11. CLASSIFICATION OF HEIRS

Heirs in Islāmic law can be divided into the following classes (listed in order of succession):

1. Sharers (*Aṣḥābul-Furūd*)
2. Residuaries by reason of blood relationship (*'Aṣabāt*)
3. Residuary by special reason (e.g. *Mawlā Al-'Itāq*)
4. Distant kindred (*Dhawūl-Arḥām*)
5. Successor by contract (*Mawlāul-Mawāla*)
6. Acknowledged kinsman (*Al-Muqirr Lahu*)
7. Universal legatee/'testatee' (*Al- Mūṣā Lahu*)
8. Public treasury (*Baytul-Māl*)

- It is crucial to understand the concept of sharer and residuary as many of the rules are dependent on this differentiation.
- Note that the distant kindred do not inherit at all under the *Mālikī Fiqh*.
- *Shāfi'ī Fiqh* does not recognise the successor by contract or the acknowledged kinsman.

11.1 SHARERS (*AṢḤĀB Al-FURŪD*)

- The Arabic word *Aṣḥābul-Furūd* literally means "possessors of obligatory share". There is no suitable English term for this and the term "sharers" has been used to denote this class of heirs.
- The sharers are also referred to as Qur'ānic heirs. Only nine are expressly mentioned in the Qur'ān. The granddaughter, true grandfather and true grandmother have been added by Muslim jurists using *Qiyās* (analogy), thus placing these

three Qur'ānic heirs in a position of their respective primary heirs (daughter, father and mother) when they replace them in the latter's absence. There are, therefore, a total of twelve Qur'ānic heirs or sharers.

- These heirs are entitled to receive a fixed share of the inheritance.
- A fixed share can be 1/2, 1/3, 2/3, 1/4, 1/6, or 1/8 (or to put it more simply 1/3 and 1/4 doubled and halved).
- The actual share that a Qur'ānic heir (sharer) inherits is dependent on the presence of other heirs.

Qur'ānic share	Qur'ānic heirs entitled to the share
1/2	H D DS *Si* *Sc*
1/4	H W
1/8	W
2/3	Ds DSs *Sis* *Scs*
1/3	M Bus *Sus*
1/6	F tgF M tgM DS *Sc* Bu *Su*

Fig. 1 shows entitlement of fixed Qur'ānic shares. Note that the letter 's' denotes plurality.

- The male sharers are:
  1. Father
  2. True grandfather (father's father h.h.s.)
  3. Husband
  4. Uterine brother
- The female sharers are:
  5. Mother
  6. True grandmother
  7. Widow
  8. Daughter

9. Son's daughter h.l.s. (DS, DSS, DSSS and so on)
10. Full sister
11. Consanguine sister (half-sister by father)
12. Uterine sister (half-sister by mother)

- Another way to classify the sharers is by their relationship to the propositus, thus:

Grandparents	tgF	tgM
Parents	F	M
Spouse	H	W
Daughters	D	DS h.l.s.
Siblings	Bu	S_u S_f S_c

- Certain sharers are entitled to a maximum collective share which they divide amongst themselves. If the sharers are of the same kind this collective share is divided equally.

Joint sharers	Maximum collective share	Distribution of collective share
W (one or more)	1/4 or 1/8	Equally
tgM (one or more)	1/6	Equally
Ds (two or more)	2/3	Equally
D + DSs	2/3	D 1/2 and DSs 1/6
DSs (two or more)	2/3	Equally
S_f (two or more)	2/3	Equally
S_f + S_cs	2/3	S_f 1/2 and S_cs 1/6
S_c (two or more)	2/3	Equally
Bu + S_u (2 or more uterine siblings)	1/3	Equally

Fig. 2 shows joint sharers. Note that the letter 's' denotes plurality. See the section for individual sharers for details.

- Under certain circumstances some of the female sharers inherit as a residuary.
- A female sharer is converted into a residuary by a male residuary of the same degree and related to the deceased through the father. Thus:
  i. Sons convert the daughters into residuaries.
  ii. Son's sons convert the son's daughters into residuaries and so on.
  iii. The lower son's son may convert a higher son's daughter into a residuary should the latter be excluded from inheritance. This is the case of the lucky kinsman, see section 24.1.4 as well as examples 2, 6 and 109.
- The case of the father converting the mother into a residuary (see section 16.2) and the sister (full or consanguine) inheriting as a residuary when co-existing with a daughter or son's daughter are the two exceptions to this rule (see section 32.1.3).

11.1.1 Sharers that can be partially excluded (*Hajb Nuqṣān*)

- Sharers may be partially excluded *(Ḥajb Nuqṣān)* by the presence of other heirs or blood relatives of the deceased. Sharers who are partially excluded effectively have their share reduced. The conditions of partial exclusion are given under the relevant chapter for each sharer. The sharers who can be partially excluded are:

1. Husband
2. Widow
3. Mother
4. Son's daughter
5. Consanguine sister

11.1.2 Sharers who are never excluded

- Sharers that are never excluded are:
  1. Father
  2. Mother
  3. Husband
  4. Wife
  5. Daughter
- The son, who inherits as a residuary, is the only other heir who is never excluded

11.1.3 Sharers that can be totally excluded (*Ḥajb Ḥirmān*)

- Sharers may be totally excluded (*Ḥajb Ḥirmān*) by the presence of other heirs of the deceased. Sharers who are totally excluded inherit nothing. The word exclusion on its own denotes total exclusion. The conditions of total exclusion are given under the relevant chapter for each sharer. The sharers who can be totally excluded are:
  1. True grandfather
  2. True grandmother
  3. Son's daughter
  4. Full sister
  5. Consanguine sister
  6. Uterine brother
  7. Uterine sister

11.1.4 Sharers that can be converted into residuaries

- The following heirs who normally inherit as sharers can be converted into residuaries:
  1. Father
  2. True grandfather

  3. Mother
  4. Daughter
  5. Son's daughter
  6. Full sister
  7. Consanguine sister

11.2 RESIDUARIES (*'AṢABĀT NASABIYYARH*)

The Prophet (ﷺ) said: *"Give the Farā'iḍ to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased."* (Ṣaḥīḥ Al-Bukhārī)

- *'Aṣabāt* (translated as residuaries) may be by blood relation (*Nasbiyyah*) or by a special cause (*Sababiyyah*), e.g. *Mawlā Al-'Itāq*. *'Aṣabāt Nasbiyah* (singular *'Aṣabah*) refers to the "near male agnates".
- In *Shari'ah* law the *'Aṣabāt Nasbiyyah* (residuaries) consist of all male agnates and four specified female agnates.
- Agnate relatives of the deceased are those between whom and the deceased no female intervenes. Hence, all residuaries are related to the deceased through a male.
- The four female agnates are daughter, son's daughter h.l.s., full sister and consanguine sister.
- Some heirs who normally inherit as sharers can be converted into residuaries under certain circumstances.
- Where there are several residuaries of the same degree the estate is divided amongst them on a per capita basis. Thus, if the deceased leaves behind one nephew through one brother, two nephews through another brother and seven nephews through yet another brother all the nephews would inherit equally as residuaries.
- The *'Aṣabāt Nasabiyyah* can be divided into three types:

1. *'Aṣabah Binafsihi* is an heir who is a residuary in his own right e.g. son, son's son h.l.s., father, brother, paternal uncle. These are the male agnates.
2. *'Aṣabah Bighayrihā* is an heir who becomes a residuary in the right of another heir; e.g. daughter with son, son's daughter h.l.s. with son's son of equal or lower degree, full sister with brother, consanguine sister with consanguine brother. These are the female agnates.
3. *'Aṣabah Ma'a Ghayrihā* is an heir who becomes a residuary when inheriting with *'Aṣabah Bighayrihā*. The two examples are full sister and consanguine sister inheriting with daughter or son's daughter h.l.s. This is based on the tradition of the Prophet Muhammad (ﷺ). See section 31.1.3.

- The residuary heirs can also be classified according to order of succession into four classes:

I Descendants of the deceased

II Ascendants of the deceased

III Descendants of the father

IV Descendants of the true grandfather h.h.s.

- The other residuary which is not in this classification is residuary by special reason such as *Mawlā Al-'Itāq* and his heirs. Such residuaries are not of any practical importance in this day and age.

11.2.1 The female agnate residuaries

- There are four female agnates who can inherit as residuaries:
  - Daughter
  - Son's daughter h.l.s.
  - Full sister
  - Consanguine sister
- No female is a primary residuary but only becomes a residuary in the presence of a co-existing male residuary of the same degree and consanguine relationship to the deceased. This is the principle of *Ta'sīb*.
- Thus, son converts daughters into residuaries, son's son converts son's daughters into residuaries, full brother converts full sisters into residuaries and consanguine brother converts consanguine sisters into residuaries.
- Qur'ānic heirs not affected by *Ta'sīb* are the widow, true grandmother and uterine sister.
- The case of the father converting the mother into a residuary (section 16.2) and the sister (full or consanguine) inheriting as a residuary when co-existing with a daughter or son's daughter h.l.s. (section 31.1.3) are the two exceptions to this rule.

11.2.2 Rules of inheritance amongst the residuaries

- The residuaries inherit whatever remains (the residue) of the estate after the sharers have been allotted their shares.
- If there are no sharers the residuaries take the whole estate.
- If there are no residuaries the sharers take the residue (doctrine of *Radd*).
- The priority rights of the residuary heirs to the inheritance are based on the following principles (Al-Jabarī's rule):

1. Descendants take priority over ascendants who take priority over collaterals. The exception is that the father is not excluded by the son. All collaterals are

excluded by father and true grandfather according to the *Ḥanafī Fiqh* but not according to the other three *Sunni Fiqh*. See sections 18.2.5-18.2.7.

2. The nearer in degree exclude the more remote within the limits of each class of heirs. Whoever is related to the deceased through another person will not inherit while that person is alive. The father for instance, totally excludes the brother and sister (full and consanguine). One exception to this rule is that the mother does not exclude the uterine siblings.
3. Amongst collaterals the strength of blood-tie determines priority. Full blood takes preference over half-blood through father e.g. Si when residuary has preference over Bc and Sc.

11.2.3 Class I residuaries

The class I residuaries (descendants of the deceased) are:

- Son
- Son's son h.l.s.
- Daughter when accompanied by son.
- Son's daughter h.l.s. when accompanied by son's son of an equal or lower degree.

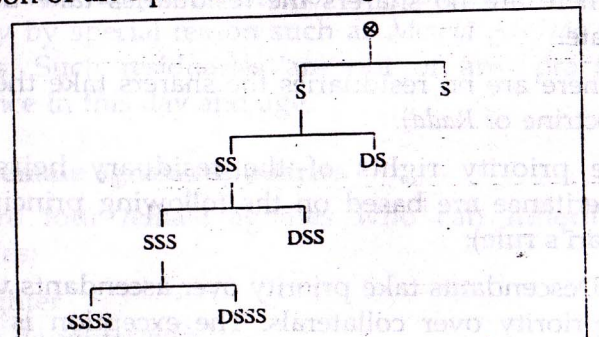


Fig. 3 shows first four generations of class I residuaries

- After the heirs with fixed shares have been allocated their shares, the residue is distributed amongst the class I residuaries.
- The general rule that the male inherits the portion of two females applies.
- The daughters share with the sons.
- Similarly, the son's daughters share with the son's sons and so on.

The following examples should be studied in conjunction with chapters on inheritance of son, daughter and granddaughter.

Example 1

A person dies leaving behind a father, two daughters (2D) and a son's daughter (DS) as shown in Fig. 4.

The distribution of the estate is thus:

2D inherit 2/3 (fixed share)
F inherits 1/3 (1/6 as sharer and 1/6 as residuary)
DS excluded by 2D

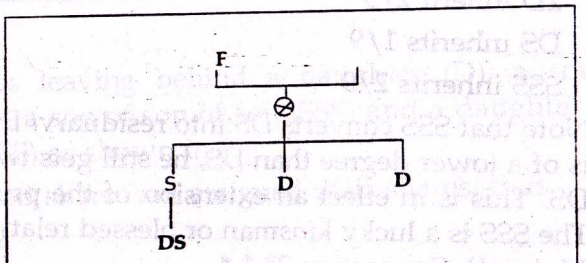


Fig. 4 (All living heirs are shown in bold)

Example 2

A person dies leaving behind two daughters (2D), a son's daughter (DS) and a son of son of son (SSS), thus:

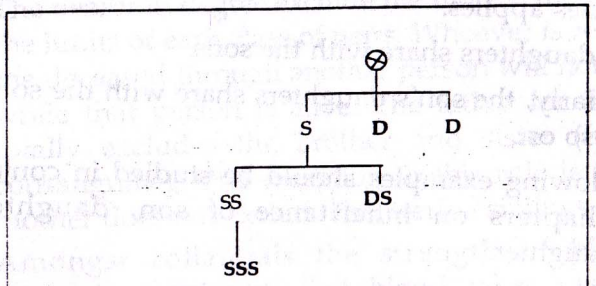


Fig. 5 (All living heirs are shown in bold)

Heirs with fixed shares are assigned their shares, thus:

2D inherit 2/3 (fixed share)

DS shares the residue of 1/3 with SSS; the general rule that the male gets the portion of two female applies.

The final distribution of the estate is thus:

2D inherit 2/3

DS inherits 1/9

SSS inherits 2/9

Note that SSS converts DS into residuary. Even though SSS is of a lower degree than DS, he still gets twice the share of DS. This is in effect an extension of the principle of *Ta'sīb*. The SSS is a lucky kinsman or blessed relative (*Al-Qarib Al-Mubarak*). See section 23.1.4.

Example 3

A person dies leaving behind one daughter (D), a son's daughter (DS) and son of son of son (SSS), thus:

Heirs with fixed shares are assigned their shares, thus:

D inherits 1/2

DS inherits 1/6

SSS inherits 1/3 as residuary

In this example SSS does not convert DS into residuary.

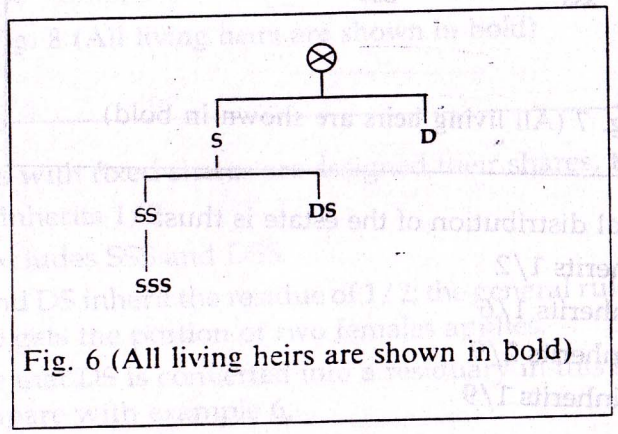


Fig. 6 (All living heirs are shown in bold)

Example 4

A person dies leaving behind a daughter (D), a son's daughter (DS), a son of son of son (SSS) and a daughter of son of son (DSS) as shown in Fig. 7.

Heirs with fixed shares are assigned their shares, thus:

D inherits 1/2

DS inherits 1/6

D and DS together inherit 2/3.

SSS and DSS inherit the residue of 1/3; the general rule that the male gets the portion of two females applies.

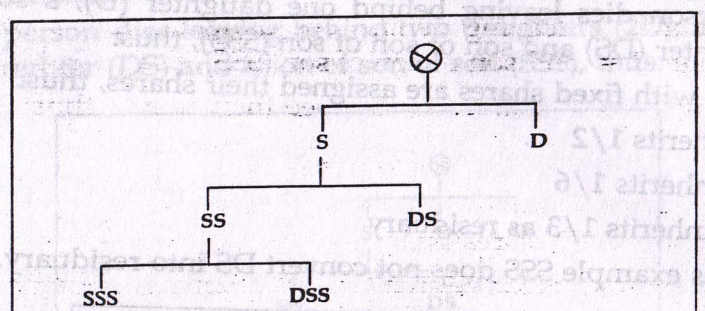


Fig. 7 (All living heirs are shown in bold)

The final distribution of the estate is thus:

D inherits 1/2

DS inherits 1/6

SSS inherits 2/9

DSS inherits 1/9

Example 5

A person dies leaving behind a daughter (D), a son's son (SS), a son's daughter (DS), a son of son of son (SSS) and a daughter of son of son (DSS) as shown in Fig. 8.

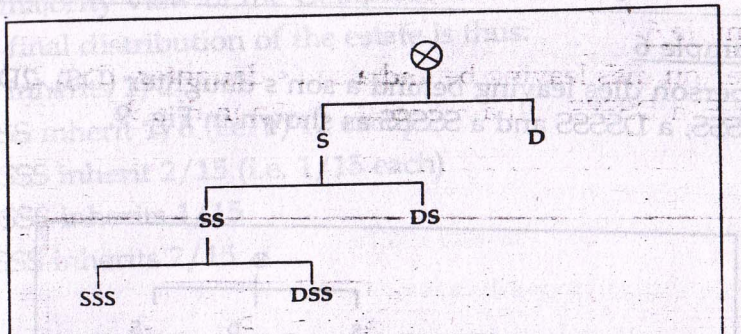


Fig. 8 (All living heirs are shown in bold)

Heirs with fixed shares are assigned their shares, thus:

D inherits 1/2

SS excludes SSS and DSS.

SS and DS inherit the residue of 1/2; the general rule that the male gets the portion of two females applies.

Note that DS is converted into a residuary in this situation. Compare with example 6.

The final distribution of the estate is thus:

D inherits 1/2

SS inherits 1/3

DS inherits 1/6

SSS excluded by SS

DSS excluded by SS

Example 6

A person dies leaving behind a son's daughter (DS), 2DSS, 2DSSS, a DSSSS and a SSSSS as shown in Fig. 9.

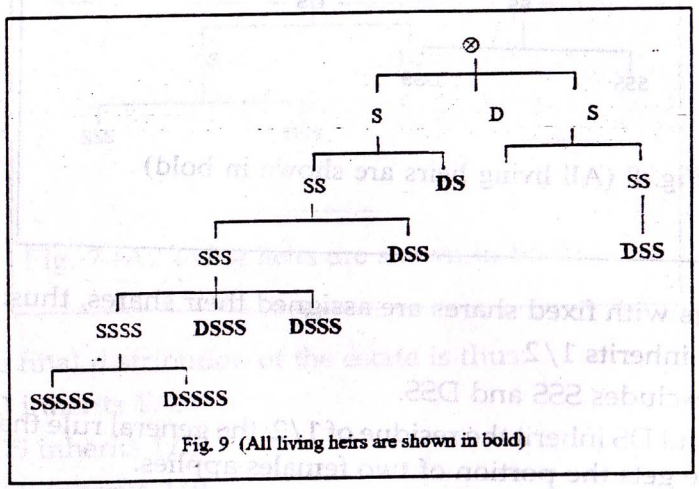


Fig. 9 (All living heirs are shown in bold)

Heirs with fixed shares are assigned their shares, thus:

DS inherits 1/2

2DSS inherit 1/6 (i.e. 1/12 each)

Note that DS and 2DSS together inherit 2/3.

SSSSS, DSSSS and 2DSSS inherit the residue of 1/3; the general rule that the male gets the portion of two females applies. Note that it is the presence of SSSSS that converts DSSS and DSSSS into residuaries. The principle of *Ta'sīb* is extended here to allow a male of lower degree (SSSSS) to convert a female of a higher degree into a residuary. This is

the majority view of the Companions of the Prophet (ﷺ).

The final distribution of the estate is thus:

DS inherits 1/2

2DSS inherit 1/6 (i.e. 1/12 each)

2DSSS inherit 2/15 (i.e. 1/15 each)

DSSSS inherits 1/15

SSSSS inherits 2/15

Example 7

A person dies leaving behind two daughters (2D), DS, DSS and SSS as shown in Fig. 10.

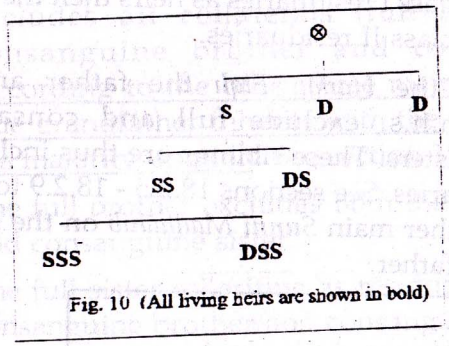


Fig. 10 (All living heirs are shown in bold)

Heirs with fixed shares are assigned their shares, thus:

2D inherit 2/3

DS and DSS are converted into residuaries by SSS and they all inherit the residue; the general rule that the male gets the portion of two females applies.

The final distribution of the estate is thus:

2D inherit 2/3 (1/3 each)

DS inherits 1/12

SSS inherits 1/6

DSS inherits 1/12

Note that in such a situation the DS inherits with DSS who is of a lower degree.

11.2.4 Class II residuaries

The class II residuaries (ascendants of the deceased) are:

- Father
- True grandfather h.h.s.
- If there are no class I residuaries as heirs then the residue devolves onto class II residuaries.
- According to the *Ḥanafī Fiqh* the father and true grandfather h.h.s. exclude full and consanguine brothers and sisters. These siblings are thus included in class III residuaries. See sections 18.2.5 - 18.2.9 to see the views of the other main *Sunni Madhāhib* on the share of the true grandfather.

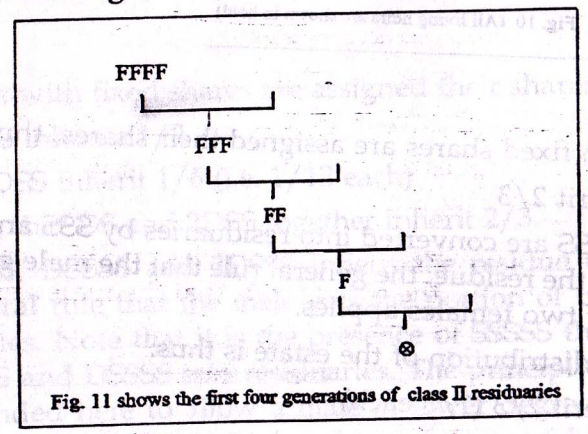


Fig. 11 shows the first four generations of class II residuaries

11.2.5 Class III residuaries

The class III residuaries (descendants of father of deceased) are:

- Full brother
- Consanguine brother
- Full sister when not sharer
- Consanguine sister when not sharer
- Full brother's son h.l.s.
- Consanguine brother's son h.l.s.
- If there are no class I and no class II residuaries as heirs the residue then devolves onto class III residuaries. According to the *Ḥanafī Fiqh* the true grandfather h.h.s. excludes all collaterals (full brother, full sister, consanguine brother and consanguine sister). According to the other three main *Sunni Madhāhib* the true grandfather inherits with the collaterals and this is the majority opinion. See section 19.2.
- The full brother excludes both the consanguine brother and consanguine sister.
- The full sister inheriting as residuary excludes both the consanguine brother and consanguine sister.
- The general rule that the male inherits the portion of two females applies.
- Note that the full sister can inherit either as a residuary when accompanied by a full brother (*'Aṣabah Bighayrihā*) or as *'Aṣabah Ma'a Ghayrihā* when inheriting with a daughter or son's daughter h.l.s. in the absence of a full brother. Similarly, with consanguine sister in default of full sister. This situation is an exception to the rule that no female is primarily a residuary but only becomes so when coexisting with a male residuary.

- In default of the sister (full or consanguine) inheriting as a residuary, the residue devolves upon the full brother's sons. If there are no full brother's sons the residue devolves upon the consanguine brother's sons.
- Finally the residue devolves upon full or consanguine brothers' sons' h.l.s. in like order, the nearer degree excluding the more remote, and the issue of full brothers excluding the issue of consanguine brothers of the same degree.
- The order of succession for practical purposes amongst the class III residuaries is as follows:

1. Full brother and full sister — Bf $\mathcal{Sf}$
   Full sister inheriting as residuary
2. Consanguine brother and consanguine sister — Bc $\mathcal{Sc}$
   Consanguine sister inheriting as residuary
3. Son of full brother — SBf
4. Son of consanguine brother — SBc
5. Grandson through son of full brother — SSBf
6. Grandson through son of Bc — SSBc
7. Great grandson through son of full brother — SSSBf
8. Great grandson through son of Bc — SSSBc

   And so on in like manner.

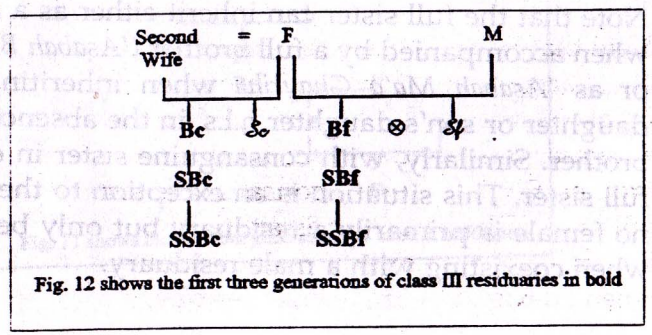


Fig. 12 shows the first three generations of class III residuaries in bold

The following examples illustrate the principles of inheritance amongst class III residuaries.

Example 8

A person dies leaving behind two full sisters ($2\mathcal{Sf}$), a consanguine brother (Bc) and a consanguine sister ($\mathcal{Sc}$) as shown in Fig. 13.

Heirs with fixed shares are assigned their shares, thus:

$2\mathcal{Sf}$ together inherit 2/3 as sharers

Bc and $\mathcal{Sc}$ inherit the residue of 1/3, the general rule that the male gets the portion of two females applies.

The final distribution of the estate is thus:

$2\mathcal{Sf}$	inherit 2/3
Bc	inherits 2/9
$\mathcal{Sc}$	inherits 1/9

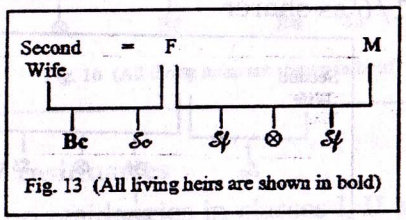


Fig. 13 (All living heirs are shown in bold)

Example 9

A person dies leaving behind one daughter and one full sister as the only heirs as shown in Fig. 14.

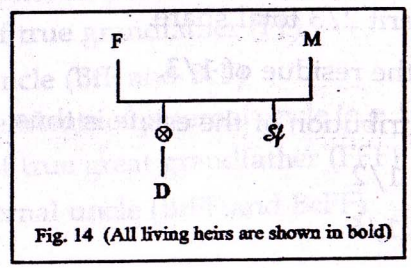


Fig. 14 (All living heirs are shown in bold)

Heirs with fixed shares are assigned their shares, thus:

Daughter inherits 1/2 as sharer

The full sister (Sf) inherits the residue of 1/2 as a primary residuary (*'Aṣabah Ma'a Ghayrihā*), this an exception to the general rule (see section 31.1.3).

The final distribution of the estate is thus:

D inherits 1/2

Sf inherits 1/2

Example 10

A person dies leaving behind a full sister (Sf), a consanguine sister (Sc) and a son of full brother (SBf) as the only heirs as shown in Fig. 15.

Heirs with fixed shares are assigned their shares:

Sf inherits 1/2 as sharer

Sc inherits 1/6 as sharer

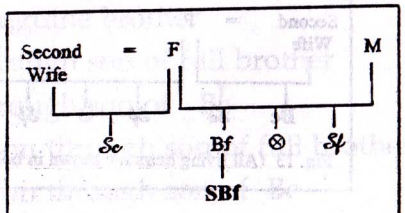


Fig. 15 (All living heirs are shown in bold)

Note that Sf and Sc inherit as sharers in this example and together inherit 2/3 total share.

SBf inherits the residue of 1/3.

The final distribution of the estate is thus:

Sf inherits 1/2

Sc inherits 1/6

SBf inherits 1/3

Example 11

A person dies leaving behind a full brother (Bf), a uterine brother (Bu) and a uterine sister (Su) as the only heirs as shown in Fig. 16.

Heirs with fixed shares are assigned their shares,

Bu and Su together inherit 1/3 equally as sharers

Bf inherits the residue of 2/3

The final distribution of the estate is thus:

Bu inherits 1/6

Su inherits 1/6

Bf inherits 2/3

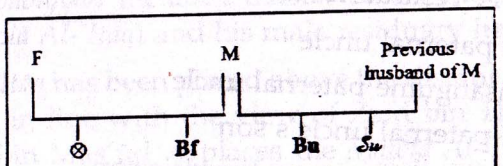


Fig. 16 (All living heirs are shown in bold)

11.2.6 Class IV residuaries

- If there are no residuaries in classes I, II and III as heirs, the residue devolves on class IV residuaries (descendants of true grandfathers of the deceased)

The class IV residuaries are:

- Offspring of true grandfather (FF)
  1. Paternal uncle (BfF and BcF)
  2. Male descendants of paternal uncle (e.g. SBfF and SBcF)
- Offspring of true great grandfather (FFF)
  1. Great paternal uncle (BfFF and BcFF)

2. Male descendants of great paternal uncle (e.g. SBfFF and SBcFF)

- Offspring of more remote true grandfather (FFFF) and so on
- The order of inheritance amongst the class IV residuaries operates first vertically then horizontally, that is to say, all the descendants of the paternal grandfather (FF) and their offspring acting as residuaries have to be exhausted before the descendants of the paternal great grandfather (FFF) can be admitted. The list below demonstrates this point.
- The order of succession for practical purposes amongst class IV residuaries is:

1. Full paternal uncle BfF
2. Consanguine paternal uncle BcF
3. Full paternal uncle's son SBfF
4. Consanguine paternal uncle's son SBcF
5. Full paternal uncle's son's son SSBfF
6. Consanguine paternal uncle's son's son SSBcF
7. Full paternal uncle's son's son's son SSSBfF
8. Consanguine paternal uncle's son's son's son SSSBcF

and so on in like manner.

If there are no agnatic heirs through the paternal uncle then the estate devolves upon the great uncles (i.e. siblings of paternal grandfather and their offspring), thus:

9. Full great paternal uncle BfFF
10. Consanguine great paternal uncle BcFF
11. Full great paternal uncle's son SBfFF
12. Consanguine great paternal uncle's son SBcFF

13. Full great paternal uncle's son's son SSBfFF
14. Consanguine great paternal uncle's son's son SSBcFF

and so on in like manner.

If there are no agnatic heirs through the great paternal uncle then the estate devolves upon the great great uncles (i.e. siblings of paternal great grandfather and their offspring), thus:

15. Full great great paternal uncle BfFFF
16. Consanguine great great paternal uncle BcFFF

and so on in like manner.

11.3 RESIDUARY BY SPECIAL REASON

- *'Aṣabāt Sababiyyah* includes master of an emancipated slave (*Mawlā Al-'Itāq*) and his male residuary heirs.
- *Mawlā Al-'Itāq* has been placed above the distant kindred in priority in line with the view of Zaid bin Thābit ﷺ. Abdullāh bin Mas'ūd ﷺ places the *Mawlā Al-'Itāq* after the distant kindred.
- If a manumitted slave dies without leaving any residuary heir by blood relationship, the manumittor is entitled to the residue in preference to the sharers taking the residue as *Al-Radd* and in preference to the distant kindred if any.
- In our present day and age where slavery has been abolished worldwide, this law is of historical importance only.

11.4 DISTANT KINDRED OR *DHAWŪ*

- The Arabic term *Dhawūl-Arḥām* means "possessors of kinship" and the term distant kindred is used to refer to this class of heirs; also referred to as uterine heirs.

- The term distant kindred is somewhat misleading suggesting that the relationship to the deceased is distant, this is not necessarily so, e.g. the daughter's daughter, who is, in common circumsatnces nearer to the deceased, likewise the daughter's son. There is no ideally suitable term in English for the *Dhawūul- Arḥām*, the term distant kindred is used by most authors.
- These are all blood relatives of the deceased who are neither sharers (*Aṣḥābul-Furūd*) nor residuaries (*'Aṣabāt*). All issues through female relatives are distant kindred except those through the mother.

11.4.1 Inheritance amongst the distant kindred (*Dhawū Al-Arḥām*) according to the four Sunni *Madhāhib*

- The majority of the Companions of the Prophet Muḥammad (ﷺ) hold that the *Dhawūul- Arḥām* are entitled to inherit. Those who allow the right of inheritance to the *Dhawūl- Arḥām* cite Qur'ānic Verses 4:33 and 33:6 in favour of their opinion. The *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh* follow this view and they entitle the *Dhawūl- Arḥām* to inherit the residue when:
  1. The sharers and the residuaries are not entitled to it.
  2. The only heir is husband or widow who is given his/her share and the residue goes to the *Dhawūul- Arḥām*.
- The view of Zaid bin Thābit ﷺ was that the *Dhawūl-Arḥām* are not entitled to inherit at all, any residue in the absence of sharers and residuaries goes to the *Baytul-Māl*.

