

تلخيص فقه الفرائض

Summary of the Fiqh of Inheritance

In the name of Allah, the Most Compassionate, the Most Merciful

All praise is due to Allah; we praise Him, seek His help and forgiveness, and repent to Him.

We seek refuge with Allah from the evil of our selves and from our bad deeds. Whoever Allah guides, none can lead astray, and whoever He leads astray, none can guide. I bear witness that there is no deity worthy of worship but Allah, alone, with no partner, and I bear witness that Muhammad is His slave and messenger. May Allah's peace and blessings be upon him, his family and Companions, and those who follow them rightly until the Day of Judgment.

This is a short treatise on 'Ilm al-Farā'id (Law of Inheritance), according to the new curriculum for the first secondary school year. In it, I adopted the style of simple and clear writing and illustration by examples. I called it Talkhīs Fiqh al-Farā'id (Summary of the Law of Inheritance).

I ask Allah Almighty to render my work sincere for His sake and beneficial for His servants; indeed, He is All-Generous, All-Bountiful.

1. Definition of Farā'id
2. Its benefit
3. Its ruling

1. Farā'id is the plural of Farīdah, which means an obligation.

Linguistically, it refers to something due and allocated.

In Islamic terminology, it refers to the knowledge of distribution of inheritance in terms of Fiqh and the method of calculation.¹

2. Its benefit: to give each heir their due share.

3. Its ruling: it is a collective duty which, if adequately fulfilled by some, ceases to be due on the rest of the people.

The rights related to the estate, and demonstrating what is prior among them:

The rights related to the estate are five, arranged in the following order:

1. The costs of preparing the deceased for burial, including the price of the water for washing him, his shroud, the perfume applied to the shroud, the wages for his washer, and the wages for the digger of his grave.

2. The rights related to the estate itself, like the debts documented by mortgage.

3. The rights related to the deceased's liability, like the debts not documented by mortgage, whether they are due to Allah, such as Zakah, or to people, like loans.

¹ The core of Farā'id is its Fiqh. As for the calculation, it is merely a method that is used when needed. [Author]

4. The valid bequest, which concerns one third or less of the estate and allocated to a non-heir.

5. Inheritance, and precedence in distributing it is given to inheritance by Fard (fixed shares), then inheritance by Ta'sīb (having a paternal relation with the deceased person and having no right to a fixed share), and then inheritance by Rahim (having a maternal relation with the deceased and having no right to a fixed share).

A clarifying example: A person dies, and the following sums are linked to his estate:

100 riyals: the cost of preparing him for burial.

100 riyals: a debt documented by mortgage.

100 riyals: a debt not documented by mortgage.

100 riyals: a valid bequest.

Heirs: Spouse and one full sister.

If he leaves behind 100 riyals, it shall be spent on preparing him for burial, and the other items shall be left out.

If he leaves behind 200 riyals, it shall be spent on preparing him for burial and the debt documented by mortgage, and the other items shall be left out.

If he leaves behind 300 riyals, it shall be spent on preparing him for burial, the debt documented by mortgage, and the debt not documented by mortgage; the other items shall be left out.

If he leaves behind 600 riyals, 300 riyals shall be spent on the foregoing, 100 riyals shall be spent as

per the bequest, 100 riyals for the spouse, and 100 riyals for the full sister.

The bequest takes precedence over the inheritance because the spouse and the full sister are each entitled to half of the inheritance, and this fixed share only applies to the remaining amount after taking the sum determined by the bequest. If the bequest was not given precedence, the spouse and sister would each get 112.5 riyals and the bequest would take 75 riyals.

Eligibility for Inheritance

There are three causes that make a person eligible to inherit: marriage, kinship, and Walā' (allegiance of an ex-slave to his ex-master).

a. Marriage: the valid marriage contract, by virtue of which a husband can inherit from his wife and vice versa, even without consummation of marriage.

b. Kinship: the connection between two persons by birth, be it a close or distant connection.

c. Walā': It is a relationship of agnation that is formed between a freed slave and his ex-master by virtue of setting him free. It extends to the ex-masters agnates (who are agnates by themselves).

Categories of kindred, based on their sides

Based on their sides, relatives fall under three categories: ascendants, descendants, and collaterals.

a. Ascendants are those from whom the deceased descended, such as the fathers and mothers. They all inherit by Fard or Ta'sīb, except for two categories:

1. Any male who is connected to the deceased through a female. An example is the mother's father.

2. Any female that gave birth to a male connected to the deceased through a female. An example is the mother of the mother's father.

Those two categories are maternal relatives.

b. Descendants are the deceased person's progeny, such as his children. They all inherit by Fard or Ta'sīb, except for those who are connected to the deceased through a female, like the daughter's son and the daughter's daughter. Those are maternal relatives.

c. Collaterals are the descendants of the deceased person's ascendants, like his brothers and paternal uncles. They all inherit by Fard or Ta'sīb, except for two categories:

1. Any male connected to the deceased through a female except for maternal brothers. Examples include the sister's son, the son of a maternal brother, the half paternal uncle from the mother's side, and the maternal uncle.

2. All females except for sisters. Examples include the brother's daughter, the paternal aunt,

the paternal uncle's daughter, and the maternal aunt.

Those two categories are maternal relatives.

Conditions of Inheritance

The conditions of inheritance are three:

a. Verifying the death of the benefactor or legally declaring him to be among the dead.

An example of declaring him to be among the dead: a missing person¹ if the waiting period for his return has expired².

b. Verifying that the heir is alive after the death of the benefactor, or legally declaring him to be among the living.

An example of declaring him to be among the living: when pregnancy with an heir is established at the time of the benefactor's death³, even if life has yet to be breathed into the embryo.

