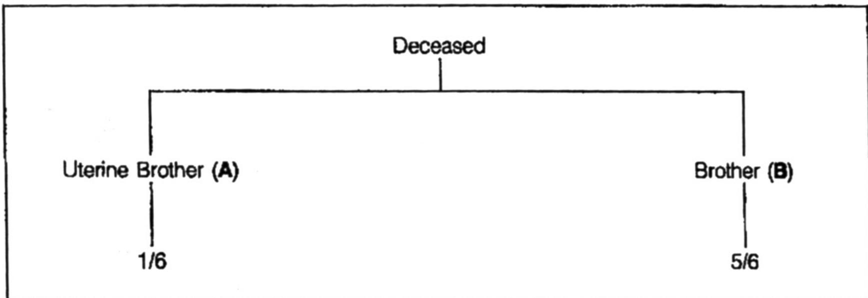


The sole surviving relatives of the deceased are a daughter A, a son's daughter, B, and a consanguine sister, C. A and B inherit their fixed Quranic proportions of one-half and one-sixth respectively so as to exhaust the two-thirds. The residue of two-sixths devolves upon C in accordance with the rule under (e).

11.9 Uterine brother
11.10 Uterine sister

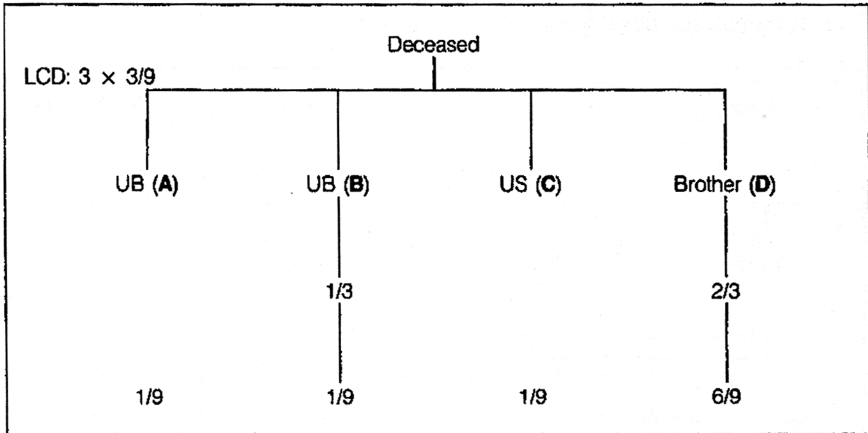
In the case of uterine brothers and sisters, (mother's children: they have the same mother but different fathers) the following rules are applicable:

(a) They receive 1/6 where one of them exists alone.



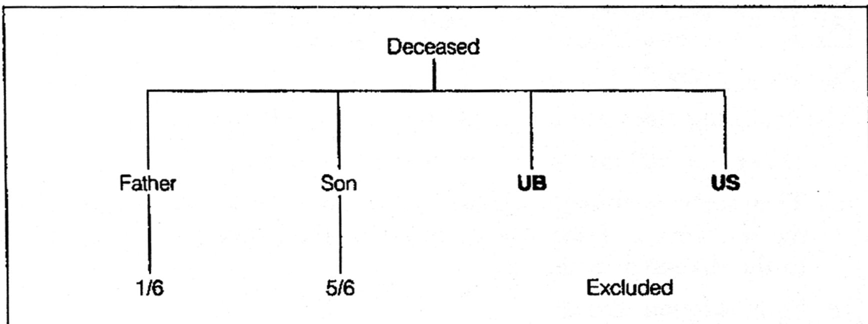
The surviving relatives are a uterine brother, A, and a brother, B. A inherits his specified Quranic portion of one-sixth in conformity with the above rule whilst the remainder of five-sixths devolves upon B as nearest residuary.

(b) When two or more, they receive one-third in common to be shared in equal proportions.



The deceased is survived by two uterine brothers, A and B, a uterine sister, C and a brother, D. A, B and C receive one-third in equal shares and the residue of two-thirds devolves upon D. In the result, the net estate is divided into nine shares, with A, B and C receiving one share each and D taking the balance of six shares.

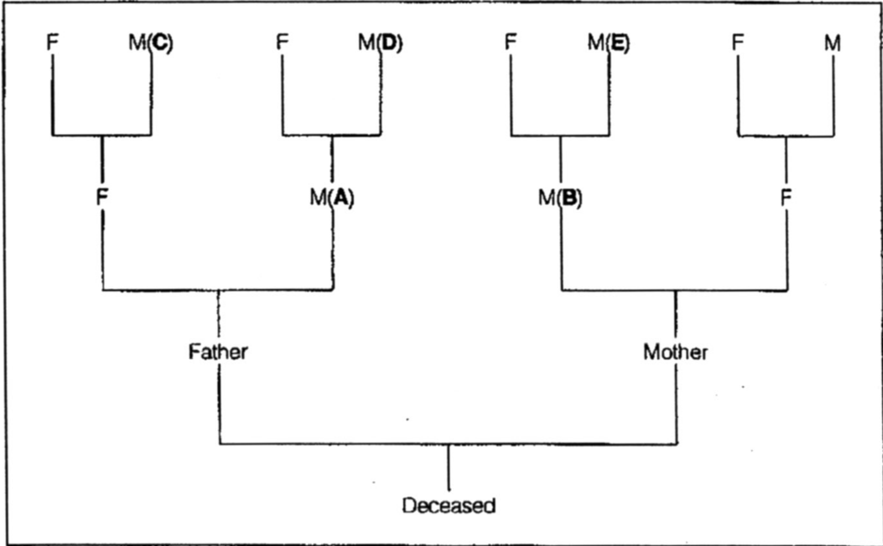
(c) The uterine brothers and sisters are excluded by the child, son's children however low and by the father and grandfather by consensus of jurists.



The surviving relatives are a father, son, a uterine brother, UB, and a uterine sister, US. In accordance with the rule under (c), the uterine brother and sister are excluded. Consequently, the father as Quranic heir receives one-sixth and the residue of five-sixths devolves upon the son as residuary of the first class.

11.11 True grandmother

As stated, the true grandmother is that female ancestor between whom and the deceased no false grandfather intervenes.



In this illustration, the surviving relatives are all true grandmothers, namely:

Father's Mother – A Mother's Mother – B	in the first degree of ascent
Father's father's Mother – C Father's mother's Mother – D Mother's mother's Mother – E	in the second degree of ascent

The following rules are applicable to true grandmothers.

(a) They are excluded from succession by the mother.

(b) They receive one-sixth, whether one or more, and whether related from the mother's or father's side, provided that, they are equally related to the deceased in degree.

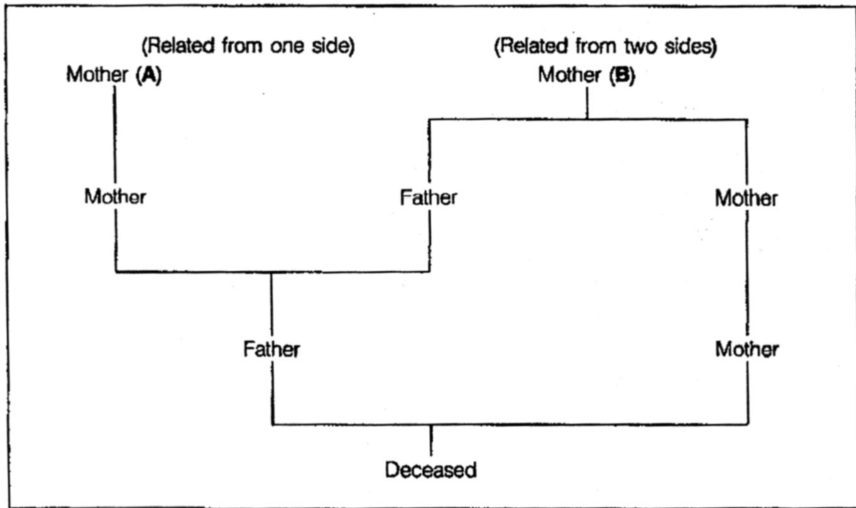
In the illustration above:

A and B receive one-twelfth each.

In their absence C, D and E receive one-eighteenth each.

(c) The nearer in degree excludes the more remote. A and B therefore exclude C, D and E.

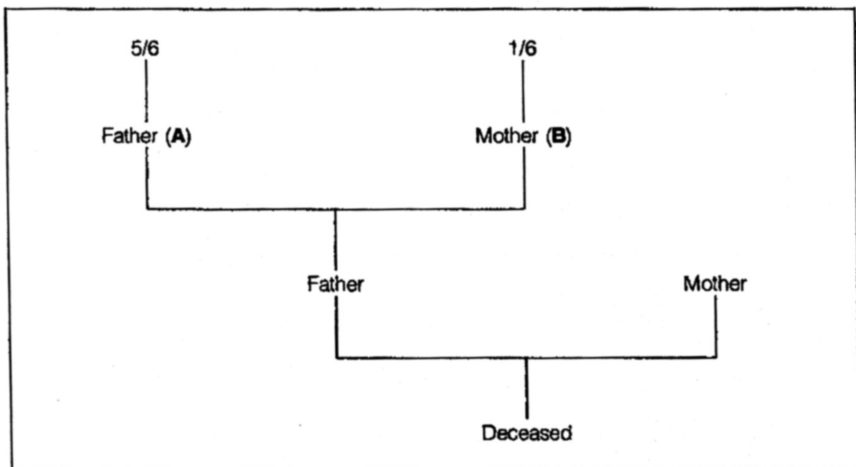
(d) There is a difference of opinion among the jurists in the case of a dual relationship.



The sole surviving relatives of the deceased are two grandmothers. The one grandmother is the father's mother's mother (A) who is related from one side. The other is related from two sides, namely, the mother's mother's mother who is also the father's father's mother (B).

According to the jurist ABU YUSUF, A and B will take one-sixth equally, that is, one-twelfth each – and this is the accepted ruling. Iman Muhammad on the other hand states that by reason of their sides the division must be in thirds. According to this view, B will take $^{2}/_{18}$ and A will receive $^{1}/_{18}$.

(e) The paternal grandmothers are excluded by the father and similarly they will be excluded by the grandfather; but the father's mother however high would inherit with the grandfather since she is not connected through him.



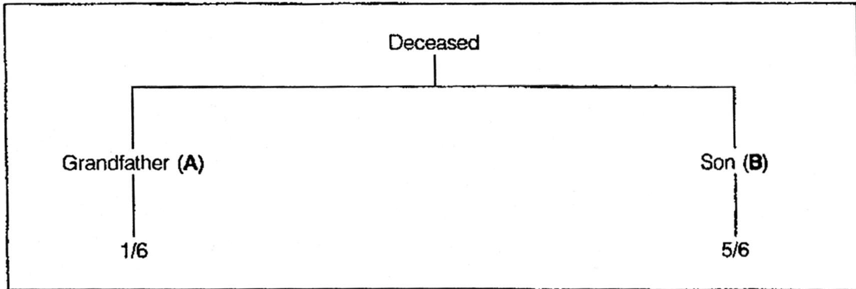
The sole surviving relatives are A and B: father's father and father's mother. B takes one-sixth in accordance with the rule under (e). The residue of five-sixths devolves upon A, as residuary of class two, in the absence of children of the deceased.

11.12 True grandfather

The rules applicable to the father are applicable, *mutatis mutandis*, to the true grandfather.[28] The true grandfather only inherits in default of the father.

The true grandfather takes:

(a) one-sixth along with the son or son's son however low. In this capacity he is a pure Quranic heir.



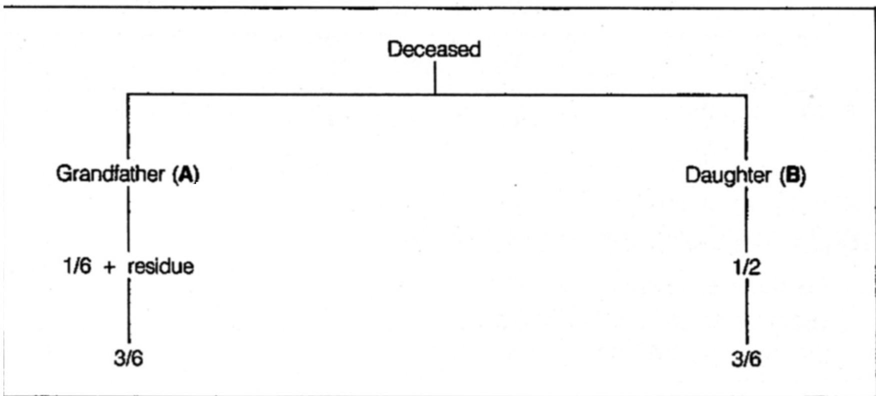
The sole surviving relatives are a true grandfather, A and a son, B. A receives his one-sixth as Quranic heir in accordance with the above rule and the residue of five-sixths devolves upon the son as primary residuary of the first class.