  This was also the view of Imām Mālik (ﷺ) and Imām Shāfi'ī (ﷺ).

  Later Shāfi'ī jurists were of the opinion that if the *Baytul-Māl* is not admistered according to Islāmic law the

Dhawūl-Arḥām take precedence over the *Baytul-Māl*, which effectively means that the *Dhawūl-Arḥām* are allowed to inherit under Shāfi'ī law.

- Only the traditional *Mālikī Fiqh* does not allow the *Dhawuul-Arḥām* to inherit. This is because in *Mālikī* law the *Baytul-Māl* is considered to be a residuary itself. Although some *Mālikī* jurists in practice do allow the *Dhawūl-Arḥām* to inherit, the traditional *Mālikī* law of not allowing the *Dhawūl-Arḥām* to inherit at all is still upheld in some Islāmic states.
- For distribution amongst the distant kindred the Ḥanbalī and *Shāfi'ī Fiqh* (as well as some *Mālikī* jurists) use a system of representation (*Tanzīl*) whereas the *Ḥanafī Fiqh* uses a system based on the strength of blood relationship (*Qarābah*).
- This form of representation used by the *Shāfi'ī* and *Ḥanbalī Fiqh* for distribution of the estate amongst the distant kindred is different from the representation principle of exclusion mentioned in section 8.2 no. 8.
- Sections 11.4.2 to 11.4.9 discuss the rules pertaining to the *Ḥanafī Fiqh*.
- Section 11.4.7 discusses the rules pertaining to the *Shāfi'ī* and *Ḥanbalī Fiqh*.

11.4.2 Rules of succession applicable to the distant kindred (*Dhawūl-Arḥām*) according to *Ḥanafī Fiqh*

- The distant kindred can be divided into four classes (as with the residuaries):

  I Descendants of the deceased

  II Ascendants of the deceased

  III Descendants h.l.s. of the siblings of the deceased

IV Descendants h.l.s. of ascendants h.h.s. of the deceased

- When the distant kindred are entitled to inherit, the estate devolves firstly upon class I distant kindred, if there are no class I heirs the estate devolves upon class II heirs, if there are no class II heirs the estate devolves upon class III heirs, and if there are no class III heirs then the estate devolves upon class IV heirs.
- Each class of distant kindred has two sets of rules; the first set of rules determine which of the claimants within each class are entitled to inherit and the second set of rules determine the share of each claimant.
- As regards to the distant kindred group there is some difference of opinion amongst the *Ḥanafī* jurists concerning the order of succession as well as the actual share of each claimant.
- If the claimants are of equal degree and have equal claim to the inheritance and the intermediate ancestors of the claimants differ in their "blood" (full, consanguine or uterine) or gender, the two prominent students of Imām Abū Ḥanīfah (رحمه الله), namely Imām Muḥammad bin al-Ḥasan Al-Shaybānī (رحمه الله) and Imām Abū Yūsuf Ya'qūb bin Ibrahīm (رحمه الله), proposed two different systems of distributing the estate amongst the distant kindred claimants.
- Imām Abū Yūsuf (رحمه الله) proposed a system based on the distribution of the estate on a per capita basis. Where the claimants are of equal degree the estate is divided with reference to gender and the number of claimants. This system is easy to implement and it is followed by Ḥanafī jurists in western Asia.
- The system proposed by Imām Muḥammad (رحمه الله) is based on a per stirpes basis and this is the system adopted by

the author of the *Sirājiyyah* and *Ḥanafī* jurists in the Indian subcontinent.

- These differing systems of Imām Abū Yūsuf (رحمه الله) and Imām Muḥammad (رحمه الله) only apply to the distant kindred group because no such difference of "blood" or gender can occur amongst equal claimants of ancestors of the residuaries.
- The difference in gender of the ancestors affects the share of the claimants in classes I, II, III and IV according to Imām Muḥammad's (رحمه الله) system.
- The difference in "blood" (full, consanguine or uterine) of the ancestors affects the order of succession of the claimants in class III of the distant kindred.
- The general rule that the male inherits the portion of two females applies.

11.4.3 Class I distant kindred

The class I distant kindred are descendants of the deceased. They are the grandchildren and their descendants who are neither sharers nor residuaries (SD, DD, SDS, DDS, SSD, DSD, SDD, DDD, SDSS, DDSS etc.) as shown in Fig. 17.

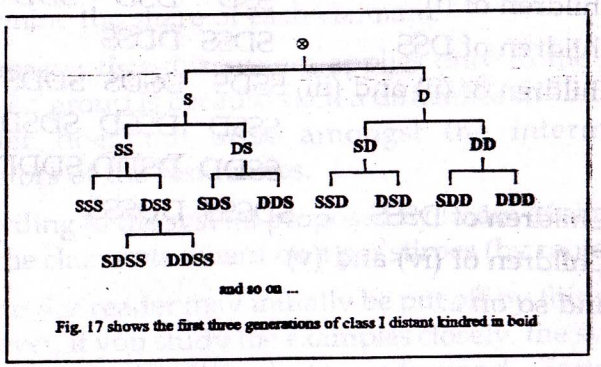


Fig. 17 shows the first three generations of class I distant kindred in bold

The rules governing inheritance amongst class I distant kindred are as follows:

1. The nearer in degree excludes the more remote.
2. If claimants are of equal degree then descendants of sharers or residuaries take preference over descendants of distant kindred, e.g. DDS will exclude DDD. This is because DDS is a descendant of DS (a sharer) whereas DDD is a descendant of DD (a distant kindred).
3. If all the claimants are of equal degree and have equal claim to the inheritance we apply the doctrine of Imām Abū Yūsuf (رحمه الله) or Imām Muḥammad (رحمه الله) if the ancestors of the claimants vary in gender (see below).

The order of succession amongst the class I distant kindred according to the *Ḥanafī Fiqh* is as shown below. Each group in turn must be exhausted before any member of the next group can succeed.

i	Children of D	SD DD
ii	Children of DS	SDS DDS
iii	Children of (i)	SSD DSD SDD DDD
iv	Children of DSS	SDSS DDSS
v	Children of (ii) and (iii)	SSDS DSDS SDDS DDDS
		SSSD DSSD SDSD DDSD
		SSDD DSDD SDDD DDDD
vi	Children of DSSS	SDSSS DDSSS
vii	Children of (iv) and (v)	
	and so on ...	

11.4.3a System proposed by Imām Abū Yūsuf (رحمه الله)

- According to Imām Abū Yūsuf (رحمه الله), when considering distribution of the estate amongst claimants of equal rights with regard to degree and "blood" amongst the distant kindred group, we need only to consider the actual claimants.
- Imām Abū Yūsuf's (رحمه الله) system does not take any notice of the gender or "blood" of the intermediate ancestors i.e. roots of the claimants.
- Inheritance is based on the gender and "blood" of the actual claimants, that is to say on a per capita basis. Each male inherits the portion of two females.
- Imām Abū Yūsuf's (رحمه الله) system is very easy to implement compared to Imām Muḥammad's (رحمه الله) system.

11.4.3b System proposed by Imām Muḥammad (رحمه الله)

- According to Imām Muḥammad (رحمه الله) when considering distribution of the estate amongst the distant kindred in situations when the claimants are of equal degree and "blood", we must consider the gender and "blood" of the intermediate ancestors (the roots) of the claimants to determine the share of each claimant.
- The reason that this system applies only to the distant kindred group is because such a difference in "blood" or gender does not arise amongst the intermediate ancestors of the residuaries.
- According to the system proposed by Imām Muḥammad (رحمه الله) the claimants inherit on a per stirpes (by roots) basis.
- The novice reader may initially be put off by this section, however, if you study the examples closely, the system is not particularly difficult to understand. Fortunately

Imām Muḥammad's (رحمه الله) system only becomes applicable where the claimants are great grandchildren or lower descendants.

- The doctrine of Imām Muḥammad (رحمه الله) is as follows:

1. If the heirs are of equal degree (proximity) to the deceased and the conditions of their roots (ascendants) are equal, we examine the gender of the roots and the number of branches arising from the roots.
2. The roots of the claimants are examined (from the deceased outwards) until there is a difference in gender amongst the roots.
3. At this point, where there is a difference of gender of the roots, we assign shares based on the gender of each of the roots and the number of claimants arising from each of the roots. The rule that the male gets the portion of two females applies.
4. We continue to examine and descend along the roots of the claimants. If a further difference of gender appears at a lower level in the family tree, the shares allotted collectively to the male roots and those allotted to the female roots are reassigned at that level.
5. Step four is repeated until we get to the claimants.
6. The shares allotted to the male roots are collected together and distributed to their descendants. Similarly, the shares allotted to the female roots are collected together and distributed to their descendants. The male inherits double the share of the female.
7. The working of the system is best illustrated by studying the examples shown below.

11.4.3c Examples of distribution of inheritance amongst class I distant kindred using Imām Muḥammad's (رحمه الله) system

These examples demonstrate the rules involved in the distribution of the inheritance amongst class I distant kindred and the working of the two variant doctrines of Imām Abū Yūsuf (رحمه الله) and Imām Muḥammad (رحمه الله).

It should be noted that if there is no difference in the gender or "blood" of the intermediate ancestors, then the shares allotted to the claimants by the two differing systems are identical.

Example 12 (*Ḥanafī Fiqh*)

A person dies leaving behind a SD, SDD and DDD as the only claimants as shown in Fig. 18.

i. SD excludes both SDD and DDD because the nearer in degree excludes the more remote.

ii. SD as sole claimant would take the whole estate.

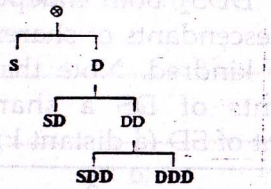


Fig. 18 (All living heirs are shown in bold)

Example 13 (*Ḥanafī Fiqh*)

A person dies leaving behind a SD, DD, DDS, SDD and DDD as the only claimants as shown in Fig. 19.

i. SD and DD exclude DDS, SDD and DDD because the nearer in degree exclude the more remote.

ii. SD gets 2/3 and DD gets 1/3. The male gets the

portion of two females.

iii. Both claimants (SD and DD) have the same ancestor so they inherit in an identical manner under Imām Abū Yūsuf's (ﷺ) and Imām Muḥammad's (ﷺ) systems.

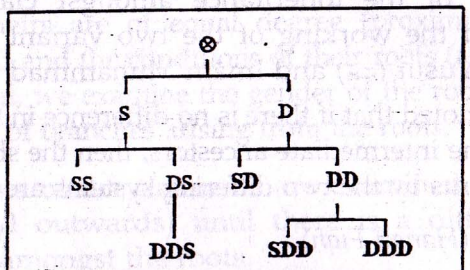


Fig. 19 (All living heirs are shown in bold)

Example 14 (*Ḥanafī Fiqh*)

A person dies leaving behind a SDS_1, DDS_2 and DSD as the only claimants as shown in Fig. 20.

i. SDS_1 and DDS_2 both independently exclude DSD because descendants of sharers exclude descendants of distant kindred. Note that SDS_1 and DDS_2 are descendants of DS a sharer, while DSD is a descendant of SD (a distant kindred).

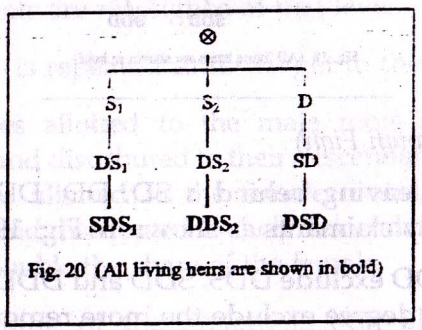


Fig. 20 (All living heirs are shown in bold)

ii. SDS_1 inherits 2/3 and DDS_2 inherits 1/3. The male

gets the portion of two females.

iii. Because there is no difference in the gender of the ancestors of the two heirs, they inherit in an identical manner under Imām Abū Yūsuf's (ﷺ) and Imām Muḥammad's (ﷺ) systems.

Example 15 (*Ḥanafī Fiqh*)

A person dies leaving behind a SD_1, DD_1, $2DD_2$ and DD_3 as the only claimants as shown in Fig. 21.

i. All the claimants are of equal degree and all inherit in the capacity of distant kindred .

ii. As there is no difference in the gender of the roots of the claimants they inherit in an identical manner under Imām Abū Yūsuf's (ﷺ) and Imām Muḥammad's (ﷺ) systems.

iii. The general rule that the male gets the portion of two females applies.

iv. SD_1 is assigned two portions, DD_1, $2DD_2$ and DD_3 are assigned one portion each. The total number of portions is six.

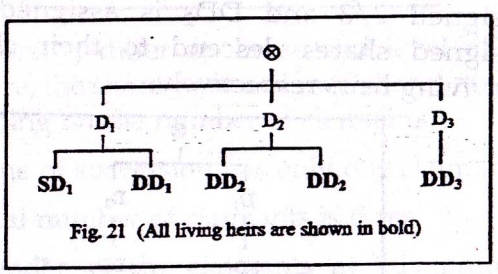


Fig. 21 (All living heirs are shown in bold)

v. The final distribution of shares is thus:

SD_1 inherits 1/3

DD_1 inherits 1/6

$2DD_2$ inherit 1/6 each

DD_3 inherits 1/6

Example 16 (*Ḥanafī Fiqh*)

A person dies leaving behind a DSD_1 and SDD_2 as the only claimants as shown in Fig. 22. This is the simplest case with only two claimants and two lines of descent in which we apply the system of Imām Muḥammad (رحمه الله).

i. Ancestors differ at the second level of descent (**), therefore, the shares are assigned at this point depending on the number of claimants.

ii. Each line of succession has only one claimant.

iii. The total number of claimants is two.

The gender of the claimants at this point is not important, the shares are assigned according to the gender of the ancestors at this point. The male gets the portion of two females.

iv. SD_1 is a male with one descendant so he is assigned two portions, DD_2 is a female with one descendant so she is assigned one portion. This means SD_1 is assigned 2/3 and DD_2 is assigned 1/3. These assigned shares descend to their claimants, i.e. surviving heirs respectively.

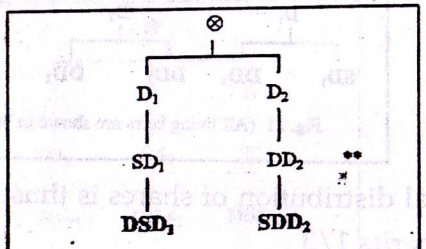


Fig. 22 (All living heirs are shown in bold)

v. DSD_1 gets 2/3 and SDD_2 gets 1/3.

vi. According to Imām Abū Yūsuf's (رحمه الله) system, we pay no attention to the ancestors (roots) of the claimants. The gender of the claimants is considered, therefore DSD_1 gets 1/3 and SDD_2 gets 2/3. The male gets the portion of two females.

Example 17 (*Ḥanafī Fiqh*)

A person dies leaving behind a SDD, SSD and DSD as the only claimants. In this case, there are three claimants through three different lines of descent as shown in Fig. 23.

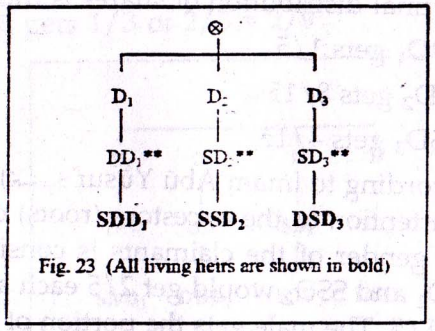


Fig. 23 (All living heirs are shown in bold)

i. Ancestors(**) differ at the second level of descent, therefore, the sharers are assigned shares at this point depending on the number of claimants.

ii. Each line of succession has only one claimant.

iii. The total number of claimants is three.

The gender of the claimants at this point is not important, the shares are assigned according to the gender of the ancestor at this point. The male gets the portion of two females.

iv. Therefore, DD_1 is assigned 1/5, SD_2 is assigned 2/5 and SD_3 is assigned 2/5. These assigned shares

descend to their claimants respectively.

v. The shares assigned to the male roots are collected together, (2/5 + 2/5 = 4/5) and distributed to their descendants i.e. SSD_2 and DSD_3. The male gets twice the share of the female. Therefore,

SSD_2 gets 2/3 of 4/5 = 8/15

DSD_3 gets 1/3 of 4/5 = 4/15

vi. The shares assigned to the female root(s) are collected together (1/5) and distributed to their descendant(s) i.e. SDD_1 who gets 1/5.

vii. The final distribution of shares is thus:

SDD_1 gets 1/5

SSD_2 gets 8/15

DSD_3 gets 4/15

viii. According to Imām Abū Yūsuf's (رحمه الله) system, we pay no attention to the ancestors (roots) of the claimants. The gender of the claimants is considered, therefore SDD_1 and SSD_2 would get 2/5 each and DSD_3 would get 1/5. The male gets the portion of two females.

Example 18 (*Hanafi Fiqh*)

In the next example we have four lines of succession and the rules are applied similarly.

A person dies leaving behind a SDD_1, DDD_2, SSD_3 and DSD_4 as the only claimants as shown in Fig. 24.

i. Ancestors (**) differ at the second level of descent (**), therefore, the sharers are assigned shares at this point depending on the number of claimants.

The gender of the claimants at this point is not important, the shares are assigned according to the gender of the ancestor at this point. The male gets the

portion of two females.

ii. Each line of succession has only one claimant.

iii. The total number of claimants is four.

iv. Therefore, DD_1 and is DD_2 are assigned 1/6 each; SD_3 and SD_4 are assigned 2/6 each; these shares assigned descend to their claimants respectively.

v. The shares assigned to the male roots are collected together (2/6 + 2/6 = 4/6 ≡ 2/3) and distributed to their descendants i.e. SSD_3 and DSD_4. The male gets twice the share of the female. Therefore:

SSD_3 gets 2/3 of 2/3 = 4/9

DSD_4 gets 1/3 of 2/3 = 2/9

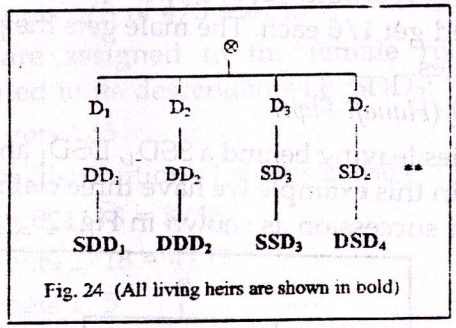


Fig. 24 (All living heirs are shown in bold)

vi. The shares assigned to the female roots are collected together (1/6 + 1/6 = 2/6 ≡ 1/3) and distributed to their descendants i.e. SDD_1 and DDD_2. The male gets twice the share of the female. Thus:

SDD_1 gets 2/3 of 1/3 = 2/9

DDD_2 gets 1/3 of 1/3 = 1/9

vii. The final distribution of shares is thus:

SDD_1 gets 2/9

DDD_2 gets 1/9

SSD_3 gets 4/9

DSD_4 gets 2/9

Note that the two great grandsons SDD_1 and SSD_3, although they are of the same degree with respect to the deceased do not inherit equally because their roots (ascendants) are of different gender. The same applies to the two great granddaughters DDD_2 and DSD_4.

viii. According to Imām Abū Yūsuf's (رحمه الله) system, we pay no attention to the ancestors (roots) of the claimants. The gender of the claimants is considered, so SDD_1 and SSD_3 would get 1/3 each while DDD_2 and DSD_4 would get 1/6 each. The male gets the portion of two females.

Example 19 (*Ḥanafī Fiqh*)

A person dies leaving behind a SSD_1, DSD_1 and SDD_2 as the only heirs. In this example we have three claimants but only two lines of succession as shown in Fig. 25.

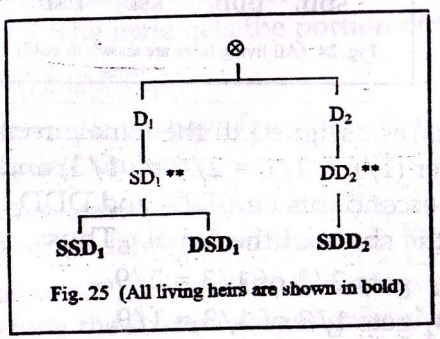


Fig. 25 (All living heirs are shown in bold)

i. Ancestors (**) differ at the second level of descent, therefore, the sharers are assigned shares at this point depending on the number of claimants.

ii. The total number of claimants is three. The gender of the claimants at this point is not important, the shares are assigned according to the gender of the ancestor at this point. The male gets the portion of two females.

iii. Therefore, SD_1 (who is a male and has two claimants) is assigned 4/5 and DD_2 (who is a female with one claimant) is assigned 1/5; these shares assigned descend to their claimants respectively.

iv. The share assigned to the male root (4/5) is distributed to its descendants i.e. SSD_1 and DSD_1. The male gets twice the share of the female. Therefore:

SSD_1 gets 2/3 of 4/5 = 8/15

DSD_1 gets 1/3 of 4/5 = 4/15

v. The share assigned to the female root (1/5) is distributed to its descendants i.e. SDD_2:

SDD_2 gets 1/5

vi. The final distribution of shares is thus:

SSD_1 gets 4/18 = 8/15

DSD_1 gets 2/18 = 4/15

SDD_2 gets 1/5

vii. According to Imām Abū Yūsuf's (رحمه الله) system, we pay no attention to the ancestors (roots) of the claimants. The gender of the claimants is considered, therefore SSD_1 and SDD_2 would get 2/5 each and DSD_1 1/5.

Compare this example with example 19.

Example 20 (*Hanafi Fiqh*)

A person dies leaving behind $2DDSD_1$, $2SDDD_2$, and a $DSDD_3$ as the only claimants as shown in Fig. 26.

i. Ancestors (**) differ at the second level of descent, therefore, the shares are assigned at this point depending on the number of claimants.

ii. The total number of claimants is five.

The gender of the claimants at this point is not important, the shares are assigned according to the gender of the ancestors at this point. The male gets the portion of two females.

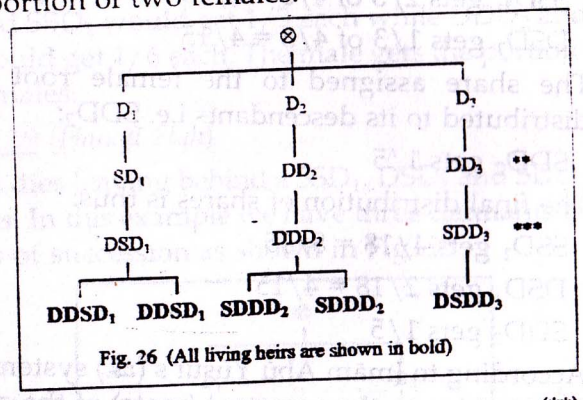


Fig. 26 (All living heirs are shown in bold)

iii. In this example we have three ancestors (**) at level two, one male and two females, and there are five claimants.

SD_1 is male with two claimants;

DD_2 is female with two claimants;

DD_3 is female with one claimant.

The male gets the portion of two females. So SD_1 is assigned 4/7, DD_2 is assigned 2/7 and DD_3 is assigned 1/7.

It should be noted that the male root has been assigned 4/7 and the female roots 3/7.

iv. We continue to examine and descend along the roots of the claimants. A further difference of gender appears amongst the ancestors (**) at the next level in the family tree, level three. The difference occurs only in the combined female root.

The shares allotted to the male root (4/7) is distributed amongst its descendants, $2DDSD_1$ get 4/7 (2/7 each).

v. Since the difference occurs only in the female root at level three (***), the shares allocated to the female root (2/7 + 1/7 = 3/7) are re-assigned at this level.

vi. "DDD_2 is a female with two claimants;

SDD_3 is a male with one claimant.

The total amount to be divided is 3/7, the male gets the portion of two females. SDD_3 is a male with one claimant so he is assigned two portions, DDD_2 is a female with two claimants so she is assigned two portions.

DDD_2 gets 1/2 of 3/7 = 3/14

SDD_3 gets 1/2 of 3/7 = 3/14

vii. The share assigned to DDD_2 is distributed amongst her descendants and the share assigned to SDD_3 is distributed amongst his descendants:

$2SDDD_2$ get 3/14 (3/28 each) and;

$DSSS_3$ gets 3/14

viii. The final distribution of shares is thus:

$2DDSD_1$ get 2/7 each

$2SDDD_2$ get 3/28 each

$DSDD_3$ gets 3/14

ix. According to Imām Abū Yūsuf's (رحمه الله) system, we pay no attention to the ancestors (roots) of the claimants. The gender of the claimants is considered, thus $2SDDD_2$ would get 2/7 each, $2DDSD_1$ would get 1/7 each and $DSDD_3$ would also get 1/7.

Example 21 (*Ḥanafī Fiqh*)

A person dies leaving behind $2DDD_1$ ($2DSD_2$) and SDD_3 as the only claimants as shown in Fig. 27. This is an example of dual relationship (see chapter 44).

i. In this example two cousins (DD_1 and SD_2) marry so that DDD_1 and DSD_2 are identical.

ii. Ancestors (**) differ at the second level of descent, therefore, the shares are assigned at this point depending on the number of claimants.

iii. The total number of claimants is three.

The gender of the claimants at this point is not important, the shares are assigned according to the gender of the ancestors (roots). The male gets the portion of two females.

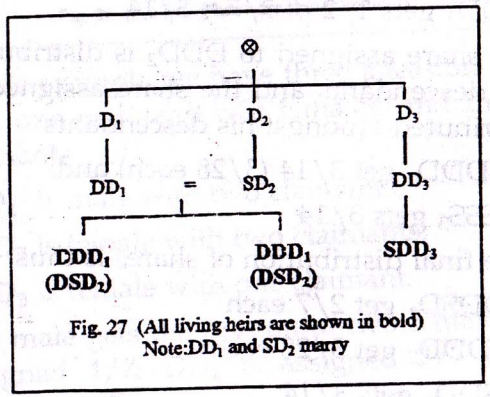


Fig. 27 (All living heirs are shown in bold)
Note: DD_1 and SD_2 marry

iv. DD^1 is female with two claimants;
SD_2 is male with two claimants;
DD_3 is female with one claimant.

The male gets the portion of two females. So DD_1 is assigned 2/7, SD_2 is assigned 4/7 and DD_3 is assigned 1/7.

v. The shares assigned to the male root (4/7) are distributed to its descendants i.e. $2DSD_2$. Thus:
$2DSD_2$ get 4/7 (2/7 each)

vi. The shares assigned to the female roots are collected together (2/7 + 1/7 = 3/7) and distributed to their descendants. The male gets twice the share of the female:
SDD_3 gets 1/2 of 3/7 = 3/14
$2DDD_1$ get 1/2 of 3/7 = 3/14 (3/28 each)

vii. The final distribution of shares are as shown in Fig. 28.
DDD_1 and DSD_2 are identical, each of these individuals inherit a share through the male root and a share through the female root, so the total share is:
3/28 + 2/7 = 3/28 + 8/28 = 11/28 each.
Thus:
DDD_1 and DSD_2 get 11/28 each
SDD_3 gets 3/14

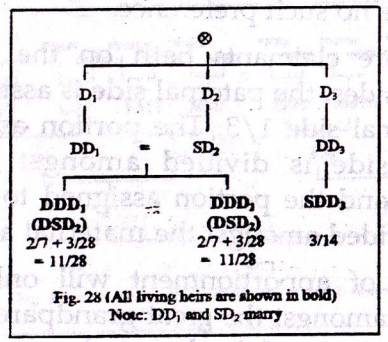


Fig. 28 (All living heirs are shown in bold)
Note: DD_1 and SD_2 marry

viii. According to Imām Abū Yūsuf's (رحمه الله) system, we pay no attention to the ancestors (roots) of the claimants. The gender of the claimants is considered, so $2DDD_1$ (or $2DSD_2$) would inherit 1/3 each because they inherit in two different capacities. SDD_3 would inherit 1/3. The male gets the portion of two females.

11.4.4 Class II distant kindred (*Dhawūl-Arḥām*)

If there are no claimants of class I distant kindred the estate devolves upon the class II distant kindred. The class II distant kindred are ascendants of the deceased. These are the false grandparents h.h.s.

The rules governing inheritance amongst class II distant kindred are as follows:

1. The general rule that the nearer in degree excludes the more remote applies.
2. If claimants are of equal degree, then claimants of sharers or residuaries take preference over descendants of distant kindred; e.g. FMM is preferred to FFM. This is because FMM is a descendant of MM (a sharer) whereas FFM is a descendant of FM (a distant kindred). Some Ḥanafī jurists give no such preference.
3. If there are claimants both on the paternal and maternal sides, the paternal side is assigned 2/3 and the maternal side 1/3. The portion assigned to the paternal side is divided amongst the paternal ancestors and the portion assigned to the maternal side is divided amongst the maternal ancestors.

   This rule of apportionment will only come into operation amongst the great grandparents and more remote ancestors of the deceased.

4. If the claimants are of equal degree and have equal claim to the inheritance but there is a difference in gender amongst the descendants then Imām Muḥammad's (رحمه الله) system is applied. This difference will only occur when we reach ancestors in the fourth degree from the deceased (great great grandparents), therefore, the situation is unlikely to arise in practice.
5. The general rule that the male inherits the portion of two females is applicable.

Using these rules the order of succession amongst class II distant kindred according to the *Ḥanafī Fiqh* is as shown below. Each group in turn must be exhausted before any member of the next group can succeed.

i.	grandparents	FM		
ii.	great grandparents	FMF	FMM	
iii.	great grandparents	FFM	MFM	
iv.	great great grandparents	FMFF	FMMF	FMMM
v.	great great grandparents	FFMF	MFMF	FFFM
		MFFM	FMFM	MMFM
		FFMM	MFMM	

vi. more distant false grandparents

◆ Compare class II distant kindred (Fig. 29) with class II residuaries (Fig. 11)

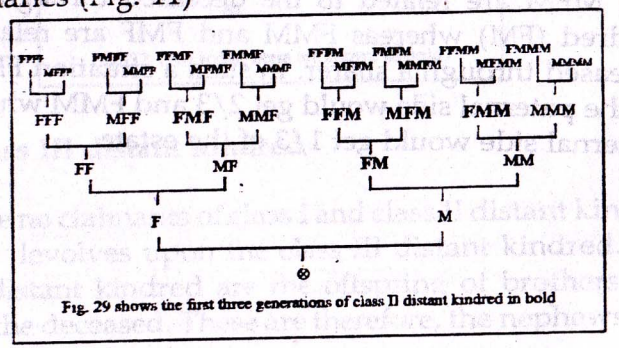


Fig. 29 shows the first three generations of class II distant kindred in bold

Example 22 (*Ḥanafī Fiqh*)

A person dies leaving behind FM, FMM and FMF as the only claimants as shown in Fig. 30. FMM and FMF are totally excluded by FM because he is closer in degree to the deceased. In such a case FM as sole heir would inherit the whole estate.

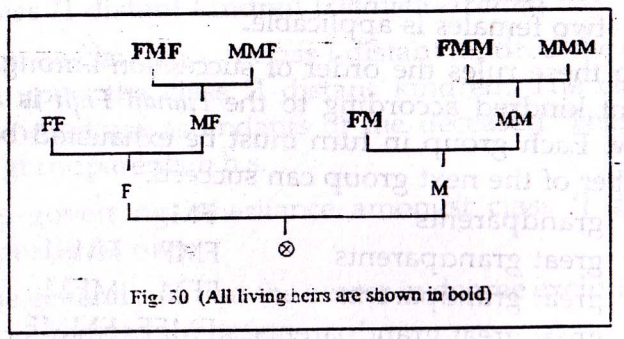


Fig. 30 (All living heirs are shown in bold)

Example 23 (*Ḥanafī Fiqh*)

A person dies leaving behind FMF, FFM, MFM and FMM as the only claimants as shown in Fig. 31. FMM and FMF each independently excludes both FFM and MFM because FFM and MFM are related to the deceased through a distant kindred (FM) whereas FMM and FMF are related to the deceased through a sharer. In such a situation FMF who is on the paternal side would get 2/3 and FMM who is on the maternal side would get 1/3 of the estate.