The same applies to a missing heir as regards the waiting period if we cannot verify that his death preceded the death of the benefactor.

¹ A person who has not been heard from for a long time, and it is not known whether he is alive or dead. [Author]

² The period of waiting for his return to be determined at the ruler's discretion, and it differs according to the missing person's circumstances. [Author]

³ This can be verified if the baby is born alive and stable less than six months after the death of the benefactor, or more than that if the baby's mother has not engaged in sexual intercourse after the benefactor's death. [Author]

Based on these two conditions, if two persons die and it is not known who died first, neither of them shall inherit from the other.

For example, two persons die in a collapsed building or by drowning, burning, traffic accident, or the like, and we cannot verify that the death of the benefactor preceded the death of the heir.

c. Knowing the side that renders inheritance due, be it marriage, kinship, or Walā'. In other words, knowing that so-and-so shall inherit from so-and-so because they are married or the like.

Impediments of Inheritance

The impediments of inheritance are three: difference of religion, slavery, and murder.

If any of these three impediments exists in one person, he is regarded as if he were non-existent, inheriting nothing and having no effect on the other heirs.

a. The difference of religion means that each of them follows a different religion. This constitutes an impediment for both of them. The non-Muslim does not inherit from the Muslim, and the Muslim does not inherit from the non-Muslim. Likewise, the Jew does not inherit from the Christian, and the Christian does not inherit from the Jew, and so on.

b. Slavery refers to a person being owned by someone else. This constitutes an impediment on

both sides of inheritance; a slave neither inherits from anyone nor does anyone inherit from him.

c. Murder means that someone takes the life of another. It is the unjust killing that constitutes an impediment, be it intentional or unintentional¹, and whether it occurs directly or through some means.

This impediment is one-sided. It prevents the killer from inheriting from the slain person, but not the other way around. For example, if a person fatally wounds his brother, but the attacker dies before the wounded; in such a case, the wounded brother inherits from his attacker.

As for just killing, it does not constitute an impediment to inheritance. An example is when a person kills the benefactor as a legal retribution, in which case he inherits from him.

Categories of heirs based on the type of inheritance

Based on the type of inheritance, heirs fall under three categories: heirs by Fard, heirs by Ta'sīb, and heirs by Rahim.

¹ Some scholars held that manslaughter (unintentional killing) does not constitute an impediment to inheriting. In such a case, the killer should pay blood money – if he is not pardoned – and inherits his share excluding the paid blood money. This is the view held by Imām Mālik and favored by Ibn al-Qayyim. [Author] Refer to Al-Sharh al-Saghīr by Al-Dardīr (4/713) and I'lām al-Muwaqqi'īn (6/425).

a. Heirs by Fard are those entitled to a fixed share in the inheritance, like one half, one fourth, one eighth, two thirds, one third, and one sixth.

b. Heirs by Ta'sīb are those who inherit without a fixed share.

c. Heirs by Rahim are all relatives treated like the heirs by Fard or Ta'sīb, but they do not inherit by either.

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Heirs by Fard and the share of each heir

Heirs by Fard are ten: husband, wife, mother, father, grandmother, grandfather, daughters, son's daughters, paternal sisters, and maternal siblings.

1. Husband's share in inheritance

The husband inherits one half or one fourth.

He inherits a half if his wife has no inheriting descendants¹.

He inherits one fourth if his wife has an inheriting descendant.

An example of a husband inheriting one half: A woman dies and leaves behind her husband and father. In such a case, the husband takes one half and the rest goes to the father.

An example of a husband inheriting one fourth: A woman dies and leaves behind her husband and

¹ Inheriting descendants are children, sons' children, and so on, if they have no impediment to inheritance. [Author]

son. In such a case, the husband takes one fourth and the rest goes to the son.

2. Wife's share in inheritance

The wife inherits one fourth or one eighth.

She inherits one fourth if her husband has no inheriting descendant.

She inherits one eighth if her husband has an inheriting descendant.

An example of a wife inheriting one fourth: A man dies and leaves behind his wife and father. In such a case, the wife takes one fourth and the rest goes to the father.

An example of a wife inheriting one eighth: A man dies and leaves behind his wife and son. In such a case, the wife takes one eighth and the rest goes to the son.

The share remains the same whether there is one wife or a number of co-wives.

3. Mother's share in inheritance

The mother inherits one third or one sixth or one third of the rest.

She inherits one third if the deceased has no inheriting descendant nor a number of brothers or sisters and it is not one of the two 'Umari cases.

She inherits one sixth if the deceased has an inheriting descendant or a number of brothers or

sisters¹; and she inherits one third of the remaining wealth in the two 'Umari cases², which are as follows:

1- A husband, a mother, and a father.

The inheritance is divided into six portions: half (three portions) for the husband, one third of the remaining amount (one portion) for the mother, and the rest for the father.

2. A wife, a mother, and a father.

The inheritance is divided into four portions: one fourth (one portion) for the wife, one third of the remaining amount (one portion) for the mother, and the rest for the father.

An example of a mother inheriting one third: A man dies and leaves behind his mother and father. In such a case, the mother takes one third and the rest goes to the father.

An example of a mother inheriting one sixth: A man dies and leaves behind his mother and son. In such a case, the mother takes one sixth and the rest goes to the son.

Another example: A man dies and leaves behind his mother and two full brothers. In such a case, the

¹ Whether they are males only, males and females, or females only; and whether they are full siblings, or half-siblings from the father, or half-siblings from the mother. [Author]

² They are named after 'Umar ibn al-Khattāb (may Allah be pleased with him), because he was the first to issue a decree regarding these two cases when they took place during his rule. [Author]

mother takes one sixth and the rest goes to the two full brothers.