28 The true grandfather is that male ancestor between whom and the deceased no female intervenes – father's father however high. According to the famous jurist ABU HANIFAH, full brothers and sisters and consanguine brothers and sisters are excluded from succession by the true grandfather – and this is the accepted ruling in HANAFI LAW. The majority of the jurists on the other hand hold that they inherit with the grandfather – and following the view of the companion of the Holy Prophet (PBUH), ZAID BIN THABIT, the grandfather is entitled to the share of the brother (in which case he is counted as a brother) or a third of the residue, or a sixth of the whole estate, whichever is the greater, after the share of the Quranic heir is allotted. For example, a deceased woman is survived by her husband, a grandfather and a brother. The husband will take his prescribed Quranic portion of $\frac{1}{2}$ (in the absence of children of the deceased). The grandfather will be counted as a brother, and the remaining half will be divided equally amongst the grandfather and the brother—

Husband $\frac{1}{2}$ = $\frac{2}{4}$
Grandfather .... $\frac{1}{4}$
Brother .... $\frac{1}{4}$

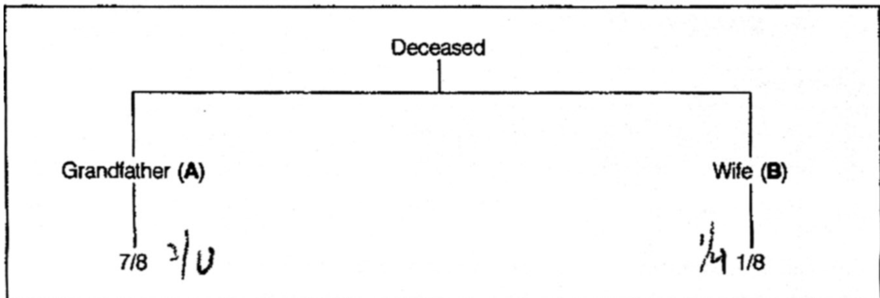
In this case the $\frac{1}{4}$ share of the grandfather (deemed to be a brother) is greater than $\frac{1}{6}$, or $\frac{1}{3}$ of the residue $\frac{1}{2}$, which equals $\frac{1}{6}$.

(b) One-sixth as Quranic heir and the remainder (if any) as residuary if he exists alongside the daughters and/or the son's daughters however low.



The deceased is survived by a true grandfather (A) and a daughter (B). A receives one-sixth as Quranic heir plus the residue of two-sixths as residuary, in accordance with the rule under (b). B receives her fixed Quranic share of one-half.

(c) As pure residuary in circumstances where the deceased leaves no children or son's children however low.



The surviving relatives are a true grandfather, A and a wife, B. B receives her specified Quranic portion of one-eighth and the residue of seven-eighths devolves upon A in accordance with the rule under (c).

Residuaries

CHAPTER XII

Residuaries are of three kinds, namely:

Residuaries in their own right.
Residuaries in another's right.
Residuaries together with another.

12.1 Residuaries in their own right

They are those male relations between whom and the deceased no female intervenes.[29] They consist of four classes, which in order of priority, are:

Class one[30]

(a) the sons of the deceased; thereafter
(b) the son's sons, however low

Class two[31]

(a) the father of the deceased; thereafter
(b) the father's father however high

Class three[32]

(a) full brothers of the deceased; thereafter
(b) consanguine brothers of the deceased; thereafter
(c) full brother's sons however low, thereafter
(d) consanguine brother's sons however low

29 This is, every male in whose line of descent to the deceased no female intervenes – or descent through male links from a common ancestor. Hence, a female can never be a residuary in her own right – See ch 12.2 and 12.3. A residuary heir doesn't receive a prescribed or fixed portion or share but takes the residue after the share of the Quranic heir has been allotted to him or her. If a residuary heir in his own right exists alone, he will take or inherit the entire estate to the exclusion of any uterine relations. For example, if the sole surviving relatives of the deceased are a son and a daughter's son, the son would take the entire estate to the exclusion of the daughter's son who is a uterine relation.
30 The descendants of the deceased.
31 The "root" or "principle" of the deceased.
32 The descendants of the deceased's father.

Class four[33]

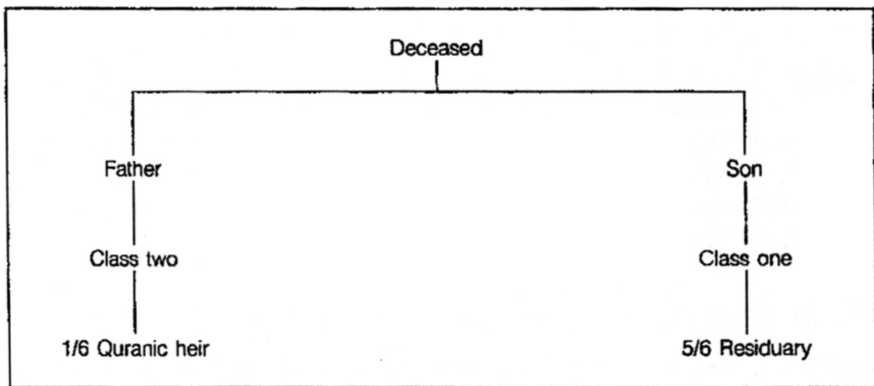
(a) the father's full brother; thereafter
(b) the father's consanguine brother; thereafter
(c) paternal uncle's sons, however low; thereafter
(d) consanguine paternal uncle's sons, however low

These four classes are governed by the following most important rules:

12.1.1 The rule of class

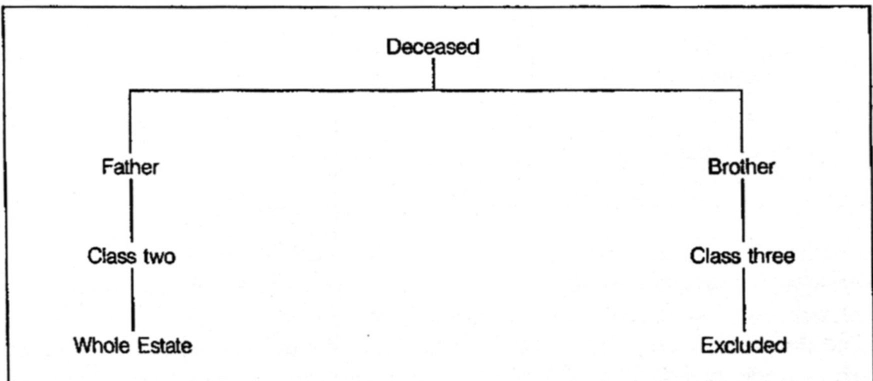
A relative of a higher class excludes a relative of a lower class. In other words, class one excludes class two, class two excludes class three, and class three excludes class four.

(a)



The deceased leaves a father and a son as sole surviving relatives. According to the rule of class, the son excludes the father from succession. However, the father receives his fixed one-sixth portion as Quranic heir and the remainder of five-sixths devolves upon the son as class one residuary.

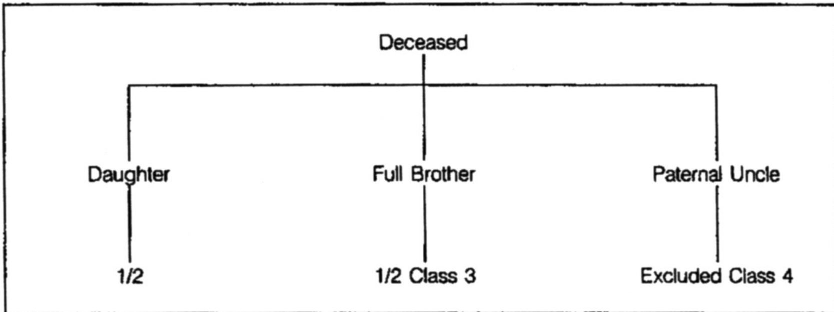
(b)



33 The descendants of the deceased's grandfather.

The deceased is survived solely by a father and brother. The rule of class operates to exclude the brother with the consequence that the father takes the whole estate as class one residuary.

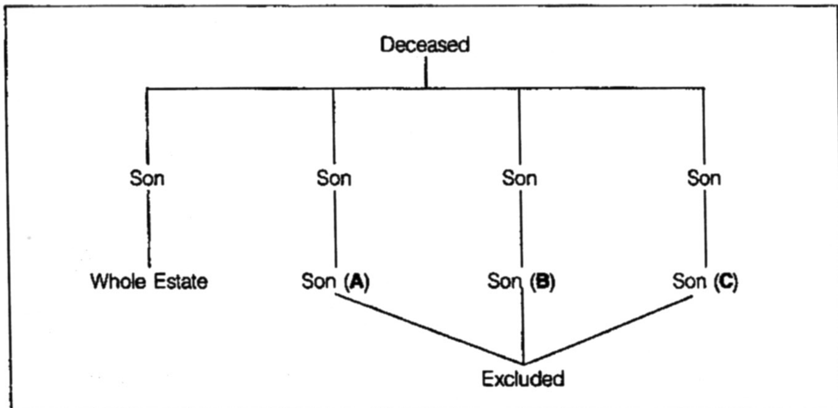
(c)



The deceased leaves a daughter, a full brother and paternal uncle. The daughter receives her allotted Quranic portion of one-half. The remaining half devolves upon the full brother who, by the operation of the rule of class, excludes the paternal uncle.

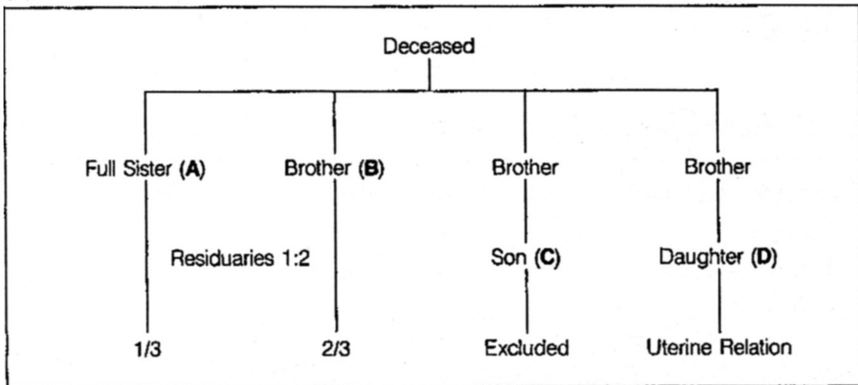
12.1.2 The rule of degree

Within the same class, relatives nearer in degree to the deceased exclude the remoter ones.



The deceased leaves a son and A, B and C, all sons of sons of the deceased who predeceased him. The sons and grandsons belong to class one residuaries. The rule of degree, however, operates to exclude A, B and C (grandsons). In the result, the entire estate devolves upon the son.

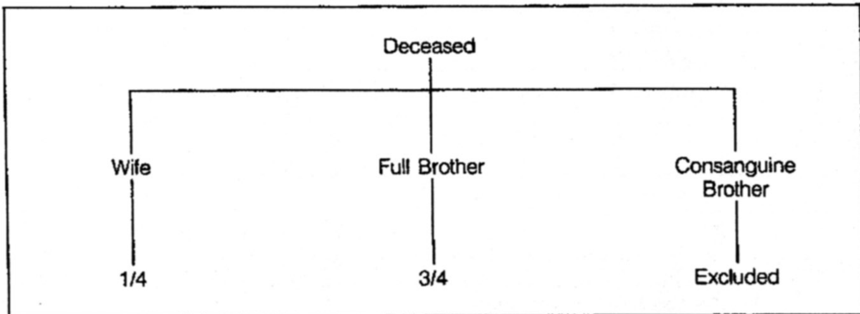
(b)



The sole surviving relatives are a full sister A, a full brother B, a brother's son C, and a brother's daughter D. B excludes C, and simultaneously converts A into a residuary (by reason of being nearer in degree than C). D is a uterine relation because she is neither a Quranic heir nor a residuary. Accordingly, D is excluded in the presence of Quranic heirs and residuaries. In the circumstances, B and A take in the proportion of 2:1, A receives one-third and B two-thirds.

12.1.3 The rule of strength of blood-tie

Amongst relatives of the same class and who are equally related to the deceased in degree, relations by full blood exclude relations by half blood.[34] This rule applies only to classes three and four (collaterals).



The deceased leaves a wife, a full brother and a consanguine brother as sole surviving relatives. The wife receives her allotted Quranic portion of one-quarter in absence of children of deceased. The remaining three-quarters

34 That is, preference is given on the basis of the strength of relationship or blood-tie. Preference is therefore given to a relation whether male or female, having double relationship over one having a single relationship.

devolves upon the full brother who excludes the consanguine brother of the same degree by virtue of the operation of the rule of the strength of blood-tie.[35]

12.2 Residuaries in another's right

Residuaries in another's right are the following four females:[36]

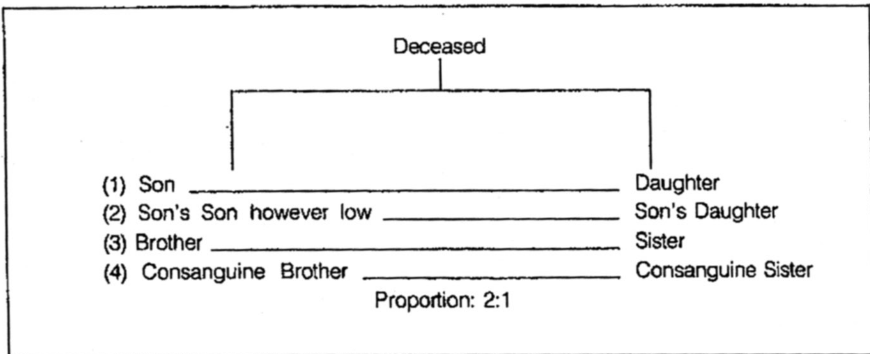
Daughter
Son's daughter
Full Sister
Consanguine Sister

They are converted into residuaries by respectively:

Son
Son's son however low
Brother
Consanguine Brother

When converted, the male residuary heir receives twice that of the female.