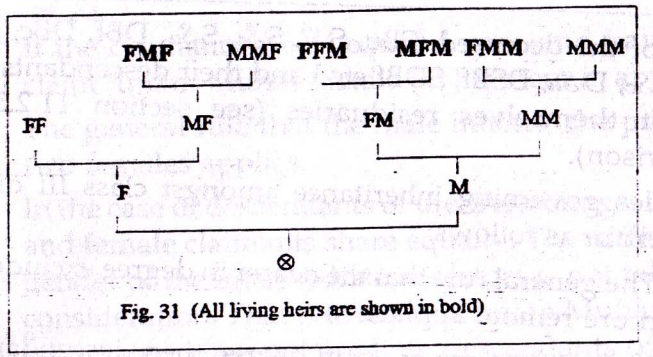


Fig. 31 (All living heirs are shown in bold)

Example 24 (*Ḥanafī Fiqh*)

A person dies leaving behind FFM and MFM as the only claimants as shown in Fig. 32. FFM and MFM are both of equal degree from the deceased and both are related to the deceased through the mother. The male gets the portion of two females applies, so that FFM gets 2/3 and MFM gets 1/3.

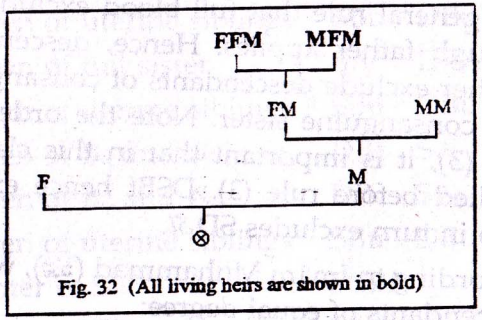


Fig. 32 (All living heirs are shown in bold)

11.4.5 Class III distant kindred

If there are no claimants of class I and class II distant kindred the estate devolves upon the class III distant kindred. The class III distant kindred are the offspring of brothers and sisters of the deceased. These are therefore, the nephews and

nieces of the deceased (SBu, S$\mathcal{S}f$, S$\mathcal{S}c$, S$\mathcal{S}u$, DBf, DBc, DBu, D$\mathcal{S}f$, D$\mathcal{S}c$, D$\mathcal{S}u$, DSBf, SDBf etc.) and their descendants who are not themselves residuaries (see section 11.2.5 for comparison).

The rules governing inheritance amongst class III distant kindred are as follows:

1. The general rule that the nearer in degree excludes the more remote applies.
2. If claimants are of equal degree then descendants of residuaries take preference over descendants of distant kindred; for example, DSBf will exclude DDBf. This is because DSBf is a descendant of SBf (a residuary) whereas DDBf is a descendant of DBf (a distant kindred). For the same reason DSBc excludes SD$\mathcal{S}f$ even though the former is of half-blood and the latter is of full blood.
3. The general rule that full blood excludes half-blood through father applies. Hence, descendants of full brother exclude descendants of consanguine brother and consanguine sister. Note the order of rules (2) and (3), it is important that in this class rule (2) is applied before rule (3). DSBf hence excludes DSBc who in turn excludes SD$\mathcal{S}f$.

   According to Imām Muḥammad (رحمه الله), when there are descendants of equal degree:

   - Descendants of Bu and $\mathcal{S}u$ are not excluded by descendants of Bf, Bc, $\mathcal{S}f$ or $\mathcal{S}c$, they inherit with them.
   - Descendants of Bf exclude descendants of Bc and $\mathcal{S}c$.
   - Descendants of $\mathcal{S}f$ do not exclude descendants of Bc.
   - Two or more descendants of $\mathcal{S}f$ exclude descendants of $\mathcal{S}c$.
4. If the claimants are of equal degree and have equal claim 'Imām Muḥammad's (رحمه الله) system is applied.
5. The general rule that the male inherits the portion of two females applies.
6. In the case of descendants of uterine siblings, the male and female claimants share equally. The difference in gender of the intermediate ancestors is not taken into consideration. That is to say that Imām Muḥammad's (رحمه الله) system does not apply to descendants of uterine siblings.

Using these rules, the order of succession according to Imām Muḥammad's (رحمه الله) doctrine amongst the class III distant kindred is as shown below. Each group in turn must be exhausted before any member of the next group can succeed.

i.	children of full siblings	DBf S$\mathcal{S}f$ D$\mathcal{S}f$
	children of uterine siblings	SBu DBu S$\mathcal{S}u$ D$\mathcal{S}u$
ii.	children of full sister	S$\mathcal{S}f$ D$\mathcal{S}f$
	children of uterine siblings	SBu DBu S$\mathcal{S}u$ D$\mathcal{S}u$
	children of Bc and $\mathcal{S}c$	DBc S$\mathcal{S}c$ D$\mathcal{S}c$
iii.	children of Bc and $\mathcal{S}c$	DBc S$\mathcal{S}c$ D$\mathcal{S}c$
	children of uterine siblings	SBu DBu S$\mathcal{S}u$ D$\mathcal{S}u$
iv.	daughter of SBf	DSBf
v.	daughter of SBc	DSBc
vi.	children of (i)	SDBf SS$\mathcal{S}f$ SD$\mathcal{S}f$
		SBu SDBu SS$\mathcal{S}u$ SD$\mathcal{S}u$
		DBf DS$\mathcal{S}f$ DD$\mathcal{S}f$
		SBu DDBu DS$\mathcal{S}u$ DD$\mathcal{S}u$
vii.	children (ii)	SS$\mathcal{S}f$ SD$\mathcal{S}f$

SSBu SDBu SS$\mathcal{S}u$ SD$\mathcal{S}u$
SDBc SS$\mathcal{S}c$ SD$\mathcal{S}c$
DS$\mathcal{S}f$ DD$\mathcal{S}f$
DSBu DDBu DS$\mathcal{S}u$ DD$\mathcal{S}u$
DDBc DS$\mathcal{S}c$ DD$\mathcal{S}c$

viii. children of (iii)
SDBc SS$\mathcal{S}c$ SD$\mathcal{S}c$
SSBu SDBu SS$\mathcal{S}u$ SD$\mathcal{S}u$
DDBc DS$\mathcal{S}c$ DD$\mathcal{S}c$
DSBu DDBu DS$\mathcal{S}u$ DD$\mathcal{S}u$

ix. daughters of SSBf DSSBf
x. daughters of SSBc DSSBc
xi. children of (vi)
xii. children of (vii)
xiii. children of (viii)
xiv. daughters of SSSBf
xv. daughters of SSSBc
and so on ...

- According to Imām Abū Yūsuf (رحمه الله), the order of succession amongst group III of the distant kindred is slightly different because his basis for order of succession is the "blood" of the claimants whereas Imām Muḥammad (رحمه الله) bases his order on the "blood" of the roots of the claimants.
- According to Imām Abū Yūsuf (رحمه الله), descendants of Bf and $\mathcal{S}f$ exclude descendants of Bc and $\mathcal{S}c$ who in turn exclude descendants of Bu and $\mathcal{S}u$. The rule that the male inherits double the share of two females applies to all relatives including descendants of uterine brothers and uterine sisters.

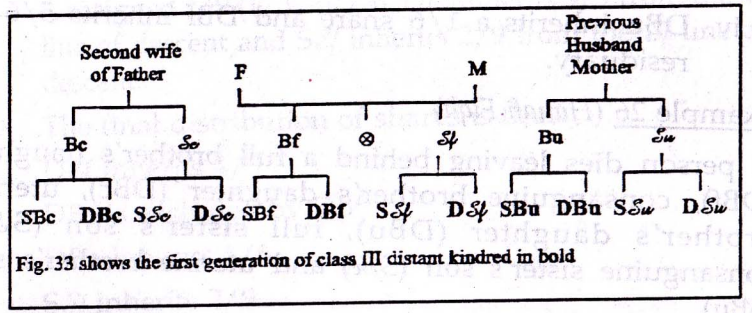


Fig. 33 shows the first generation of class III distant kindred in bold

The following examples are calculated using Imām Muḥammad's (رحمه الله) system.

Example 25 (*Ḥanafī Fiqh*)

A person dies leaving behind a full brother's daughter (DBf), a consanguine brother's daughter (DBc) and uterine brother's daughter (DBu) as shown in Fig. 34.

i. DBc is excluded by DBf because claimants of full blood exclude claimants of half-blood through father.
ii. The remaining claimants, DBf and DBu are of equal degree.

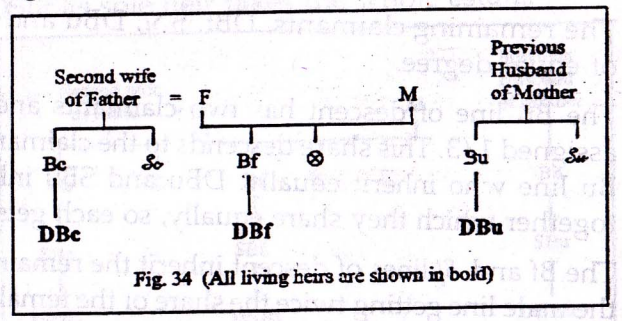


Fig. 34 (All living heirs are shown in bold)

iii. The Bu line of descent has only one claimant and is thus assigned 1/6 which descends to his claimant.

iv. DBu inherits a 1/6 share and DBf inherits 5/6 as residuary.

Example 26 (*Ḥanafī Fiqh*)

A person dies leaving behind a full brother's daughter (DBf), consanguine brother's daughter (DBc), uterine brother's daughter (DBu), full sister's son (S$\mathcal{S}_f$), consanguine sister's son (S$\mathcal{S}_c$) and uterine brother's son (SBu).

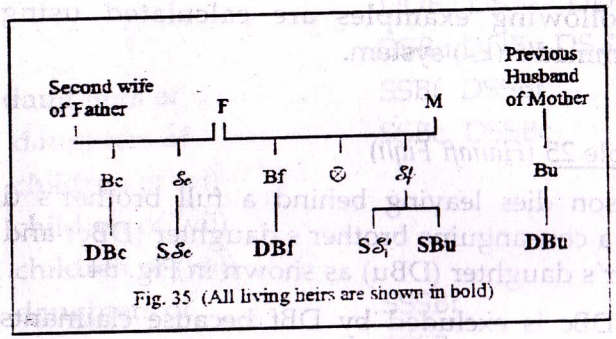


Fig. 35 (All living heirs are shown in bold)

i. DBc and S$\mathcal{S}_c$ are excluded by DBf because claimants of full blood exclude claimants of half-blood through father.

ii. The remaining claimants, DBf, S$\mathcal{S}_f$, DBu and SBu are of equal degree.

iii. The Bu line of descent has two claimants and is thus assigned 1/3. This share descends to the claimants of the Bu line who inherit equally. DBu and SBu inherit 1/3 together which they share equally, so each gets 1/6.

iv. The Bf and $\mathcal{S}_f$ lines of descent inherit the remaining 2/3, the male line getting twice the share of the female. The Bf line and $\mathcal{S}_f$ line both have only one claimant each. The male line is assigned the share of two females. The Bf line is therefore, assigned 4/9 (2/3 of 2/3) and the $\mathcal{S}_f$ line is assigned 2/9 (1/3 of 2/3). DBf inherits 4/9 from the Bf line of descent and S$\mathcal{S}_f$ inherits 2/9 from the $\mathcal{S}_f$ line of descent.

v. The final distribution of shares is thus:

DBf inherits 4/9

DBc is excluded by DBf

DBu inherits 1/6

S$\mathcal{S}_f$ inherits 2/9

S$\mathcal{S}_c$ is excluded by DBf

SBu inherits 1/6

Example 27 (*Ḥanafī Fiqh*)

A person dies leaving behind a full brother's son's daughter (DSBf), consanguine brother's son's daughter (DSBc) and uterine brother's son's daughter (DSBu) as shown in Fig. 36.

i. DSBf excludes DSBu because DSBf is a descendant of a residuary (SBf) and DSBu is a descendant of a distant kindred (SBu).

ii. DSBf excludes DSBc because claimants of full blood exclude claimants of half-blood through father.

iii. DSBf as sole heir takes the whole estate.

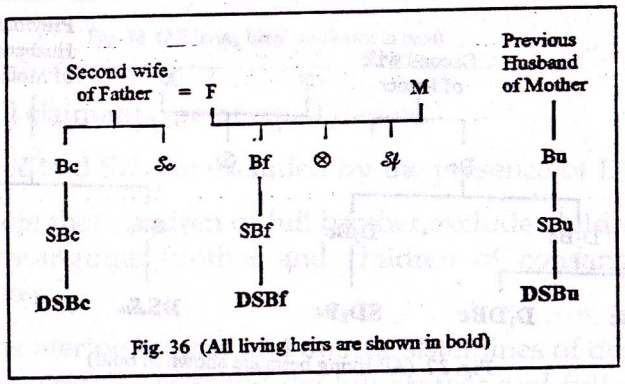


Fig. 36 (All living heirs are shown in bold)

Example 28

A person dies leaving behind 2DDBc, SDBc, DS$\mathcal{S}u$ and SD$\mathcal{S}u$ as shown in Fig. 37.

i. All claimants are of equal degree.

ii. The intermediate ancestors of the claimants differ in "blood" and gender so we must apply Imām Muḥammad's (ﷺ) doctrine.

iii. The share assigned to the uterine sister line of descent (1/3) is distributed equally amongst its claimants DS$\mathcal{S}u$ and SD$\mathcal{S}u$ (1/6 each).

iv. Now if we look at the consanguine brother line of descent, D_1Bc has two claimants and D_2Bc has one claimant. The gender of the claimants is not important at this point. Shares are assigned according to the gender of the ancestors. Both D_1Bc and D_2Bc are females. D_1Bc is assigned two portions because she has two claimants and D_2Bc is assigned one portion because she has one claimant. Therefore, D_1Bc is assigned 4/9 (2/3 of 2/3) and D_2Bc is assigned 2/9 (1/3 of 2/3).

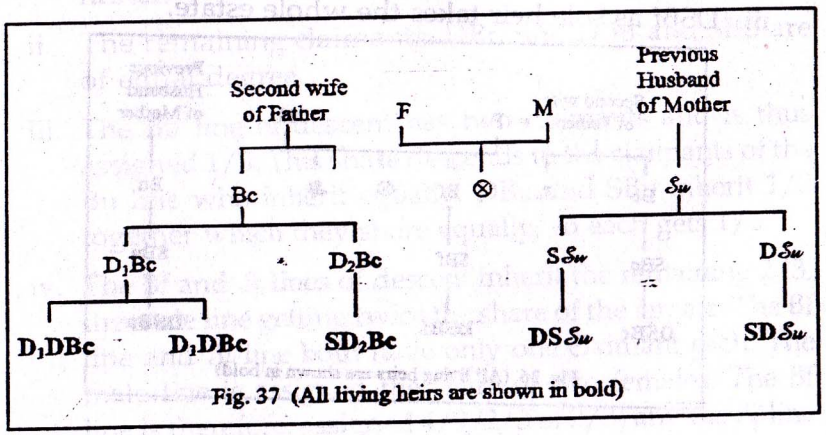


Fig. 37 (All living heirs are shown in bold)

v. The share assigned to D_1Bc (4/9) is distributed to her claimants ($2DD_1$Bc) and the share assigned to D_2Bc (2/9) is distributed to her claimant (SD_2Bc).

vi. The final distribution of shares is thus:

$2DD_1$Bc get 2/9 each

SD_2Bc gets 2/9

DS$\mathcal{S}u$ gets 1/6

SD$\mathcal{S}u$ gets 1/6

Example 29 (*Ḥanafī Fiqh*)

A person dies leaving behind DBf, S$\mathcal{S}f$, D$\mathcal{S}i$, DBc, S$\mathcal{S}c$, DBu S$\mathcal{S}u$ and D$\mathcal{S}u$ as shown in Fig. 38.

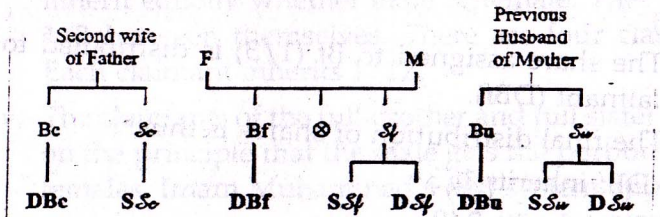


Fig. 38 (All living heirs are shown in bold)

i. All claimants are of equal degree.

ii. DBc and S$\mathcal{S}c$ are excluded by the presence of DBf.

Note that children of full brother exclude children of consanguine brother and children of consanguine sister.

iii. The uterine brother and uterine sister lines of descent are assigned 1/3; and the full brother and full sister lines of descent are assigned the residue 2/3.

iv. The claimants of the uterine brother and uterine sister inherit equally whether male or female. There are three claimants; each gets 1/9.

DBu gets 1/9 (1/3 of 1/3), S$\mathcal{S}_u$ gets 1/9 (1/3 of 1/3) and D$\mathcal{S}_u$ gets 1/9 (1/3 of 1/3).

v. Now if we look at the full brother and full sister lines of descent, Bf has one claimant and $\mathcal{S}_f$ has two claimants. The principle that the male gets the portion of two females applies. As the female ($\mathcal{S}_f$) has two claimants and the male (Bf) has one claimant, $\mathcal{S}_f$ is assigned 1/3 (1/2 of 2/3) and Bf is assigned 1/3 (1/2 of 2/3).

vi. The share assigned to $\mathcal{S}_f$ (1/3) is distributed to her claimants, the male gets the portion of two females. S$\mathcal{S}_f$ gets 2/9 (2/3 of 1/3) and D$\mathcal{S}_f$ gets 1/9 (1/3 of 1/3).

vii. The share assigned to Bf (1/3) is distributed to his claimant (DBf).

viii. The final distribution of shares is thus:

DBf inherits 1/3
S$\mathcal{S}_f$ inherits 2/9
D$\mathcal{S}_f$ inherits 1/9
DBu inherits 1/9
S$\mathcal{S}_u$ inherits 1/9
D$\mathcal{S}_u$ inherits 1/9

Example 30 (*Hanafī Fiqh*)

A person dies leaving behind SDBf, DDBf, SS$\mathcal{S}_f$, DS$\mathcal{S}_f$, SD$\mathcal{S}_f$, DSBu, SDBu and 2DS$\mathcal{S}_u$ as shown in Fig. 39.

i. All claimants are of equal degree.

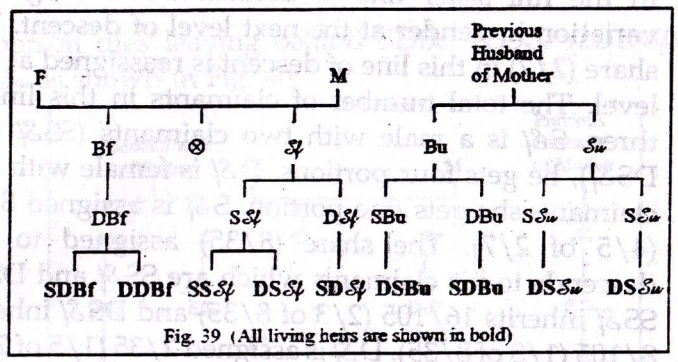


Fig. 39 (All living heirs are shown in bold)

ii. The uterine brother and uterine sister lines of descent are assigned 1/3 and the full brother and full sister lines of descent are assigned the residue of 2/3.

iii. The claimants of the uterine brother and uterine sister inherit equally whether male or female. They inherit 1/3 between themselves. There are four claimants. Each claimant inherits 1/12.

iv. The claimants of the full brother and full sister inherit on the principle that the male gets the portion of two females. Imam Muhammad's (ﷺ) system applies.

v. If we look at the full brother and full sister lines of descent, the shares are assigned at the point where the gender of the roots vary. The total number of claimants is five. Bf is male with two claimants (thus he gets four portions) and he is assigned 8/21 (4/7 of 2/3) and $\mathcal{S}_f$ is female with three claimants (thus she gets three portions) and is assigned 2/7 (3/7 of 2/3).

vi. Share assigned to the Bf line descends to his claimants;

SDBf gets 16/63 (2/3 of 8/21)
DDBf gets 8/63 (1/3 of 8/21)

vii. In the full sister line of descent there is again a variation in gender at the next level of descent. The share (2/7) in this line of descent is reassigned at this level. The total number of claimants in this line is three. S$\mathcal{Sf}$ is a male with two claimants (SS$\mathcal{Sf}$ and DS$\mathcal{Sf}$), he gets four portions. D$\mathcal{Sf}$ is female with one claimant, she gets one portion. S$\mathcal{Sf}$ is assigned 8/35 (4/5 of 2/7). The share (8/35) assigned to S$\mathcal{Sf}$ descends to his claimants which are SS$\mathcal{Sf}$ and DS$\mathcal{Sf}$. SS$\mathcal{Sf}$ inherits 16/105 (2/3 of 8/35) and DS$\mathcal{Sf}$ inherits 8/105 (1/3 of 8/35). D$\mathcal{Sf}$ is assigned 2/35 (1/5 of 2/7) which descends to the sole claimant SD$\mathcal{Sf}$ who inherits 2/35.

viii. The final distribution of shares is thus:

SDBf	inherits	16/63
DDBf	inherits	8/63
SS$\mathcal{Sf}$	inherits	16/105
DS$\mathcal{Sf}$	inherits	8/105
SD$\mathcal{Sf}$	inherits	2/35
DSBu	inherits	1/12
SDBu	inherits	1/12
2DS$\mathcal{Su}$	inherit	1/12 each

Example 31 (*Hanafī Fiqh*)

A person dies leaving behind SDBc, 2DS$\mathcal{Sc}$ (2DD$\mathcal{Sf}$) and DS$\mathcal{Su}$ as shown in Fig. 40.

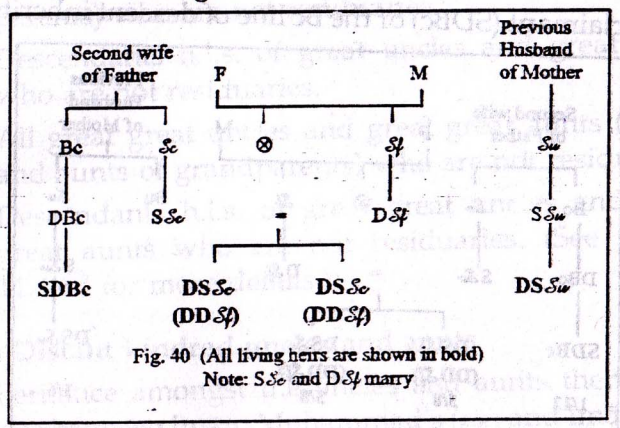


Fig. 40 (All living heirs are shown in bold)
Note: S$\mathcal{Sc}$ and D$\mathcal{Sf}$ marry

i. All claimants are of equal degree.

ii. The $\mathcal{Su}$ line of descent is assigned a 1/6 share, the $\mathcal{Sf}$ line of descent with two claimants is assigned 2/3 share and the Bc and $\mathcal{Sc}$ lines of descent are together assigned the residue of 1/6. For the consanguine siblings the general rule that the male inherits the share of two females applies.

iii. The $\mathcal{Su}$ line of descent has only one claimant (DS$\mathcal{Su}$) so the share (1/6) assigned to $\mathcal{Su}$ line of descent devolves upon this one claimant.

iv. The $\mathcal{Sf}$ line of descent has two claimants (2DD$\mathcal{Sf}$) who inherit the share assigned to the $\mathcal{Sf}$ line of descent. So each DD$\mathcal{Sf}$ gets 1/3 (1/2 of 2/3).

v. Now let us consider the Bc and $\mathcal{Sc}$ lines of descent. $\mathcal{Sc}$ is a female with two claimants so the $\mathcal{Sc}$ line of descent is assigned two portions. Bc is a male with only one

claimant so the Bc line of descent is assigned two portions. So both the $\mathcal{S}c$ line of descent and the Bc line of descent are each assigned 1/12 (1/2 of 1/6). The one claimant (SDBc) of the Bc line of descent inherits 1/12.

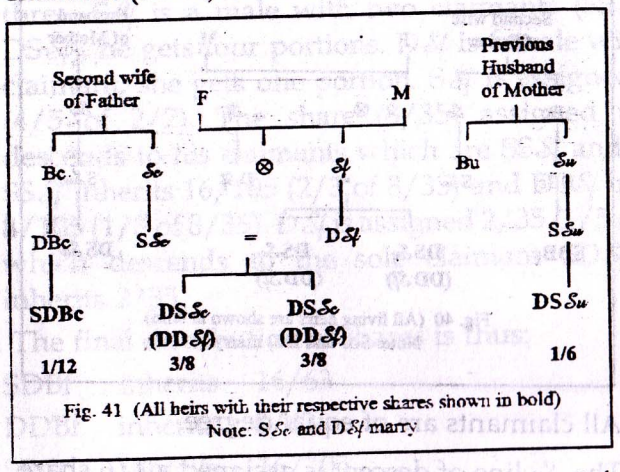


Fig. 41 (All heirs with their respective shares shown in bold)
Note: S$\mathcal{S}c$ and D$\mathcal{S}f$ marry

vi. The S$\mathcal{S}c$ has two claimants (2DS$\mathcal{S}c$) who inherit the share assigned to the $\mathcal{S}c$ line of descent. So each DS$\mathcal{S}c$ gets 1/24 (1/2 of 1/12).

vii. Note that S$\mathcal{S}c$ and D$\mathcal{S}f$ marry so that 2DS$\mathcal{S}c$ and 2DD$\mathcal{S}f$ are identical, they inherit through the $\mathcal{S}c$ line of descent and through the $\mathcal{S}f$ line of descent. So each DS$\mathcal{S}c$ (or DD$\mathcal{S}f$) gets 1/24 + 1/3 = 9/24 = 3/8.

viii. The final distribution of shares is shown in Fig. 41.

11.4.6 Class IV distant kindred

If there are no claimants of classes I, II and III distant kindred the estate devolves upon the class IV distant kindred. The class IV distant kindred are descendants of ascendants of the deceased. Thus, the class IV distant kindred in order of succession consist of:

i. All uncles and aunts who are not residuaries.
ii. Descendants h.l.s. of uncles and aunts who are not residuaries.
iii. All great uncles and great aunts (uncles and aunts of parents) who are not residuaries.
iv. Descendants h.l.s. of great uncles and great aunts who are not residuaries.
v. All great great uncles and great great aunts (uncles and aunts of grandparents) who are not residuaries.
vi. Descendants h.l.s. of great great uncles and great great aunts who are not residuaries. (See section 11.4.6d for more details.)

11.4.6a Distant kindred uncles and aunts

For inheritance amongst the uncles and aunts there is no difference between Imām Muḥammad's (رحمه الله) and Imām Abū Yūsuf's (رحمه الله) systems. The order of succession amongst uncles and aunts of group IV distant kindred is based on the following rules:

1. If there are claimants on both the paternal and maternal sides, claimants on the paternal side are assigned twice the share assigned to the maternal side. Thus, the paternal side is assigned 2/3 and the maternal side is assigned 1/3.
2. If there are no claimants on the paternal side, the maternal side is assigned the whole share and vice versa.
3. Claimants of full blood exclude claimants of half-blood through father and these in turn exclude claimants of half-blood through mother. This rule is applied separately to the paternal and maternal sides.
4. The portion assigned to the paternal side is divided

amongst the claimants on the paternal side and the portion assigned to the maternal side is divided amongst the claimants on the maternal side.

5. Note that no claimant on the paternal side excludes any claimant on the maternal side and no claimant on the maternal side excludes any claimant on the paternal side.
6. The general rule that the male inherits the portion of two females is applicable in all cases of class IV distant kindred.

11.4.6b Distant kindred descendants of uncles and aunts

- The two differing systems of Imām Muḥammad (رحمه الله) and Imām Abū Yūsuf (رحمه الله) give different results for the grandchildren of the uncles and aunts (i.e. children of cousins).
- The grandchildren of uncles and aunts are treated in a similar manner to grandchildren of daughters of the propositus (see class I distant kindred).
- According to Imām Abū Yūsuf (رحمه الله) the portions assigned to the paternal side (2/3) and maternal side (1/3) are divided amongst each of the claimants on a per capita basis; the male inheriting twice the share of the female.

According to Imām Muḥammad (رحمه الله), the order of succession amongst the descendants of the uncles and aunts of group IV distant kindred is based on the following rules (these rules are similar to the rules for class I distant kindred):

1. If there are claimants on both the paternal and maternal sides, claimants on the paternal side are assigned twice the share assigned to the maternal side. Thus, the paternal side is assigned 2/3 and the maternal side is assigned 1/3.
2. If there are no claimants on the paternal side, the maternal side is assigned the whole share and vice versa.
3. Claimants through a nearer ancestor exclude those related through a more remote ancestor. If the ancestor is the same, the nearer in degree excludes the more remote.
4. Claimants of full blood exclude claimants of half-blood through father and these in turn exclude claimants of half-blood through mother. This rule is applied separately to the paternal and maternal sides.
5. If claimants are of equal degree and relationship to the deceased then descendants of residuaries take preference over descendants of distant kindred; e.g. DBfF excludes D*Ś*F. This is because DBfF is a descendant of BfF (a residuary) whereas D*Ś*F is a descendant of *Ś*F (a distant kindred). On a practical point this rule will be applicable only on the paternal side because there are no claimants on the maternal side who inherit as residuaries. It should be noted that rule (4) is applied before rule (5). Compare this to the order in class III distant kindred.
6. The portion assigned to the paternal side is divided amongst the claimants on the paternal side and the portion assigned to the maternal side is divided amongst the claimants on the maternal side.
7. Descendants of uncles and aunts inherit together and no claimant on either side can exclude any claimant on the other side.
8. The general rule that the male inherits the portion of

two females is applicable.

11.4.6c Distant kindred great uncles and great aunts

If there are no descendants at all of uncles and aunts, then the estate devolves upon the great uncles and great aunts and failing them, amongst their descendants h.l.s. Those related through a nearer ancestor exclude those related through a more remote ancestor. The rules applicable to the great uncles and great aunts are those listed for uncles and aunts and rules applicable to the descendants of the great uncles and great aunts are those listed for descendants of uncles and aunts.

With regard to these more remote ancestors such as great uncles and great aunts (*S*FF, BfMF, BcMf etc.), the allotment of 2/3 to the paternal side and 1/3 to the maternal side is further subdivided as shown in Fig. 42. This process would be repeated similarly for higher generations if the situation ever arose. The descendants take what is allotted to their ancestors.

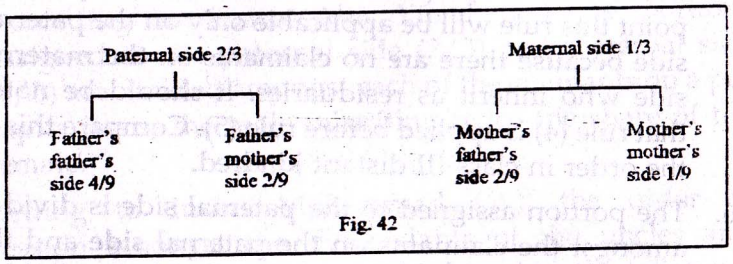


Fig. 42

11.4.6d Order of succession amongst class IV distant kindred

Using the rules detailed in sections 11.4.6a – 11.4.6c, the order of succession amongst class IV distant kindred according to the *Hanafi Fiqh* is as shown below. Each group in turn must be exhausted before any member of the next group can succeed.

i. Full paternal aunt *S*F
Full maternal uncle & aunt BfM *S*M

ii. Consanguine paternal aunt *S*cF
Consanguine maternal uncle & aunt BcM *S*cM

iii. Uterine paternal uncle & aunt BuF *S*uF
Uterine maternal uncle & aunt BuM *S*uM

iv. Descendant of residuary DBfF

v. Children of (i) S*S*F D*S*F
SBfM DBfM S*S*M D*S*M

vi. Descendant of residuary DBcF

vii. Children of (ii) S*S*cF D*S*cF
SBcM DBcM S*S*cM D*S*cM

viii. Children of (iii) SBuF DBuF S*S*uF D*S*uF
SBuM DBuM S*S*uM D*S*uM

ix. Descendant of residuary DSBfF

x. Children of (iv) and (v) SDBfF DDBfF
SS*S*F DS*S*F SD*S*F DD*S*F
SSBfM DSBfM SDBfM DDBfM
SS*S*M DS*S*M SD*S*M DD*S*M

xi. Descendant of residuary DSBcF

xii. Children of (vi) and (vii) SDBcF DDBcF
SS*S*cF DS*S*cF SD*S*cF DD*S*cF
SSBcM DSBcM SDBcM DDBcM

	SS ℭcM	DS ℭcM	SD ℭcM	D ℭcM
xiii. Children of (viii)	SSBuF	DSBuF	SDBuF	DDBuF
xiv.	SS ℭuF	DS ℭuF	SD ℭuF	DD ℭuF
	SSBuM	DSBuM	SDBuM	SDBuM
	SS ℭuM	DS ℭuM	SD ℭuM	DD ℭuM

xv. Descendants h.l.s. of the paternal and maternal uncles and aunts who are not residuaries in like manner and order.

xvi. Great uncles and great aunts (these are the uncles and aunts of parents) excluding those who are residuaries.

xvii. Descendants h.l.s. of (xvi) in like manner and order.