4. Father's share in inheritance

The father's inheritance is either by Fard only (one sixth), or by Ta'sīb only, or by Fard and Ta'sīb together.

He inherits by Fard only if the deceased has a male inheriting descendant.

He inherits by Ta'sīb only if the deceased has no inheriting descendant.

He inherits by Fard and Ta'sīb together if the deceased has a female inheriting descendant and there is no male inheriting descendant with her.

An example of a father inheriting by Fard only: A man dies and leaves behind his father and son. In such a case, the father takes one sixth and the rest goes to the son.

An example of a father inheriting by Ta'sīb only: A man dies and leaves behind his wife and father. In such a case, the wife takes one fourth and the rest goes to the father.

An example of a father inheriting by Fard and Ta'sīb together: A person dies and leaves behind his daughter and father. In such a case, the daughter takes one half and the father takes one sixth by Fard and the rest by Ta'sīb.

5. Grandmother's share in inheritance

Grandmother here refers to the person who has not given birth to a male between whom and the

deceased person there is a female, like the mother of the mother's father.

A grandmother does not inherit while the mother is alive, nor while a nearer grandmother is alive, like the case of the mother of the mother's mother while the father's mother is alive.

The share of one grandmother is one sixth. If there are a number of grandmothers, they all share one sixth equally, and the share does not increase if they increase in number.

An example of one grandmother inheriting: A man dies and leaves behind his father's mother and his son. In such a case, the grandmother takes one sixth and the rest goes to the son.

An example of several grandmothers inheriting: A person dies and leaves behind his grandmothers (the mother of his mother's mother, the mother of his father's mother, and the mother of his father's father) and his father. In such a case, the grandmothers get one sixth, to be divided equally among them, and the rest goes to the father.

6. Grandfather's share in inheritance

Grandfather here refers to someone between whom and the deceased there is no female, like the mother's father.

A grandfather does not inherit while the father is alive, nor while a nearer grandfather is alive, like the case of the father of the father's father while the father's father is alive.

The grandfather inherits either by Fard only (one sixth), by Ta'sīb only, or by Fard and Ta'sīb together.

He inherits by Fard only if the deceased has a male inheriting descendant.

He inherits by Ta'sīb only if the deceased has no inheriting descendant.

He inherits by Fard and Ta'sīb together if the deceased has a female inheriting descendant and no male inheriting descendant with her.

An example of a grandfather inheriting by Fard only: A man dies and leaves behind his grandfather and son. In such a case, the grandfather takes one sixth and the rest goes to the son.

An example of a grandfather inheriting by Ta'sīb only: A man dies and leaves behind his mother and grandfather. In such a case, the mother takes one third and the rest goes to the grandfather.

An example of a grandfather inheriting by Fard and Ta'sīb together: A person dies and leaves behind his daughter and grandfather. In such a case, the daughter takes one half and the grandfather takes one sixth by Fard and the rest by Ta'sīb.

7. Daughters' share in inheritance

Daughters inherit by Ta'sīb only or by Fard only.

They inherit by Ta'sīb if the deceased has a son. In such a case, the male takes twice the portion that the female takes.

They inherit by Fard if the deceased has no son. In such a case, if it is only one daughter, she takes one half; and if they are two or more daughters, they take two thirds.

An example of daughters inheriting by Ta'sīb: A person dies and leaves behind a son and a daughter. In such a case, they take the entire inheritance, with two portions for him and one portion for her.

An example of a daughter inheriting one half by Fard: A person dies and leaves behind a wife, a daughter, and a full brother. In such a case, the wife takes one eighth, the daughter takes one half, and the rest goes to the full brother.

An example of two daughters inheriting two thirds by Fard: A person dies and leaves behind two daughters and a father. In such a case, the two daughters take two thirds and the father takes one sixth by Fard and the rest is by Ta'sīb.

An example of more than two daughters inheriting two thirds by Fard: A person dies and leaves behind three daughters, his mother, and his father. In such a case, the daughters take two thirds, the mother takes one sixth, and the father takes one sixth. Here, the father does not inherit by Ta'sīb because nothing remains after the allocation of the fixed shares.

8. Inheritance of son's daughters¹

The son's daughters do not inherit whatsoever while a male heir from higher descendants is alive, nor while two inheriting females from higher descendants are alive - except if the deceased person has a son of a son having the same degree as theirs or a lower degree, in which case they inherit along with him by Ta'sīb, with the male inheriting twice as much as the female.

Apart from this, they inherit by Ta'sīb only or by Fard only.

They inherit by Ta'sīb if the deceased has a son's son having the same degree as theirs. In such a case, the male shall inherit twice as much as the female.

They inherit by Fard if the deceased does not have a son's son having the same degree as theirs. In such a case, if it is one daughter, she takes a half; and if there are two or more daughters, they take two thirds - except if there is a female from higher descendants who inherits a half, in which case they inherit one sixth to complete the two thirds, whether it is one daughter or more; the share does not go above one sixth if they increase in number.

An example of granddaughters inheriting by Ta'sīb while two inheriting females from higher descendants are alive: A person dies and leaves

¹ This refers to any female descendant connected to the deceased through a male between whom and the deceased there is no female, even if he is a lower descendant. [Author]

behind his two daughters, his son's daughter, and his son's son. In such a case, his two daughters take two thirds and the son's daughter and the son's son take the rest; he takes two shares and she takes one share.¹

Another example: A person dies and leaves behind his son's two daughters, the daughter of his son's son, and the son of the son of his son's son. In such a case, the two daughters of his son take two thirds, and the rest goes to the daughter of his son's son and the son of the son of his son's son, with the male inheriting twice as much as the female².