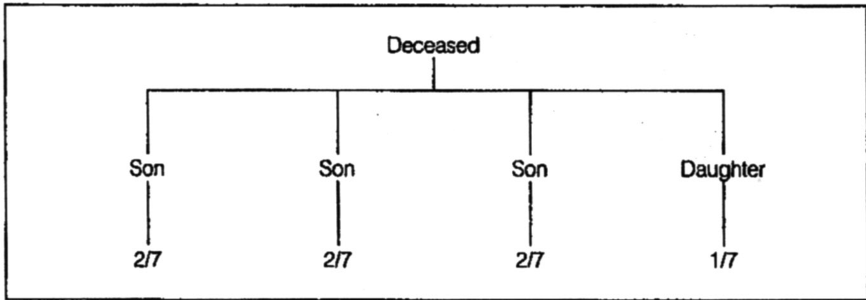
(a)



35 Similarly, a full brother's son will be preferred to the son of a consanguine brother and a full sister who exists as a residuary with the daughter of the deceased will exclude a brother by the same father only.

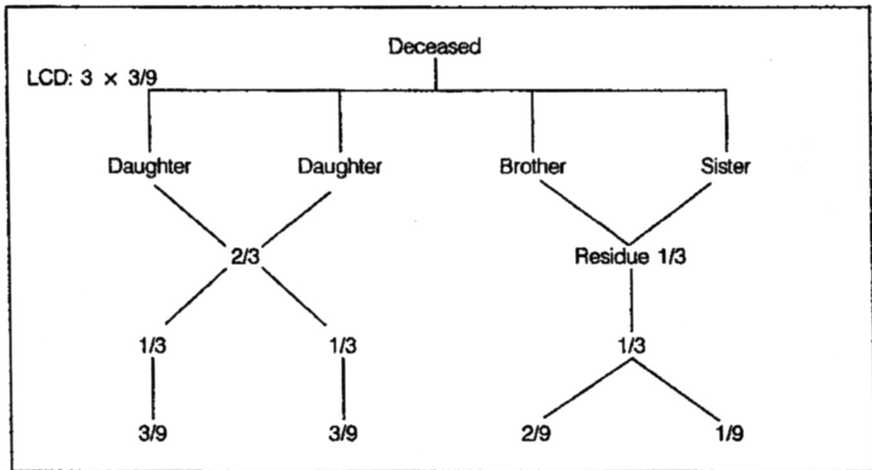
36 That is, Quranic heirs only, whose shares are half and two thirds – and they are converted into residuary heirs by their brothers. The paternal uncle therefore, whilst a residuary heir, cannot convert a paternal aunt into a residuary heir because the latter is not a Quranic heir and doesn't receive a fixed portion.

(b)



The sole surviving relatives of the deceased are his three sons and a daughter. The daughter, if existing alone (in default of the three sons) would have been entitled to one-half as Quranic heir. The presence of the sons, however, converts her into a residuary. As a result, the proportion of 2:1 applies. The net estate is, therefore, divided into seven shares: two shares for each son and one share for the daughter.

(c)

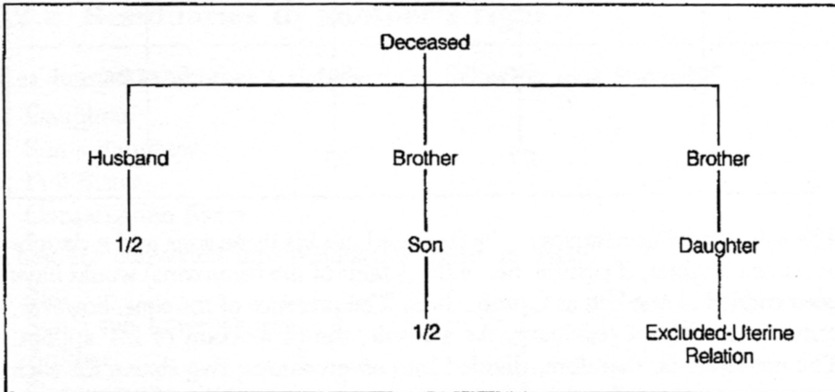


The deceased leaves two daughters, a brother, and a sister. The two daughters receive their allotted two-thirds in the aggregate in the absence of sons. However, the brother converts the sister into a residuary. In the result, and applying the LCD method, the net estate is divided into nine shares: each daughter receives three shares, the brother two shares and the sister one share.

The daughter, son's daughter, sister and consanguine sister in their capacity as Quranic heirs receive one-half (when existing alone) and two-thirds (when two or more).

In view of the aforegoing, it follows that a female relative who is a uterine relation cannot be converted into a residuary by a male residuary heir of the same degree.

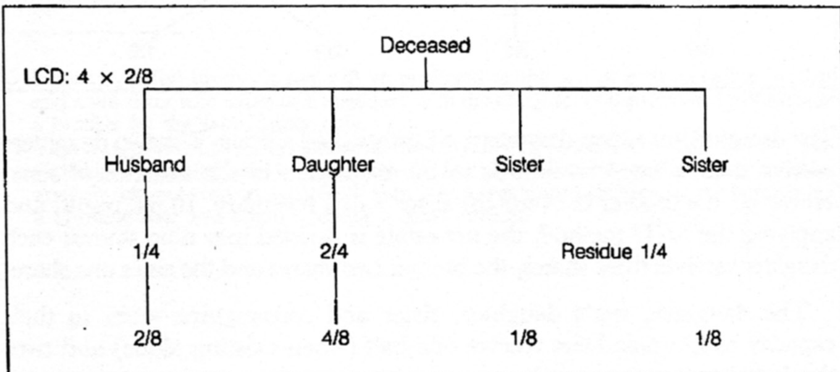
(d)



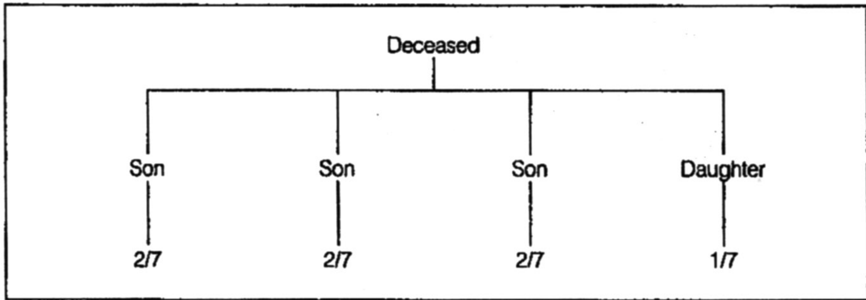
The deceased leaves a husband, a brother's son and a brother's daughter. The husband receives his specified Quranic portion of one-half in the absence of children of the deceased. The remaining half devolves upon the brother's son as residuary heir of the third class. The brother's daughter is excluded because she is a uterine relation (not being a Quranic heir or residuary). Had there been a brother's son in place of the brother's daughter, the residue would have been equally divided between the two residuaries.

12.3 Residuaries together with another

These refer to female Quranic heirs (full sister and consanguine sister) who become residuaries in the presence of other females (daughter and son's daughter).

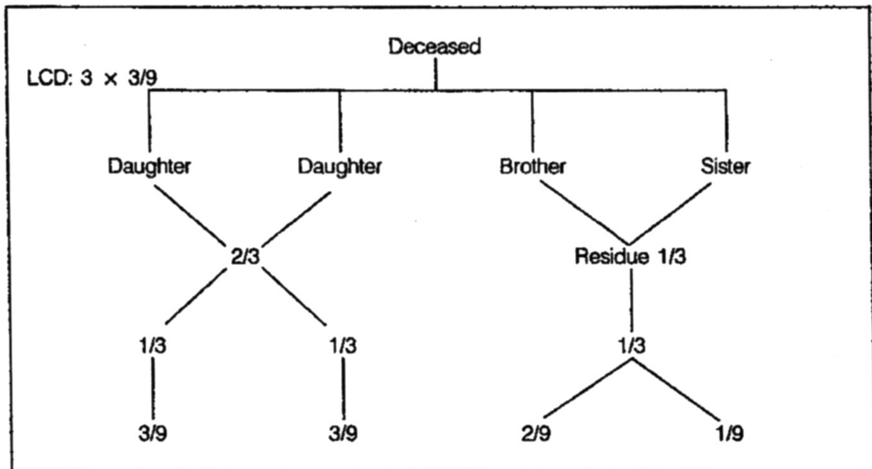


(b)



The sole surviving relatives of the deceased are his three sons and a daughter. The daughter, if existing alone (in default of the three sons) would have been entitled to one-half as Quranic heir. The presence of the sons, however, converts her into a residuary. As a result, the proportion of 2:1 applies. The net estate is, therefore, divided into seven shares: two shares for each son and one share for the daughter.

(c)



The deceased leaves two daughters, a brother, and a sister. The two daughters receive their allotted two-thirds in the aggregate in the absence of sons. However, the brother converts the sister into a residuary. In the result, and applying the LCD method, the net estate is divided into nine shares: each daughter receives three shares, the brother two shares and the sister one share.

The daughter, son's daughter, sister and consanguine sister in their capacity as Quranic heirs receive one-half (when existing alone) and two-thirds (when two or more).

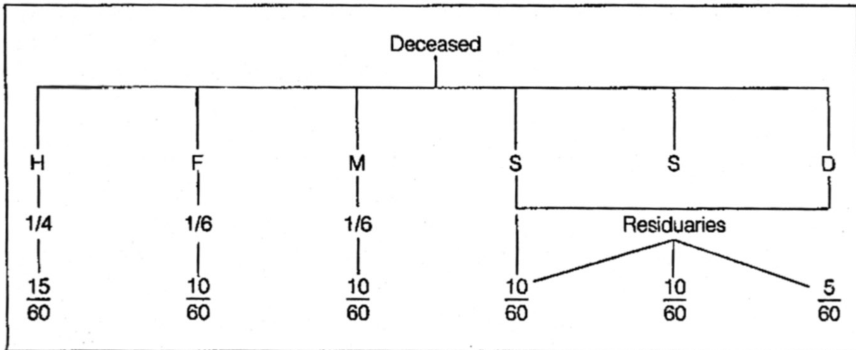
Quranic heirs and residuaries
Some examples

CHAPTER XIII

The rules governing Quranic heirs and residuaries (chapters 11 and 12) may be illustrated by the following examples.

13.1 Example

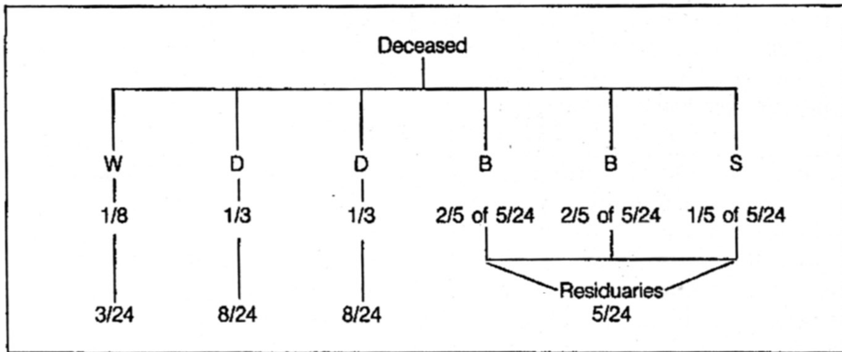
The sole surviving relatives of a deceased person are her husband, father, mother and two sons and a daughter.



H, F, and M are Quranic heirs: they take their allotted portions first. The son converts his sister (the daughter of the deceased) into a residuary heir so that the residue is divided amongst the children of the deceased in the proportion of two parts to a son and one part to a daughter.

13.2 Example

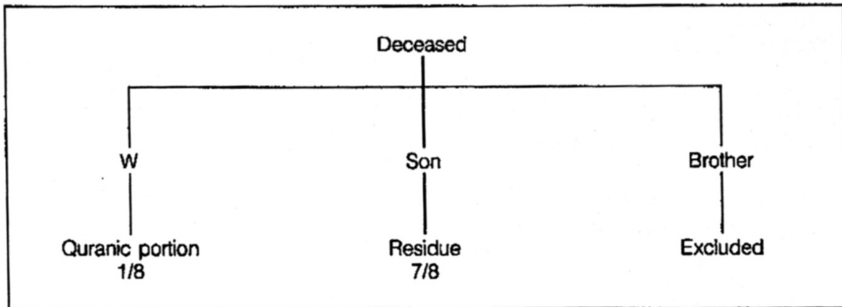
The sole surviving relatives of a deceased are his wife, two daughters, two brothers and a sister.



The Quranic heirs W, D and D take their prescribed portions first. After satisfaction of their prescribed portions there is a residue of 5/24 which must be divided amongst the residuaries. The brother converts his sister into a residuary and in accordance with the general rule in such cases the brother will take two parts (of the residue) and the sister one part.

13.3 Example

The sole surviving relatives of a deceased person are his wife, a son and a brother.



After allotting the prescribed portion of 1/8 to the wife who is a Quranic heir, the residue of 7/8 devolves upon the son as a residuary heir of the first class. The brother who is a residuary heir of the third class is excluded by the son – the nearest male agnate.