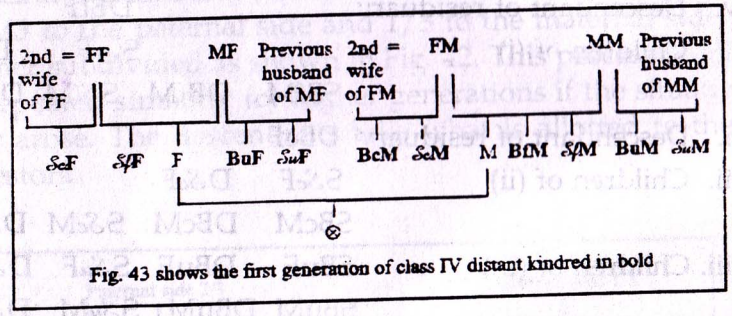


Fig. 43 shows the first generation of class IV distant kindred in bold

Example 32 (*Ḥanafī Fiqh*)

A person dies leaving behind a full maternal uncle (BfM) and a full maternal aunt (ℭfM) as the only heirs as shown in Fig. 44. Both heirs are on the maternal side. The male gets the portion of two females, thus:

BfM inherits 2/3

ℭfM inherits 1/3

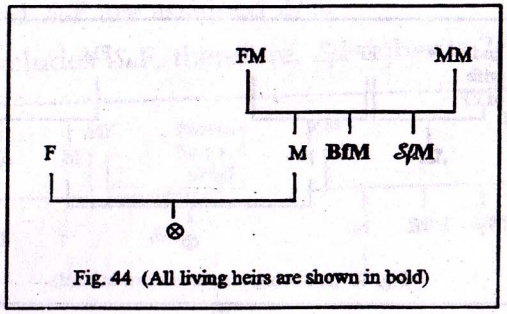


Fig. 44 (All living heirs are shown in bold)

Example 33 (*Ḥanafī Fiqh*)

A person dies leaving behind a uterine paternal uncle (BuF) and a uterine paternal aunt (ℭuF) as the only heirs, Fig. 45.

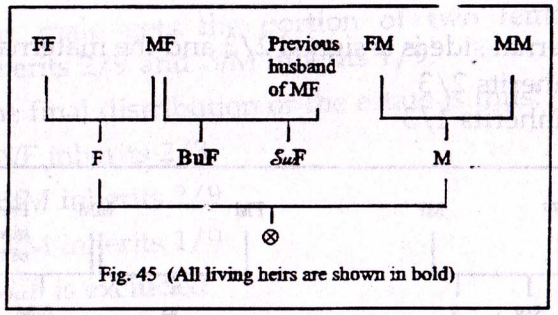


Fig. 45 (All living heirs are shown in bold)

Both heirs are on the paternal side. The male gets the portion of two females, thus:

BuF inherits 2/3

ℭuF inherits 1/3

Example 34 (*Ḥanafī Fiqh*)

A person dies leaving behind a consanguine paternal aunt (ℭcF) and full maternal aunt (ℭfM) as shown in Fig. 46.

The paternal side is assigned 2/3 and the maternal side 1/3.

ℭcF inherits 2/3 and ℭfM inherits 1/3

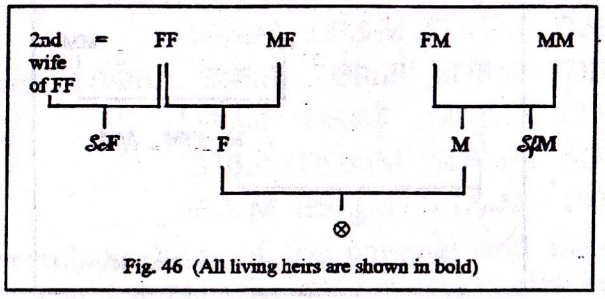


Fig. 46 (All living heirs are shown in bold)

Example 35 (*Ḥanafī Fiqh*)

A person dies leaving behind a full paternal aunt (*Sf*F) and a uterine maternal aunt (*Su*M) as the only claimants as shown in Fig. 47.

The paternal side is assigned 2/3 and the maternal side 1/3.

*Sf*F inherits 2/3

*Su*M inherits 1/3

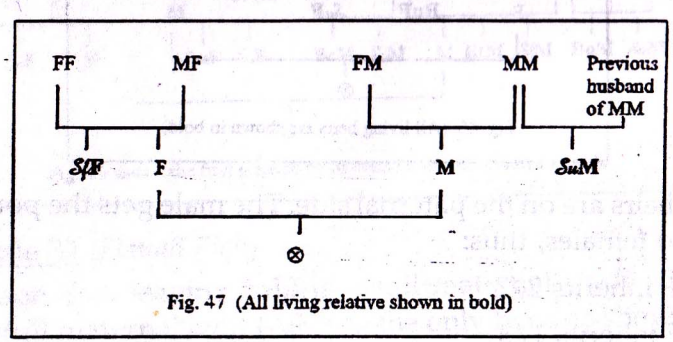


Fig. 47 (All living relative shown in bold)

Example 36 (*Ḥanafī Fiqh*)

A person dies leaving behind a full paternal aunt (*Sf*F), uterine paternal aunt (*Su*F), full maternal uncle (BfM) and a full maternal aunt (*Sf*M) as shown in Fig. 48.

i. The paternal side is assigned 2/3 and the maternal side 1/3.

ii. *Sf*F and *Su*F are assigned 2/3.

*Sf*F excludes *Su*F, therefore, *Sf*F inherits 2/3.

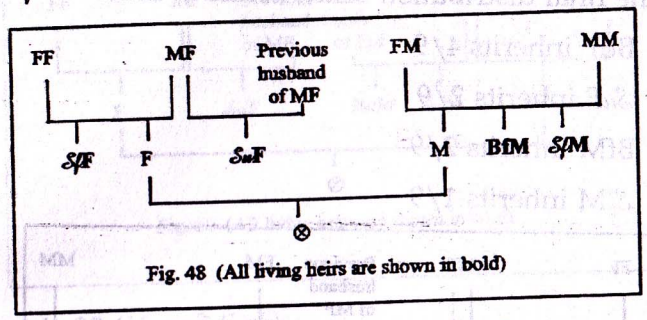


Fig. 48 (All living heirs are shown in bold)

iii. BfM and *Sf*M are assigned 1/3.

The male gets the portion of two females. BfM inherits 2/9 and *Sf*M inherits 1/9.

iv. The final distribution of the estate is thus:

*Sf*F inherits 2/3

BfM inherits 2/9

*Sf*M inherits 1/9

*Su*F is excluded

Example 37 (*Ḥanafī Fiqh*)

A person dies leaving behind a uterine paternal uncle (BuF), a uterine paternal aunt (*Su*F), a full maternal uncle (BfM) and a full maternal aunt (*Sf*M) as shown in Fig. 49.

i. The paternal side is assigned 2/3 and the maternal side 1/3.

ii. BuF and *Su*F are assigned 2/3.

The male gets the portion of two females. BuF inherits 4/9 and *Su*F inherits 2/9.

iii. BfM and *Sf*M are assigned 1/3.

The male gets the portion of two females. BfM

inherits 2/9 and $\mathcal{S}f$M inherits 1/9.

iv. The final distribution of the estate is thus:

BuF inherits 4/9

$\mathcal{S}u$F inherits 2/9

BfM inherits 2/9

$\mathcal{S}f$M inherits 1/9

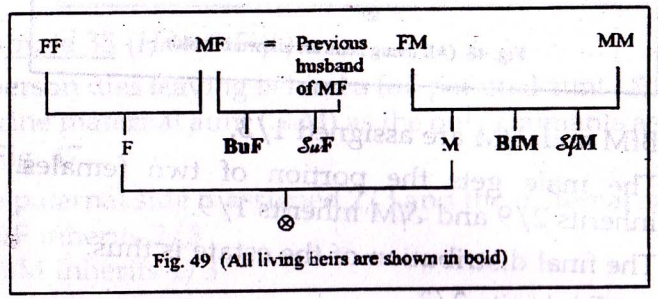


Fig. 49 (All living heirs are shown in bold)

Example 38 (*Ḥanafī Fiqh*)

A person dies leaving behind a uterine paternal aunt ($\mathcal{S}u$F), a consanguine maternal uncle (BcM) and a consanguine maternal aunt ($\mathcal{S}c$M) as shown in Fig. 50.

i. The paternal side is assigned 2/3 and the maternal side 1/3.

ii. $\mathcal{S}u$F is assigned 2/3 and inherits 2/3, being the only claimant on the paternal side.

iii. BcM and $\mathcal{S}c$M are assigned 1/3.

The male gets the portion of two females. BcM inherits 2/9 and $\mathcal{S}c$M inherits 1/9.

iv. The final distribution of the estate is thus:

$\mathcal{S}u$F inherits 2/3

BcM inherits 2/9

$\mathcal{S}c$M inherits 1/9

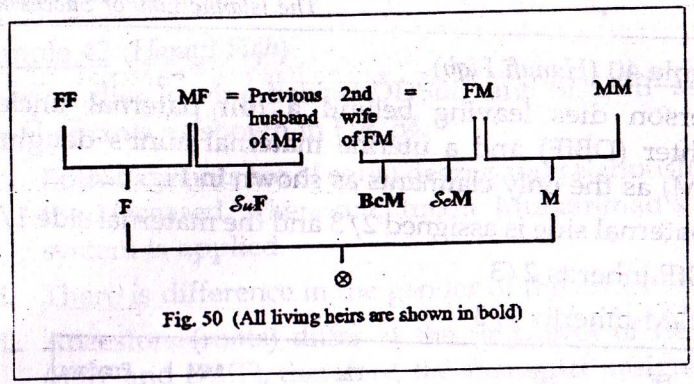


Fig. 50 (All living heirs are shown in bold)

Example 39 (*Ḥanafī Fiqh*)

A person dies leaving behind a son of a full paternal aunt (S$\mathcal{S}f$F) and a daughter of a uterine maternal aunt (D$\mathcal{S}u$M) as the only claimants as shown in Fig. 51.

The paternal side is assigned 2/3 and the maternal side 1/3.

$\mathcal{S}f$F is assigned 2/3

$\mathcal{S}u$M is assigned 1/3

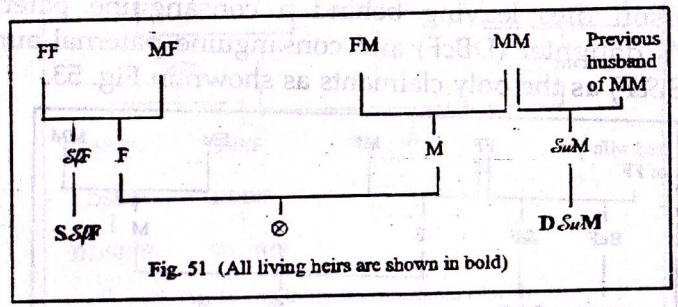


Fig. 51 (All living heirs are shown in bold)

Shares assigned to $\mathcal{S}f$F and $\mathcal{S}u$M descend to their respective heirs. The paternal side is assigned 2/3 and the maternal side 1/3.

S$\mathcal{S}f$F inherits 2/3

D$\mathcal{S}u$M inherits 1/3

Example 40 (*Ḥanafī Fiqh*)

A person dies leaving behind a full paternal uncle's daughter (DBfF) and a uterine maternal aunt's daughter (D$\mathcal{S}_u$M) as the only claimants as shown in Fig. 52.

The paternal side is assigned 2/3 and the maternal side 1/3.

DBfF inherits 2/3

D$\mathcal{S}_u$M inherits 1/3

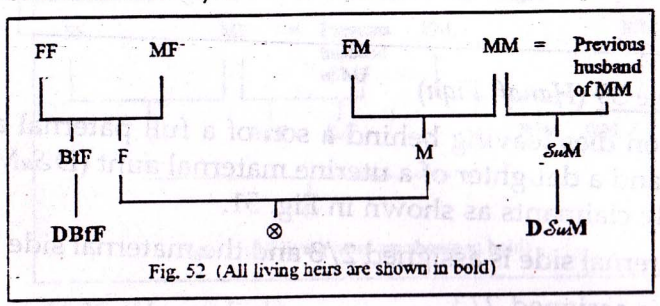


Fig. 52 (All living heirs are shown in bold)

Example 41 (*Ḥanafī Fiqh*)

A person dies leaving behind a consanguine paternal uncle's daughter (DBcF) and consanguine paternal aunt's son (S$\mathcal{S}_c$F) as the only claimants as shown in Fig. 53.

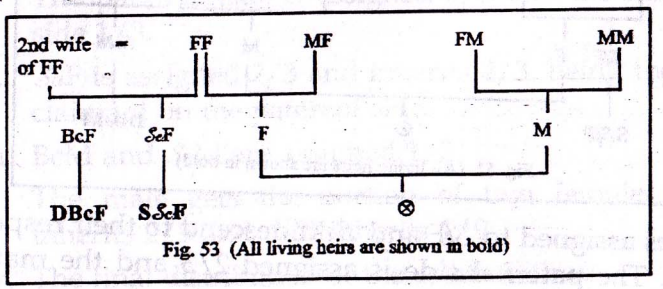


Fig. 53 (All living heirs are shown in bold)

DBcF excludes S$\mathcal{S}_c$F because DBcF is a descendant of a residuary (BcF) whereas S$\mathcal{S}_c$F is a descendant of a distant kindred ($\mathcal{S}_c$F). DBcF as sole heir inherits the whole estate.

Example 42 (*Ḥanafī Fiqh*)

A person dies leaving behind DDSBfF and SDDBfF as the only claimants as shown in Fig. 54.

i. Both claimants are of equal degree and relationship to the deceased. Therefore, Imām Muḥammad's (رحمه الله) system is applied.

ii. There is difference in the gender of the ancestors.

iii. Ancestors (roots) differ at the first level of descent (SBfF and DBfF), therefore, the shares are assigned at this point depending on the number of claimants.

iv. Each line of succession has only one claimant.

v. The gender of the claimants at this point is not important, the shares are assigned according to the gender of the ancestors (roots) at this point. The male gets the portion of two females.

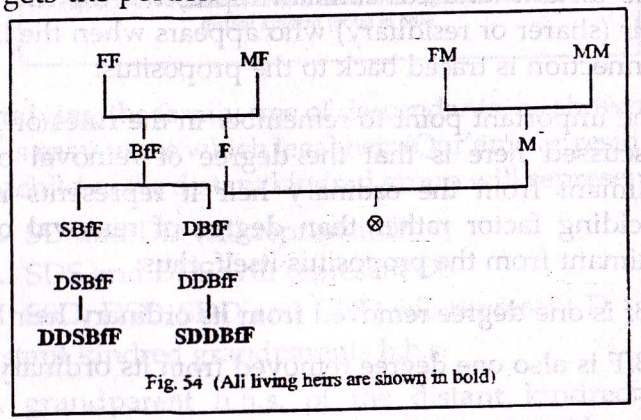


Fig. 54 (All living heirs are shown in bold)

vi. SBfF is assigned 2/3 and DBfF is assigned 1/3.

vii. There is no further difference in the gender of the ancestors between the two lines of descent; these assigned shares therefore, descend to their claimants. Thus:

DDSBfF inherits 2/3

SDDBfF inherits 1/3

10.4.7 INHERITANCE AMONGST THE DISTANT KINDRED ACCORDING TO THE *SHĀFI'I AND ḤANBALI FIQH*

- The system of inheritance used by the *Shāfi'ī* and *Ḥanbalī Fiqh* amongst the distant kindred is based on the principle of *Tanzīl* (representation). Those Mālikī jurists who allow the distant kindred to inherit also follow this system of *Tanzīl*. This form of representation is different from the representation discussed in section 8.2 no. 8.
- In this system of *Tanzīl* a claimant of the distant kindred class inherits in the capacity of a sharer or residuary heir whom he/she represents.
- The distant kindred claimant represents the first legal heir (sharer or residuary) who appears when the line of connection is traced back to the propositus.
- One important point to remember in the rules of *Tanzīl* discussed here is that the degree of removal of the claimant from the ordinary heir it represents is the deciding factor rather than degree of removal of the claimant from the propositus itself, thus:
- DBf is one degree removed from its ordinary heir Bf;
- DBfF is also one degree removed from its ordinary heir BfF
- If the only surviving heirs are a spouse and distant kindred, the spouse is given his/her share and the residue is inherited by the distant kindred.
- A distant kindred as sole heir will inherit the whole estate.

11.4.7a Method of *Tanzīl* in the *Shāfi'ī* and *Ḥanbalī Fiqh*

1. Distant kindred grandchildren h.l.s.

- A grandchild h.l.s. of the distant kindred group represents the first ordinary legal heir (sharer or residuary) who appears when the line of connection is traced back to the propositus.

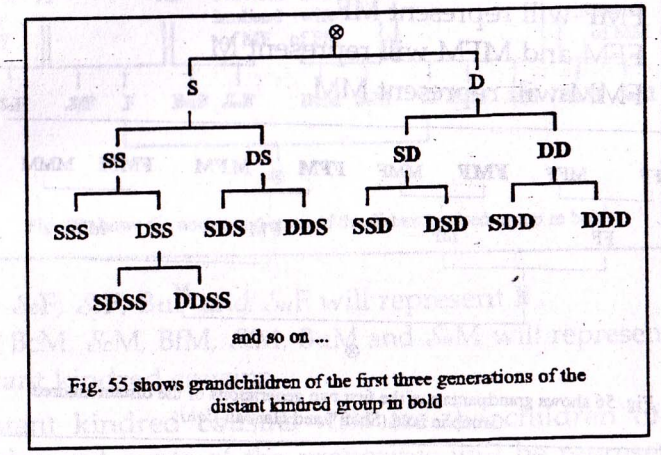


Fig. 55 shows grandchildren of the first three generations of the distant kindred group in bold

By studying the family tree of descendants, as shown in Fig. 55, it is easy to see which legal heir (Qur'ānic or residuary) a grandchild of the distant kindred group will represent, thus:

- SD and DD will represent D
- SDS and DDS will represent DS
- SSD, DSD, SDD and DDD will represent D

2. Distant kindred grandparents h.h.s.

- A grandparent h.h.s. of the distant kindred group represents the first legal heir (sharer or residuary) who appears when the line of connection is traced back to the propositus.
- By studying the family tree of ascendants, as shown in

Fig. 56, it is easy to see which legal heir (Qur'ānic or residuary) a grandparent of the distant kindred group will represent, thus:

- FM will represent M
- FMF will represent MF
- FFM and MFM will represent M
- FMM will represent MM

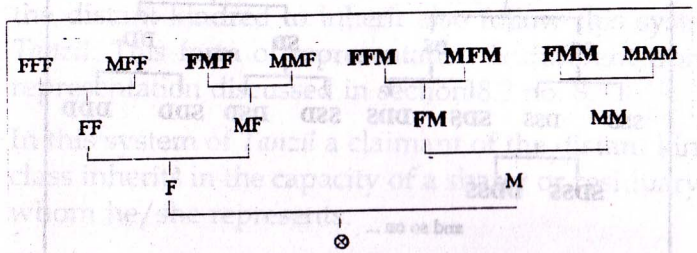


Fig. 56 shows grandparents of the first two generations of the distant kindred Group in bold (Shāfi'ī and Ḥanbalī *fiqh)*

3. Distant kindred nephews and nieces

- Nephews and nieces of the distant kindred group will represent the nearest ascending legal heir (sharer or residuary) who appears when the line of connection is traced back to the propositus. By studying Fig. 57 it can be seen that:

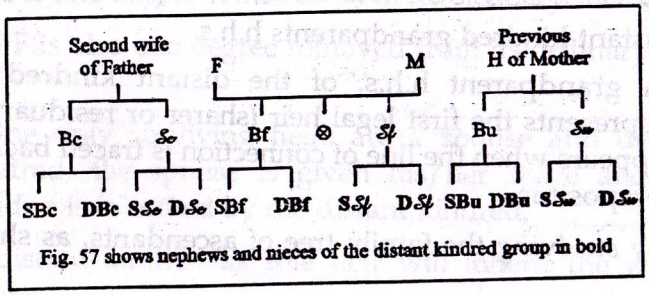


Fig. 57 shows nephews and nieces of the distant kindred group in bold

4. Distant kindred uncles and aunts

- Uncles and aunts of the distant kindred group are represented by their brother or sister, who will be the father or the mother of the propositus, as shown in Fig. 58.

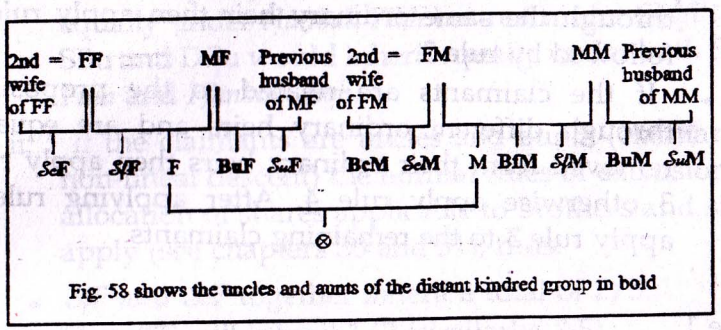


Fig. 58 shows the uncles and aunts of the distant kindred group in bold

- ScF, SfF, BuF and SuF will represent F
- BcM, ScM, BfM, SfM, BuM and SuM will represent M

5. Distant kindred cousins

- Distant kindred cousins who are the children of the uncles and aunts of the propositus will be represented either by their own parents or the parents of the propositus, whoever is the nearest legal heir. Thus:
  - DBfF will represent BfF
  - DBcF will represent BcF
  - SSfF, DSfF, SScF, DScF, SBuF, DBuF, SSuF and DSuF will represent F
  - SBfM, DBfM, SBcM, DBcM, SBuM, DBuM, SSfM, DSfM, SScM, DScM, SSuM and DSuM will represent M.

11.4.7b Rules of *Tanzīl* in the *Shāfi'ī* and *Ḥanbalī Fiqh*

- There are five major rules in the *Tanzīl* system which determine the order of priority and the actual share of each claimant amongst the distant kindred. These five rules are listed below and should be applied thus:

- If the only claimants are spouse and distant kindred apply rule 5 first.
- If all the claimants are related to the propositus through the same ordinary heir then apply rule 1 followed by rule 2.
- If the claimants are related to the propositus through different ordinary heirs and are equally removed form their ordinary heirs then apply rule 3 otherwise apply rule 4. After applying rule 4 apply rule 3 to the remaining claimants.

Rule 1

If the claimants are connected to the propositus through the same ordinary heir, the nearer in degree to this ordinary heir excludes the more remote, thus:

DD will exclude SDD, DDD, SSD and DSD

FM will exclude FFM and MFM

$\mathcal{S}_f$F will exclude S$\mathcal{S}_f$F, D$\mathcal{S}_f$F, S$\mathcal{S}_c$F and D$\mathcal{S}_c$F

Rule 2

Claimants who are connected to the propositus through the same ordinary heir and are of the same degree of removal from this ordinary heir inherit on the basis of their relationship to this ordinary heir. There are three sub-rules to this rule:

i. If the claimants are of lineal descent (e.g. DD, SD, DDS, SDS, S$\mathcal{S}_f$, D$\mathcal{S}_f$, SBu, DBu etc.) the male and female descendants always inherit equally according to the *Ḥanbalī Fiqh* because it is argued that all these claimants are connected to the propositus though a female.

However, according to the *Shāfi'ī Fiqh*, the male

inherits the portion of two females unless the claimants are descendants of a uterine brother or uterine sister of the propositus in which case they inherit equally. Thus, SDS and DDS would inherit equally under *Ḥanbalī Fiqh* but not under *Shāfi'ī Fiqh*. SBu and DBu would inherit equally under both *Shāfi'ī Fiqh* and *Ḥanbalī Fiqh*.

ii. If the claimants are uncles and aunts (claimants of non-lineal descent) the normal rules of exclusion and allocation of shares applicable to brothers and sisters apply (see chapters 30 and 31), thus:

- $\mathcal{S}_f$F and $\mathcal{S}_c$F together inherit a total of 2/3.
- One $\mathcal{S}_f$F will inherit 1/2 (similarly $\mathcal{S}_c$F).
- 2 or more $\mathcal{S}_f$F will together inherit 2/3 (similarly $\mathcal{S}_c$F).
- 2 or more $\mathcal{S}_f$F will exclude $\mathcal{S}_c$F.
- One B$\mathcal{S}_u$F, $\mathcal{S}_u$F, BuM, $\mathcal{S}_u$M will alone inherit 1/6, two or more will together inherit 1/3.
- All maternal uncles (BfM, BcM, BuM) and maternal aunts ($\mathcal{S}_f$M, $\mathcal{S}_c$M, $\mathcal{S}_u$M) who have the same blood-tie with the mother of the propositus share equally.
- BfM will exclude BcM and $\mathcal{S}_c$M (just as Bf excludes Bc and $\mathcal{S}_c$).
- M will exclude all maternal uncles and maternal aunts.

◆ Distant kindred great uncles and great aunts will represent FF or MM and inherit under the same rules as the uncles and aunts.

iii. If the claimants are cousins of the propositus with different parents, these cousins inherit as their parents would have using rule 2 (ii) above.

Under *Ḥanbalī Fiqh* such cousins (male or female)

inherit equally. However, under the *Shāfi'ī Fiqh* children of different genders of maternal uncle (BfM, BcM, BuM), maternal aunt (*Sf*M, *Sc*M, *Su*M), uterine paternal uncle (BuF) and uterine paternal aunt (*Su*F) inherit equally but children of full paternal uncle (BfF) and consanguine paternal uncle (BcF) inherit on the principle that the male inherits twice the share of the female. Any children of cousins inherit in the position of their parents.

Rule 3

If the claimants are connected to the propositus through different ordinary heirs and are removed from these ordinary heirs to an equal degree, they inherit in the position of the ordinary heirs through which they are connected.

- BuF, *Sf*F, *Sc*F, *Su*F, BfM, BcM, BuM, *Sf*M, *Sc*M, *Su*M, DBf, DBc, SBu, DBu, S*Sf*, D*Sf*, S*Sc*, D*Sc*, S*Su*, D*Su*, DBfF and DBcF are all removed by one degree from the ordinary heirs they represent.
- Distant kindred paternal uncle or aunt (representing the father) excludes all the distant kindred nephews and nieces (representing the brothers and sisters) as well as distant kindred cousins (representing uncles and aunts).
- Distant kindred nephews and nieces (representing the brothers and sisters) exclude all the distant kindred cousins (representing uncles and aunts).

Rule 4

If the claimants are connected to the propositus through different ordinary heirs and vary in their degree of removal from these ordinary heirs then according to the *Shāfi'ī Fiqh* the claimant nearer in degree to the ordinary heir that he/she represents excludes all those claimants who are more remote.

According to the *Ḥanbalī Fiqh* the claimant nearer in degree to the ordinary heir that he/she represents excludes all those claimants who are more remote within the same general class of heirs. For this purpose there are three classes of heirs defined by the *Ḥanbalī* jurists, namely descendants, paternal relatives and maternal relatives.

- SDS and DDS, who are both one degree removed from their ordinary heir (DS), will both independently exclude SSD, DSD, SDD and DDD, who are two degrees removed from their ordinary heirs, under both *Shāfi'ī* and *Ḥanbalī Fiqh*.
- SDS and DDS will also exclude FFM and MFM, who are both removed two degrees from their ordinary heir (FM), under *Shāfi'ī Fiqh* but not under *Ḥanbalī Fiqh*.
- On the same principle DBfF, who is only one degree removed from her ordinary heir, will exclude both D*Sf*F and D*Sf*M under both *Shāfi'ī* and *Ḥanbalī Fiqh*. Note that all claimants represent different ordinary heirs.

Rule 5

When the only heirs are spouse and distant kindred, the spouse is given his or her full Qur'ānic share which is not subject to the doctrine of *'Awl* and the remaining estate is distributed amongst the distant kindred according to rules 1 to 4.

Example 43 (*Shāfi'ī* and *Ḥanbalī Fiqh*)

A person dies leaving behind a daughter's daughter (DD) and a daughter of daughter of son (DDS) as the only claimants, as shown in Fig. 59.

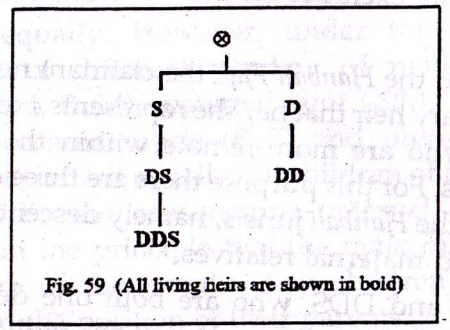


Fig. 59 (All living heirs are shown in bold)

Nearest ordinary heir of DD is D, degree of removal is 1.

Nearest ordinary heir of DDS is DS, degree of removal is 1.

The claimants are connected to the propositus through different ordinary heirs and are equally removed form their ordinary heirs therefore we apply rule 3.

The ordinary heirs would inherit thus:

D allocated 1/2

DS allocated 1/6

Doctrine of *Radd* is applied thus:

D allocated 3/4

DS allocated 1/4

The shares allocated to the ordinary heirs descend to their respective representatives. The final distribution of shares according to the *Shāfi'ī* and *Ḥanbalī Fiqh* is thus:

DD inherits 3/4

DDS inherits 1/4

Example 44 (*Shāfi'ī* and *Ḥanbalī Fiqh*)

A person dies leaving behind a mother of father of mother (MFM) and a uterine maternal aunt (*Su*M) as the only claimants as shown in Fig. 60.

Nearest ordinary heir of MFM is M, degree of removal is 2.

Nearest ordinary heir of *Su*M is M, degree of removal is 1.

The claimants are connected to the propositus through the same ordinary heir but their degree of removal is different therefore we apply rule 1.

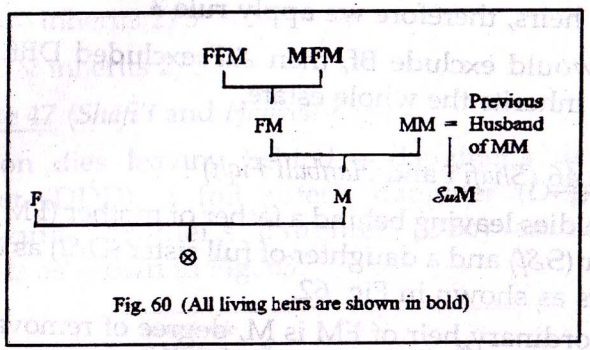


Fig. 60 (All living heirs are shown in bold)

*Su*M who is one degree removed from her ordinary legal heir excludes MFM who is two degrees removed. Therefore *Su*M as sole heir inherits the whole estate.

Example 45 (*Shāfi'ī* and *Ḥanbalī Fiqh*)

A person dies leaving behind a uterine paternal aunt (*Su*F) and a full brother's daughter (DBf) as the only claimants as shown in Fig. 61.

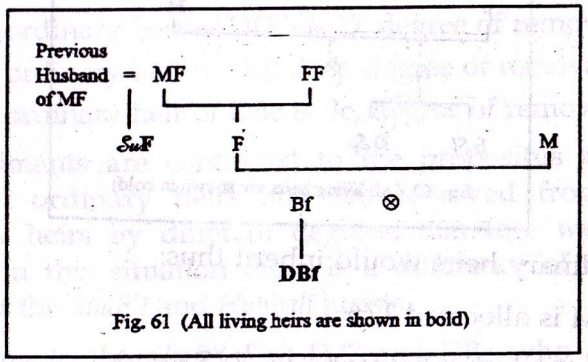


Fig. 61 (All living heirs are shown in bold)

Nearest ordinary heir of $\mathcal{S}_u$F is F, degree of removal is 1.
Nearest ordinary heir of DBf is Bf, degree of removal is 1.