An example of them inheriting by Ta'sīb along with a son's son having the same degree as theirs: A person dies and leaves behind his wife, his son's daughter, and his son's son. In such a case, the wife takes one eighth, and the rest goes to the son's daughter and the son's son; he takes two shares and she takes one share.

An example of a son's daughter inheriting a half by Fard: A woman dies and leaves behind her husband, her son's daughter, and the son of her son's son. In such a case, her husband takes one fourth, her son's daughter takes a half, and the rest goes to the son of her son's son.

¹ In this example, they are rendered agnates by a son's son having the same degree as theirs. [Author]

² In this example, they are rendered agnates by a son's son who is a descendant of a lower degree than theirs. [Author]

An example of a son's two daughters inheriting two thirds by Fard: A person dies and leaves behind his mother's mother, his son's two daughters, and his father. In such a case, the mother's mother takes one sixth, the son's two daughters take two thirds, and the father takes one sixth.

An example of more than two daughters of the son inheriting two thirds by Fard: A person dies and leaves behind his son's three daughters and his father. In such a case, the son's three daughters take two thirds, and the father takes one sixth by Fard and the rest by Ta'sīb.

An example of a son's daughter inheriting one sixth along with a higher female descendant who inherits a half: A person dies and leaves behind his daughter, his son's daughter, and the son of his son's son. In such a case, the daughter takes a half, the son's daughter takes one sixth to complete the two thirds, and the rest goes to the son of the son's son.

An example of more than one daughter of the son inheriting one sixth: A woman dies and leaves behind her husband, her daughter, her son's daughters, and her paternal uncle. In such a case, the husband takes one fourth, the daughter takes a half, the son's daughters take one sixth to complete the two thirds, and the rest goes to the paternal uncle.

9. Inheritance of non-maternal sisters¹

No one inherits from brothers or sisters while there is a male heir from the descendants or ascendants.²

a. Inheritance of full sisters:

Full sisters inherit by Ta'sīb through others, by Ta'sīb along with others, and by Fard.

They inherit by Ta'sīb through others if the deceased has a full brother, with the male inheriting twice as much as the female.

They inherit by Ta'sīb along with others if the deceased has a female descendant who inherits by Fard; so they are treated like full brothers.

Apart from this, they inherit by Fard. If it is one full sister, she takes a half; and if there are two or more full sisters, they take two thirds.

An example of full sisters inheriting by Ta'sīb through others: A person dies and leaves behind his full sister and full brother. In such a case, they take the entire inheritance; he takes two shares and she takes one share.

An example of full sisters inheriting by Ta'sīb along with others: A person dies and leaves behind his daughter, his son's daughter, his full sister, and his paternal brother (half-brother from the father).

¹ They refer to full sisters and half-sisters from the father. [Author]

² A male heir from the ascendants is any male between whom and the deceased there is no female and he has no impediment of inheritance, like the father, the grandfather, and the great grandfather. [Author]

In such a case, the daughter takes a half, the son's daughter takes one sixth to complete two thirds, and the rest goes to the full sister. The paternal brother takes nothing.

An example of one full sister inheriting by Fard: A person dies and leaves behind his full sister, wife, and paternal brother. In such a case, the full sister takes a half, the wife takes one fourth, and the rest goes to the paternal brother.

An example of two full sisters inheriting by Fard: A person dies and leaves behind his two full sisters, his mother, and his full paternal uncle. In such a case, the two full sisters take two thirds, the mother takes one sixth, and the rest goes to the full paternal uncle.

An example of more than two full sisters inheriting by Fard: A person dies and leaves behind his three full sisters, the mother of his father, and his paternal brother. In such a case, the three full sisters take two thirds, the grandmother takes one sixth, and the rest goes to the paternal brother.

b. Inheritance of paternal sisters:

Paternal sisters do not inherit whatsoever if there is an inheriting full brother, nor if there are two or more full sisters, except if the deceased has a paternal brother, in which case they inherit along with him by Ta'sīb, with the male inheriting twice as much as the female.

And they inherit one sixth if there is one full sister, to complete the two thirds, whether it is only one half-sister or more than that. Their share does not increase if they increase in number.

Apart from this, they inherit the same as full sisters, as detailed above.

An example of their inheritance along with two full sisters by Ta'sīb: A person dies and leaves behind his two full sisters, his paternal sister, and his paternal brother. In such a case, the two full sisters take two thirds, and the rest goes to the paternal brother and the paternal sister; he takes two shares and she takes one share.

An example of them inheriting one sixth along with one full sister: A person dies and leaves behind his full sister, his paternal sister, and his full paternal uncle. In such a case, the full sister takes a half, the paternal sister takes one sixth to complete two thirds, and the rest goes to the paternal uncle.

Another example: A person dies and leaves behind his full sister, his two paternal sisters, his mother, and his full paternal uncle. In such a case, the full sister takes a half, the two paternal sisters take one sixth to complete two thirds, the mother takes one sixth, and the rest goes to the paternal uncle.

10. The inheritance of the mother's children

The mother's children refer to maternal brothers and sisters (half-siblings from the mother).

They do not inherit while there is an inheriting descendant or there is a male inheriting ascendant.

Their inheritance: By Fard, one sixth if it is only one person, and one third if they are two or more, to be distributed among them equally; the male not taking more than the female.

An example of the inheritance of one maternal sibling: A person dies and leaves behind his maternal sister, his full sister, his two paternal sisters, and his mother. In such a case, the maternal sister takes one sixth, the full sister takes a half, the two paternal sisters take one sixth to complete two thirds, and the mother takes one sixth.

An example of the inheritance of two maternal siblings: A person dies and leaves behind his two maternal brothers and his two full sisters. In such a case, the two maternal brothers take one third, to be divided equally between them, and the two full sisters take two thirds.