Uterine relations

CHAPTER XIV

A uterine relation is that relative of the deceased who is neither a Quranic heir nor a residuary. A uterine relation is only entitled to inherit in default of both Quranic heirs and residuaries, save for one exception: the uterine relations inherit together with the husband or wife (as the case may be) because the latter are not entitled to take the surplus by return.[37]

In short, a uterine relation is that relative of the deceased (for example: daughter's son) who does not inherit as a Quranic heir or a residuary. In the absence of both Quranic heirs and residuaries, a uterine relation will take the entire estate. Because the deceased is normally survived by Quranic heirs and residuaries, uterine relations inherit rarely in practice.

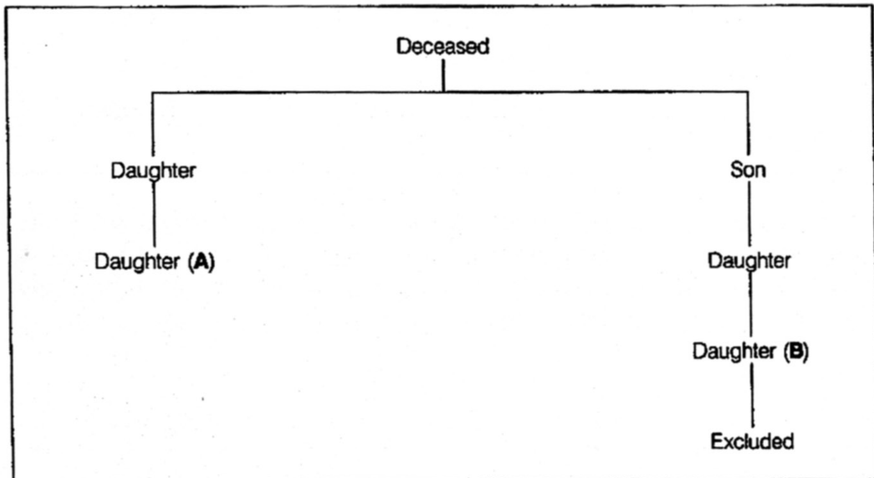
There are four classes of uterine relations in the following order of priority:

14.1 Class One

The descendants of the deceased:
- the children of daughters; and
- the children of son's daughters.

The rules governing succession under this class are:

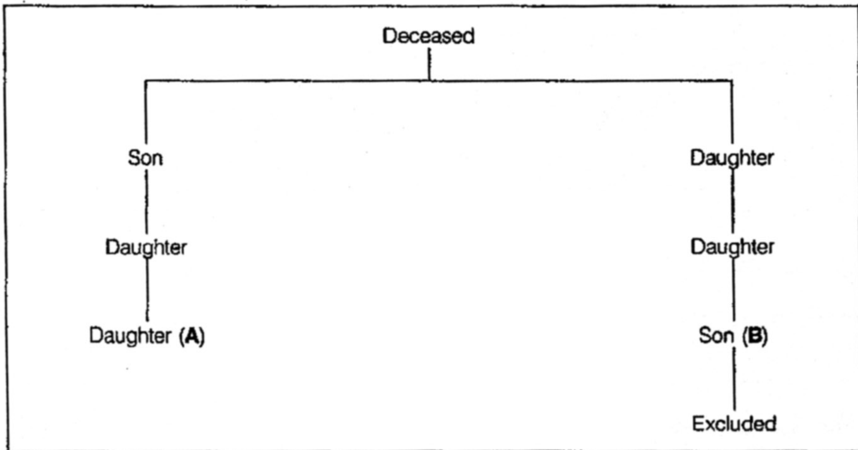
(a) The nearer in degree to the deceased excludes the more remote. (Rule of degree).



37 See ch 16 on the doctrine of return.

A deceased leaves a daughter's daughter A and a daughter B of a son's daughter as his only surviving relations. Both A and B are uterine relations because they are connected to the deceased through a female. By reason of the operation of the rule of degree, A (second degree) excludes B (third degree).

(b) Amongst claimants of equal degree, the descendants of Quranic heirs or residuaries are preferred to descendants of uterine relations.



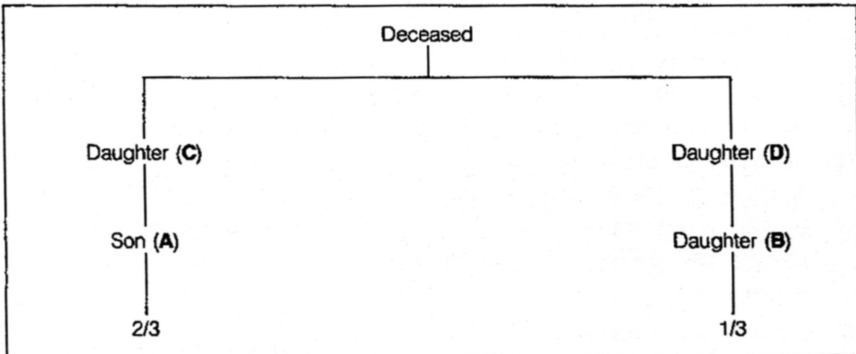
A deceased is survived by a daughter A of a son's daughter and a son B of a daughter's daughter. A excludes B because A is descended from a son's daughter (Quranic heir) and B from a daughter's daughter (uterine relation).

(c) If the claimants are of equal degree and:

(i) the person through whom they are related to the deceased are not Quranic heirs or residuaries; or all of them are descended from Quranic heirs or residuaries; and

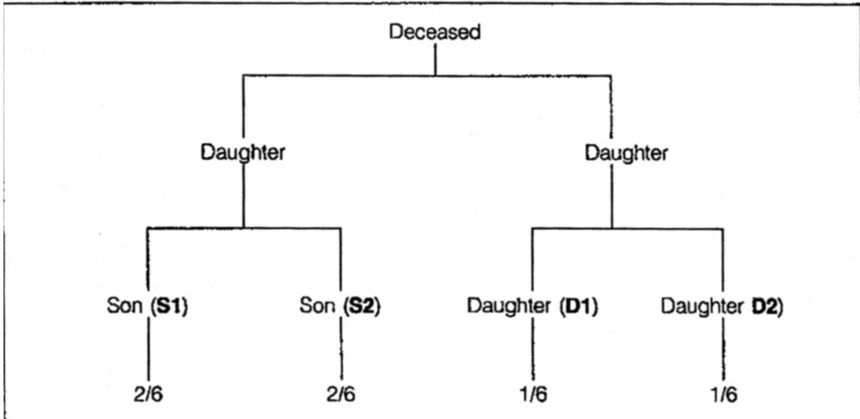
(ii) the sex of the roots (intermediate ancestors) are same, they (claimants) shall take *per capita* subject to the general rule of double share to the male.

(a)



The deceased is survived by a son A of a daughter and a daughter B of a daughter. A and B are of equal degree and their intermediate ancestors, C and D, are of the same sex. Accordingly, the son receives two-thirds and the daughter one-third in accordance with the general rule of the male receiving twice the share of the female.

(b)



The deceased leaves two sons S1 and S2 of a daughter and two daughters D1 and D2 of a daughter. As the claimants S1, S2 and D1 and D2 are of the same degree and the roots are of the same sex, S1 and S2 receive two-sixths each whilst D1 and D2 receive one-sixth each.

(d) Where the sex of the roots differ (that is, the persons through whom the claimants are connected with the deceased differ in their sex):

According to Imam Muhammad:[38]

(i) Distribution would take place in the line of descent where the difference of sex first appears according to the rule of double share to the male.

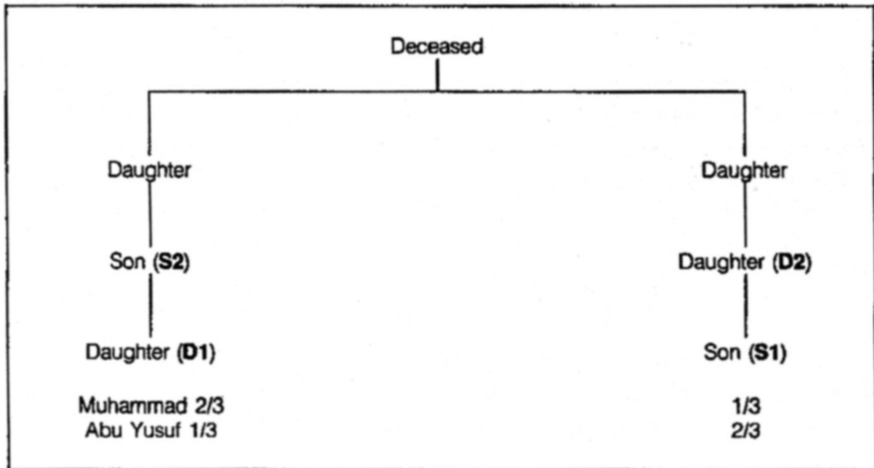
(ii) For the purpose of distribution in (i), every male relative of the intermediate link (or the line of descent where the difference of sex first appears) will count as so many surviving claimants as are claiming through him; likewise, every female relative of the intermediate link will count as so many surviving claimants as are claiming through her.

(iii) In the result, upon the distribution in (i) and (ii), the male relatives will be grouped in one class; and the female relatives in another.

(iv) Thereafter, the shares allotted to the male relatives will descend to the persons claiming through them; likewise the shares of the female relatives in (i) and (ii) above is repeated, *mutatis mutandis,* until the actual surviving claimants are reached.

38 A distinguished Muslim jurist.

(a)



A deceased leaves a daughter D1 of a son of a daughter and a son S1 of a daughter of a daughter.

According to Imam Muhammad:

A difference of sex appears in the second line of descent S2 and D2. S2 will count as many claimants as claim through him. Likewise, D2 will count as many claimants as claim through her. In view of the fact that there is one surviving claimant in respect of each branch, S2 is allotted two-thirds and D2 one-third, according to the rule of double share to the male relative. Accordingly S2 passes his two-thirds to D1 and D2 passes her one-third to S1. The distribution is, therefore, as follows:

D1:2/3
S1:1/3

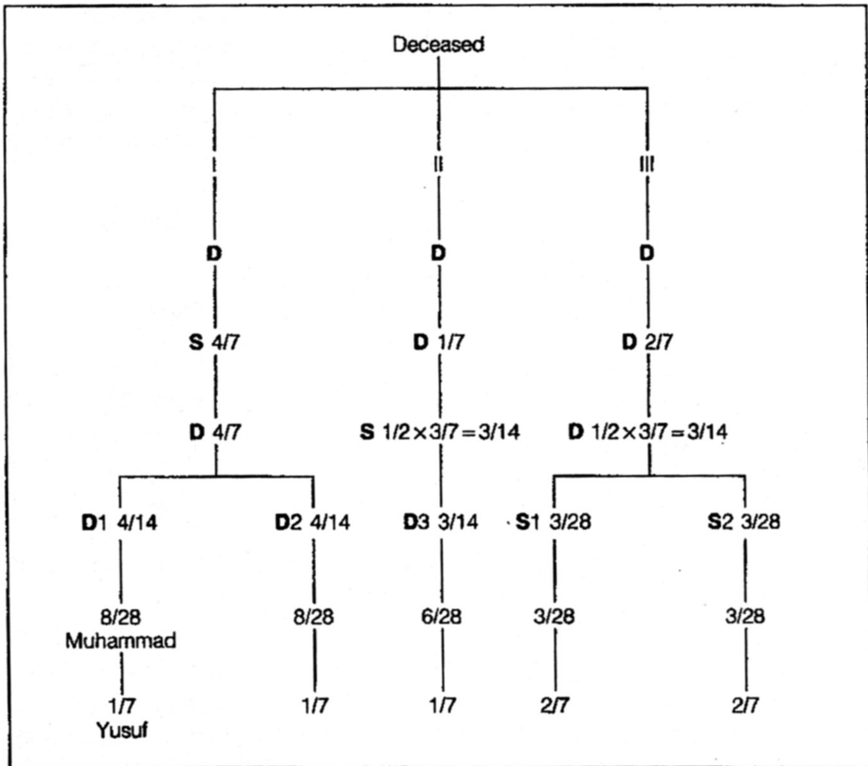
According to Imam Abu Yusuf:[39]

S1 and D1 take per capita in proportion of 2:1. The distribution is therefore as follows:

S1:2/3
D1:1/3

(b) A deceased leaves two daughters D1 and D2 of a daughter's son's daughter, one daughter D3 of a daughter's daughter's son and two sons S1 and S2 of a daughter's daughter's daughter. D1 and D2 belong to branch I, D3 belongs to branch II, and S1 and S2 to branch III.

39 A distinguished Muslim jurist.



The distribution would be as follows:

According to Imam Yusuf:

The actual claimants, namely, D1, D2 D3, S1 and S2 will inherit, the male taking double the share of the female. Accordingly, the estate will be divided into seven parts and the distribution will be as follows:

D1 = 1/7	S1 = 2/7
D2 = 1/7	S2 = 2/7
D3 = 1/7	

According to Imam Muhammad:

In this example, the ancestors differ in sex in the second line of descent. Accordingly, the distribution would be in seven parts in view of the fact that the two claimants in branch I would count as two males and the two claimants in branch III would count as two females. Hence, the distribution in the second line of descent would be: DS = 4/7; DD = 1/7 and DD = 2/7.

The 4/7 in branch I descends to the claimants of branch I, namely D1 and D2 who take equally. Therefore, D1 will receive 8/28 and D2 will take 8/28.