The claimants are connected to the propositus through different ordinary heirs and are equally removed form their ordinary heirs, therefore we apply rule 3.

Since F would exclude Bf, then $\mathcal{S}_u$F excluded DBf. $\mathcal{S}_u$F as sole heir inherits the whole estate.

Example 46 (*Shāfi'ī* and *Ḥanbalī Fiqh*)

A person dies leaving behind a father of mother (FM), son of full sister (S$\mathcal{S}\ell$) and a daughter of full sister (D$\mathcal{S}\ell$) as the only claimants as shown in Fig. 62.

Nearest ordinary heir of FM is M, degree of removal is 1.
Nearest ordinary heir of S$\mathcal{S}\ell$ is $\mathcal{S}\ell$, degree of removal is 1.
Nearest ordinary heir of D$\mathcal{S}\ell$ is $\mathcal{S}\ell$, degree of removal is 1.

The claimants are connected to the propositus through different ordinary heirs and are equally removed form their ordinary heirs, therefore we apply rule 3.

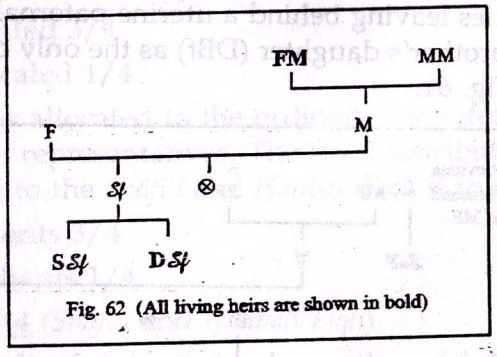


Fig. 62 (All living heirs are shown in bold)

The ordinary heirs would inherit thus:

M is allocated 1/6

2 $\mathcal{S}\ell$ jointly allocated 2/3 (1/3 each)

The shares allocated to the ordinary heirs descend to their respective representatives. The final distribution of shares according to the *Shāfi'ī* and *Ḥanbalī Fiqh* is thus:

FM inherits 1/5

S$\mathcal{S}\ell$ inherits 2/5

D$\mathcal{S}\ell$ inherits 2/5

Example 47 (*Shāfi'ī* and *Ḥanbalī Fiqh*)

A person dies leaving behind a daughter's daughter's daughter (DDD), a full sister's daughter (D$\mathcal{S}\ell$) and a consanguine brother's daughter (DBc) as the only claimants as shown in Fig. 63.

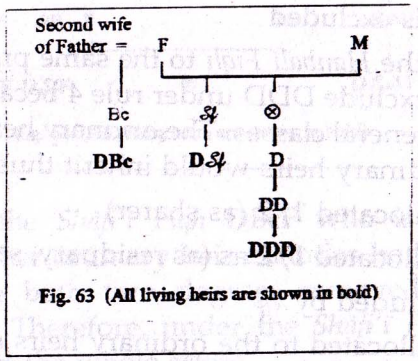


Fig. 63 (All living heirs are shown in bold)

Nearest ordinary heir of DDD is D, degree of removal is 2.
Nearest ordinary heir of D$\mathcal{S}\ell$ is $\mathcal{S}\ell$, degree of removal is 1.
Nearest ordinary heir of DBc is Bc, degree of removal is 1.

The claimants are connected to the propositus through different ordinary heirs and are removed from their ordinary heirs by different degrees, therefore we apply rule 4. In this situation there is a difference of opinion amongst the *Shāfi'ī* and *Ḥanbalī* jurists.

According to the *Shāfi'ī Fiqh* D$\mathcal{S}\ell$ and DBc who are one

degree removed from their ordinary heir both independaently exclude DDD who is two degree removed from her ordinary heir. Now we apply rule 3 to the remaining two claimants (D$\mathcal{S}\!\!\!/$ and DBc).

$\mathcal{S}\!\!\!/$ is allocated 1/2 (as sharer)

Bc is allocated 1/2 (as residuary)

The shares allocated to the ordinary heirs descend to their respective representatives. The final distribution of shares according to the *Shāfi'ī Fiqh* is thus:

D$\mathcal{S}\!\!\!/$ inherits 1/2

DBc inherits 1/2

DDD is excluded

If we apply the *Ḥanbalī Fiqh* to the same problem. D$\mathcal{S}\!\!\!/$ and DBc do not exclude DDD under rule 4 because they belong to different general classes. The ordinary heirs are D, $\mathcal{S}\!\!\!/$ and Bc. These ordinary heirs would inherit thus:

D is allocated 1/2 (as sharer)

$\mathcal{S}\!\!\!/$ is allocated 1/2 as (as residuary, see section 31.1.3)

Bc excluded by $\mathcal{S}\!\!\!/$

The shares allocated to the ordinary heirs descend to their respective representatives. The final distribution of shares according to the *Ḥanbalī Fiqh* is thus:

DDD inherits 1/2

D$\mathcal{S}\!\!\!/$ inherits 1/2

DBc is excluded.

Example 48 (*Shāfi'ī* and *Ḥanbalī Fiqh*)

A person dies leaving behind a uterine maternal aunt's daughter (D$\mathcal{S}u$M), a full paternal aunt's daughter (D$\mathcal{S}\!\!\!/$F) and a consanguine uncle's daughter (DBcF) as the only claimants, as shown in Fig. 64.

Nearest ordinary heir of D$\mathcal{S}u$M is M, degree of removal is 2.
Nearest ordinary heir of D$\mathcal{S}\!\!\!/$F is F, degree of removal is 2.
Nearest ordinary heir of DBcF is BcF, degree of removal is 1.

The claimants are connected to the propositus through different ordinary heirs and are removed form their ordinary heirs by different degrees, therefore we apply rule 4. In this situation there is a difference of opinion amongst the *Shāfi'ī* and *Ḥanbalī* jurists.

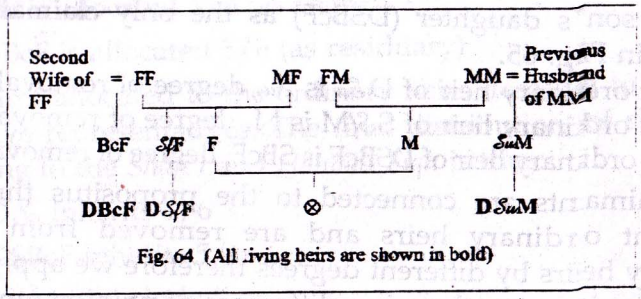


Fig. 64 (All living heirs are shown in bold)

According to the *Shāfi'ī Fiqh* DBcF who is one degree removed from her ordinary heir excludes both D$\mathcal{S}u$M and D$\mathcal{S}\!\!\!/$F who are both two degrees removed from their ordinary heirs. Therefore, under the *Shāfi'ī Fiqh* DBcF as sole heir inherits the whole estate.

If we apply the *Ḥanbalī Fiqh* to the same problem. DBcF and S$\mathcal{S}\!\!\!/$F are in the same general class of heirs as regards rule 4, that is to say the paternal class. DBcF who is one degree removed from her ordinary heir excludes D$\mathcal{S}\!\!\!/$F who is two degrees removed from her ordinary heir. Now we apply rule 3 to the remaining two claimants (DBcF and D$\mathcal{S}u$M).

M is allocated 1/3 (as sharer)

BcF is allocated 2/3 (as residuary)

The shares allocated to the ordinary heirs descend to their

respective representatives. The final distribution of shares according to the *Ḥanbalī Fiqh* is thus:

D$\mathcal{S}_u$M inherits 1/3

DBcF inherits 2/3

D$\mathcal{S}_f$F is excluded

Example 49 (*Shāfi'ī* and *Ḥanbalī Fiqh*)

A person dies leaving behind a uterine sister's daughter (D$\mathcal{S}_u$), a full maternal aunt's son (S$\mathcal{S}_f$M) and a consanguine uncle's son's daughter (DSBcF) as the only claimants as shown in Fig. 65.

Nearest ordinary heir of D$\mathcal{S}_u$ is $\mathcal{S}_u$, degree of removal is 1.
Nearest ordinary heir of S$\mathcal{S}_f$M is M, degree of removal is 2.
Nearest ordinary heir of DSBcF is SBcF, degree of removal is 1.

The claimants are connected to the propositus through different ordinary heirs and are removed from their ordinary heirs by different degrees therefore we apply rule 4. In this situation there is a difference of opinion amongst the *Shāfi'ī* and *Ḥanbalī* jurists.

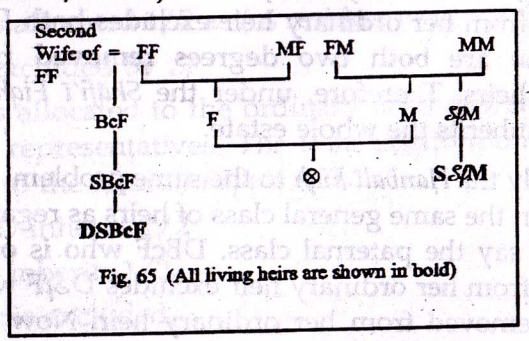


Fig. 65 (All living heirs are shown in bold)

According to the *Shāfi'ī Fiqh* D$\mathcal{S}_u$ and SBcF who are both one degree removed from their ordinary heir both independently exclude S$\mathcal{S}_f$M who is two degrees removed from his ordinary heir. Now we apply rule 3 to the

remaining two claimants (D$\mathcal{S}_u$ and and SBcF).

If we apply the *Ḥanbalī Fiqh* to the same problem. D$\mathcal{S}_u$ and S$\mathcal{S}_f$M are both in the same general class as regards rule 4, that is the maternal class. SBcF is in the paternal class. D$\mathcal{S}_u$ who is one degree removed from her ordinary heir excludes S$\mathcal{S}_f$M who is two degrees removed from his ordinary heir.

Now we apply rule 3 to the remaining two claimants (D$\mathcal{S}_u$ and and SBcF).

$\mathcal{S}_u$ is allocated 1/6 (as sharer)

SBcF is allocated 5/6 (as residuary)

The shares allocated to the ordinary heirs descend to their respective representatives. The final distribution of shares according to the *Shāfi'ī* and *Ḥanbalī Fiqh* is thus:

D$\mathcal{S}_u$ inherits 1/6

DSBcF inherits 5/6

S$\mathcal{S}_f$M is excluded

Example 50 (*Shāfi'ī* and *Ḥanbalī Fiqh*)

A person dies leaving behind a uterine sister's daughter (D$\mathcal{S}_u$), a uterine maternal uncle (BuM) and a full paternal aunt's son (S$\mathcal{S}_f$F) as the only claimants as shown in Fig. 66.

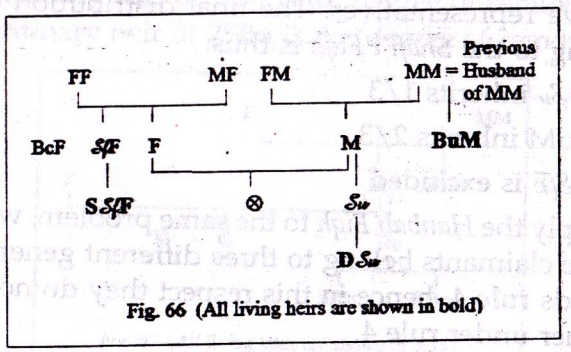


Fig. 66 (All living heirs are shown in bold)

Nearest ordinary heir of D$\mathcal{S}_u$ is $\mathcal{S}_u$, degree of removal is 1.
Nearest ordinary heir of BuM is M, degree of removal is 1.
Nearest ordinary heir of S$\mathcal{S}_f$F is F, degree of removal is 2.

The claimants are connected to the propositus through different ordinary heirs and are removed from their ordinary heirs by different degrees therefore we apply rule 4. In this situation there is a difference of opinion amongst the Shāfi'ī and Ḥanbalī jurists.

According to the *Shāfi'ī Fiqh* D$\mathcal{S}_u$ and BuM who are both one degree removed from their ordinary heir both independently exclude S$\mathcal{S}_f$F who is two degrees removed from his ordinary heir.

Now we apply rule 3 to the remaining two claimants (D$\mathcal{S}_u$ and and BuM). Both the ordinary heirs would inherit as sharers.

$\mathcal{S}_u$ is allocated 1/6

M is allocated 1/3

The total sum of the shares is less than one with no residuary heir, therefore the doctrine of *Radd* is applied.

$\mathcal{S}_u$ is allocated 1/6 increased to 1/3

M is allocated 1/3 increased to 2/3

The shares allocated to the ordinary heirs descend to their respective representatives. The final distribution of shares according to the *Shāfi'ī Fiqh* is thus:

D$\mathcal{S}_u$ inherits 1/3

BuM inherits 2/3

S$\mathcal{S}_f$F is excluded

If we apply the *Ḥanbalī Fiqh* to the same problem, we see that the three claimants belong to three different general classes as regards rule 4, hence in this respect they do not exclude each other under rule 4.

Now we apply rule 3.

M is allocated 1/3 (as sharer)

F is allocated 2/3 as residuary

$\mathcal{S}_u$ excluded by the F

The shares allocated to the ordinary heirs descend to their respective representatives. The final distribution of shares according to the *Ḥanbalī Fiqh* is thus:

BuM inherits 1/3

S$\mathcal{S}_f$F inherits 2/3

D$\mathcal{S}_u$ is excluded

Example 51 (*Shāfi'ī* and *Ḥanbalī Fiqh*)

A man dies leaving behind a widow (W), a full maternal uncle (BfM) and two uterine brother's sons (2SBu) as the only claimants as shown in Fig. 67.

The claimants are a widow and distant kindred, so we apply rule 5. The widow is given 1/4 share and the remaining 3/4 is to be divided amongst the distant kindred.

Note that the distant kindred are allowed to inherit if the only other claimant is the spouse relict (see section 11.4.1).
Nearest ordinary heir of BfM is M, degree of removal is 1.
Nearest ordinary heir of 2SBu is Bu, degree of removal is 1.

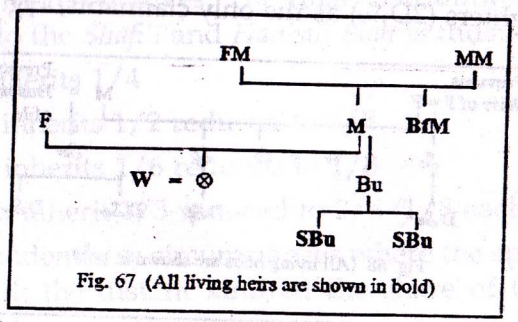


Fig. 67 (All living heirs are shown in bold)

The claimants are connected to the propositus through different ordinary heirs and are removed form their ordinary heirs the same degree therefore we apply rule 3.

Both the ordinary heirs would inherit as sharers.

M is allocated 1/6

2Bu are allocated 1/3 (1/6 each)

The sum total of these claimants is 1/2. Since there is 3/4 of the estate left to be divided amongst them we apply the doctrine of *Radd* to increase the share of each claimant (BfM and 2SBu) proportionately.

M is allocated 1/6 increased to 1/4

2Bu are allocated 1/3 increased to 1/2 (1/4 each)

The shares allocated to the ordinary heirs descend to their respective representatives. The final distribution of shares according to the *Shāfi'ī* and *Ḥanbalī Fiqh* is thus:

W inherits 1/4

BfM inherits 1/4

2SBu inherit 1/2 (1/4 each)

Example 52 (*Shāfi'ī* and *Ḥanbalī Fiqh*)

A man dies leaving behind a widow (W), a full sister's daughter (D$\mathcal{Sf}$), a consanguine sister's daughter (D$\mathcal{Sc}$) and two uterine sister's daughters (2D$\mathcal{Su}$) as the only claimants, Fig. 68.

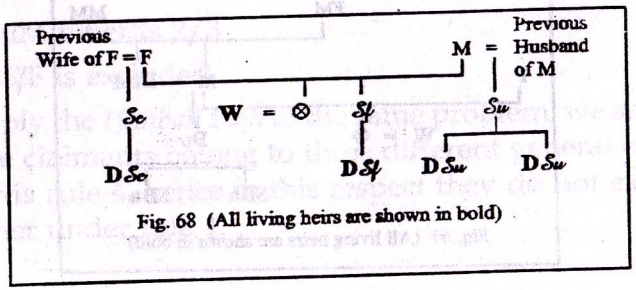


Fig. 68 (All living heirs are shown in bold)

The claimants are a widow and distant kindred, so we apply rule 5. The widow is given 1/4 share and the remaining 3/4 is to be divided amongst the distant kindred.

Nearest ordinary heir of D$\mathcal{Sf}$ is $\mathcal{Sf}$, degree of removal is 1.
Nearest ordinary heir of D$\mathcal{Sc}$ is $\mathcal{Sc}$, degree of removal is 1.
Nearest ordinary heir of 2D$\mathcal{Su}$ is $\mathcal{Su}$, degree of removal is 1.

The claimants are connected to the propositus through different ordinary heirs and are removed from their ordinary heirs to the same degree, therefore we apply rule 3.

All the three ordinary heir in this situation would inherit as sharers.

$\mathcal{Sf}$ is allocated 1/2

$\mathcal{Sc}$ is allocated 1/6 (see section 31.2.2)

2$\mathcal{Su}$ are allocated 1/3 (1/6 each)

The sum total of these claimants is 1/2 + 1/6 + 1/3 = 1. Since there is only 3/4 of the estate left to be divided amongst them, we apply the doctrine of *'Awl* to reduce the share of each claimant (D$\mathcal{Sf}$, D$\mathcal{Sc}$ and 2D$\mathcal{Su}$) proportionately.

$\mathcal{Sf}$ is allocated 1/2 reduced to 3/8

$\mathcal{Sc}$ is allocated 1/6 reduced to 1/8

2$\mathcal{Su}$ are allocated 1/3 reduced to 1/4 (1/8 each)

The shares allocated to the ordinary heirs descend to their respective representatives. The final distribution of shares according to the *Shāfi'ī* and *Ḥanbalī Fiqh* is thus:

W inherits 1/4

D$\mathcal{Sf}$ inherits 1/2 reduced to 3/8

D$\mathcal{Sc}$ inherits 1/6 reduced to 1/8

2D$\mathcal{Su}$ inherit 1/3 reduced to 2/8 (1/8 each)

Note that under these circumstances where the spouse relict inherits with the distant kindred the share of the spouse

relict is not subject to the doctrine of *'Awl*.

Example 53 (*Shāfi'ī* and *Ḥanbalī Fiqh*)

A woman dies leaving behind a husband (H), a full sister's daughter (D$\mathcal{Sf}$), a consanguine sister's daughter (D$\mathcal{Sc}$) and a uterine sister's daughter (D$\mathcal{Su}$) as the only claimants, as shown in Fig. 69.

The claimants are a husband and distant kindred, so we apply rule 5. The husband is given 1/2 share and the remaining 1/2 is to be divided amongst the distant kindred.
Nearest ordinary heir of D$\mathcal{Sf}$ is $\mathcal{Sf}$, degree of removal is 1.
Nearest ordinary heir of D$\mathcal{Sc}$ is $\mathcal{Sc}$, degree of removal is 1.
Nearest ordinary heir of D$\mathcal{Su}$ is $\mathcal{Su}$, degree of removal is 1.

The claimants are connected to the propositus through different ordinary heirs and are removed from their ordinary heirs to the same degree therefore we apply rule 3.

All the three ordinary heir in this situation would inherit as sharers.

$\mathcal{Sf}$ is allocated 1/2
$\mathcal{Sc}$ is allocated 1/6
$\mathcal{Su}$ are allocated 1/6

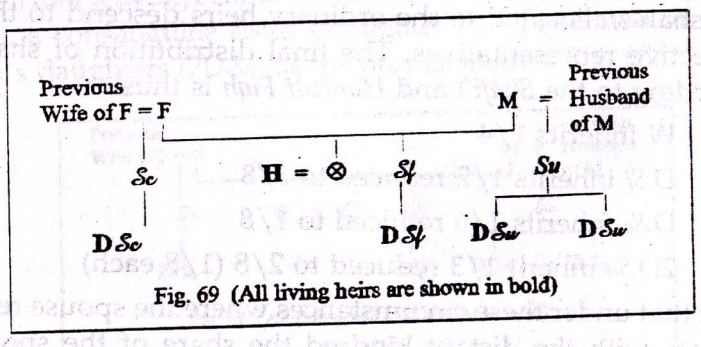


Fig. 69 (All living heirs are shown in bold)

The sum total of these claimants is 1/2 + 1/6 + 1/6 = 5/6. Since there is only 1/2 of the estate left to be divided amongst them we apply the doctrine of *'Awl* to reduce the share of each claimant (D$\mathcal{Sf}$, D$\mathcal{Sc}$ and D$\mathcal{Su}$) proportionately.

$\mathcal{Sf}$ is allocated 1/2 reduced to 3/10
$\mathcal{Sc}$ is allocated 1/6 reduced to 1/10
$\mathcal{Su}$ are allocated 1/6 reduced to 1/10

The shares allocated to the ordinary heirs descend to their respective representatives. The final distribution of shares according to the *Shāfi'ī* and *Ḥanbalī Fiqh* is thus:

The final distribution of the shares is thus:

H inherits 1/2
D$\mathcal{Sf}$ inherits 1/2 reduced to 3/10
D$\mathcal{Sc}$ inherits 1/6 reduced to 1/10
D$\mathcal{Su}$ inherits 1/6 reduced to 1/10

Note that under these circumstances where the the spouse relict inherits with the distant kindred the share of the spouse relict is not subject to the doctrine of *'Awl*.

11.5 SUCCESSOR BY CONTRACT (*MAWLĀ Al-MAW ĀLA*)

- If there are no sharers, residuaries or distant kindred, the estate devolves upon the successor by contract (*Mawlā Al-Mawāla*) if any.
- A successor by contract is a person who is entitled to inherit as a result of a contact made with the deceased in consideration of an undertaking given by him to the deceased.
- For example Saleem who is of unknown descent says to Aḥmad, "You are my *Mawlā* and you will inherit my estate after I die and you will pay any blood money on my behalf", and Aḥmad accepts. Saleem is the declarant

and Aḥmad is the acceptor.

The conditions of a valid contact are as follows:

1. There should be declaration and acceptance.
2. The declarant should have no heir by blood relation, he should have reached puberty (majority) and he himself should be a person of unknown descent.
3. The acceptor inherits from the declarant provided that at the time of the latter's death he has attained puberty (majority).
4. All children of the declarant born after the contract enter into the contract of clientship (*Al-mawāla*).

- The *Shāfi'ī, Ḥanbalī* and *Mālikī Fiqh* do not recognise the successor by contract (*Mawlā Al-Mawāla*).

11.6 ACKNOWLEDGED KINSMAN (*Al-MUQIRR LAHU*)

- If none of the above (11.1-11.5) exist, then the acknowledged kinsman (*Al-Muqirr Lahu*) is next in line to inherit. Acknowledged kinsman is a person of unknown descent whose kinship has been acknowledged by the deceased not through himself but through another; for example acknowledgement of a brother (kinship through father) or uncle (kinship through grandfather).
- It is important to note that the person must be of unknown descent because if the acknowledged relationship is known, the acknowledgement is superfluous and unnecessary.
- If one acknowledges someone as his son or daughter (i.e. kinship through oneself) this does not come under the concept of acknowledged kinsman but under parental acknowledgement which is a totally different concept.

- The acknowledged kinsman inherits as a residuary.
- If the only heirs are the widow and acknowledged kinsman, the widow is given her share and the acknowledged kinsman takes the residue.
- The *Shāfi'ī Fiqh* does not recognise the acknowledged kinsman.

The conditions required for the person of unknown descent to inherit from the deceased as an acknowledged kinsman are as follows:

1. The acknowledgement of kinship (blood relationship) must be through another person and not through the deceased himself.
2. The acknowledgement should not be repudiated but upheld until the death of the deceased.
3. If the acknowledgement is repudiated then the acknowledged kinsman cannot participate in the inheritance.
4. The acknowledged kinsman can only inherit from the person who acknowledged him and not other relationships which may arise as a result of the acknowledgement.

11.7 UNIVERSAL LEGATEE (*Al-MŪṢĀ LAHU*)

- Universal legatee is the person to whom the deceased has bequeathed the whole of his property by will when there are no heirs whatsoever. Technically speaking, the term "testatee" is a more accurate translation of *Al-Mūṣā Lahu*. However, the term "legatee" is more commonly used in this context and I have therefore, used the term "legatee" to refer to the beneficiary of a will (*Waṣiyyah*).
- The rule of bequeathing up to 1/3 of the estate does not

apply in this situation because there are no heirs (see section 48.3.2).

11.8 PUBLIC TREASURY (*BAYTUL-MĀL*)

- If none of the above (11.1 - 11.7) exist, then the estate of the deceased devolves to the *Baytul-Māl*, the public treasury for the benefit of all Muslims.
- The *Mālikī Fiqh* considers *Baytul-Māl* to be the residuary in the absence of all other residuaries. The effect of this ever present residuary is manifested in three important ways in the *Mālikī Fiqh*:
  1. The distant kindred (*Dhawūl-Arham*) are never entitled to inherit.
  2. The doctrine of *Radd* is not applicable.
  3. Tthere is an absolute limit of 1/3 of the estate that can be bequested. Since the 1/3 limit for bequests is imposed to protect the interests of the heirs, the interests of *Baytul-Māl* as an heir have to be protected. See sections 48.3.1 - 48.3.2.
- Throughout the book I have used the term *Baytul-Māl* because the translation "public treasury" may cause confusion when used in the western sense.

12. PRIMARY HEIRS

Key points:

The following heirs are referred to as "primary heirs". They are never totally excluded from inheritance provided there is no impediment (see chapter 10) preventing them from doing so. The share of the primary heirs may be reduced. All the primary heirs are Qur'ānic heirs except the son.

- father
- mother
- son
- daughter
- spouse relict (husband/widow)

13. SUCCESSION OF SPOUSE

﴿وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبُعُ مِمَّا تَرَكْنَ مِن بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكْتُمْ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُم مِّن بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ﴾

"And for you there is one-half of what your wives leave behind if there is no child, but if they leave a child then for you there is one-fourth of what they leave behind: after (fulfilling) any legacy they may have bequeathed or (after payment of any) debt. And for them one fourth of what you leave behind if you did not have a child, but if you have a child then for them one-eighth of what you leave behind after (fulfilling) any legacy you may have bequeathed or (after payment of any) debt." (Qur'ān 4:12)

13.1 HUSBAND

Key points:

- The husband is a primary heir, he always gets a share of the inheritance (unless there is some impediment preventing him) and he is also one of those heirs who can be partially excluded.
- The husband is always a sharer and gets a fixed share of either 1/2 or 1/4.
- The husband gets a fixed 1/4 share if there is a:
  1. child or

  2. son's son h.l.s. (SS, SSS, SSSS etc.) or
  3. son's daughter h.l.s. (DS, DSS, DSSS etc.)
- The husband gets a fixed 1/2 share if there is:
  1. no child and
  2. no son's son h.l.s. (SS, SSS, SSSS etc.) and
  3. no son's daughter h.l.s. (DS, DSS, DSSS etc.)

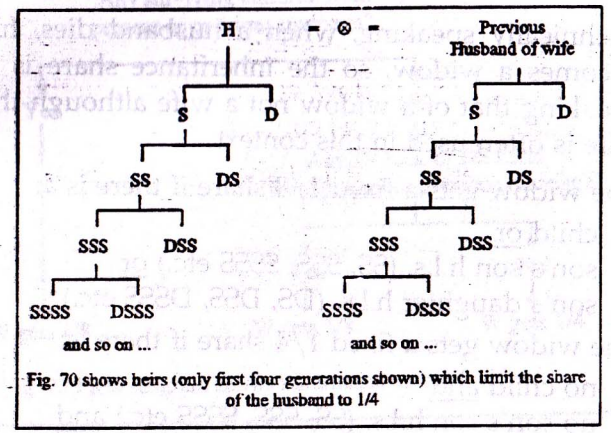


Fig. 70 shows heirs (only first four generations shown) which limit the share of the husband to 1/4

- If any of the descendants shown in Fig. 70 are amongst the heirs then husband (H) gets 1/4, otherwise husband gets 1/2.

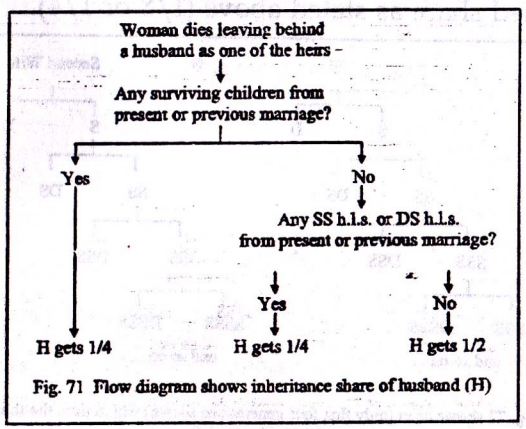


Fig. 71 Flow diagram shows inheritance share of husband (H)

13.2 WIDOW/WIFE

Key points:

- The widow is in the group of primary heirs who always get a share of the inheritance (unless there is some impediment, see chapter 10) and she is also one of those heirs who can be partially excluded.
- Technically speaking, when a husband dies, his wife becomes a widow, so the inheritance share is strictly speaking that of a widow not a wife although the term wife is often used in this context.
- The widow gets a fixed 1/8 share if there is a:
  1. child or
  2. son's son h.l.s. (SS, SSS, SSSS etc.) or
  3. son's daughter h.l.s. (DS, DSS, DSSS etc.)
- The widow gets a fixed 1/4 share if there is:
  1. no child and
  2. no son's son h.l.s. (SS, SSS, SSSS etc.) and
  3. no son's daughter h.l.s. (DS, DSS, DSSS etc.)
- If there is more than one widow, they share in the allotted share as stated above (1/8 or 1/4).

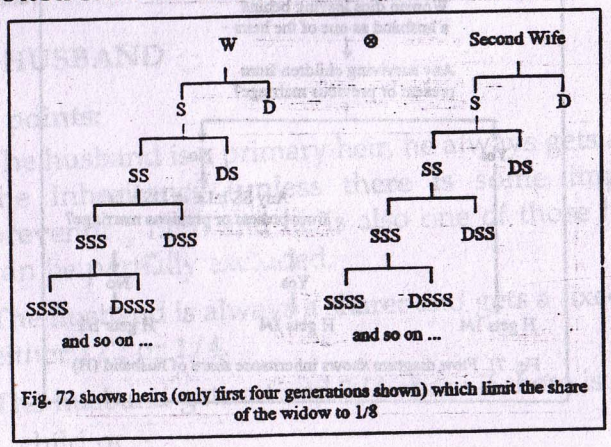


Fig. 72 shows heirs (only first four generations shown) which limit the share of the widow to 1/8

- If any of the descendants shown in Fig. 72 are amongst the surviving heirs then W gets 1/8 otherwise W gets 1/4.