An example of the inheritance of more than two maternal siblings: A person dies and leaves behind his maternal brother, his two maternal sisters, and his full brother. In such a case, the maternal brother and two sisters take one third, to be distributed among them equally, and the rest goes to the full brother.

A Complementary Section

If there is a group of fixed shares that are greater than the fundamental portions of the case, none of the heirs entitled to those shares is excluded from inheritance, because none of them is more worthy of such exclusion than the others. The case goes through 'Awl (a situation when the fixed shares are greater than the inheritance), and this causes a proportionate decrease in the amounts of all fixed shares.

For example: A woman dies and leaves behind her husband and her two full sisters. In such a case, the husband is entitled to a half and the two full sisters are entitled to two thirds. So, the case goes through 'Awl from six to seven portions, with the fixed share of each heir decreasing by one seventh of it.

A second example: A woman dies and leaves behind her husband, her mother, her two full sisters, and her two maternal sisters. In such a case, the husband is entitled to a half, the mother is entitled to one sixth, the two full sisters to two thirds, and the two maternal sisters to one third. So, the case goes through 'Awl from six to ten portions, with the fixed share of each heir decreasing by two fifths of it.

A third example: A person dies and leaves behind his wife, his two full sisters, and his maternal sister. In such a case, the wife is entitled to one fourth, the

two full sisters to two thirds, and the maternal sister to one sixth. So, the case goes through 'Awl from 12 to 13 portions, with the fixed share of each heir decreasing by a thirteenth of it.

A fourth example: A person dies and leaves behind his wife, two daughters, mother, and father. In such a case, the wife is entitled to one eighth, the two daughters to two thirds, the mother to one sixth, and the father to one sixth. So, the case goes through 'Awl from 24 to 27 portions, with the fixed share of each heir decreasing by a ninth of it.

Exercises

Exercise (1)

1. Mention the governing rule concerning those who do not inherit neither by Fard nor Ta'sīb. Give an example.

2. What is the category of kinship in the following? Who among them are maternal relatives? Mention the reason¹:

Paternal aunt, father, full brother's daughter, maternal uncle, son's daughter, mother's father, mother's mother, half paternal uncle from the mother's side, half paternal uncle from the father's side, daughter's son, son's son, son of maternal brother, son of paternal brother, mother of

¹ The reason here - and wherever mentioned in the exercises - refers to derivation from the relevant rule. [Author]

mother's father, mother of father's father, sister's son.

Exercise (2)

1. When does each spouse inherit one fourth?
2. When does a father inherit by Fard and Ta'sīb together?
3. What are the cases where each of the grandmother and grandfather do not inherit?
4. When do sisters inherit by Ta'sīb along with others?

Exercise (3)

Give examples for the following and mention the reason:

1. A case where the wife takes one eighth and the son's daughter takes one sixth, both by Fard.
2. A case where the husband takes a half and the mother takes one sixth, both by Fard.
3. A case where the fixed shares are greater than the fundamental portions of inheritance, increasing them from six to eight.

Exercise (4)

Divide the following cases and mention the reason:

1. Mother, wife, two maternal brothers, and two full brothers.
2. Full sister, full brother in slavery, mother, and paternal uncle.
3. Two daughters, son's daughter, and paternal sister.

4. Two full sisters, two paternal sisters, and two maternal sisters.

5. Wife, mother, and grandfather.

6. Husband, father, grandmother (mother's mother), grandmother (father's mother), and grandmother (mother of father's father).

7. Husband, mother, two full sisters, and maternal brother.

8. Wife, mother, two paternal sisters, and two maternal sisters.

Agnates

It refers to relatives who inherit without fixed shares. They take the entire inheritance if there is no heir entitled to a fixed share. If there is an heir entitled to a fixed share, an agnate inherits with him and takes what remains. If the fixed shares consume the whole inheritance, the agnate takes nothing.

An example of an agnate inheriting the entire inheritance: A person dies and leaves behind his full brother. In such a case, the full brother takes the entire inheritance.

An example of an agnate inheriting the remaining amount: A woman dies and leaves behind her husband, her two maternal brothers, and her two full brothers. In such a case, the husband takes a half, the two maternal brothers take one third, and the rest goes to the two full brothers.

An example of an agnate inheriting nothing: A woman dies and leaves behind her husband, her mother, her two maternal brothers, and her two full brothers. In such a case, the husband takes a half, the mother takes one sixth, the two maternal brothers take one third, and the two full brothers take nothing, because the fixed shares consumed the entire inheritance.

Categories of Agnates

Agnates fall under three categories: Agnates by themselves, agnates through others, and agnates along with others.

A. Agnates by themselves are:

1- All male ascendants, descendants, and collaterals, except for maternal brothers and maternal relatives.¹

2- All males and females entitled to inheritance by Walā', like the male and female manumitter of a slave.

B. Agnates through others are: daughters, son's daughters, full sisters, and paternal sisters.

1- Daughters are made agnates through sons.

2- Son's daughters are made agnates through son's sons if they have the same degree, or if they are lower than them and the two thirds are already consumed by the shares of those higher than them.

¹ Refer to "the Categories of kindred, based on their sides" to know who maternal relatives are. [Author]

3- Full sisters are made agnates through full brothers.

4- Paternal sisters are made agnates through paternal brothers.

Each one of those females inherits by Ta'sīb, along with the one who made her an agnate, with the male inheriting twice as much as the female.

An example of daughters inheriting by Ta'sīb through others: A person dies and leaves behind his daughter and son. In such a case, they take the entire inheritance, with two portions for him and one portion for her.