The collective share in the second line of descent of branches II and III is 3/7 (1/7 + 2/7); which is to be redistributed to their descendants. However, further differences of sex appear in the third line of descent in respect of branches II and III. The above scheme of distribution is again repeated. The one claimant in the second branch II is counted as a male whilst the two claimants in the third branch III are counted as two females. Hence, DDS will receive 1/2 of 3/7 which equals 3/14; and DDD will receive 1/2 of 3/7 which also equals 3/14.

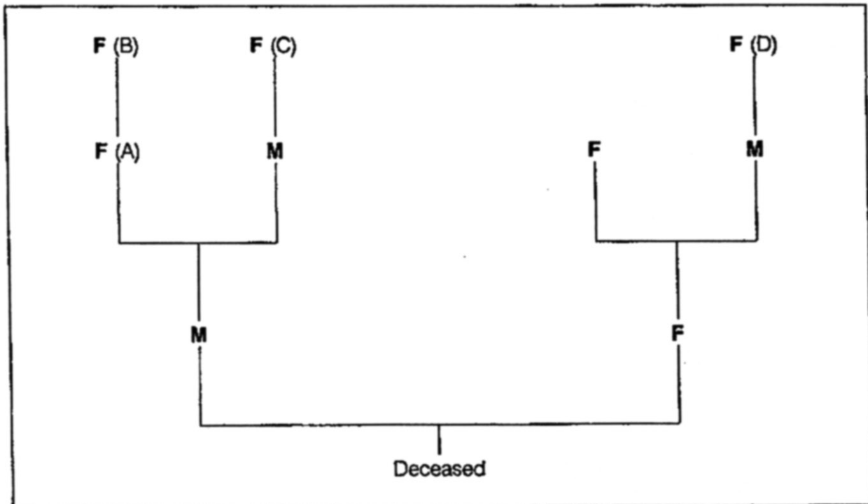
The 3/14 in the third line of descent in branch II would devolve on claimant D3 whilst the 3/14 in branch III would devolve on claimants S1 and S2 equally. Hence, D3 takes 6/28 whilst S1 and S2 take 3/28 each.

14.2 Class Two

The ascendants of the deceased:

false grandfathers, and
false grandmothers

An example of false grandfathers are shown in the following illustration:



A is a false grandfather in the first line of ascent: mother's father. B, C and D are false grandfathers in the second line of ascent: mother's father's father; mother's mother's father; and father's mother's father, respectively.

An example of false grandmothers may be illustrated as follows:

A is a false grandmother in the third degree of ascent; mother's father's mother. B and C are false grandmothers in the fourth degree of ascent: mother's mother's father's mother; and mother's father's mother's mother.

14.3 Class Three

Descendants of the mother and father of the deceased:
- children of sister
- children of brother's daughters
- children of uterine brothers

These heirs may be illustrated as follows:

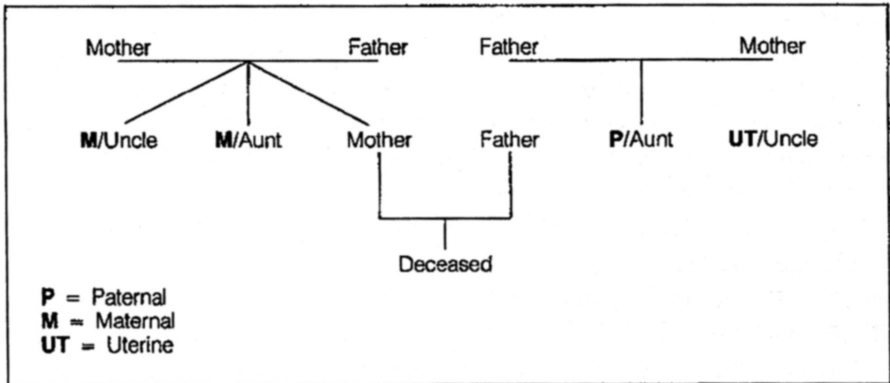
S1, S2, S3 and D1, D2, D3, D4 are all uterine relations of the third class.

14.4 Class Four

Descendants of the two grandfathers and the two grandmothers of the deceased:

paternal aunts
uterine uncles by the same mother
maternal uncles
maternal aunts

These heirs may be illustrated as follows:



All those persons related to the deceased through the heirs listed in the four classes are uterine relations.

Devolution of vested inheritance

CHAPTER XV

According to Islamic Law, upon the death of a person, his heirs and legatees become the owners of his estate in proportion to their legal shares.

Consequently, it often happens that upon the death of a person and before actual distribution to the legal heirs, one or more of the said heirs may die. Accordingly, the shares that devolved upon the heirs which have died constitute part of such deceased heir/s estate and are, therefore, inheritable by his or her own heirs.

This is called Munaasikhah[40] in Islamic Law.

The general rule of inheritance is applicable to such cases; assign the legal shares to the original claimants including the deceased heir and, thereafter, assign the deceased heir's share to his or her heirs.

The Muslim jurists have, however, devised an ingenious system of calculation in cases of Munaasikhah which will briefly be dealt with by means of the following three examples.

In order to understand this system the following technical terms must be understood:

Tamaathul

When two equal numbers are divided by each other and leave no fraction they are said to be Tamaathul, for example 2 and 2; 5 and 5.

Tadaakhul

Two numbers are said to be Tadaakhul when the smaller divides into the larger exactly leaving no fraction, for example 2 and 4; 6 and 12.

Tawaafuq

Two numbers are said to be Tawaafuq when they have a common factor but do not divide into each other without leaving a fraction, for example 6 and 10 has 2 as its factor:

$3 \times 2 = 6$
$5 \times 2 = 10$

---

40 This is a method of calculation of the shares of all the heirs where an heir dies prior to division of the estate. Any other method arriving at the same result may be adopted.

Tabaayun

When two numbers do not have a common factor nor divide into each other without leaving a fraction they are said to be Tabaayun, for example 2 and 3;4 and 7.

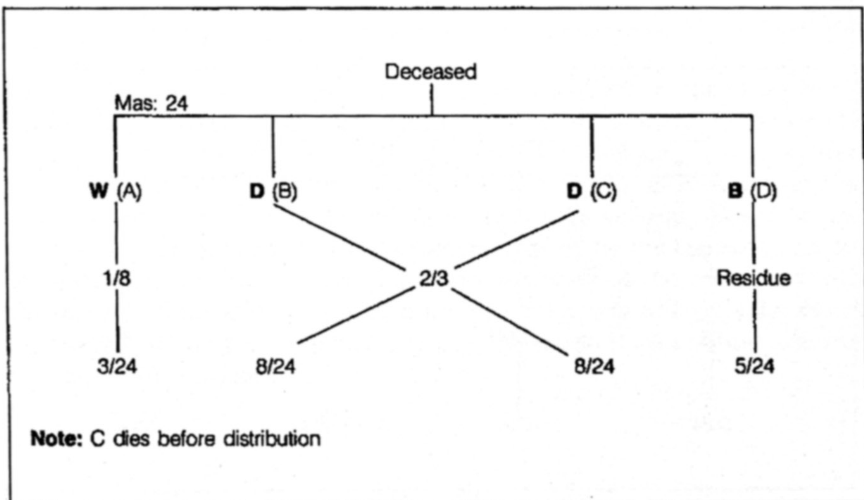
In each of the examples below the abbreviation letters 'Mas' denotes the word 'Masla' which is the lowest common denominator equalling the net distributable value of the estate and the abbreviation letter 'H' denotes the numerator of the share of the deceased heir, literally H = 'on hand'.

Furthermore, the following abbreviations in respect of heirs are used:

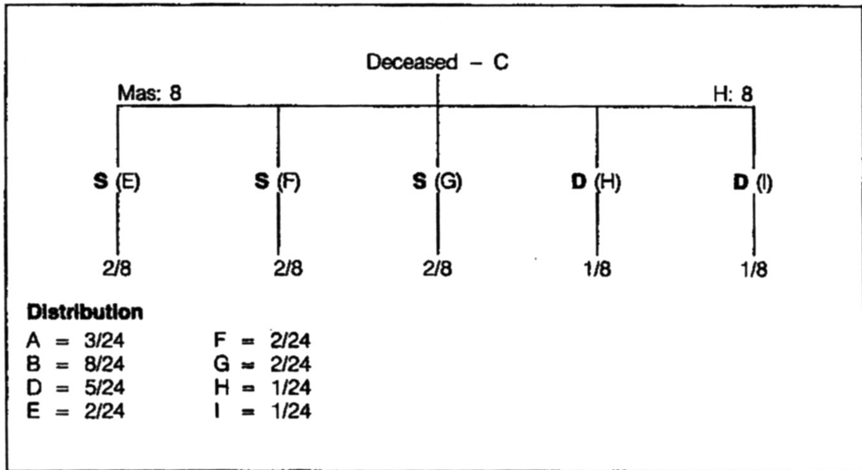
W = Wife
D = Daughter
S = Son
M = Mother
MM = Mother's mother
F = Father
Sis = Sister
B = Brother
U = Uncle
FM = Father's mother
Dec = Deceased

(a) Example of Tamaathul

(a)



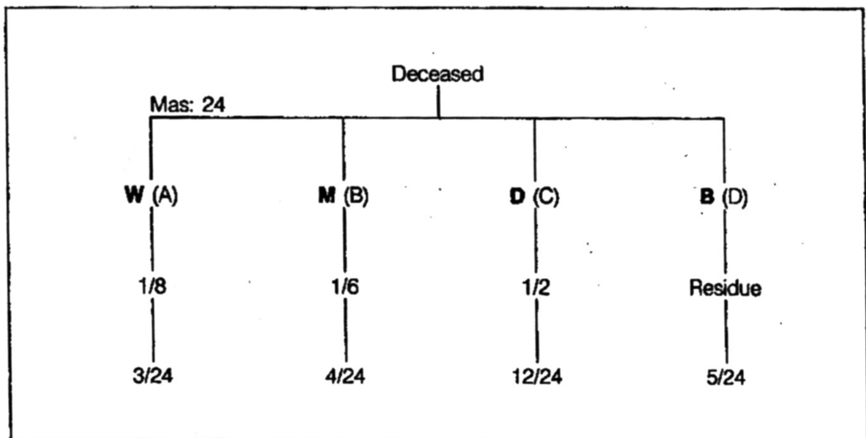
(b)



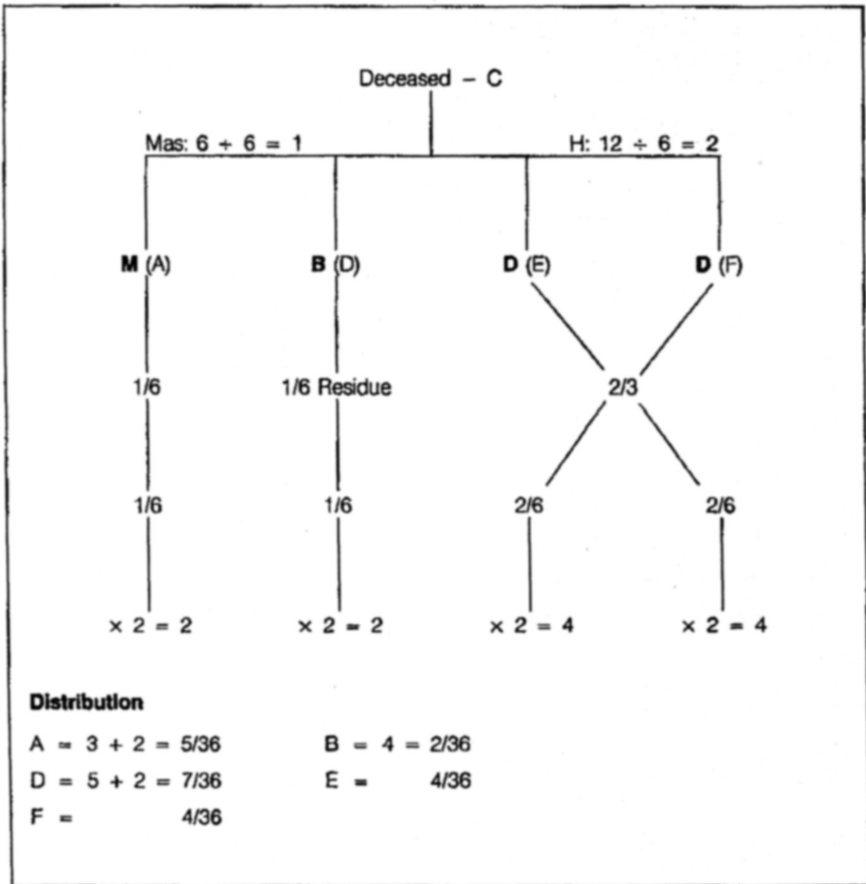
In the above case, daughter C dies before the estate of deceased is distributed. C's heirs are E, F, G, H and I as shown in (b) above. The numerator of deceased heir C's share, namely 8, is brought onto the right hand side in illustration (b). The 8, on hand, is compared with the masla of illustration (b), i.e 8. It will be found that both divide into each other equally. Accordingly, they are Tamaathul. In the case of Tamaathul nothing is done to the respective shares or the masla. The masla is, accordingly, 24 and each heir will receive the respective proportions as shown in the distribution above.