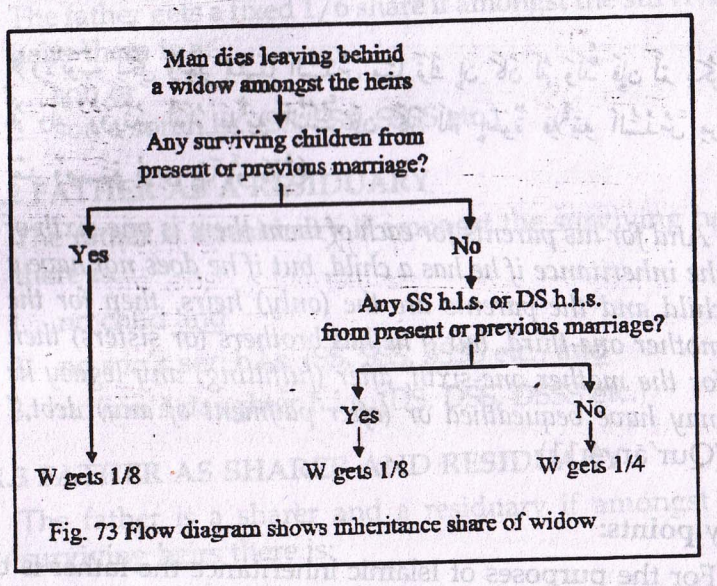


Fig. 73 Flow diagram shows inheritance share of widow

14. FATHER

﴿وَلِأَبَوَيْهِ لِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُۥ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَّهُۥ وَلَدٌ وَوَرِثَهُۥٓ أَبَوَاهُ فَلِأُمِّهِ ٱلثُّلُثُ ۚ فَإِن كَانَ لَهُۥٓ إِخْوَةٌ فَلِأُمِّهِ ٱلسُّدُسُ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصِى بِهَآ أَوْ دَيْنٍ﴾

"And for his parents for each of them there is one-sixth of the inheritance if he has a child, but if he does not have a child and the parents are the (only) heirs, then for the mother one-third, but if he has brothers (or sisters) then for the mother one-sixth, after (fulfilling) any legacy he may have bequeathed or (after payment of any) debt."
(Qur'ān 4:11)

Key points:

- For the purposes of Islāmic inheritance the father is the real father.
- Adopted parents, foster parents etc. are all excluded as regards inheritance according to *Sharī'ah*.
- Islām forbids adultery, fornication (*Zinā*) and legal adoption thereby safeguarding the family lineage and keeping the family line unambiguously defined.
- The father is a primary heir, he always gets a share of the inheritance (unless there is some impediment, see chapter 10).
- The father can be a sharer, a residuary or both.
- If the father is the sole heir he gets the whole estate.
- If the surviving heirs are parents only then the mother gets 1/3 and the father gets 2/3.

14.1 FATHER AS A SHARER

- The father gets a fixed 1/6 share if amongst the surviving heirs there is a:
  1. son or
  2. son's son h.l.s. (SS, SSS, SSSS etc.)

14.2 FATHER AS A RESIDUARY

- The father is a residuary if amongst the surviving heirs there is:
  1. no child and
  2. no son's son h.l.s. (SS, SSS, SSSS etc.), and
  3. no son's daughter h.l.s. (DS, DSS, DSSS etc.)

14.3 FATHER AS SHARER AND RESIDUARY

- The father is a sharer and a residuary if amongst the surviving heirs there is:
  1. no son and
  2. no son's son h.l.s.

  but there is:
  3. daughter(s) or
  4. son's daughter h.l.s.
- In this situation, the father gets a fixed 1/6 as sharer plus whatever remains of the estate after all the other heirs have been allotted their shares.

14.4 DIAGRAMS ILLUSTRATING INHERITANCE OF FATHER

- See Fig. 74 and Fig. 75 on the next page.
- If any of the male descendants shown in Fig. 74 are amongst the surviving heirs, then F inherits as a sharer and gets a fixed 1/6.

- If there are no male descendants shown in Fig. 74 but there is one or more female descendants shown amongst the surviving heirs, then F gets 1/6 plus any residue.
- If there is no male and no female descendant shown in Fig. 74 amongst the surviving heirs, then F inherits as residuary.

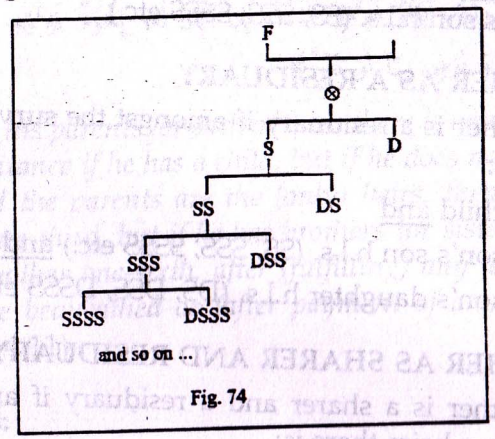


Fig. 74

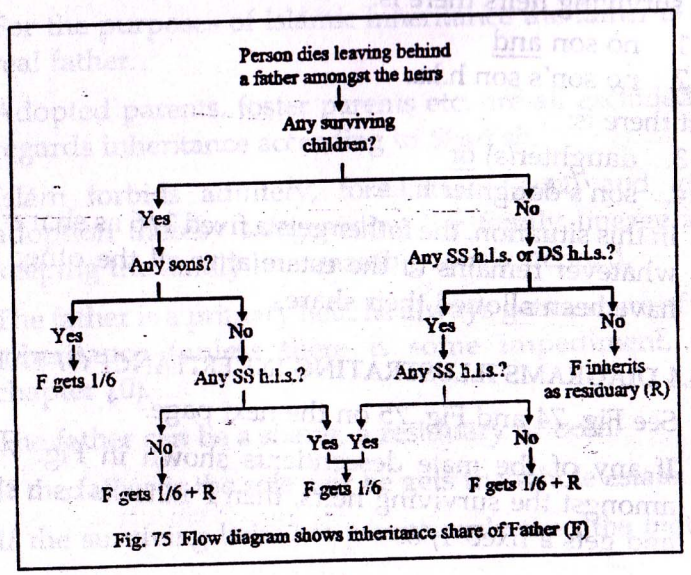


Fig. 75 Flow diagram shows inheritance share of Father (F)

14.5 WHEN FATHER INHERITS WITH MOTHER AND SPOUSE ONLY

- If the only surviving heirs are parents and spouse (husband or widow), then the surviving spouse is given a fixed share after payment of any debts and bequests (1/2 for husband and 1/4 for widow). Out of the residue the mother gets 1/3 and the father takes the remaining 2/3, thus:

Husband	Mother	Father
1/2	1/6	1/3
Widow	Mother	Father
1/4	1/4	1/2

- The mother in this case is inheriting as a residuary which is an exception to the general rules of inheritance, but this is done to ensure that the father does not get less than the mother. See section 15.2.

14.6 HEIRS EXCLUDED BY FATHER OF DECEASED

The following potential heirs are totally excluded from the inheritance by the presence of the father of the deceased:

- All grandfathers h.h.s.
- All paternal grandmothers h.h.s.
- The paternal grandmother is not excluded by the father according to the *Ḥanbalī Fiqh*.
- Brothers (full, consanguine and uterine).
- Sisters (full, consanguine and uterine).
- Uncles and their sons.

15. MOTHER

﴿وَلِأَبَوَيْهِ لِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُۥ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَّهُۥ وَلَدٌ وَوَرِثَهُۥٓ أَبَوَاهُ فَلِأُمِّهِ ٱلثُّلُثُ ۚ فَإِن كَانَ لَهُۥٓ إِخْوَةٌ فَلِأُمِّهِ ٱلسُّدُسُ مِنۢ بَعْدِ وَصِيَّةٍ يُوصِى بِهَآ أَوْ دَيْنٍ﴾

"And for his parents for each of them there is one-sixth of the inheritance if he has a child, but if he does not have a child and the parents are the (only) heirs then for the mother one-third, but if he has brothers (or sisters) then for the mother one-sixth, after (fulfilling) any legacy he may have bequeathed or (after payment of any) debt." (Qur'ān 4:11)

Key points:

- For the purposes of Islāmic inheritance the mother is the real mother.
- Adopted parents, foster parents etc. are all excluded as regards Islāmic inheritance.
- Islām forbids adultery, fornication (*Zinā*) and legal adoption thereby safeguarding the family lineage and keeping the family line unambiguously defined.
- The mother is a primary sharer; she always get a share of the inheritance (unless there is some impediment, see chapter 10), and she is also one of those heirs who can be partially excluded.
- If the mother is the sole heir, then according to the *Ḥanafī Fiqh* (also *Ḥanbalī* and *Shāfi'ī Fiqh*), she is entitled to inherit the whole estate (1/3 as sharer and 2/3 as *Al-Radd*).

15.1 MOTHER AS A SHARER

- The mother gets a fixed 1/6 share if amongst the surviving heirs there is:
  1. child or
  2. son's son h.l.s. (SS, SSS, SSSS etc.) or
  3. son's daughter h.l.s. (DS, DSS, DSSS etc.)
  4. two or more full/half-siblings (any combination).

According to Ibn 'Abbās ﷺ, three or more brothers are necessary to reduce the mother's share to 1/6 because the Qur'ān uses the Arabic plural form of brother rather than the Arabic dual form. *"...if the deceased left brothers (or sisters), the share of the mother is a sixth."* (Qur'ān 4:11).

- Even if the siblings themselves are excluded they limit the share of the mother to 1/6.
- The mother gets 1/3 if amongst the surviving heirs there is:
  5. no child and
  6. no son's son h.l.s. (SS, SSS, SSSS etc.) and
  7. no son's daughter h.l.s. (DS, DSS, DSSS etc.) and
  8. less than two siblings/half-siblings combination.

Exception is when the only heirs are spouse and both parents of the deceased (see 16.2. below).

15.2 WHEN MOTHER INHERITS WITH FATHER AND SPOUSE ONLY

- If the only surviving heirs are both parents and spouse (husband or widow) then according to 'Umar bin Al-Khattāb ﷺ, the surviving spouse is given a fixed share after payment of any debts and bequests (1/2 for husband and 1/4 for widow), then the mother is given a 1/3 of the

residue and the father takes the remaining 2/3, thus:

Husband	Mother	Father
1/2	1/6	1/3
Widow	Mother	Father
1/4	1/4	1/2

- In these two cases the mother inherits 1/3 of the residue. This is done to ensure that the father does not get less than the mother. It would appear that the principle of *Ta'sīb* has been extended to cover this situation, although of course this is not strictly under the definition of *Ta'sīb*.
- These two cases of the parents inheriting with the husband or wife are generally known as *Al-Gharrawani* (the two decievers) or *'Umariyyatān* (two decisions of 'Umar) after 'Umar bin Al-Khattāb ﷺ, the second Caliph of Islām. In fact, 'Umar's ﷺ name has only been mentioned in the case of the husband with two parents and not the case of the wife with two parents. 'Umar's ﷺ decision actually rests on the opinion of the knowledgeable Zaid bin Thābit ﷺ.
- It should be noted of course that the father does not always inherit more than the mother. In the presence of a child, each is allocated 1/6. This is well illustrated by the case where the only surviving heirs are two daughters and both parents. The two daughters inherit 2/3 of the inheritance (1/3 each) and the parents inherit 1/6 each.
- Some *Ṣaḥābah* and some Muslim jurists such as 'Abdullâh bin 'Abbās ﷺ as well as 'Alī bin Abī Ṭālib ﷺ are of the opinion that the mother should be given her 1/3 share because the Qur'ān clearly states the mother's share to be 1/3. The father would inherit the residue. This view is not accepted by the majority who interpret

the *Sūrah An-Nisā'* Verse 11, *"... the parents are the heirs, then for the mother one-third"* to mean *"... the parents are the (only) heirs, then for the mother one-third."*

- The majority argue that to give the mother 1/3 in the presence of the husband and father would contradict the basic principle that a male inherits the portion of two females of equal degree and class. If the mother is given 1/3, then the father would get only 1/6. There is no parallel of a female inheriting twice the share of the male of equal degree and class.
- Ibn Sīrīn (رحمه الله, d.729 CE) agrees with 'Umar bin Al-Khattāb ﷺ if the only heirs are husband and both parents, but if the only heirs are widow and both parents he agrees with 'Alī bin Abī Ṭālib ﷺ. This view is not generally accepted.

15.5 WHEN MOTHER INHERITS WITH SPOUSE AND GRANDFATHER ONLY

- If the only surviving heirs are paternal grandfather (FF), mother and spouse (husband or widow), then according to the consensus of opinion (*Ijmā'*) of the Muslim jurists, the surviving spouse and mother are given their fixed shares and the paternal grandfather (FF) who acts as a residuary takes whatever remains. This is also the view adopted by the *Ḥanafī Fiqh*.

Husband	Mother	Father's father
1/2	1/3	R = 1/6
Widow	Mother	Father's father
1/4	1/3	R = 5/12

- According to Imām Abū Yūsuf (رحمه الله) mother takes 1/3 of residue after the spouse has been allotted his/her share which means that the paternal grandfather inherits in an identical manner to the father.

15.4 HEIRS EXCLUDED BY MOTHER OF DECEASED

The following potential heirs are totally excluded from the inheritance by the presence of the mother of the deceased:

- All true grandmothers h.h.s. (MM, MMM, MF, MMF and MFF).

15.5 DIAGRAMS ILLUSTRATING INHERITANCE OF MOTHER

- If any of the descendants shown in Fig. 76 are amongst the surviving heirs then the mother is partially excluded and inherits 1/6 as a sharer.
- If any two of the brothers or sisters (in any combination) shown in Fig. 77 are amongst the surviving heirs, then the mother is partially excluded and inherits 1/6 as a sharer.

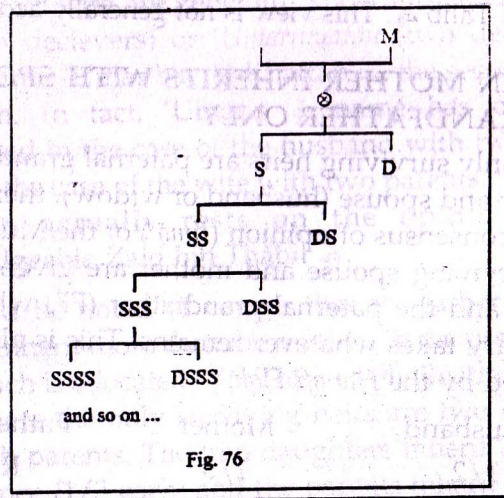


Fig. 76

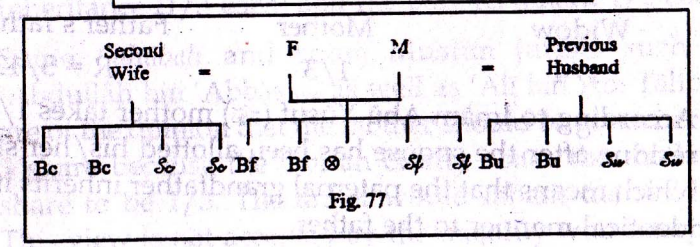


Fig. 77

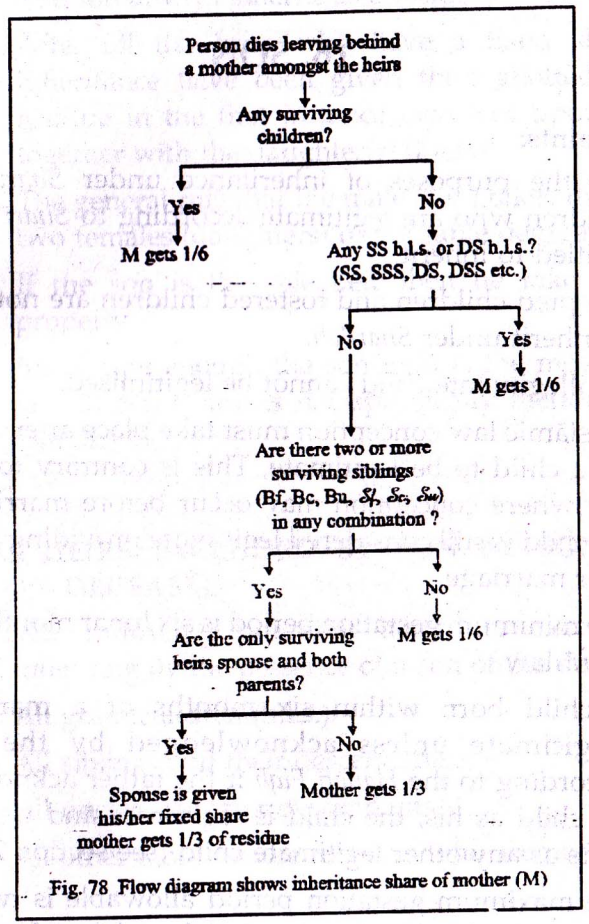


Fig. 78 Flow diagram shows inheritance share of mother (M)

16. SON

Key points:

- For the purposes of inheritance under *Sharī'ah* only children who are legitimate according to *Sharī'* law are entitled to inherit.
- Adopted children and fostered children are not entitled to inherit under *Sharī'ah*.
- An illegitimate child cannot be legitimised.
- In Islāmic law conception must take place after marriage for a child to be legitimate. This is contrary to English law where conception may occur before marriage and the child is still considered legitimate providing it is born after marriage.
- The minimum gestation period is six lunar months under *Sharī'* law.
- A child born within six months of a marriage is illegitimate unless acknowledged by the father. According to the *Ḥanafī Fiqh* if the father acknowledges the child as his, the child is legitimate and treated the same as any other legitimate child (see section 26.3.1).
- The maximum gestation period allowable is two lunar years according to the *Ḥanafī Fiqh* and four lunar years according to the *Shāfi'ī* and *Ḥanbalī Fiqh*. The *Mālikī Fiqh* recognises gestation period of five to seven years.

16.1 INHERITANCE SHARE OF SON

- The son is a primary heir, he always gets a share of the inheritance (unless there is some impediment, see chapter 10).

- The son always inherits as a residuary.
- After all the heirs who have a fixed share in the inheritance have been given their allotted share, the residue in the first instance devolves upon the son(s) together with the daughter(s) if any.
- The general rule that the male (son) takes the portion of two females (daughters) of the same degree applies.
- If the son is the sole heir then he takes the whole property.
- Interesting enough the son who is the most important heir in *Sharī'* law is not specifically mentioned in the Qur'ān.

16.2 HEIRS EXCLUDED BY SON BY SON OF THE DECEASED

- The following potential heirs are excluded from inheriting by the presence of a son of the deceased:
- All grandchildren (h.l.s.).
- All siblings and their descendants.
- All uncles and their descendants.
- All other more remote relatives who are not sharers.

17. DAUGHTER

Key points:

- For the purposes of inheritance under *Sharī'ah* only children who are legitimate according to *Sharī'* law are entitled to inherit.
- Adopted children and fostered children are not entitled to inherit under *Sharī'ah*.
- An illegitimate child cannot be legitimised.
- In Islāmic law conception must take place after marriage for a child to be legitimate. This is contrary to English law where conception may occur before marriage and the child is still considered legitimate providing it is born after marriage.
- The minimum gestation period is six lunar months.
- A child born within six months of a marriage is illegitimate unless acknowledged by the father.
- The maximum gestation period allowable is two lunar years according to the *Ḥanafī Fiqh* and four lunar years according to the *Shāfi'ī* and *Ḥanbalī Fiqh*. The *Mālikī Fiqh* recognises gestation period of five to seven years.

17.1 INHERITANCE SHARE OF DAUGHTER

﴿يُوصِيكُمُ ٱللَّهُ فِيٓ أَوۡلَٰدِكُمۡۖ لِلذَّكَرِ مِثۡلُ حَظِّ ٱلۡأُنثَيَيۡنِۚ فَإِن كُنَّ نِسَآءٗ فَوۡقَ ٱثۡنَتَيۡنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَۖ وَإِن كَانَتۡ وَٰحِدَةٗ فَلَهَا ٱلنِّصۡفُۚ﴾

"Allāh commands you as regards your children's (inheritance): for the male a portion equal to that of two females. But if (there are) women (daughters) more than two, then for them two thirds of the inheritance; and if there is only one then it is half." (Qur'ān 4:11)

- The daughter is in the group of heirs who always gets a share of the inheritance (unless there is some impediment preventing her from inheriting, see chapter 10).
- The daughter may inherit as a sharer or as a residuary.
- If the daughter is the sole heir then according to the *Ḥanafī Fiqh* (also *Ḥanbalī* and *Shāfi'ī Fiqh*) she inherits the whole estate (1/2 as sharer and 1/2 as *Al-Radd*).

17.2 Daughter inheriting as sharer

- The daughter inherits as a sharer if there is no surviving son as heir.
- If there is only one daughter she inherits a fixed share of 1/2.
- If there are two or more daughters they jointly inherit a fixed share of 2/3 which is divided equally amongst them. The maximum collective share allotted to the daughters and son's daughters h.l.s. inheriting as sharers is 2/3.
- Note that according to *Ijmā'* (consensus) the term *"Fauqathnatani"* in *Sūrah An-Nisā'* Verse 11 is interpreted as "two or more".

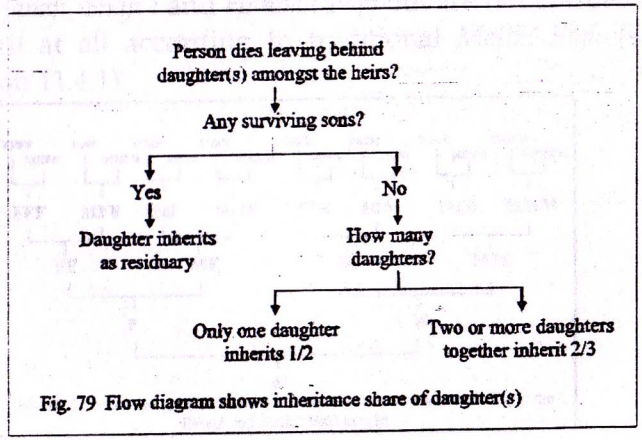


Fig. 79 Flow diagram shows inheritance share of daughter(s)

17.3 DAUGHTER INHERITING AS A RESIDUARY

- In the presence of a son the daughter inherits as a residuary.
- All heirs entitled to a fixed share are given their allotted shares, the residue of the estate that remains is inherited by the residuaries.
- The residue firstly devolves upon the sons together with the daughters if any.
- The general principle that the male inherits a portion that of two females of the same degree applies.

17.4 HEIRS EXCLUDED BY DAUGHTER

- Two or more daughters exclude DS h.l.s. unless DS h.l.s. is converted into residuary by SS h.l.s. of equal or lower degree.

18. GRANDFATHER

18.1 TRUE AND FALSE GRANDFATHER

- In Islāmic inheritance a grandfather can be either a true grandfather or a false grandfather.
- A true grandfather (*Al-Jadd Al-Ṣaḥih*) is a male ancestor between whom and the deceased no female intervenes.
- Thus the true grandfathers are father's father h.h.s. (FF, FFF, FFFF etc.).
- A false grandfather is a male ancestor between whom and the deceased a female intervenes.
- Thus false grandfathers are father of mother (FM), father of father of mother (FMF), father of father of mother (FFM), father of mother of mother (FMM) etc.
- This distinction between false and true grandfather is very important because in Islāmic law false grandfathers inherit in the capacity of distant kindred.
- The distant kindred are entitled to inherit according to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh* but are not entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

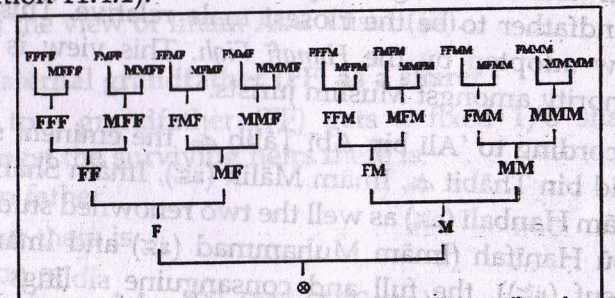


Fig. 80 shows all true grandparents of the first three generations (according to the Hanafi and Shāfi'ī *fiqh*) in bold

18.2 INHERITANCE SHARE OF TRUE GRANDFATHER

Key points:

- All true grandfathers are excluded by father and nearer true grandfather.
- There is difference of opinion amongst Muslim jurists regarding the share of the true grandfather (FF, FFF, FFFF etc.) in the presence of collaterals (full and consanguine siblings).
- This difference of opinion has arisen because Muslim jurists have been unable to agree whether the true grandfather or the collaterals (full and consanguine siblings) are closer to the deceased.
- According to Abū Bakr ﷺ, 'Abdullâh bin 'Abbās ﷺ and Imām Abū Ḥanīfah (رحمه الله), the true grandfather totally excludes the full and consanguine siblings based on the following *Hadīth: "Give the farā'id to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased". (Ṣaḥīḥ Al-Bukhārī).* *Farā'id* refers to the Qur'ānic heirs or sharers. Those who claim that the true grandfather excludes the collaterals (full and consanguine siblings) consider the true grandfather to be the closest male relative. This is the view adopted by the *Ḥanafī Fiqh*. This view is in the minority amongst Muslim jurists.
- According to 'Alī bin Abī Ṭālib ﷺ, the eminent scholar Zaid bin Thābit ﷺ, Imām Mālik (رحمه الله), Imām Shāfi'ī (رحمه الله), Imām Ḥanbalī (رحمه الله) as well the two renowned students of Abū Ḥanīfah (Imām Muḥammad (رحمه الله) and Imām Abū Yūsuf (رحمه الله)), the full and consanguine siblings inherit jointly with the true grandfather. This is the majority view of the *Ṣaḥābah*.

18.2.1 Paternal grandfather (FF)

Key points:

- The paternal grandfather (FF) is a true grandfather
- The true grandfather (FF) will only inherit if there is no surviving father of the deceased and there is no impediment to succession.
- The true grandfather (FF) is totally excluded by the presence of the father.
- The true grandfather (FF) like the father can inherit as a sharer, as a residuary or both.
- The true grandfather (FF) inherits like the father except in four cases when:
  1. Spouse, mother and FF are the only heirs (see sections 15.2 and 15.3).
  2. MF is excluded by F (according to all *Sunni* Fiqh except *Ḥanbalī*) but not by FF.
  3. F totally excludes Bf and Bc; FF does not exclude Bf and Bc according to the *Mālikī, Shāfi'ī* and *Ḥanbalī Fiqh*, but he does according to the *Ḥanafī Fiqh.*
  4. F of manumitter inherits with son of manumitter from the estate of a manumitted slave, however the FF of manumitter is excluded by the son of manumitter. This is the view of Imam Abū Yūsuf (رحمه الله).

18.2.2 Paternal grandfather (FF) as a sharer

- The true grandfather (FF) gets a fixed 1/6 share if amongst the surviving heirs there is:
  1. no father
     but there is
  2. son or
  3. son's son h.l.s. (SS, SSS, SSSS etc.)

18.2.3 Paternal grandfather (FF) as a residuary

- The true grandfather (FF) is a residuary if amongst the surviving heirs there is:
  1. no father and
  2. no child and
  3. no SS h.l.s. and no DS h.l.s. (SS, DS, SSS, DSS etc.)

18.2.4 Paternal grandfather (FF) as sharer and residuary

- The true grandfather (FF) is a sharer and residuary if amongst the surviving heirs there is:
  1. no father and
  2. no son and
  3. no son's son h.l.s.

  but there is:
  4. daughter(s) or
  5. son's daughter h.l.s. (DS, DSS etc.)

In this situation the true grandfather (FF) gets a fixed 1/6 plus whatever remains of the estate after all the other sharers have been satisfied.

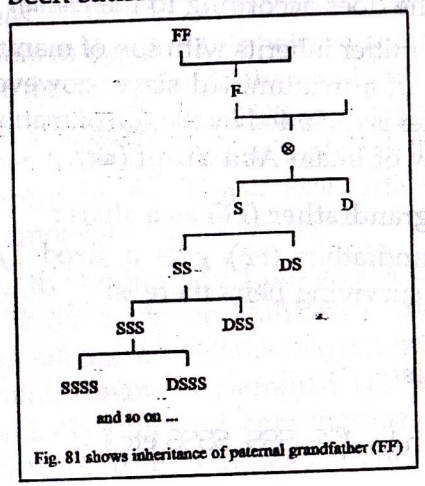


Fig. 81 shows inheritance of paternal grandfather (FF)

- If any of the male descendants shown in Fig. 81 are amongst the surviving heirs, then tgF (FF) inherits as sharer and gets a fixed 1/6 share.
- If there is no male descendant shown in Fig. 81 but there is a female descendant shown amongst the surviving heirs, then tgF (FF) gets 1/6 plus any residue.
- If there is no male and no female descendant shown in Fig. 81 amongst the surviving heirs, then tgF (FF) inherits as residuary.

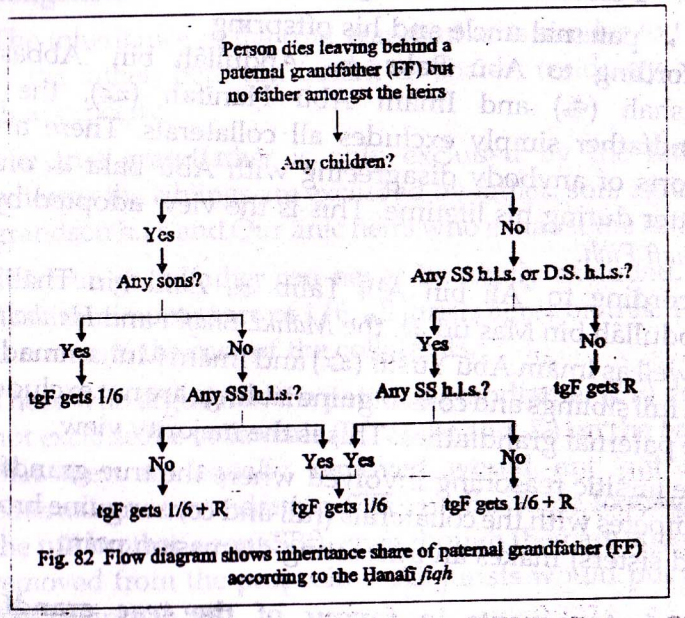


Fig. 82 Flow diagram shows inheritance share of paternal grandfather (FF) according to the Hanafi *fiqh*

18.2.5 Heirs excluded by paternal grandfather of deceased

The following potential heirs are totally excluded from the inheritance by the presence of the paternal grandfather of the deceased:

1. More remote grandfathers.

2. All paternal grandmothers h.h.s. except father's mother.

   The paternal grandmother is not excluded by the father or true grandfather according to the *Ḥanbalī Fiqh*.

3. Descendants of father
   - brothers (full and consanguine) and their offspring
   - sisters (full and consanguine)
4. Uterine brother and sister.
5. Descendants of true grandfather.
   - paternal uncle and his offspring

According to Abū Bakr ﷺ, 'Abdullâh bin 'Abbās ﷺ, 'Ā'ishah (ﷺ) and Imām Abū Ḥanīfah (ﷺ), the true grandfather simply excludes all collaterals. There are no reports of anybody disagreeing with Abū Bakr ﷺ on this matter during his lifetime. This is the view adopted by the *Ḥanafī Fiqh*.

According to 'Alī bin Abī Ṭālib ﷺ, Zaid bin Thābit ﷺ, 'Abdullâh bin Mas'ūd ﷺ, the *Mālikī, Shāfi'ī* and *Ḥanbalī Fiqh* as well as Imām Abū Yūsuf (ﷺ) and Imām Muḥammad (ﷺ), the full siblings and consanguine siblings are not excluded by the paternal grandfather. This is the majority view.

The jursitic reasoning involved where the true grandfather competes with the collaterals (full and consanguine brothers and sisters) makes an interesting discussion point.

18.2.6 Arguments in favour of the true grandfather excluding the collaterals

- In linguistic terms the term "father" (*Abū*) is applied to male agante ascendants. The Qur'ān speaks of Abraham (ﷺ) as the father of the Muslim community.
- The relationship between grandfather and grandchild parallels to that between father and child.

- In many other aspects of Islāmic law the father and grandfather are treated in a similar manner. For instance, both are exempt from punishment of death for culpable homicide, exempt from flogging for *Qadhf* (unproven allegation of *Zinā*) and also both are exempt from amputation of hand for the offence of theft where the victim is the child or grandchild of the accused.
- In situations where a child is in need of maintenance, the majority view is that the grandfather has to provide whereas the brothers and sisters are under no such obligation.
- The inheritance of the true grandfather is similar to that of the father, both can inherit as sharer, residuary and dual capacity.
- The true grandfather is only excluded by the father whereas the siblings are excluded by father, son, agnatic grandson h.l.s and Qur'ānic heirs who exhaust the estate.
- The true grandfather can never be totally excluded, he has a minimum share of 1/6, all jurists agree on this. This is not so in the case of the collaterals.
- Those who argue that the paternal grandfather (FF) does not exclude the collaterals (Bf, *Sf*, Bc and *Sc*) on the basis that they are equally removed would not put the paternal great grandfather (FFF) on the same footing as the full brother's son (SBf), even though they are equally removed from the propositus. All jurists would put the FFF before the SBf.

18.2.7 Arguments in favour of the true grandfather not excluding the collaterals

- The collaterals (Bf, *Sf*, Bc and *Sc*) and the paternal grandfather (FF) are both second degree removed from

the propositus. The collaterals are descendants while the paternal grandfather is an ascendant, descendants have priority over ascendants, therefore the collaterals have a stronger claim.

- The true grandfather and father do not inherit in exactly the same manner, there are exceptions (see section 18.2.1).