An example of son's daughters inheriting by Ta'sīb through others: A person dies and leaves behind his daughter, his son's daughter, and his son's son. In such a case, the daughter takes a half, and the rest goes to the son's son and the son's daughter, with two portions for him and one portion for her.

Another example: A person dies and leaves behind his two daughters, his son's daughter, and the son of his son's son. In such a case, the two daughters take two thirds, and the rest goes to the son of the son's son and the son's daughter, with two portions for him and one portion for her.

An example of full sisters inheriting by Ta'sīb through others: A person dies and leaves behind his full sister and his full brother. In such a case, they

take the entire inheritance, with two portions for him and one portion for her.

An example of paternal sisters inheriting by Ta'sīb through others: A person dies and leaves behind his paternal sister and his paternal brother. In such a case, they take the entire inheritance, with two portions for him and one portion for her.

No woman can be made an agnate by a male except those four categories. A brother's son does not make his sister, his paternal aunt, or the daughter of his paternal uncle agnates. Likewise, the paternal uncle does not make the paternal aunt an agnate, and the son of the paternal uncle does not make his sister an agnate, nor the daughter of his paternal uncle.¹²

An example of this case involving a brother's son: A person dies and leaves behind his daughter, the son of his full brother, and the daughter of his full brother. In such a case, the daughter takes a half, and the rest goes to the son of the full brother; the daughter of the full brother takes nothing.

Another example: A person dies and leaves behind his two full sisters, his paternal sister, and the son of his paternal brother. In such a case, the two full sisters take two thirds, and the rest goes to the son of the paternal brother; the paternal sister

1 --

2 --

takes nothing because she has no one to make her an agnate.

An example involving a paternal uncle: A person dies and leaves behind his paternal uncle and his paternal aunt. In such a case, the paternal uncle takes the entire inheritance and the paternal aunt takes nothing.

An example involving a paternal uncle's son: A person dies and leaves behind his paternal uncle's son and his paternal uncle's daughter. In such a case, the paternal uncle's son takes the whole inheritance and the paternal uncle's daughter takes nothing.

C. Agnates along with others: full sisters and paternal sisters, along with inheriting descendants entitled to fixed shares; thus full sisters are treated like full brothers and paternal sisters are treated like paternal brothers.

An example involving full sisters: A person dies and leaves behind his daughter and his full sister. In such a case, the daughter takes a half, and the rest goes to the full sister.

An example involving paternal sisters: A person dies and leaves behind his daughter, his son's daughter, and his paternal sister. In such a case, the daughter takes a half, the son's daughter takes one sixth to complete two thirds, and the rest goes to the paternal sister.

Order of Agnates

Agnates inherit in order. Precedence is given to those from a prior side, then those nearer in kinship, and then those with more strength. This is referred to in the following verse of poetry:

In terms of the side, give precedence to what is prior, then to who is nearer, and then to who is stronger.¹

A. As for the sides, what is prior is given precedence in terms of Ta'sīb over what comes next.

There are four sides: sonhood, fatherhood, paternal descendants, and Walā'.²

1- Sonhood includes: sons and their sons, down to all levels of sonhood.

2- Fatherhood includes: fathers and their fathers, up to all levels of fatherhood.

3- Paternal descendants include: brothers, full paternal uncles, half paternal uncles from the father's side, and their sons down to all levels.³

¹ Verse by Al-Ja'bari, as mentioned by Ibn Qāsim in Hāshiyat al-Rahbiyyah, p. 39.

² Some scholars hold that the sides of agnates are five, dividing paternal descendants into two sides: 1- Brothers, which include full brothers and paternal brothers and their sons, and their sons' sons; 2- Paternal uncles, which include full paternal uncles and half paternal uncles from the father's side, and their sons and their sons' sons. Other scholars hold a differing view. [Author]

³ Sisters are treated like brothers if they are made agnates along with others. [Author]

4- Walā', which includes the manumitter and his agnates who are agnates by themselves.¹

These four sides are referred to in the following statement:

Their sides: sonhood, fatherhood, their descendants, and finally the people of Walā'.²

Whoever belongs to any of these sides is given precedence in terms of Ta'sīb over those who come next.

For example: A person dies and leaves behind his father and his son. In such a case, the father takes one sixth by Fard, and the rest goes to the son by Ta'sīb.

A second example: A person dies and leaves behind his father and his full brother. In such a case, the father takes the entire inheritance by Ta'sīb.

A third example: A person dies and leaves behind his paternal uncle and his manumitter. In such a case, the paternal uncle takes the entire inheritance by Ta'sīb.

¹ They are the male agnates and the agnates by Walā'. If a manumitted slave dies and leaves behind his manumitter's son and manumitter's daughter, the manumitter's son takes the entire inheritance by Ta'sīb, for he is an agnate by himself; the manumitter's daughter takes nothing, for she is an agnate through others. If a manumitted slave dies and leaves behind his manumitter's daughter, the manumitter's full sister, and the manumitter's paternal uncle, the manumitter's paternal uncle takes the entire inheritance, for he is an agnate by himself; the manumitter's daughter takes nothing, for she is an inheritor by Fard; and the manumitter's full sister takes nothing, for she is an agnate along with others. [Author]

²

A fourth example: A person dies and leaves behind his mother and his manumitter. In such a case, the mother takes one third, and the rest goes to the manumitter by Ta'sīb.

B. As for closeness in kinship, if agnates belong to one side, precedence is given to those who are nearer to the deceased.

The nearer on the sides of sonhood and fatherhood are those who have fewer persons between them and the deceased.

The nearer on the side of paternal descendants are the father's descendants, namely brothers and their sons down to all levels; the nearer then the next in nearness.