(b) Example of Tadaakhul

(a)



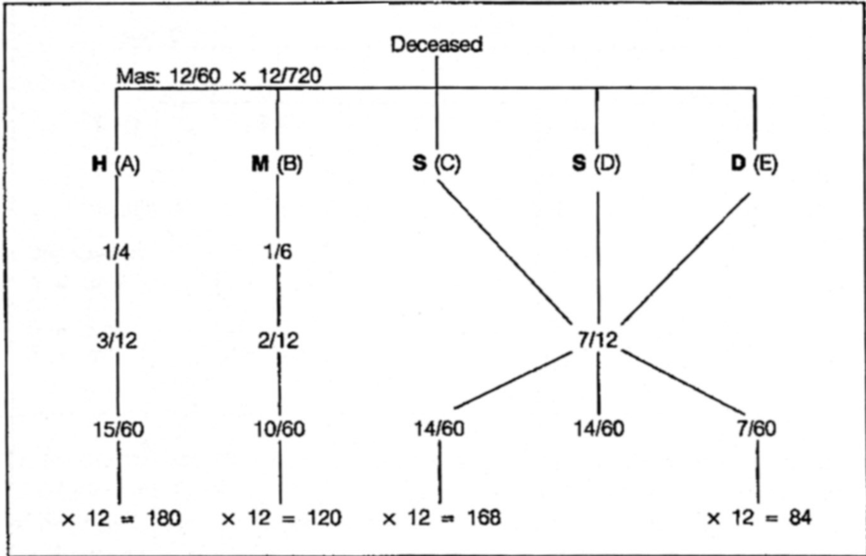
(b)



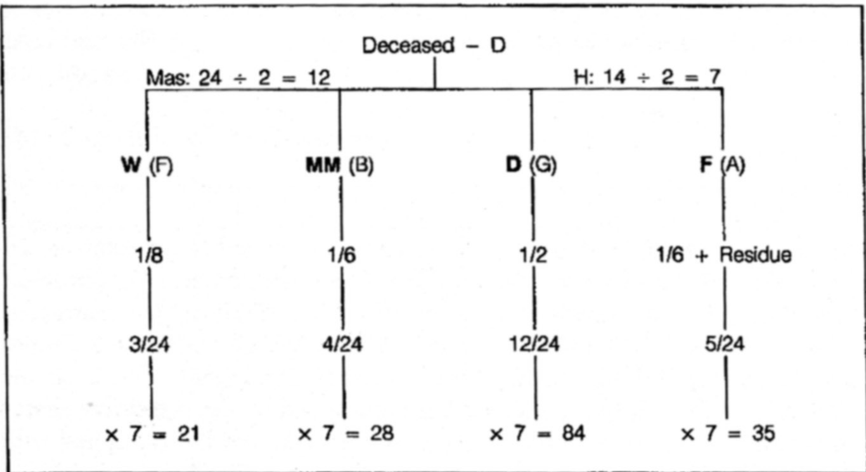
In the above example, daughter of deceased C died before the estate could be distributed. Accordingly, deceased heir C's share namely, 12 is brought onto the right hand side in illustration (b). This number 12 is compared with the masla of illustration (b) which is 6. It will be seen that 6 divides into 12 leaving 2. This is, therefore, a case of Tadaakhul. The 2 on the right hand side in illustration (b) is then multiplied by the respective shares in illustration (b). The 1 on the left hand side need not be multiplied with the shares in illustration (A) as such multiplication will still leave the shares in illustration (a) unaltered. Accordingly, the masla is 24 and the distribution is as shown above.

(c) Example of Tawaafuq

(a)



(b)



In the above example, son D died before the estate of deceased could be distributed. As in previous example, son D's share namely 14 is brought onto the right hand side in illustration (b). This 14, on hand, is compared with masla of illustration (b) which is 24. It is found that the common factor between these two numbers (i.e. 24 and 14) is 2. Hence, this is a case

of Tawaafuq. Both 24 and 14 are accordingly divided by 2 yielding 12 and 7 respectively. This 12 on the left hand masla side in illustration (b) is then multiplied by each of the shares in illustration (a) including the masla namely, 60. The 7 on the right hand side of illustration (b). Accordingly, the new masla is multiplied by 720 and the distribution is:

Distribution

A = 180 + 35 = 215/720   B = 120 + 28 = 148/720
C = 168 = 168/720   E = 84 = 84/720
F = 21 = 21/720   G = 84 = 84/720

The doctrine of return

CHAPTER XVI

This equitable doctrine applies in circumstances where after having allotted to the Quranic heirs their respective quota-shares, there remains a residue which, in the absence of residuaries, must be returned to the Quranic heirs in proportion to their shares, save that the husband and the wife are not entitled to the return.

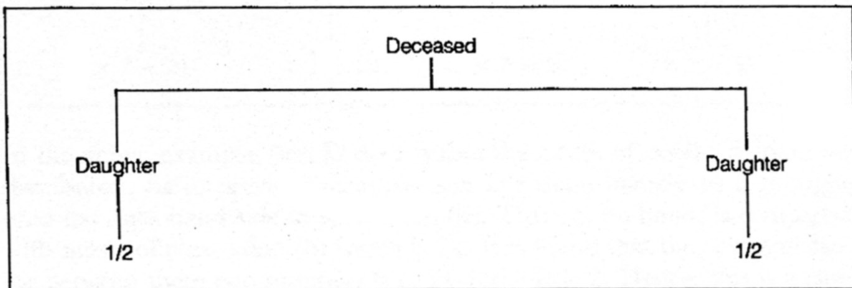
The Quranic heirs entitled to the return are:

Mother
Grandmother
Daughter
Son's daughter
Sister
Consanguine sister
Uterine brother
Uterine sister

In the presence of the father and true grandfather, this doctrine does not apply as these Quranic heirs are also entitled to the residue in specific circumstances.

To facilitate the computation of shares the following rules must be noted:

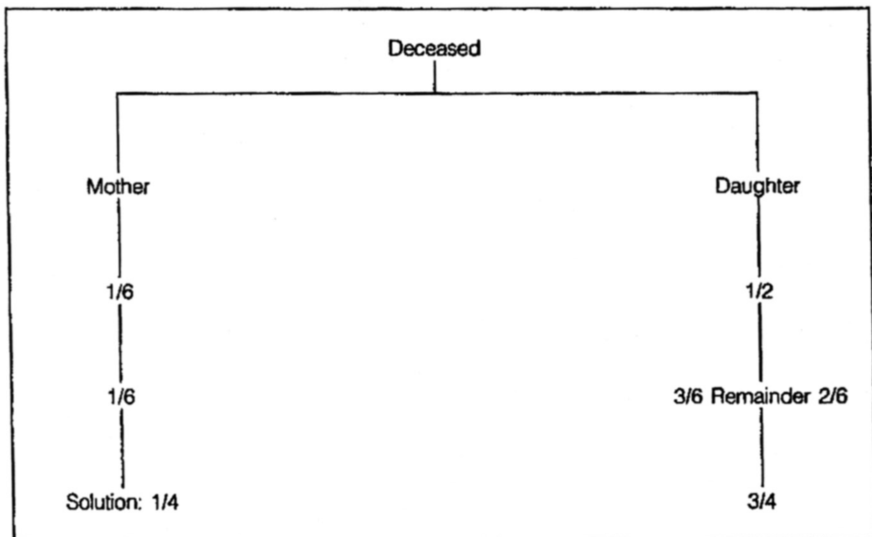
(a) If the Quranic heirs entitled to the return belong to one category (eg. two daughters, or two sisters), the estate must be divided by a figure representing the number of such heirs present.



The deceased is survived by two daughters. Ordinarily, they are entitled to their fixed Quranic portions of a collective two-thirds in the absence of sons. However, there is an excess of one-third in this case which must be returned to the daughters proportionately (in the absence of residuaries).

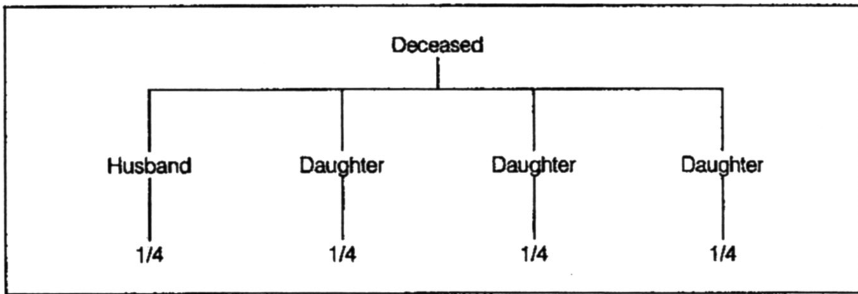
The simple rule is: at the outset, divide the net estate by two, as there are two daughters of the same category, to arrive at the shares. Accordingly each daughter receives one-half.

(b) If the categories of the Quranic heirs entitled to the return differ, the estate must be divided by a figure representing the sum total of the shares of such heirs.



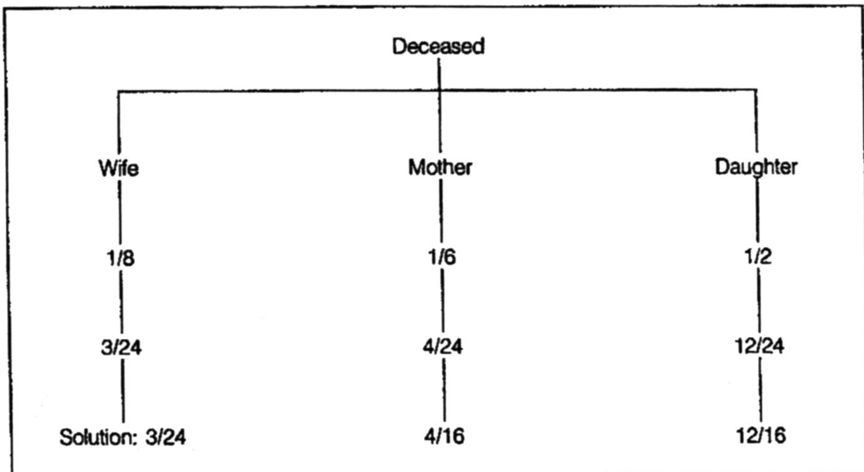
The sole surviving relations of the deceased are a mother and a daughter. As Quranic heirs, the mother receives one-sixth (in the presence of children), and the daughter one-half, or 3/6, (in the absence of sons). There is an excess of two-sixths which must revert to the mother and daughter in the proportions of 1:3 respectively. The simple rule is: reduce the denominators (six in this case) to equal the total of the numerators of the fractional shares, (three plus one in this case). Accordingly, the fractional shares of the mother and daughter are increased to one-quarter and three-quarters respectively. It must be noted that the mother and daughter belong to different categories.

(c) If the husband or wife co-exist with Quranic heirs of the same category, the said husband or wife, as the case may be, must have allotted to them their respective shares, whereupon the residue shall be divided amongst the Quranic heirs entitled to the return.



The deceased leaves a husband and three daughters. The husband is allotted one-quarter. The daughters who are entitled to two-thirds (in absence of sons) must take the surplus in equal proportions. The simple rule is to allot the residue of three-quarters amongst them equally. They, therefore, receive a quarter each. The husband does not share in the surplus.

(d) If Quranic heirs of different categories co-exist with the husband or wife, after assigning to such husband or wife their respective shares (as the case may be), the residue (balance of the estate) must be divided by a figure representing the sum total of the shares of such Quranic heirs entitled to the residue.



The deceased leaves a wife, a mother and a daughter. The wife receives her fixed one-eighth in the presence of children. The mother receives her one-sixth in the presence of children. The daughter takes her specified half in absence of sons. The excess of five twenty-fourths (reduced to a common denominator) must be shared proportionately between the mother and the daughter in the proportions of 1:3 respectively. The simple rule is: reduce the denominator (24) to sixteen by adding the numerators (4 + 12) of the

fractional shares (4/24 and 12/24). The result is that the fractional shares of the mother and daughter are increased to 4/16 and 12/16 respectively. Assume that the net estate equals R48 in value. The distribution would be as follows:

		R
Wife	: 3/24 of R48,00	6,00
Mother	: 4/16 of R42,00	10,50
Daughter	: 12/16 of R42,00	31,50
Total net estate		48,00

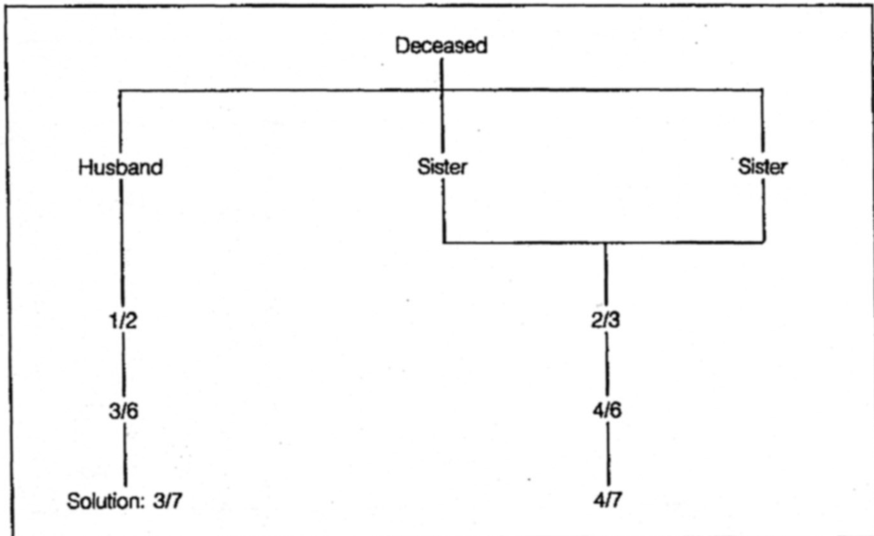
The doctrine of increase

CHAPTER XVII

This doctrine is the opposite of the doctrine of return. It applies under circumstances where sum total of the shares of the Quranic heirs exceed unity and therefore, the total amount of the estate.