Whatever the arguments of the proponents of the true grandfather excluding the collaterals their arguments were not decisive enough for the majority, who allow the collaterals to inherit with the true grandfather. The difference of opinion on this issue is best exemplified by a case which has been given various names such as *Al-Khurqā'* (debatable), *Al-Musaddasah* (hexagonal) and *Al-'Uthmāniyyah*. The case involves the mother (M), the paternal grandfather (FF) and full sister (*Sf*) as the only heirs. The solutions put forward by the some of the most learned Companions of the Prophet (ﷺ) were as follows:

	Mother	*Sf*	FF
Abū Bakr ؓ	1/3	Nil	2/3
'Umar ؓ	1/6	1/2	1/3
'Uthmān ؓ	1/3	1/3	1/3
'Alī bin Abī Ṭālib ؓ	1/3	1/2	1/6
Ibn Mas'ūd (i) ؓ	1/6	Nil	5/6
Ibn Mas'ūd (ii) ؓ	1/4	1/2	1/4
Zaid bin Thābit ؓ	1/3	2/9	4/9

The two doctrines which are practised allowing the true grandfather to co-inherit with the collaterals are those put forward by 'Alī bin Abī Ṭālib ؓ and Zaid bin Thābit ؓ.

18.2.8 The doctrine of 'Alī bin Abī Ṭālib ؓ

- 'Alī bin Abī Ṭālib ؓ allows the collaterals and the true grandfather to inherit along normal principles but gives the true grandfather two options or advantages.

A1: The true grandfather when in competition with a brother (full or consanguine) can elect to inherit wholly as a residuary even in the absence of a daughter or agnatic granddaughter h.l.s. (see sections 18.2.3 – 18.2.4), if this is to his advantage. In this capacity, the true grandfather inherits either as a Bf or Bc. When the true grandfather inherits as a Bc, the *Sf* will inherit as Qur'ānic heir.

A2: The true grandfather gets a minimum 1/6 Qur'ānic share which he otherwise would not as a residuary if normal rules were applied.

Example 54 ('Alī's ؓ doctrine)

A person dies leaving behind a paternal grandfather (FF), a full brother (Bf) and a consanguine brother (Bc) as the only claimants.

Bc is excluded by Bf.

FF inherits 1/2 (rule A1)

Bf inherits 1/2

Example 55 ('Alī's ؓ doctrine)

A man dies leaving behind a widow (W), a paternal grandfather (FF), two full brothers (2Bf) and a consanguine brother (Bc) as the only claimants.

Bc is excluded by Bf.

W inherits 1/4 (as sharer)

FF inherits 1/4 (rule A1)

2Bf inherit 1/2 (1/4 each)

Example 56 ('Alī's ﷺ doctrine)

A man dies leaving behind a widow (W), a paternal grandfather (FF), a full brother (Bf) and a full sister (Sf) as the only claimants.

W inherits 1/4 (as sharer)

FF inherits 3/10 (rule A1)

Bf inherits 3/10

Sf inherits 3/20

Example 57 ('Alī's ﷺ doctrine)

A person dies leaving behind a maternal grandmother (MM), a paternal grandfather (FF), two full brothers (2Bf) and a full sister (Sf) as the only claimants.

MM inherits 1/6 (as sharer)

FF inherits 5/21 (rule A1)

2Bf inherit 10/21 (5/21 each)

Sf inherits 5/42

Example 58 ('Alī's ﷺ doctrine)

A person dies leaving behind a daughter (D), a paternal grandfather (FF), a full brother (Bf), a full sister (Sf) and a consanguine sister (Sc) as the only claimants.

D inherits 1/2 (as sharer)

FF inherits 1/5 (rule A1)

Bf inherits 1/5

Sf inherits 1/10

Sc is excluded by Bf

Under normal principles, the paternal grandfather would inherit 1/6 as Qur'anic heir in the presence of the daughter,

but under advantage rule A1, he elects to inherit purely as a residuary and gets 1/5.

Example 59 ('Alī's ﷺ doctrine)

A man dies leaving behind a widow (W), a paternal grandfather (FF) and a consanguine brother (Bc) as the only claimants.

W inherits 1/4

FF inherits 3/8 (rule A1)

Bc inherits 3/8

Example 60 ('Alī's ﷺ doctrine)

A person dies leaving behind a mother (M), a paternal grandfather (FF), a full sister (Sf) and a consanguine brother (Bc) as the only claimants.

M inherits 1/6

FF inherits 1/6 (rule A1)

Sf inherits 1/2 as Qur'ānic heir

Bc inherits 1/6

Example 61 ('Alī's ﷺ doctrine)

A person dies leaving behind three true grandmothers (3tgM), a paternal grandfather (FF), a full sister (Sf), a consanguine sister (Sc) and a uterine sister (Su) as the only claimants. This case has been named *Al-Ḥamziyyah*. Note that under *Mālikī Fiqh*, three true grandmothers cannot inherit simultaneously (see section 19.2).

3tgM inherit 1/6 (1/18 each)

FF inherits 1/6 (rule A2)

Sf inherits 1/2 as Qur'ānic heir

Sc inherits 1/6 (see section 32.2.2)

Su is excluded by FF

Example 62 ('Alī's ﷺ doctrine)

A person dies leaving behind a daughter (D), a paternal grandfather (FF) and a full sister ($\mathcal{S}f$) as the only claimants.

D inherits 1/2 (as sharer)

FF inherits 1/6 (rule A2)

$\mathcal{S}f$ inherits 1/3 (as residuary with D, see section 31.1.3)

Example 63 ('Alī's ﷺ doctrine)

A person dies leaving behind a daughter (D), paternal grandfather (FF) and a consanguine sister ($\mathcal{S}f$) as the only claimants.

DS inherits 1/2 (as sharer)

FF inherits 1/6 (rule A2)

$\mathcal{S}c$ inherits 1/3 (as residuary with DS, see section 31.1.3)

Example 64 ('Alī's ﷺ doctrine)

A person dies leaving behind a daughter (D), a mother (M), a paternal grandfather (FF) and 3 full brothers (3Bf) as the only claimants.

D inherits 1/2 (as sharer)

M inherits 1/6 (as sharer)

FF inherits 1/6 (rule A2)

3Bf inherit 1/6 (1/18 each)

The paternal grandfather elects to inherit 1/6 as a Qur'anic heir under advantage rule A2, because as a pure residuary he would inherit only 1/2.

Example 65 ('Alī's ﷺ doctrine)

A person dies leaving behind a husband (H), a mother (M), a paternal grandfather (FF) and 2 full brothers (2Bf) as the only claimants.

H inherits 1/2 (as sharer)

M inherits 1/6 (as sharer)

FF inherits 1/6 (rule A2)

2Bf inherit 1/6 (1/12 each)

Example 66 ('Alī's ﷺ doctrine)

A person dies leaving behind a husband (H), a mother (M), a paternal grandfather (FF), a full brother (Bf) and two full sisters ($2\mathcal{S}f$) as the only claimants.

H inherits 1/2 (as sharer)

M inherits 1/6 (as sharer)

FF inherits 1/6 (rule A2)

Bf inherits 1/12

$2\mathcal{S}f$ inherit 1/12 (1/24 each as residuaries with Bf)

18..2.9 Doctrine of Zaid bin Thābit ﷺ

- The doctrine of Zaid bin Thābit ﷺ has been adopted by the *Mālikī, Shāfi'ī* and *Ḥanbalī jurists*. The *Mālikī Fiqh* has made some modifications as detailed below.
- The doctrine of Zaid bin Thābit ﷺ is generally more favourable to the true grandfather than the doctrine of 'Alī bin Abī Ṭālib ﷺ because the true grandfather inherits as a residuary converting any sisters into residuaries and he is entitled to 1/3 of the residue after the shares of the Qur'ānic heirs have been fulfilled.
- According to Zaid bin Thābit ﷺ when the tgF inherits with the collaterals there are two possible scenarios:
  1. tgF inherits with only collaterals
  2. tgF inherits with collaterals and other heirs

In scenario 1, the tgF gets the better of two options, either:

I. as one of the brothers in *Muqāsamah* (division) or

II. a fixed 1/3 of the whole estate

In scenario 2 tgF gets the best share out of three options, thus:

I. as one of the brothers in *Muqāsamah* (division) or

II. 1/3 of the residue or

III. a fixed 1/6 of the whole estate (tgF should get 1/6 as minimum). If after all the Qur'ānic heirs have been allocated their shares and 1/6 is left this is given to the true grandfather.

- All the possibilities are calculated and the tgF is given the best share out of the options available to him.

Muqāsamah (division) means that the tgF inherits as a full brother and the consanguine brothers and consanguine sisters enter into the calculation to limit the share of the true grandfather. This is called the *Mu'āddah* (computation) rule. The consanguine siblings enter into the computation because the true grandfather does not himself excluded them. After the tgF has been allotted his share, the consanguine brothers and consanguine sisters are excluded by the full brother.

- Calculations have shown that when the true grandfather is inheriting with collaterals only if the number of collaterals does not exceed two brothers or four sisters, the tgF is better off inheriting by *Muqāsamah*.

***Al-Mukhtasarah* (abridged) case**

As seen above in *Muqāsamah*/ the full brother totally excludes the consanguine brother and consanguine sister.

However, the power of the full sister to exclude the consanguine brother and consanguine sister is restricted to the extent of making her own share up to 1/2. This case has been named *Al-Mukhtasarah* (abridged), illustrate this principle.

In the first case, the deceased left behind a full sister, consanguine sister, a consanguine brother and a paternal grandfather.

Initial allocation strictly according to the doctrine of Zaid bin Thābit ﷺ is:

$\mathcal{Sf}$	$\mathcal{Sc}$	Bc	FF
1/6	1/6	1/3	1/3

The FF is allowed to keep his share of 1/3. The $\mathcal{Sf}$ is given her share of 1/2. The remaining estate of 1/6 is divided amongst Bc and $\mathcal{Sc}$, the male getting the portion of two females.

The final allocation in this case is thus:

$\mathcal{Sf}$	$\mathcal{Sc}$	Bc	FF
1/2	1/18	1/9	1/3

In the second case, the deceased left behind a mother, a full sister, a consanguine sister, a consanguine brother and a paternal grandfather.

Initial allocation according strictly to the doctrine of Zaid bin Thābit ﷺ is:

M	$\mathcal{Sf}$	$\mathcal{Sc}$	Bc	FF
1/6	5/36	5/36	5/18	5/18

M inherits 1/6 as sharer, FF is allowed to keep his share of 5/18. The remaining estate, (5/36+5/36+5/18), is redistributed with $\mathcal{Sf}$ getting her 1/2 share and the residue is divided amongst Bc and $\mathcal{Sc}$, the male getting the portion of two females.

The final allocation in this case is thus:

M	$\mathcal{Sf}$	$\mathcal{Sc}$	Bc	FF
1/6	1/2	1/54	1/27	5/18

The rules of the doctrine of Zaid bin Thābit ﷺ are illustrated by the examples below.

Zaid's ﷺ doctrine has been modified in 3 particular cases. These cases together with the juristic reasoning involved are detailed at the end of this section.

Example 67 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF) and a full brother (Bf) as the only claimants.

FF inherits 1/2 (option I)
Bf inherits 1/2

Example 68 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF) and two full brothers (2Bf) as the only claimants.

FF inherits 1/3 (option I or option II)
2Bf inherit 2/3 (1/3 each)

Example 69 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF) and a full sister ($\mathcal{Sf}$) as the only claimants.

FF inherits 2/3 (option I)
$\mathcal{Sf}$ inherits 1/3

Example 70 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF) and three full sisters ($3\mathcal{Sf}$) as the only claimants.

FF inherits 2/5 (option I)
$3\mathcal{Sf}$ inherit 3/5 (1/5 each)

Example 71 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF), a full sister ($\mathcal{Sf}$) and a consanguine brother (Bc) as the only claimants.

FF inherits 2/5 (option I)
$\mathcal{Sf}$ inherits 1/2
Bc inherits 1/10

Example 72 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF), a full sister ($\mathcal{Sf}$) and a consanguine sisters ($\mathcal{Sc}$) as the only claimants.

FF inherits 1/2 (option I)
$\mathcal{Sf}$ inherits 1/2
$\mathcal{Sc}$ inherits nil (nothing left)

Example 73 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF), a full sister ($\mathcal{Sf}$) and two consanguine sisters ($2\mathcal{Sc}$) as the only claimants.

FF inherits 2/5 (option I)
$\mathcal{Sf}$ inherits 1/2 (Qur'ānic share)
$2\mathcal{Sc}$ inherit 1/10 (1/20 each)

Example 74 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF), a

full brother (Bf) and a consanguine brother (Bc) as the only claimants.

FF inherits 1/3 (option I)

Bf inherits 2/3

Bc inherits nil (excluded by Bf)

Compare this case with example 54 under 'Alī ﷺ doctrine. Although the true grandfather is given more advantages under Zaid's ﷺ doctrine, he is adversely affected here due to the application of *Muqasamah*. The true grandfather is not adversely affected under Zaid's ﷺ doctrine in comparison with 'Alī's ﷺ doctrine when he is in competition with one full brother or with one full brother and one full sister.

Example 75 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF), a full brother (Bf) and two full sisters (2$\mathcal{Sf}$) as the only claimants.

FF inherits 1/3 (option I or option II)

Bf inherits 1/3

2$\mathcal{Sf}$ inherit 1/3 (1/6 each)

Example 76 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF) and four full sisters (4$\mathcal{Sf}$) as the only claimants.

FF inherits 1/3 (option I or option II)

4$\mathcal{Sf}$ inherit 2/3 (1/6 each)

Example 77 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF) and three full brothers (3Bf) as the only claimants.

FF inherits 1/3 (option II)

3Bf inherit 2/3 (2/9 each)

Example 78 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF) and five full sisters (5$\mathcal{Sf}$) as the only claimants.

FF inherits 1/3 (option II)

5$\mathcal{Sf}$ inherit 2/3 (2/15 each)

Example 79 (Zaid's ﷺ doctrine)

A person dies leaving behind a paternal grandfather (FF), a full sister ($\mathcal{Sf}$), a consanguine brother (Bc) and two consanguine sisters (2$\mathcal{Sc}$) as the only claimants.

FF inherits 1/3 (option II)

$\mathcal{Sf}$ inherits 1/2

Bc inherits 1/12

2$\mathcal{Sc}$ inherit 1/12 (1/24 each)

Example 80 (Zaid's ﷺ doctrine)

A woman dies leaving behind a husband (H), a maternal grandmother (MM), a paternal grandfather (FF) and three full brothers (3Bf) as the only claimants.

H inherits 1/2 (as sharer)

MM inherits 1/6 (as sharer)

FF inherits 1/6 (option I)

3Bf inherits 1/6 (1/18 each)

Example 81 (Zaid's ﷺ doctrine)

A woman dies leaving behind a husband (H), a paternal grandfather (FF) and a consanguine brother (Bc) as the only

claimants.

H inherits 1/2 (as sharer)

FF inherits 1/4 (option I)

Bc inherits 1/4

Example 82 (Zaid's ﷺ doctrine)

A person dies leaving behind a mother (M), a paternal grandfather (FF) and a consanguine sister (Sc) as the only claimants.

M inherits 1/3 (as sharer)

FF inherits 4/9 (option I)

Sc inherits 2/9

Example 83 (Zaid's ﷺ doctrine)

A woman dies leaving behind a husband (H), a paternal grandfather (FF) and a full sister (Sf) as the only claimants.

H inherits 1/2 (as sharer)

FF inherits 1/3 (option I)

Sf inherits 1/6

Example 84 (Zaid's ﷺ doctrine)

A person dies leaving behind a daughter (D), a paternal grandfather (FF) and a consanguine sister (Sc) as the only claimants.

D inherits (as sharer) 1/2

FF inherits 1/3 (option I)

Sc inherits 1/6

Compare with example 62 under 'Alī's ﷺ doctrine.

Example 85 (Zaid's ﷺ doctrine)

A woman dies leaving behind a husband (H), a paternal

grandfather (FF) and three full sisters (3Sf) as the only claimants.

H inherits 1/2 (as sharer)

FF inherits 1/5 (option I)

3Sf inherit 3/10 (1/10 each)

Example 86 (Zaid's ﷺ doctrine)

A person dies leaving behind a mother (M), a paternal grandfather (FF) and two full brothers (2Bf) as the only claimants.

M inherits 1/6 (as sharer)

FF inherits 5/18 (option I or option II)

2Bf inherit 5/9 (5/18 each)

Example 87 (Zaid's ﷺ doctrine)

A person dies leaving behind a maternal grandmother (MM), a paternal grandfather (FF), two full brothers (2Bf) and a full sister (Sf) as the only claimants.

MM inherits 1/6 (as sharer)

FF inherits 5/18 (option I)

2Bf inherit 4/9 (2/9 each)

Sf inherits 1/9

Compare with example 57 under ('Alī's ﷺ doctrine).

Example 88 (Zaid's ﷺ doctrine)

A person dies leaving behind a mother (M), a paternal grandfather (FF) and five full sisters (5Sf) as the only claimants.

M inherits 1/6 (as sharer)

FF inherits 5/18 (option II)

5$\mathcal{Sf}$ inherits 5/9 (1/9 each)

Example 89 (Zaid's ﷺ doctrine)

A person dies leaving behind a mother (M), a paternal grandfather (FF), a full sister ($\mathcal{Sf}$), a consanguine brother (BC) and a consanguine sister ($\mathcal{Sc}$) as the only claimants.

M inherits 1/6 (as sharer)

FF inherits 5/18 (option II)

$\mathcal{Sf}$ inherits 1/2 (Qur'ānic share)

Bc inherits 1/27

$\mathcal{Sc}$ inherits 1/54

Example 90 (Zaid's ﷺ doctrine)

A woman dies leaving behind a husband (H), a paternal grandfather (FF) and two full brothers (2Bf) as the only claimants.

H inherits 1/2 (as sharer)

FF inherits 1/6 (option I option II or option III)

2Bf inherit 1/3 (1/6 each)

Example 91 (Zaid's ﷺ doctrine)

A person dies leaving behind a son's daughter (DS), a paternal grandfather (FF), a full brother (Bf), a full sister ($\mathcal{Sf}$) and a consanguine sister ($\mathcal{Sc}$) as the only claimants.

DS inherits 1/2 (as sharer)

FF inherits 1/6 (option I or option II or option III)

Bf inherits 2/9

$\mathcal{Sf}$ inherits 1/9

$\mathcal{Sc}$ is excluded by Bf

Compare with example 58 under ('Alī's ﷺ doctrine).

Example 92 (Zaid's ﷺ doctrine)

A woman dies leaving behind a husband (H), a mother (M), paternal grandfather (FF) and two full brothers (2Bf) as the only claimants.

H inherits 1/2 (as sharer)

M inherits 1/6 (as sharer)

FF inherits 1/6 (option III)

2Bf inherit 1/6 (1/12 each)

Example 93 (Zaid's ﷺ doctrine)

A woman dies leaving behind a husband (H), a mother (M), a paternal grandfather (FF) and two full sisters (2$\mathcal{Sf}$) as the only claimants.

H inherits 1/2 (as sharer)

M inherits 1/6 (as sharer)

FF inherits 1/6 (option I or III)

2$\mathcal{Sf}$ inherit 1/6 (1/12 each)

Example 94 (Zaid's ﷺ doctrine)

A woman dies leaving behind a husband (H), mother (M), paternal grandfather (FF) and a full brother (Bf) as the only claimants.

H inherits 1/2 (as sharer)

M inherits 1/3 (as sharer)

FF inherits 1/6 (option III)

Bf inherits nil

Example 95 (Zaid's ﷺ doctrine)

A woman dies leaving behind five daughters (5D), a husband (H), paternal grandfather (FF) and four full brothers (4Bf) as the only claimants. The doctrine of *'awl* is applied in this case.

5D inherit 2/3 reduced to 8/13 (8/65 each)

H inherits 1/4 reduced to 3/13

FF inherits 1/6 reduced to 2/13 (option III)

4Bf inherit nil

Example 96 (Zaid's ﷺ doctrine)

A woman dies leaving behind a daughter (D), a husband (H), a mother (M), a paternal grandfather (FF) and a full sister (*Sf*) as the only claimants. The doctrine of *'Awl* is applied in this case.

D inherits 1/2 reduced to 6/13

H inherits 1/4 reduced to 3/13

M inherits 1/6 reduced to 2/13

FF inherits 1/6 reduced to 2/13 (option III)

Sf inherits nil

Example 97 (Zaid's ﷺ doctrine)

A woman dies leaving behind four daughters (4D), a husband (H), a mother (M), a paternal grandfather (FF), three full brothers (3Bf) and two full sisters (2*Sf*) as the only claimants. The doctrine of *'Awl* is applied in this case.

4D inherit 2/3 reduced to 8/15 (2/15 each)

H inherits 1/4 reduced to 1/5

M inherits 1/6 reduced to 2/15

FF inherits 1/6 reduced to 2/15 (option III)

3Bf inherit nil

2*Sf* inherit nil

18.2.7 Modifications to doctrine of Zaid bin Thābit ﷺ

***Al-Akdariyyah* case**

This modification is accepted by the *Mālikī* and *Shāfi'ī Fiqh*. In this modification, the full sister/consanguine sister is allowed to inherit as a Qur'anic heir in the presence of the paternal grandfather which is contrary to the general principles of Zaid bin Thābit's ﷺ doctrine.

In this case a deceased woman left behind a husband, mother, full sister (or consanguine sister) and a paternal grandfather as the only heirs.

If we apply the rules of the doctrine of Zaid bin Thābit ﷺ the paternal grandfather can go for option III, that is opt for a fixed 1/6 of the estate. The distribution of the inheritance would be thus:

H	M	*Sf*	FF
1/2	1/3	Nil	1/6

The full sister is excluded *de facto*, there is nothing left for her to inherit. This would also be the case if instead of the full sister we had a full/consanguine brother.

Although the *Ḥanafī Fiqh* would derive at the same result in this case, the juristic reasoning is of course very different. The full sister is excluded *de jure* (as a matter of law) by the paternal grandfather. The only problem with this solution is that the full sister inherits nothing even though none of the heirs have the capacity to exclude her.

If the paternal grandfather is given option I in line with Zaid's ﷺ doctrine, he inherits as a brother and makes agnatical the full sister. The distribution of inheritance is thus:

H	M	Sf	FF
1/2	1/3	1/18	1/9

The problem now is that the paternal grandfather appears to get less than the minimum 1/6 which he should get according to consensus of opinion.

Zaid bin Thābit ﷺ got around this by allowing the full sister to initially inherit as a sharer and then apply the doctrine of *'Awl*.

So the full sister is allocated 1/2 share as a Qur'anic heir and the paternal grandfather is allocated 1/6. These two shares are added together (1/2 + 1/6 = 2/3) and distributed amongst the *Sf* and FF. The paternal grandfather inherits as a brother so he is given 2/3 of 2/3 which is 4/9, and the full sister gets 1/3 of 2/3 which is 2/9. The total sum of the shares is 9/6 (1/2 + 1/3 + 2/9 + 4/9) so the doctrine of *'Awl* is applied.

The final distribution of shares is thus:

H	M	Sf	FF
9/27	6/27	4/27	8/27

This is the solution adopted by the *Shāfi'ī*, *Mālikī* and *Ḥanbalī* *Fiqh*.

If we have two or more full sisters then it is not a case of *Akdariyyah* because the mother's share is reduced to 1/6, the best option for the paternal grandfather is to opt for 1/6 and the sisters inherit the remaining 1/6.

If instead of the full sister we have a full or consanguine brother, then again it is not a case of *Al-Akdariyyah*. The best option for the paternal grandfather is to opt for 1/6 and the full or consanguine brother would be excluded.

Al-Mālikiyyah case

This modification applies only to the *Mālikī Fiqh*. Imām Mālik (رحمه الله) deviated from the doctrine of Zaid bin Thābit ﷺ in this case where the deceased left behind a husband, a mother, two uterine brothers, a consanguine brother and a paternal grandfather.

If the paternal grandfather is ignored, the distribution of the estate would be:

H	M	2Bu	Bc
1/2	1/6	1/3	Residue

Bc gets nothing because there is no residue. Now if we bring in the paternal grandfather, the uterine brothers are excluded by the paternal grandfather and the distribution of shares according to the doctrine of Zaid bin Thābit ﷺ is as follows:

H	M	2Bu	Bc	FF
1/2	1/6	Nil	1/6	1/6

Imām Mālik (رحمه الله) excluded Bc from inheriting in this case because he argued that Bc should not benefit from FF excluding the uterine brothers. The FF should receive the whole benefit. After all if there was no FF then Bc would get nothing anyway. So according to Imām Mālik (رحمه الله) the distribution of shares in this case is:

H	M	2Bu	Bc	FF
1/2	1/6	Nil	Nil	1/3

Shibh Al-Mālikiyyah case

This modification applies only to the *Mālikī Fiqh*, and is also referred to as *'Ukht Al-Mālikiyya* or *Quazi- Mālikiyyah*.

If we replace the consanguine brother with a full brother in *Al-Mālikiyyah* case and compare it to *Al-Himāriyyah* case, it

makes an interesting legal discussion point.

The *Al-Ḥimāriyyah* case revolves around the competition between two or more uterine siblings and full siblings when there is only one-third of the inheritance remaining after allocation of shares to a surviving husband and mother. The second ruling of Umar ﷺ which constitutes the *Ḥimāriyyah* rule distributes the shares amongst the husband, mother, two uterine siblings and two full brother thus:

H	M	2Bu	2Bf
1/2	1/6	1/6	1/6

Those who adopt the *Ḥimāriyyah* rule, namely the *Shāfi'ī* and *Mālikī* jurists, are allowing the full brothers to inherit as uterine brothers. Those who reject the *Ḥimāriyyah* rule, the Ḥanafī and Ḥanbalī jurists, follow the principle, "once an *'Aṣabah* always an *'Aṣabah*" in which case the full brothers as residuaries inherit nothing because there is no residue.

Now let us introduce a paternal grandfather into the case who by law excludes all uterine siblings. What is the situation for the full brothers who opted to inherit as uterine brothers when it was to their advantage. Are they excluded as well? Or will they now re-assume their paternal link and inherit as full brothers? The *Mālikī* jurists have decided that the full brothers in these circumstances must continue their role as uterine brothers and thus be excluded by the paternal grandfather. The distribution of the inheritance would be thus:

H	M	2Bu	2Bf	FF
1/2	1/6	Nil	Nil	1/3

The *Shibh Al-Mālikiyyah* case involved a woman dying and leaving behind a husband, mother, two uterine sisters, full brother and a paternal grandfather. The *Mālikī* jurists decided this case on the same basis as the *Al-Mālikiyyah*

case above. The distribution of the shares is thus:

H	M	2Su	Bf	FF
1/2	1/6	Nil	Nil	1/3

18.2.11 Maternal Grandfather (FM)

- This maternal grandfather is a false grandfather.
- The false grandfather in *Sharī'ah* does not inherit as a sharer or residuary but as a distant kindred.
- The distant kindred are entitled to inherit according to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh* but are not entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).
- See sections 11.4.4 and 11.4.7 for details.

19. GRANDMOTHER

Narrated Buraydah ﷺ: Allāh's Prophet (ﷺ) appointed a sixth to a grandmother if no mother was left to inherit before her. (Abū Dāwūd). A similar *Hadīth* narrated by Ibn Abbās.ﷺ and reported by Ibn Mājah.

19.1 TRUE AND FALSE GRANDMOTHER

Key points:

- The term grandmother is often used to include more remote grandmothers such as great grandmothers.
- The collective share allocated to the true grandmothers is one-sixth.
- In Islāmic succession law, a grandmother can be either a true grandmother or a false grandmother.
- A true grandmother (*Al-Jaddah Al-Ṣaḥīḥah*) is a female ancestor between whom and the deceased no false grandfather intervenes. According to this definition of true grandmother, the *Mālikī* and *Ḥanbalī Fiqh* do not allow all such true grandmothers to inherit as sharers as discussed below. See Fig. 83-85.
- Thus the true grandmothers who inherit as sharers (according to Ḥanafī and Shāfi'ī *Fiqh*) are:
  - mother of father — MF
  - mother of mother — MM
  - mother of mother of mother — MMM
  - mother of mother of father — MMF
  - mother of father of father — MFF
  - mother of father of father of father — MFFF
  - mother of MMM — MMMM
  - mother of MMF — MMMF
  - mother of MFF — MMFF

  and so on
- A false grandmother is a female ancestor between whom and the deceased a false grandfather intervenes.
- This distinction between false and true grandmother is very important because in Islāmic law, a false grandmother inherits in the capacity of class II distant kindred.
- The distant kindred are entitled to inherit according to the *Ḥanafī, Mālikī* and *Ḥanbalī Fiqh* but are not entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

19.2 TRUE GRANDMOTHERS WHO INHERIT AS SHARERS

- There is difference of opinion amongst the four main Sunni *Madhahib* as to which true grandmothers on the paternal side are entitled to inherit as sharers.

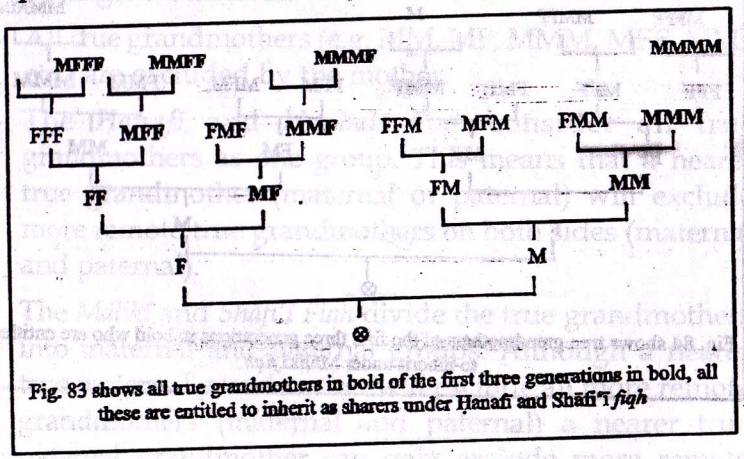


Fig. 83 shows all true grandmothers in bold of the first three generations in bold, all these are entitled to inherit as sharers under Ḥanafī and Shāfi'ī *fiqh*

- The *Ḥanafī* and *Shāfi'ī Fiqh* allow all the true grandmothers to inherit as sharers as shown in Fig. 83.
- The *Mālikī Fiqh* only allows the line of mother's mother h.h.s. and the line of succession of the mother of father and mother's mother no matter how high of father of the propositus as shown in Fig. 84. Therefore, the MM, MMM, MMMM etc. and the MF, MMF, MMMF etc. are entitled to inherit as sharers. This means that no more than two true grandmothers can inherit together under *Mālikī Fiqh*.
- The *Ḥanbalī Fiqh* allows all the true grandmothers under *Mālikī* law as well as mother of FF and mother's mother no matter how high of FF as shown in Fig. 85. Therefore, the MM, MMM, MMM etc., the MF, MMF, MMMF etc. and MFF, MMFF, MMMFF etc. are entitled to inherit as sharers. This means that no more than three true grandmothers can inherit together under *Ḥanbalī Fiqh*.