Then, the descendants of the father's father, namely paternal uncles and their sons down to all levels; the nearer then the next in nearness.

Then, the descendants of the father's grandfather, namely the paternal uncles of the deceased person's father and their sons down to all levels; the nearer then the next in nearness.

Hence, we say: The descendants of each father down to all levels are nearer than the descendants of those higher than him.

And the nearer among the father's descendants are those who have fewer persons between them and him.

The nearer on the side of Walā' is the manumitter then his agnates, like the order in the agnates of kinship

An example involving the side of sonhood: A person dies and leaves behind his son and his son's son. In such a case, the son takes the entire inheritance by Ta'sīb.

An example involving the side of fatherhood: A person dies and leaves behind his father and his grandfather. In such a case, the father takes the entire inheritance by Ta'sīb.

An example involving the side of paternal descendants: A person dies and leaves behind the son of the son of his paternal uncle and the paternal uncle of his father. In such a case, the son of the son of the paternal uncle takes the entire inheritance by Ta'sīb.

Another example: A person dies and leaves behind the son of his paternal uncle and the son of the son of his paternal uncle. In such a case, the son of the paternal uncle takes the entire inheritance by Ta'sīb.

An example involving the side of Walā': A person dies and leaves behind the son of his manumitter and the paternal uncle of his manumitter. In such a case, the manumitter's son takes the entire inheritance by Ta'sīb.

Another example: A person dies and leaves behind the son of the son of the son of his

manumitter's brother and the paternal uncle of his manumitter. In such a case, the son of the son of the son of the manumitter's brother takes the entire inheritance by Ta'sīb.

C. As for strength, if agnates are on the same side and same level of nearness to the deceased, precedence is given to those who are more strongly related to the deceased. Thus, those who are related through both father and mother are given precedence over those related through father only. It is inconceivable that precedence is given based on the strength of bonds except in the side of descendants through fatherhood.

For example: A person dies and leaves behind his full brother and his paternal brother. In such a case, the full brother takes the entire inheritance by Ta'sīb.

Another example: A person dies and leaves behind the son of his full paternal uncle and the son of his half paternal uncle from the father's side. In such a case, the son of the full paternal uncle takes the entire inheritance by Ta'sīb.

Exercises

Exercise (1)

1. Who is an agnate? And how does he inherit? Give an example.¹

¹ The rule in giving examples is to give precedence to inheritors by Fard and then inheritors by Ta'sīb; and precedence is to be given to the inheritor of the greater fixed share, like in the case of a daughter along with a son's

2. Who is an agnate through others? Give an example.

3. What are the sides of agnates? Which of them should take precedence? Give an example.

Exercise (2)

Give examples for the following and mention the reason:

1- An agnate along with others taking precedence over an agnate by himself based on the strength of ties.

2- An inheritor of one third as a fixed share along with an agnate by himself taking precedence over an agnate by himself, based on the priority of side.

3- An inheritor of one fourth as a fixed share along with an agnate by himself taking precedence over an agnate by himself, based on the nearness of kinship.

Exercise (3)

Who is an inheritor by Ta'sīb and who is not in the following examples? Mention the reason.

- A son along with a father.

- The father of a grandfather along with a father's father.

- A daughter and a paternal sister along with the son of a full brother.

daughter. Departure from this rule is possible for the sake of testing students. [Author]

- The full brother of a manumitter along with his full sister.

- The son of the son of a half paternal uncle from the father's side, along with the son of the full paternal uncle of a father.

- A paternal brother along with a full brother.

- The son of the son of the son of a half paternal uncle from the father's side along with a manumitter.

- The son of the son of a full brother along with the son of a paternal brother.

- The paternal brother of a manumitter along with his full brother.

- The son of the son of a son along with the son of a son.

Exercise (4)

Divide the following cases and mention agnates by themselves, through others, and along with others, and who are not entitled to inheritance. Mention the reason in all these.

1- A husband, a son, and a daughter.

2- A wife, a father, and a son in slavery.

3- A daughter, a full sister, and a paternal brother.

4- A paternal sister, a father's paternal uncle, and a grandfather's paternal uncle.

5- A grandmother, a father's grandfather, and a grandfather's grandfather.

6- A mother, the son of a half paternal uncle from the father's side, and the full paternal uncle of a father.

7- Two maternal brothers, two paternal brothers, and two full brothers.

Hajb (Prevention)

Linguistically, Hajb means preventing.

In terminology, it means preventing a person entitled to inherit from taking all or part of the due inheritance.

There are two types of Hajb: Hajb by an attribute and Hajb by a person.

In Hajb by an attribute, the person entitled to inherit has one of the impediments of inheritance (difference of religion - slavery - murder).

An inheritor subject to Hajb is treated as non-existing. So, he cannot prevent another inheritor or affect him or her.

For example: A person dies and leaves behind his mother, his paternal sister, his paternal brother who adopts another religion, and his paternal uncle. In such a case, the mother takes one third, the paternal sister takes a half, and the rest goes to the paternal uncle; and the paternal brother takes nothing.

In Hajb by a person, a person entitled to inherit is prevented from inheritance by another person.

A. In ascendants:

1- Each male prevents the males higher than him from inheritance.

For example: A person dies and leaves behind his father and grandfather. In such a case, the father takes the entire inheritance and the grandfather takes nothing.

2- Each female prevents the females higher than her from inheritance.

For example: A person dies and leaves behind his mother, grandmother, and paternal uncle. In such a case, the mother takes one third, and the rest goes to the paternal uncle; the grandmother takes nothing.

B. In descendants, each male prevents those lower than him from inheritance.

For example: A person dies and leaves behind his son, son's son, and son's daughter. In such a case, the son takes the entire inheritance, and the son's son and the son's daughter take nothing.