Accordingly, the shares of the respective Quranic heirs must be reduced proportionately so as to equal unity. This is most easily done by increasing the denominators of the respective fractional shares to equal the sum total of the numerators.

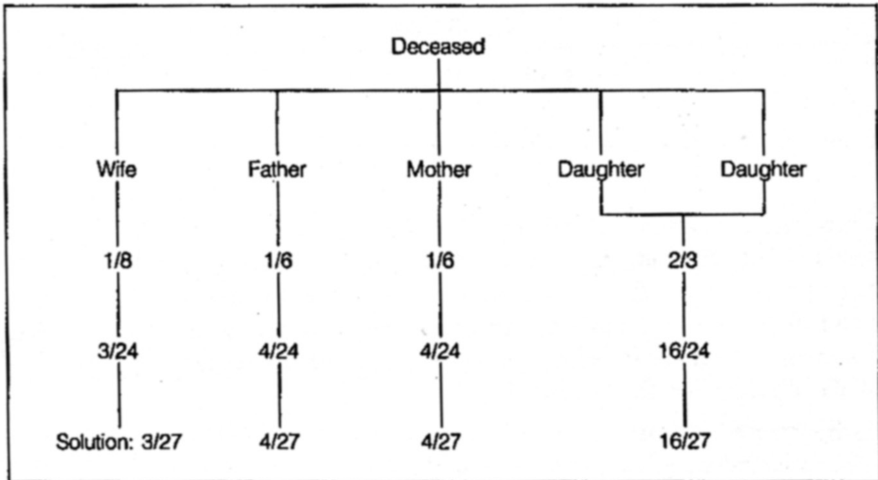
(a)



A deceased leaves a husband and two sisters, all Quranic heirs. The husband receives his allotted one-half (in the absence of children) and the sisters a collective two-thirds. The addition of the respective shares (reduced to the common denominator of 6) gives a sum of 7/6 which exceeds unity. Therefore, the simple rule is: increase the denominator to seven by adding the numerators of three sixths and four-sixths: 3 + 4 = 7. In the result,

the husband receives three-sevenths and the sisters four-sevenths, the respective shares having been proportionately reduced.

(b)



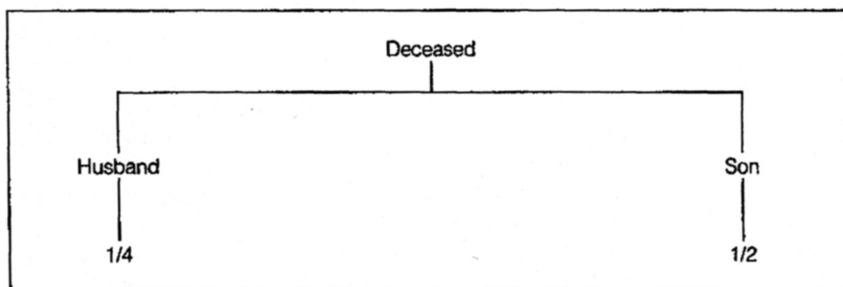
A deceased is survived by a wife, a father, a mother, and two daughters. The wife receives her allotted one-eighth in the presence of children. The father and mother take one-sixth each. The two daughters receive a collective two-thirds. When added together the respective shares amount to 27/24 (reduced to the common denominator of twenty-four). In the result, the numerators (3 + 4 + 4 + 16) of the respective fractional shares are added to give a new increased denominator of twenty-seven. In consequence, the net estate is divided into twenty-seven parts: four parts to each parent, three parts to the wife and eight to each daughter. The only denominators that are liable to be increased are:

(a) 6 which is increased to 7, 8, 9, 10.
(b) 12 which is increaed to 13, 15, 17.
(c) 24 which is increased to 27.

Exclusion

CHAPTER XVIII

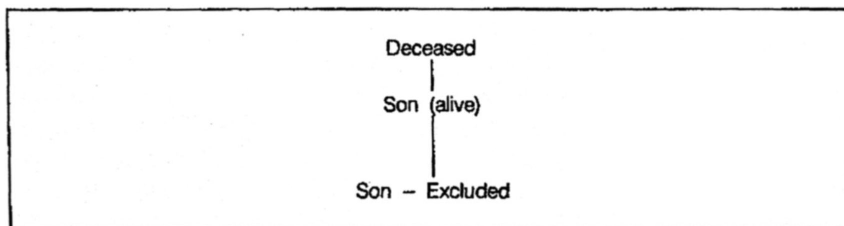
There are two classes of exclusion: partial and absolute. Partial exclusion refers to an exclusion from a larger share and an admission to a smaller one. There are five Quranic heirs who are subject to partial exclusion: husband, wife, mother, son's daughter and consanguine sister. For instance, the husband's share is reduced from one-half to one-quarter in the presence of the children of the deceased.



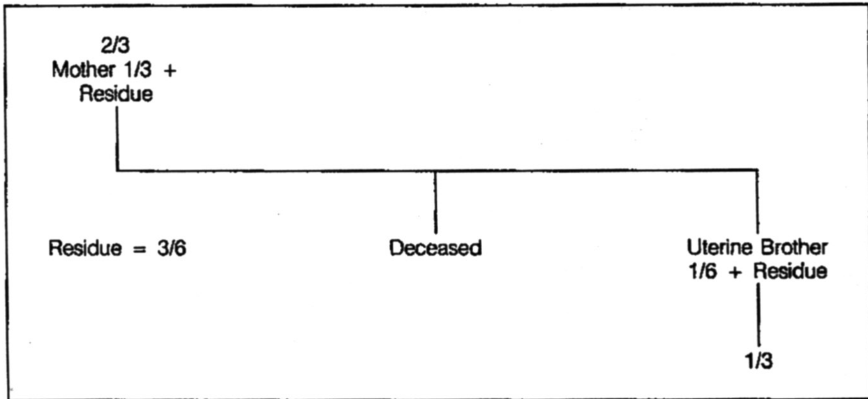
Absolute exclusion, on the other hand, refers to those relatives who inherit in certain circumstances and are excluded in others. They are: true grandmother, true grandfather, son's daughter, full sister, consanguine sister, uterine brother and uterine sister. There are six heirs who cannot be excluded under any circumstances: husband, wife, father, mother, son and daughter.

The doctrine of exclusion is based on two principles.

(a) Any person connected with the deceased through another shall not inherit whilst the latter is alive. For instance a grandson (son's son) is excluded in the presence of his father.



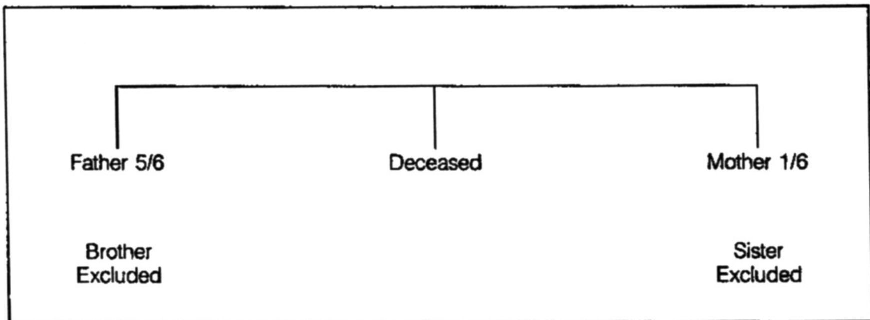
This principle is subject to an exception: a uterine brother inherits with his mother because the latter cannot take the entire estate as Quranic heir.



A deceased is survived by a mother and a uterine brother. The mother takes one-third and the uterine brother one-sixth, as Quranic heirs.

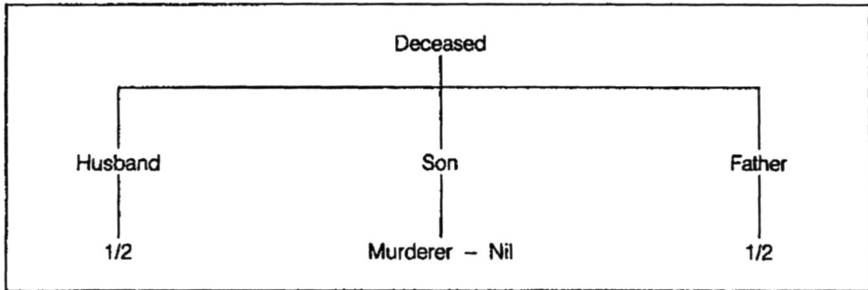
By operation of the doctrine of return the surplus of three-sixths reverts proportionately so that the mother takes two-thirds and the uterine brother one-third.

(b) The nearer in blood excludes the more remote. For instance, a full brother excludes a consanguine brother. A person absolutely excluded may partially exclude another heir.



The deceased is survived by a father, mother, a brother and a sister. The brother and sister are excluded by the father by the rule of class. However, the brother and sister reduce the share of the mother from one-third to one-sixth. The residue of five-sixths devolves upon the father in absence of children of the deceased.

A relative disqualified by reason of some impediment recognized by law (such as murder) cannot exclude another heir.



A deceased leaves a husband, father, and a son. The son murdered the deceased, his mother, and accordingly, is excluded. Had the son inherited, the husband would have taken one-quarter. The son's exclusion does not operate to reduce the husband's share. In the result, the husband takes one-half and the residue of one-half devolves upon the father.

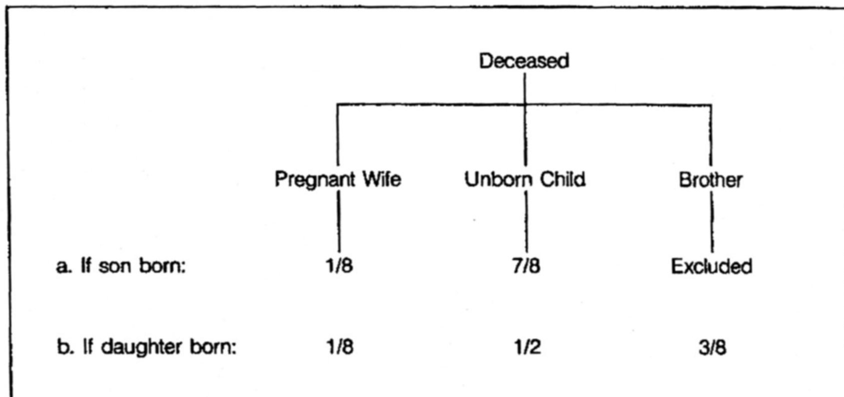
Miscellaneous cases

CHAPTER XIX

19.1 Unborn child

A child *en ventre sa mere* (conceived but still in mother's womb) has a right to inherit if born alive. There is accordingly reserved for the child the share of a son or daughter, whichever is the greater.

In the following illustration, a deceased leaves a pregnant wife, an unborn child and a brother.



On the assumption that a son would be born, the seven-eighths is reserved for the unborn child. Conversely, the 'unborn child' takes one-half on the assumption that a daughter would be born. In the result, the larger share of seven-eighths must be held in trust pending the birth of the child. The one-eighth may be distributed to the wife. From a practical viewpoint, however, it is best to delay distribution until the birth of the child.

19.2 Simultaneous deaths

Where a group of persons who are related to each other die in the same accident, and it cannot be determined which of them died first, they shall be presumed to have died simultaneously.

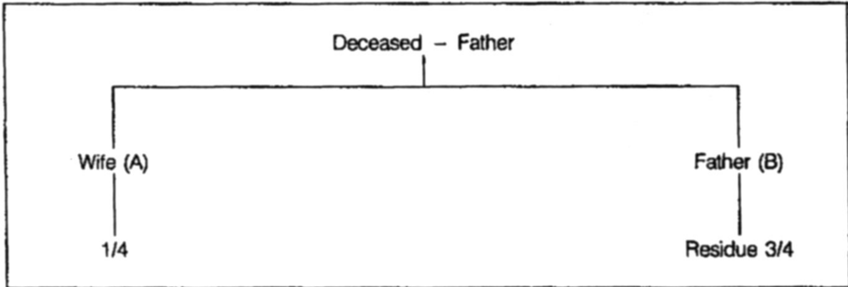
In such a case, the deceased shall not inherit *inter se* and the respective estates of each of them shall devolve upon his or her heirs, as the case may be.

Example:

(a) A father and his son died in an aircraft crash and it is not known which of them died first. The father is survived by his wife A and his father B.

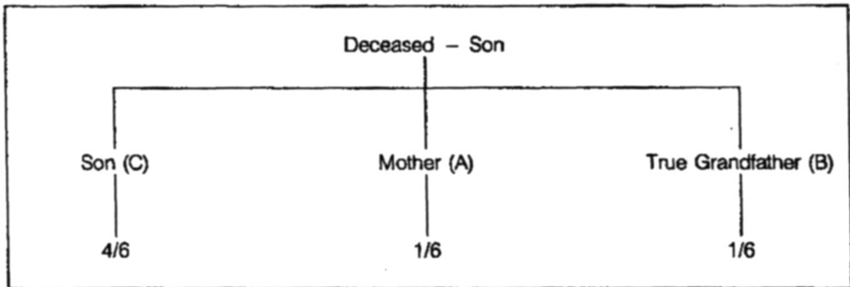
(b) The son is survived by a son C, his mother A and his true grandfather B.