C. In collaterals:

1- All collaterals are prevented from inheritance by male ascendants or descendants.

For example: A person dies and leaves behind his father and full brother. In such a case, the father takes the entire inheritance, and the full brother takes nothing.

Another example: A person dies and leaves behind his son and full sister. In such a case, the son

takes the entire inheritance, and the full sister takes nothing.

2- Maternal siblings also prevented from inheritance by female descendants.

For example: A person dies and leaves behind his daughter, maternal brother, and full brother. In such a case, the daughter takes a half, and the rest goes to the full brother; the maternal brother takes nothing.

3- Paternal siblings are prevented from inheritance by full brothers.

For example: A person dies and leaves behind his maternal sister, paternal sister, and full brother. In such a case, the maternal sister takes one sixth, and the rest goes to the full brother; the paternal sister takes nothing.

D. In Ta'sīb:

1- A person in a prior side prevents those beyond him from inheritance.

2- A person nearer in kinship prevents those who are more distant from inheritance.

3- A person with a stronger tie of kinship prevents those with weaker ties from inheritance. We have previously explained this and given examples.

Radd

Radd is to give what remains after the distribution of fixed shares to the recipients of those shares if there is no agnate.

Each inheritor entitled to a fixed share is given a proportionate increase, except for a husband and wife.

If it is only one inheritor who is subject to Radd, he takes the entire inheritance by Fard and Radd.

If a group of inheritors under the same category are subject to Radd, they take the entire inheritance by Fard and Radd, to be distributed per head.

If they are a group of inheritors under different categories, the inheritance is divided among them on the basis of six portions, and it ends where their fixed shares end.

If a husband or wife is among them, he or she is given his or her fixed share without an increase; and the rest is distributed among those subject to Radd, according to the foregoing rule.

An example of Radd for one inheritor: A person dies and leaves behind his daughter. In such a case, she takes the entire inheritance, half of which by Fard and the rest by Radd.

An example of Radd for a group of inheritors under the same category: A person dies and leaves behind his two daughters. In such a case, the two daughters take the entire inheritance, two thirds of

which by Fard and the rest by Radd, divided by two (their number).

An example of Radd for a group of inheritors under different categories: A person dies and leaves behind his daughter, his son's daughter, and his mother. The case consists of six portions: The daughter takes a half, the son's daughter takes one sixth to complete two thirds, and the mother takes one sixth. Then, the case shall go through Radd, involving five portions.

An example of Radd for inheritors who include husband or wife: A person dies and leaves behind his wife, mother, and maternal brother. In such a case, the wife takes one fourth, and the rest goes to the mother and maternal brother by Fard and Radd, on the basis of six portions; the mother takes one third (two portions) and the maternal brother takes one sixth (one portion), and the case goes through Radd involving three portions; the wife takes one, the mother takes two, and the maternal brother takes one.

Maternal Relatives

Maternal relatives are those relatives who are neither recipients of fixed shares of inheritance nor are agnates.

Maternal relatives from ascendants:

1- Any male who is connected to the deceased through a female. An example is the mother's father and the grandmother's father.

2- Any female that gave birth to a male connected to the deceased person through a female. An example is the mother of the mother's father.

Maternal relatives from descendants are those who come from a female, like the daughter's son and the daughter's daughter.

Maternal relatives from collaterals:

1- Every male connected through a female, except for maternal brothers. Examples include maternal uncles, the son of a maternal brother, and a sister's son.

2- All females except for sisters, like the paternal aunt, maternal aunt, and brother's daughter.

They inherit by *Tanzīl*, i.e., each of them is treated like the inheritor through whom he or she is connected to the deceased, and he or she takes that inheritor's share.

For example: A person dies and leaves behind the son of his full sister, the daughter of his paternal sister, the son of his maternal brother, and his maternal uncle.

In such a case, the full sister's son takes a half, for he is treated like his mother; the paternal sister's daughter takes one sixth, to complete two thirds, for she is treated like her mother; the maternal brother's son takes one sixth, for he is treated like

his father; and the maternal uncle takes one sixth, for he is treated like the mother.

Exercises

Exercise (1)

1. What is Radd? And what is its condition?
2. What are the fundamental portions of a case of Radd if those subject to Radd are a group of inheritors under the same category or different categories?
3. Who are the maternal relatives from collaterals?

Exercise (2)

Give examples for the following:

1. A case where a husband or wife is subject to Radd.
2. A case of Radd where there are categories of inheritors ending up as four.
3. A case involving maternal relatives from ascendants and descendants.

Exercise (3)

Determine whether there is Radd or not in each of the following cases. Mention the reason.

- Daughter, son's daughter, mother, and father.
- Mother and maternal brother.
- Husband, mother, and father.
- Full sister and paternal brother.
- Grandmother, two daughters, and father.
- Full sister, paternal sister, and maternal sister.

- Maternal brother and the daughter of full brother.

Exercise (4)

Divide the following cases and mention the reason:

1. Husband, daughter, and son's daughter.
2. Daughter of full sister, daughter of paternal brother, and daughter of paternal uncle.
3. Mother, maternal brother, and half paternal uncle from the mother's side.
4. Two daughters, son's daughter, and paternal sister.
5. Daughter's daughter, daughter of son's daughter, and half paternal uncle from the father's side.
6. Two full sisters, two paternal sisters, and two paternal aunts.
7. Daughter's daughter, daughter of maternal brother, and daughter of full brother.

Here we conclude what we wished to write according to the prescribed curriculum. Praise be to Allah, Lord of the worlds; and peace and blessings of Allah be upon our Prophet Muhammad and his family and Companions.

Written by

Muhammad ibn Sālih al-'Uthaymīn

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