(a)



The father's heirs are A and B who take one-quarter and three-quarters respectively.

(b)



The son's heirs are A, B and C who receive one-sixth, one-sixth and four-sixths, respectively.

It is clear from the aforegoing that A and B receive shares from both heirs in different capacities.

19.3 Illegitimate children

An illegitimate child inherits from the side of his mother only, that is, from his mother and mother's relations. Illegitimate children do not succeed to their father and father's relations because their descent from the side of their father is severed. On the other hand, their descent from the side of their mother is established.

The Executor

CHAPTER XX

The *Durr-Ul-Mukhtaar* ("Selected Pearl"), which is a leading work on Islamic Law, was written in about 1700 AD by the great scholar Sheikh Muhammad Ala-Ud-Din Haskafi. A relevant part of the text dealing with the office of Executorship is reproduced below together with the English translation. Comments in the form of footnotes are based on the work entitled *Radd-ul-Muktaar*, of the eminent jurist of Syria, well-known as Ibn Aabidin.

(وقبل عنده صح فان رد عنده)
أى بعلمه (يرتد والا
لا يصح) الرد بغيبته لئلا
يصير مغرورا من جهته
ويصح اخراجه عنها
ولو فى غيبته عند الامام
خلافا للثانى بزازية (فان
سكت) الموصى اليه
(فمات) موصيه (فله
الرد والقبول ،
(ولو ظهر للقاضى عجزه
أصلا استبدل غيره ولو
وأما عزل الخائن
فواجب انتهى
(وبطل فعل أحد
الوصيين كالمتوليين)
(الا بشراء كفنه وتجهيزه
والخصومة فى حقوقه
وشراء حاجة الطفل
عبد معين ورد وديعة
وتنفيذ وصية معينتين)
(وبيع

Translation

The appointment of an Executor will be valid by the use of any word which is indicative of such appointments. If the executor accepts the office in the presence of the testator (or the acceptance is communicated to the testator), the appointment will be valid. If not, the appointment is invalid. If the refusal is not communicated to the testator,[41] the appointment is still valid because the testator would otherwise be misled.[42] The testator may, however, change the appointment (after acceptance) without informing the person previously appointed. If the nominated executor remains silent (on being informed of his nomination) and the testator thereafter dies, he may refuse or accept the nomination.

If a judge is satisfied that the appointed executor is unable to perform his duties, he may remove him from office and appoint another in his place. On the other hand, a judge is obliged to remove an executor who is guilty of maladministration.

41 If, for example, he refuses after the death of the testator.
42 Since he relied upon the appointment – and he would suffer prejudice if the appointment was held to be invalid.

باعتاق تلف وجمع
أموال ضائعة)
وهبانية (وان مات
أحدهما فان أوصى
الى الحي أو الى آخر
فله التصرف في
التركة وحده) ولا
يحتاج الى نصب القاضي
وصيا (والا) يوص
(ضم) القاضي (اليه
غيره) درر وفي الاشباه
(وصح بيعه وشراؤه من
اجنبي بما يتغابن الناس)
الأجنبي (وان باع)
الوصي (أواشترى)
مال اليتيم (من نفسه
فان كان وصي القاضي
لا يجوز ذلك مطلقا)
لانه وكيله (وان كان
وصي الأب جاز بشرط
منفعة ظاهرة للصغير)
وجاز بيعه
عقار صغير من أجنبي لا
من نفسه بضعف قيمته
أو لنفقة الصغير أو دين
الميت أو وصية مرسلة
أو خوف
خرابه أو نقصانه أو كونه

The act of one executor (where two or more have been appointed) without the consent of his co-executors is, unless ratified by them, void, save in the following cases:[43] incurring of funeral and burial expenses; litigating in relation to the rights of the deceased; purchasing necessaries for the family of the deceased; returning property held by the deceased in trust or on deposit; distributing specific legacies;[44] selling perishables or what may be ruined or spoilt and collecting property which could be lost.

If one of two appointed executors dies then the remaining executor, unless expressly authorized by the terms of the will,[45] cannot act on his own and another will be appointed by a judge to act with him.

The executor is permitted to sell movable property belonging to a minor heir at market value[46] to a third party and he is likewise permitted to buy movables for the minor at market prices. On the other hand, an executor appointed by a judge cannot himself sell his own movable property to the minor heir nor can he buy movables belonging to the minor.[47] An executor testamentary however, can do so provided the transaction in question is clearly beneficial to the minor.[48]

An executor may sell the minor's immovable property to a third party but not to himself at a price equivalent to double its value.[49] He may even sell at market value if the property must be realized to maintain the minor; to pay the debts of the deceased; to pay specific legacies or to prevent it from deteriorating or falling into disrepair.

---

43 The exceptions are permitted on the ground of necessity.
44 These refer to legacies in favour of outsiders which do not exceed one third of the estate in value (see chapter 111). If the executor is forced to sell an asset of the estate in order to pay legacies, then the consent of the co-executors is required.
45 He may act on his own in which event there is no need for another to be joined with him.
46 If he sells below market value, he must make good the loss personally.
47 Because he is the agent of the judge.
48 If, for example, he buys an article worth R10,00 for R15,00 or he sells an article valued at R15,00 for R10,00. The father of the minor, however, may buy and sell at market value.
49 In principle, the executor cannot dispose of property belonging to major heirs without their consent.

If the executor delivers to the minor his share before the minor is properly able to manage his own affairs (even though the minor has reached puberty) and the minor loses his share, the executor must make good the loss because he has effected delivery to one who is not yet ready to receive delivery.

The executor is not entitled to trade or deal with the minor's property for his own benefit[50] and if he does so the resultant profit must be given to the poor and needy. He may, however, invest, deal or trade with the minor's property for the minor's benefit.[51]

(لودفع المال الى
اليتيم قبل ظهور رشده
بعد الادراك فضاع
ضمن لانه دفعه الى
من ليس له أن يدفع
اليه) (ولا
يتجر) الوصى (فى ماله)

أى اليتيم (لنفسه) فان
فعل تصدق بالربح
(وجاز) لو اتجر من مال

50 He remains liable for any loss to the capital.
51 Although he is not obliged to do so.

Table of Quranic Heirs

Quranic Heirs	Conditions of Inheritance	Share
1 **Father**	1 In the presence of son/s or son's sons however low.	1/6
	2 In the presence of daughters or son's daughters however low.	1/6 + Residue
	3 In the absence of children or son's children however low.	Residuary
2 **Husband**	1 In the presence of children or son's children however low.	1/4
	2 In the absence of above	1/2
3 **Wife**	1 In the presence of children or son's children however low.	1/8
	2 In the absence of above	1/4
4 **Daughter**	1 If alone	1/2
	2 If two or more	2/3 in common
	3 In presence of son	Residuary 2:1
5 **Son's Daughter**	1 If alone	1/2
	2 If two or more	2/3 in common
	(1) and (2) applies in default of daughter	
	3 If with single daughter	1/6
	4 Excluded by two daughters unless with son's son however low.	Residuary 2:1
	5 Excluded by son.	
6 **Mother**	1 In the presence of:	
	(a) children and son's children however low; or	1/6
	(b) two or more brothers and sisters whether of full or half blood	1/6
	2 In the presence of husband or wife, as the case may be, together with both parents	1/3 of Residue
	3 In the absence of 1 and 2	1/3
7 **Full Sister**	1 If alone	1/2
	2 If two or more	2/3 in common
	3 If with brother	Residuary 2:1
	4 If alongside daughters, or son's daughters	Residue
	5 Excluded by son or son's son and father	
8 **Consanguine Sisters**	1 If alone	1/2
	2 If two or more	2/3 in common
	(1) and (2) applies in default of full sisters	
	3 If alongside single full sister	1/6
	4 If alongside daughters or son's daughters	Residue
	5 Excluded by two sisters unless with consanguine brother	Residuary 2:1
	6 Excluded by full brother	

Table of Quranic Heirs (*continued*)

Quranic Heirs	Conditions of Inheritance	Share
9 & 10 **Uterine Brothers & Sisters**	1 If alone 2 If two or more 3 Excluded by child, son's child, father and grandfather	1/6 1/3 in common
11 **True Grandmother**	In default of mother – 1 If alone of the same degree 2 If two or more of the same degree	 1/6 1/6 in common
12 **True Grandfather**	In default of father – 1 If with son or son's son however low. 2 If alongside daughter or son's daughter however low. 3 In the absence of children or son's children however low.	 1/6 1/6 + Residuary Residuary

Bibliography

Arabic Works

AL-HIDĀYA, a well-known work on Islamic Law, written by ABU BAKR bin ABDUL AL-FARGĀNI AL MARGINANI AL-RISTANI BURHĀN AL-DIN, who died in 1215 AD (593 H).

KITĀB AL-FARĀ'ID AS-SIRĀJIYA, a work of highest authority on the Islamic Law of Succession, written by SIRĀJ AL-DIN a TĀHIR m.b.m.b. ABD AL-RASHID AL SAJAWANDI, who died in 1322 AD (700 H).

DURR AL-MUKHTAAR, an authoritative work of Islamic Law, written by MUHAMMAD bin ALI bin MUHAMMAD HASKAFI, who died in 1710 AD (1088 H).

RADD AL-MUKHTAAR, a well-known commentary to the DURR AL-MUKTAAR, written by ALA AL-DIN m.b.m. AMIN b. UMAR b. ABD AL-AZIZ, well-known as IBN ABIDIN, a leading jurist of Islamic Law in his time, died at Damascus in 1874 AD (1252 H).

BADĀI AL SANĀI, an eminent work of Islamic Law, written by ABU BAKR bin MASUD bin AHMAD AL-KĀSĀNI.

English Works

The Muslim Law of Inheritance, AL-HAJ MAHOMED ULLAH ibn S. JUNG, Law Publishing Company, Lahore, 1934.

N J COULSON, *Succession in the Muslim Family*, Cambridge University Press, 1971.

Index

ADIATION
by surviving spouse under a joint will in a marriage in community of propery *14-15*

ADOPTED CHILD
not an heir *8*
bequest to must not exceed one-third of estate *8-9*
clause in will giving effect to bequest *8-9*

ANTENUPTIAL CONTRACT
accords with Islamic Law *11*
examples of a bequest clause in will of a spouse married in terms of an antenuptial contract *11*
main points in drawing a will of a spouse married by antenuptial contract *11-12*

BEQUEST
rules governing bequests to outsiders *10*
to an heir is void *7*
to an outsider (non-heir) is valid up to one-third of estate *7*
to charity, example of a clause in will *9*
to grandchildren, example of a clause in a will *10*

CHILD (CHILDREN)
illegitimate *94*
minor child, time of payment of share *25-26*
share held in trust, standard clause *26*
predeceased child, whether heir *10, 31*
primary heir of deceased, cannot be excluded *31*
unborn child *93*

CONFLICT OF LAWS
between Islamic and South African Law of Succession *5*
efffect on a marriage in community of property, example of conflict *13-14*

CREDITORS
claims of
first charge against estate *7*

DEATH
heirs and their *pro rata* shares determined at time of death *3, 7, 23*
heirs' interest vests on death *23*
simultaneous deaths *77, 93-94*
validity of a bequest to an outsider determined at time of death *7*

DEBTS
of deceased rank before legacies and bequests *7, 29*

DEVOLUTION OF VESTED INHERITANCE
method of calculating shares *77-82*
see generally *77-82*
ELECTION
by surviving spouse where joint estate is disposed *14-15*
EXECUTOR
appointment *95*
discretion to pay minor's share *25*
duties of, see generally *95-97*
removal on ground of maladministration *95*
EXCLUSION
absolute *89*
partial *89*
principles governing *89-91*
FREEDOM OF TESTATION
not recognized in Islamic Law *3*
HEIR
adopted child not an heir *8*
categories of *29-30*
general principles governing heirs *31-33*
identity and entitlement determined at time of death *3, 7, 23*
INCREASE, DOCTRINE OF
meaning of *30, 87*
see generally *87-88*
JOINT WILL
of parties married in community of property *14*
MARRIAGE
in community of property *13-15*
out of community of property *11-12*
registered, only according to Islamic Law *25*
MINOR
time of payment of share *25-26*
PER STIRPES DISTRIBUTION
not recognized in Islamic Law *31-32*
QURANIC HEIRS
defined *29*
consanguine sister *51-53*
daughters *41-43*
father *37-38*
full sister *49-50*
husband *39*
mother *46-48*
sons' daughters *43-46*
uterine brother and sister *53-54*
true grandfather *57-58*
true grandmother *55-57*
wife *40-41*

RESIDUARIES
defined *29, 59*
classes of *59-60*
in another's right *63-65*
in their own right *59-63*
rules governing *60-63*
together with another *65-66*
see generally *59-66*

RETURN, DOCTRINE OF
meaning of *30, 83*
see generally *83-86*

SIMULTANEOUS DEATH, *see* DEATH

SURVIVING SPOUSE
cannot be excluded *31*
husband, share of *39*
wife, share of *40-41*

TRUST
standard clause *23*
testamentary, see generally *23*

VESTING
immediately upon death *23*
transmissibility of interest *77*

UTERINE RELATIONS
defined *29, 69*
class One *69-74*
class Two *74-75*
class Three *75*
class Four *76*
see generally *69-76*

ISBN: Soft Cover 0 409 04596 9

IMPRESS PRINTERS
031 263 2755