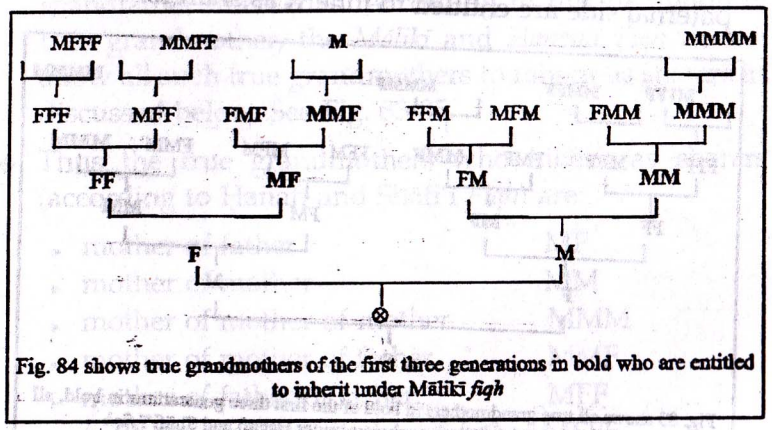


Fig. 84 shows true grandmothers of the first three generations in bold who are entitled to inherit under Mālikī *fiqh*

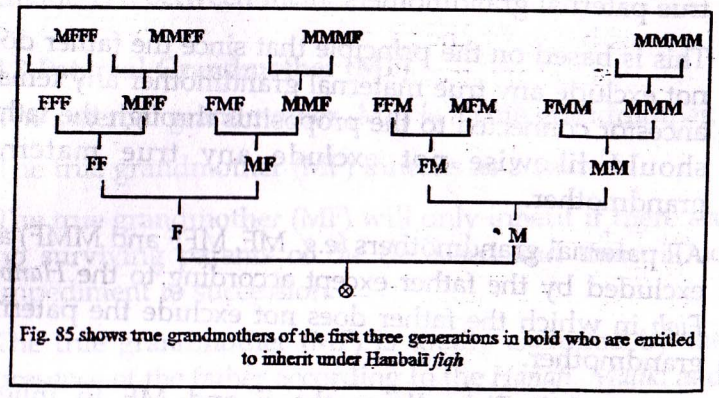


Fig. 85 shows true grandmothers of the first three generations in bold who are entitled to inherit under Ḥanbalī *fiqh*

19.3 INHERITANCE SHARE OF GRANDMOTHER

- True grandmother inherits as a sharer in the absence of the mother.
- The fixed share of one or more true grandmother(s) is 1/6.
- True grandmothers of equal degree inherit 1/6 equally amongst themselves.
- All true grandmothers (e.g. MM, MF, MMM, MFF, MMF etc.) are excluded by the mother.
- The *Ḥanafī* and *Ḥanbalī Fiqh* consider all true grandmothers as one group. This means that a nearer true grandmother (maternal or paternal) will exclude more remote true grandmothers on both sides (maternal and paternal).
- The *Mālikī* and *Shāfi'ī Fiqh* divide the true grandmothers into maternal and paternal groups. Although a nearer true maternal grandmother will exclude all more remote grandmothers (maternal and paternal) a nearer true paternal grandmother can only exclude more remote

true paternal grandmothers.

- This is based on the principle that since the father does not exclude any true maternal grandmother any female ancestor connected to the propositus through the father should likewise not exclude any true maternal grandmother.
- All paternal grandmothers (e.g. MF, MFF and MMF) are excluded by the father except according to the *Ḥanbalī Fiqh* in which the father does not exclude the paternal grandmother.
- The *Ḥanbalī Fiqh* allows the F and MF to inherit together.This is on the basis that all true grandmothers (maternal and paternal) inherit in place of the mother. Since the father does not exclude the maternal true grandmother, why should he exclude the paternal true grandmother.
- Those jurists who allow the father to exclude the paternal true grandmother state that the paternal true grandmother (MF) is connected to the propositus though the father. In a similar manner FF excludes MFF. In general, this means that a true paternal grandmother h.h.s. is excluded by a true paternal grandfather if the former is related to the deceased through the latter.

19.3.1 Maternal Grandmother (MM)

- The maternal grandmother (MM) is a true grandmother.
- The true grandmother (MM) inherits as a sharer.
- The true grandmother (MM) will only inherit if there is no surviving mother of the deceased and there is no impediment to her inheriting.

- If there is no father and no mother, the MM and MF will divide 1/6 between them.

19.3.2 Paternal Grandmother (MF)

- The paternal grandmother (MF) is a true grandmother.
- The true grandmother (MF) inherits as a sharer.
- The true grandmother (MF) will only inherit if there are no surviving parents of the deceased and there is no impediment to succession.
- The true grandmother (MF) is totally excluded by the presence of the father according to the *Ḥanafī, Mālikī* and *Shāfi'ī Fiqh* but not according to the *Ḥanbalī Fiqh.*
- The true grandmother (MF) is totally excluded by the mother.

Example 98

A man dies leaving behind his father and maternal grandmother (MM) as the only heirs to his estate as shown in Fig. 86.

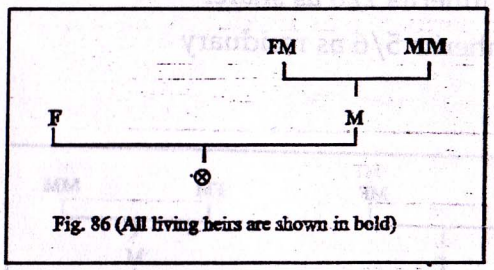


Fig. 86 (All living heirs are shown in bold)

MM inherits 1/6 as sharer

F inherits 5/6 as residuary

Example 99

A man dies leaving behind his paternal grandmother (MF), his maternal grandmother (MM) and his father as the only heirs to his estate as shown in Fig. 87.

MF is excluded by F (*Ḥanafī, Shāfi'ī* and *Mālikī Fiqh* only)

MM inherits a 1/6 as sharer

F inherits 5/6 as residuary

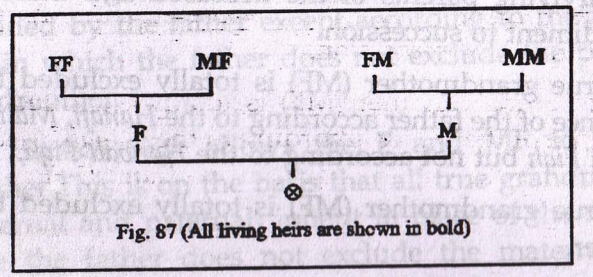


Fig. 87 (All living heirs are shown in bold)

Example 100

A man dies leaving behind his paternal grandfather (FF) and his maternal grandmother (MM) as the only heirs to his estate as shown in Fig. 88.

MM inherits 1/6 as sharer

FF inherits 5/6 as residuary

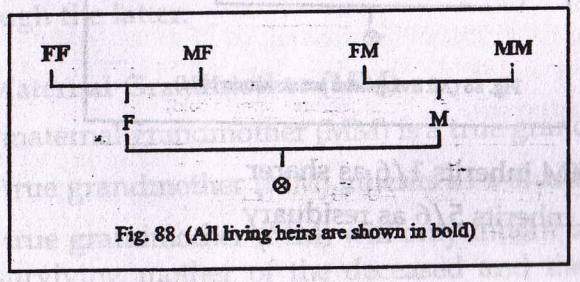


Fig. 88 (All living heirs are shown in bold)

Example 101

A man dies leaving behind his paternal grandmother (MF), his maternal grandmother (MM) and his paternal grandfather (FF) as the only heirs to his estate as shown in Fig. 89.

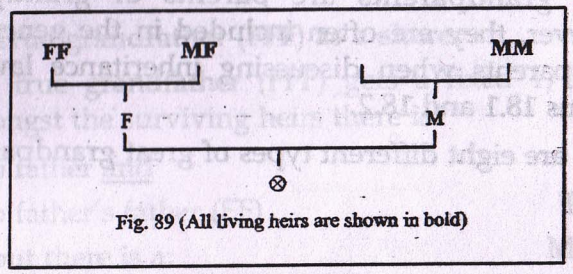


Fig. 89 (All living heirs are shown in bold)

MF and MM jointly inherit a 1/6 equally

FF inherits 5/6 as residuary

20. GREAT GRANDPARENTS

Key points:

- Great grandparents are parents of grandparents. However, they are often included in the general term grandparents when discussing inheritance law. Read sections 18.1 and 18.2.
- There are eight different types of great grandparents:

  FFF
  FFM
  FMF
  FMM
  MMM
  MMF
  MFF
  MFM

- Not all great grandparents inherit in the same capacity.
- True great grandparents (FFF, MFF, MMF and MMM) inherit as sharers or class II residuaries. In traditional *Mālikī Fiqh* MFF is not a true grandmother (see section 19.2).
- False great grandparents (FMF, FFM, MFM and FMM) inherit as class II distant kindred.

20.1 FATHER OF FATHER OF FATHER (FFF)

- The father of father of father (FFF) is a true grandfather.
- The true grandfather (FFF) will only inherit if there is no surviving father of the deceased and no surviving father's father (FF) and there is no impediment to him inheriting (see chapter 10).
- The true grandfather (FFF) can inherit as a sharer, as a residuary or both.
- The true grandfather (FFF) inherits like the FF in the absence of F and FF.

20.1.1 True grandfather (FFF) as a sharer

- The true grandfather (FFF) gets a fixed 1/6 share if amongst the surviving heirs there is:

1. no father and
2. no father's father (FF)

   but there is a:

3. son or
4. son's son h.l.s. (SS, SSS, SSSS etc.)

20.1.2 True grandfather (FFF) as a residuary

The true grandfather (FFF) is a residuary if amongst the surviving heirs there is:

1. no father and
2. no father's father (FF) and
3. no child and
4. no SS h.l.s. and no DS h.l.s. (SS, DS, SSS, DSS etc.)

20.1.3 True grandfather (FFF) as sharer and residuary

The true grandfather (FFF) is a sharer and residuary if amongst the surviving heirs there is:

1. no father and
2. no father's father (FF) and
3. no son and

4. no son's son h.l.s. (SS, SSS, SSSS etc.)

   but there is:

5. daughter(s) or

6. son's daughter h.l.s. (DS, DSS, DSSS etc.)

In this situation, the true grandfather (FFF) gets a fixed 1/6 plus whatever remains of the estate after all the other sharers have been satisfied.

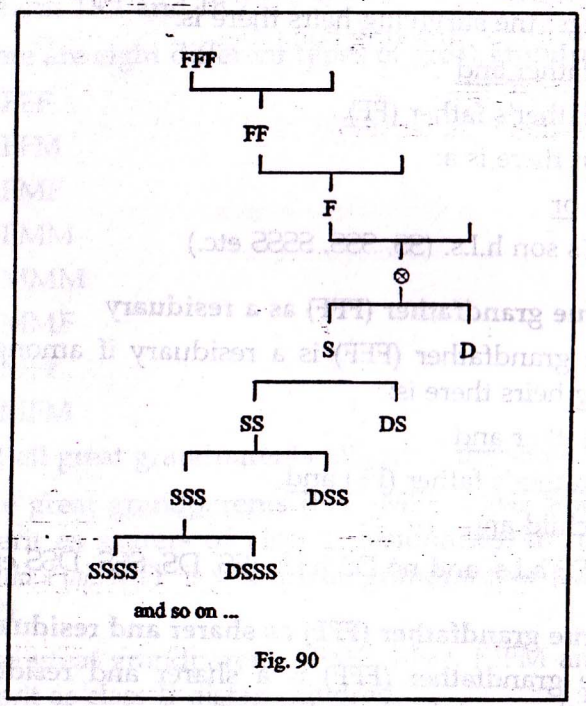


Fig. 90

- If any of the male descendants shown in Fig. 90 are amongst the surviving heirs, then tgF (FFF) inherits as sharer and gets 1/6. Note that only the first four generations of descendants are shown.

- If there is no male descendant shown in Fig. 90 but there is one or more female descendants shown amongst the surviving heirs, then tgF (FFF) gets 1/6 plus any residue.
- If there is no male and no female descendant shown in Fig. 90 amongst the surviving heirs, then tgF (FFF) inherits as a residuary.

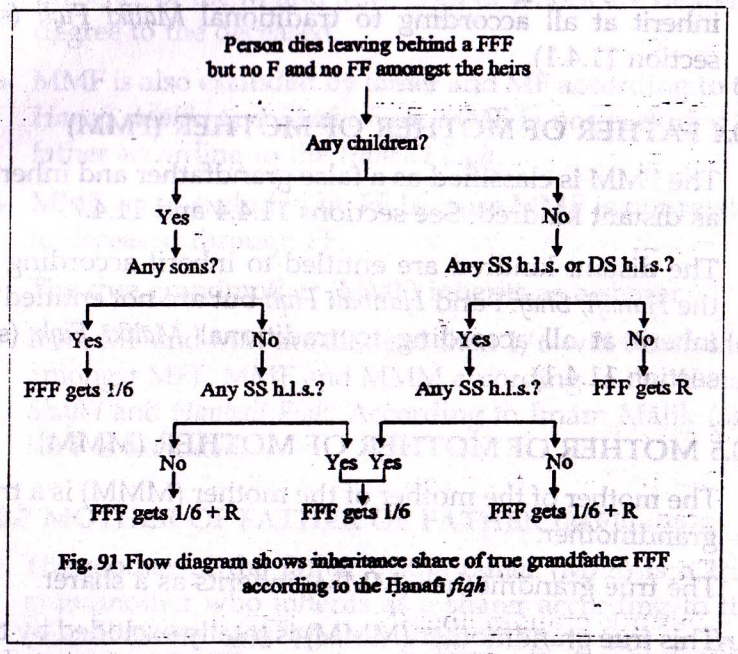


Fig. 91 Flow diagram shows inheritance share of true grandfather FFF according to the Ḥanafī *fiqh*

20.2 FATHER OF FATHER OF MOTHER (FFM)

- The FFM is classified as a false grandfather and inherits as class II distant kindred. See sections 11.4.4 and 11.4.7.
- The distant kindred are entitled to inherit according to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh* but are not entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

20.3 FATHER OF MOTHER OF FATHER (FMF)

- The FMF is classified as a false grandfather and inherits as distant kindred. See sections 11.4.4 and 11.4.7.
- The distant kindred are entitled to inherit according to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh* but are not entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

20.4 FATHER OF MOTHER OF MOTHER (FMM)

- The FMM is classified as a false grandfather and inherits as distant kindred. See sections 11.4.4 and 11.4.7.
- The distant kindred are entitled to inherit according to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh* but are not entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

20.5 MOTHER OF MOTHER OF MOTHER (MMM)

- The mother of the mother of the mother (MMM) is a true grandmother.
- The true grandmother (MMM) inherits as a sharer.
- This true grandmother (MMM) is totally excluded by the presence of the mother or by the presence of the true grandmother (MM) both of whom are nearer in degree to the deceased.
- MMM is also excluded by MF according to *Ḥanafī* and *Ḥanbalī Fiqh* (see section 19.3).
- If M, MF and MM are all dead then 1/6 will be divided amongst the true great grandmothers MFF, MMF and MMM according to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh*. According to Imām Mālik (ﷺ), MFF is excluded.

20.6 MOTHER OF MOTHER OF FATHER (MMF)

- The mother of mother of father (MMF) is a true grandmother.
- This true grandmother (MMF) is totally excluded by the presence of the M and MM, both of whom are nearer in degree to the deceased.
- MMF is also excluded by father and MF according to the *Ḥanafī, Mālikī* and *Shāfi'ī Fiqh*. MMF is not excluded by father according to the *Ḥanbalī Fiqh*.
- MMF is not excluded by FF because MMF is not related to deceased through FF.
- The true grandmother (MMF) inherits as a sharer.
- If M, MF and MM are all dead then 1/6 will be divided amongst MFF, MMF and MMM according to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh*. According to Imām Mālik (ﷺ), MFF is excluded.

20.7 MOTHER OF FATHER OF FATHER (MFF)

- The mother of the father of the father (MFF) is a true grandmother who inherits as a sharer according to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh*. MFF is not a true grandmother under traditional *Mālikī Fiqh*.
- The true grandmother (MFF) will only inherit if there is no surviving M, MM and MF and no impediment to succession.
- This true grandmother (MFF) is totally excluded by the presence of the M, MM and MF, all of whom are nearer in degree to the deceased.
- MFF is also excluded by father and FF according to *Ḥanafī* and *Shāfi'ī Fiqh*.

20.8 MOTHER OF FATHER OF MOTHER (MFM)

- The MFM is classified as a false grandmother and inherits as class II distant kindred. See sections 11.4.4 and 11.4.7.
- The distant kindred are entitled to inherit according to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh* but are not entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

The following examples illustrate rule governing succession of the true grandmother.

Example 102 (*Ḥanafī Fiqh*)

A man dies leaving behind his paternal grandmother (MF), his paternal grandfather (FF) and his great maternal grandmother (MMM) as the only heirs to his estate as shown in Fig. 92.

MMM is excluded by MF (according to *Ḥanafī* and *Ḥanbalī Fiqh*, section 20.3) who is nearer in degree.

MF inherits 1/6 as sharer

FF inherits 5/6 as residuary

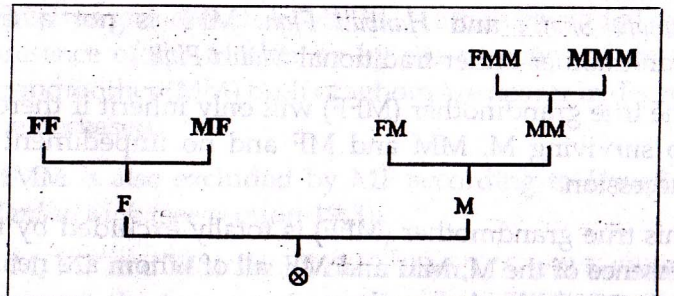


Fig. 92 (All living heirs are shown in bold)

Example 103 (*Ḥanafī Fiqh*)

A man dies leaving behind his father, paternal grandmother (MF), his great maternal grandmother (MMM) as the only heirs to his estate as shown in Fig. 93.

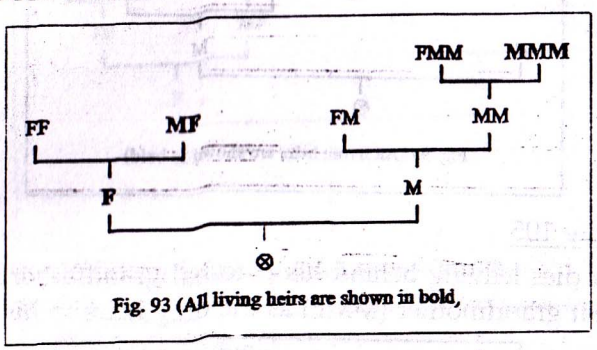


Fig. 93 (All living heirs are shown in bold)

MF is excluded by the father

MMM is excluded by MF who is nearer in degree

F as the sole heir inherits the whole estate.

Note that even though MF is herself excluded she can still exclude MMM (see chapter 9 item no. 5).

Note also that according to the *Shāfi'ī* and *Mālikī Fiqh*, although F excludes MF, MF does not exclude MMM. And in *Ḥanbalī Fiqh* although MF excludes MMM, F does not exclude MF.

Example 104

A man dies leaving behind his father and his great maternal grandmother (MMM) as the only heirs to his estate as shown in Fig. 94.

MMM inherits 1/6 as sharer

F inherits 5/6 as residuary

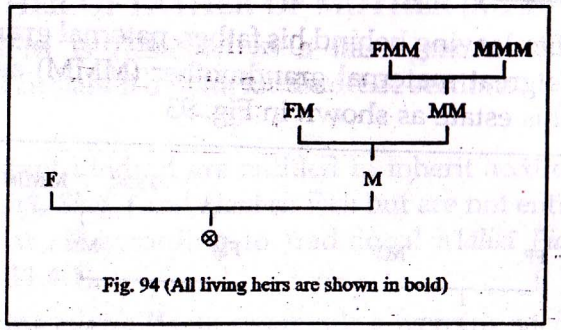


Fig. 94 (All living heirs are shown in bold)

Example 105

A man dies leaving behind his paternal grandfather (FF) and his great grandmother (MMF) as the only heirs to his estate.

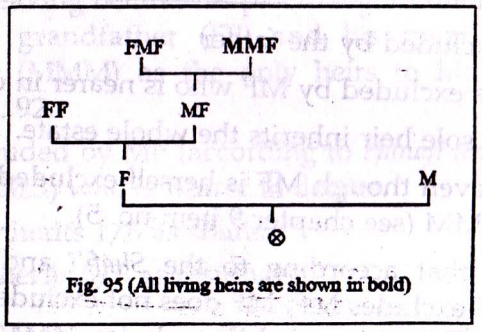


Fig. 95 (All living heirs are shown in bold)

MMF inherits 1/6 as sharer

FF inherits 5/6 as residuary

Note that FF does not exclude MMF because MMF is not related to the deceased through FF.

Example 106 (*Ḥanafī Fiqh*)

A man dies leaving behind a son and three great grandmothers (MMM, MMF and MFF) as the only heirs as shown in Fig. 96.

MMM, MMF and MFF together inherit 1/6

S inherits 5/6 as residuary

Note that MFF is not a true grandmother under the *Mālikī Fiqh* therefore would not inherit

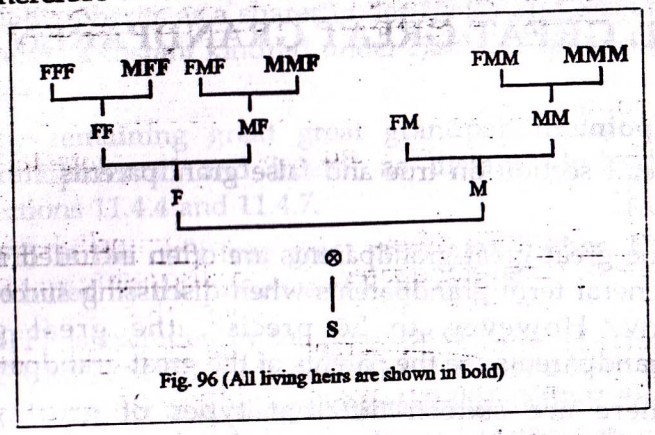


Fig. 96 (All living heirs are shown in bold)

Example 107 (*Ḥanafī Fiqh*)

A man dies leaving behind a paternal grandfather (FF) and paternal grandfather's mother (MFF) as the only heirs to his estate.

MFF is excluded by FF (*Ḥanafī, Shāfi'ī* and *Mālikī Fiqh* only)

FF as sole heir inherits the whole estate

Note that under the *Ḥanbalī Fiqh* MFF is not excluded by FF.

Note also that MFF is not a true grandmother under the *Mālikī Fiqh* and therefore would not inherit.

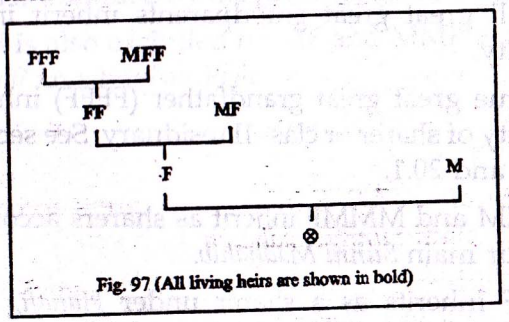


Fig. 97 (All living heirs are shown in bold)

21. GREAT GREAT GRANDPARENTS

Key points:

- Read section on true and false grandparents 18.1 and 19.1.
- The great great grandparents are often included in the general term grandparents when discussing succession law. However, to be precise, the great great grandparents are the parents of the great grandparents.
- There are sixteen different types of great great grandparents:

paternal grandfather's father's parents	FFFF	MFFF
paternal grandfather's mother's parents	FMFF	MMFF
paternal grandmother's father's parents	FFMF	MFMF
paternal grandmother's mother's parents	FMMF	MMMF
maternal grandfather's father's parents	FFFM	MFFFM
maternal grandfather's mother's parents	FMFM	MMFM
maternal grandmother's father's parents	FFMM	MFMM
maternal grandmother's mother's parents	FMMM	MMMM

- Not all great great grandparents inherit in the same capacity.
- The true great great grandfather (FFFF) inherits in the capacity of sharer or class II residuary. See sections 18.2.2 – 18.4 and 20.1.
- MMMM and MMMF inherit as sharers according to all the four main *Sunni Madhāhib.*
- MMFF inherits as a sharer under *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh* and does not inherit at all under traditional *Mālikī Fiqh.*

- MFFF inherits as a sharer under *Ḥanafī* and *Shāfi'ī Fiqh,* and as a distant kindred under *Ḥanbalī Fiqh* and *Mālikī Fiqh.*
- The remaining great great grandparents are "false grandparents" and inherit as distant kindred. See sections 11.4.4 and 11.4.7.
- FFFF is the only true great great grandfather. FFFF is excluded by the presence of F, FF or FFF.
- MFFF is excluded by the presence of F, M, FF MF, MM, FFF, MFF, MMF or MMM. MFFF does not inherit as true grandmother according to *Ḥanbalī Fiqh;* MFFF does not inherit at all according to traditional *Mālikī Fiqh.*
- MMFF is excluded by the presence of F, M, FF, MF, MM, MFF, MMF or MMM according to *Ḥanafī and Shāfi'ī Fiqh.*
- MMFF is not excluded by F or FF according to the *Ḥanbalī Fiqh.*
- MMMF is excluded by the presence of F, M, MF, MM, MFF, MMF or MMM according to *Ḥanafī* and *Shāfi'ī Fiqh.*
- MMMF is not excluded by F according to the *Ḥanbalī Fiqh.*
- MMMM is excluded by the presence of M, MM or MMM.
- MMMM is also excluded by MF and MMF according to the *Ḥanafī* and *Ḥanbalī Fiqh.*

22. GRANDSON

Key points:

- In the absence of any children as heirs, the grandchildren through sons have the same position as children so that grandsons (SS) are like sons and granddaughters (DS) are like daughters.
- It should be noted that the grandson (SS) substitutes the son in his absence but he is not a representative for the son. The son always inherits something but the grandson (SS) may not inherit anything as in the case of a deceased leaving behind both parents and two daughters when there is no residue left for the grandson.

Interestingly enough, if the only heirs are a paternal grandfather (e.g. FF or FFF), a mother and two daughters, the grandson (SS) would still inherit nothing because there is no residue while the paternal grandfather will inherit as sharer, thus:

Example 108

2D	M	SS
2/3	1/6	1/6

now if we introduce a paternal grandfather,

2D	M	FF	SS
2/3	1/6	1/6	Nil (no residue)

- All grandchildren are totally excluded by the son.

22.1 GRANDSON THROUGH SON (SS)

- In the absence of a son the grandson through a son (SS) inherits in a similar manner to the son (study examples 2-7).

- In the absence of any daughters the grandson (SS) inherits in an identical manner to the son in the latter's absence.
- The grandson through son (SS) inherits as a residuary.
- After all the sharers who have a fixed share in the inheritance have been given their allotted share, the residue in the absence of the son devolves upon the granson (SS) and granddaughters through son if any.
- The general rule that the male (SS) takes double the share of the female (DS) will apply.
- If the grandson (SS) is the sole heir, then he takes the whole estate.

22.1.1 Heirs excluded by grandson (SS)

The following potential heirs are excluded from inheriting by the presence of a grandson (SS) of the deceased:

- Grandchild through son of lower degree in relation to the deceased (e.g. SSS, SSSS, DSS, DSSS etc.).
- All siblings and their descendants.
- All uncles and their descendants.
- All more remote relatives who are not sharers.

22.2 GRANDSON THROUGH DAUGHTER (SD)

- The daughter's son (SD) inherits as a distant kindred (see sections 11.4.3 and 11.4.7). According to the *Hanafi Fiqh*, the daughter's son (SD) belongs to class I distant kindred and will only inherit in the absence of all of the following:
  - children
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - son's daughter h.l.s. (DS, DSS, DSSS etc.)
  - parents

- true grandparents h.h.s.
- brother (full, consanguine or uterine)
- sister (full, consanguine or uterine)
- full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
- consanguine brother's son's h.l.s. (SBc, SSBc, SSSBc etc.)
- full paternal uncle (BfF)
- full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
- consanguine paternal uncle (BcF)
- consanguine paternal uncle's son h.l.s. (SBcF, SSBcF etc.)
- great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
- great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.

◆ It is not possible to list all heirs that exclude the daughter's son under *Ḥanafī Fiqh*. However, the above list demonstrates how long down the line of inheritance the daughter's son is.

◆ If the only other claimant is the husband/widow, the husband/widow is given his/her share and the residue is inherited by the daughter's son.

◆ For details of succession of the daughter's son (SD) according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.

◆ The daughter's son is not entitled to inherit at all according to the traditional *Mālikī Fiqh*.

23. GRANDDAUGHTER

Key points:

◆ In the absence of any daughters as heirs, the granddaughters through sons (DS) are like daughters.

◆ Granddaughter through son (DS) is totally excluded by a son.

23.1 GRANDDAUGHTER THROUGH SON (DS)

◆ In the absence of a daughter (D), the granddaughter through son (DS) inherits in a similar manner to D.

◆ DS may inherit as a sharer or as a residuary.

◆ DS inherits on a per capita basis. This means that the total share allocated to the son's daughters' is divided equally amongst them irrespective of the number of sons through whom they are related to the deceased.

23.1.1 Granddaughter through son's (DS) excluders

◆ Son.

◆ Two or more daughters except when there is a son's son h.l.s. who converts the DS into a residuary.

23.1.2 Granddaughter through son (DS) inheriting as sharer

◆ DS inherits as a sharer unless converted into a residuary by son's son (SS).

◆ In the absence of any daughters:

1 One DS inherits a fixed share of 1/2.

2. Two or more DS together inherit a fixed share of 2/3.

The maximum collective share allotted to the daughters and

son's daughters h.l.s. inheriting as sharers is 2/3. This concept of the daughters and son's daughters inheriting a collective share (similarly with full sisters and consanguine sisters) rather than individual separate shares may become important in situations where the right of pre-emption (*Shuf'ah*) is exercised by the co-heir.

- In the presence of daughter(s) as heirs:
  1. DS (one or more) inherit a fixed 1/6 if there is only one daughter who inherits 1/2; this makes a total of 2/3.
  2. DS inherit nothing if there are two or more daughters who together inherit 2/3; unless there is a son's son h.l.s. who converts the DS into a residuary.

'Abdullâh bin Mas'ūd ﷺ held the view that when DS inherits with one daughter and son's son (SS), the DS inherits either a fixed 1/6 share or as a residuary whichever is less. This view is not accepted by the mainstream of Muslim jurists and it is at odds with the classical principle of *Ta'sīb*.

23.1.3 Granddaughter through son (DS) inheriting as a residuary

- DS always inherits as a residuary in the presence of SS.
- When DS is excluded by the presence of two or more daughters, DS may inherit by being converted into a residuary by a SS of equal or of a lower degree, that is SSS, SSSS and so on. 'Abdullâh bin Mas'ūd ﷺ held the view that when DS is excluded by the presence of two or more daughters, DS cannot be converted into a residuary by SS and will hence in such situations inherit nothing. This view is not accepted by the mainstream of Muslim jurists.
- The general principle that the male inherits a portion equal to that of two females of the same degree applies.

23.1.4 The lucky and unlucky kinsman

- In the presence of a grandson (SS), the granddaughter (DS) is always converted into a residuary (principle of *Ta'sīb*). This may work to her advantage or to her disadvantage. If it works to her advantage the grandson is referred to as the lucky kinsman (*Al-Qarīb Al-Mubarak*). If it works to her disadvantage the grandson is referred to as the unlucky kinsman (*Al-Qarīb Al-Mash'ūm*).
- The great grandson (SSS) can act as a lucky kinsman for the granddaughter (DS) but not as an unlucky kinsman (see example 2).
- The consanguine sister is affected in a similar manner when inheriting with full sister and consanguine brother; with the consanguine brother as the lucky or unlucky kinsman. See examples 135 and 147.

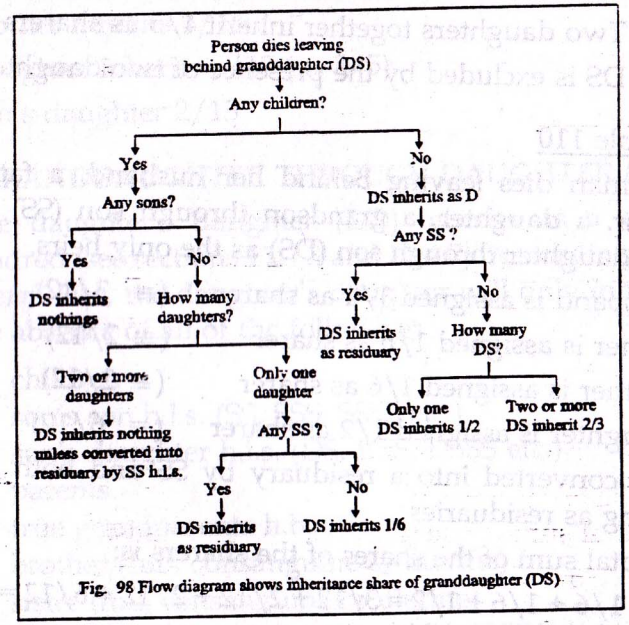


Fig. 98 Flow diagram shows inheritance share of granddaughter (DS)

Example 109

A man dies leaving behind his mother, two daughters, a grandson through son (SS) and a granddaughter through son (DS) as the only heirs.

Mother inherits 1/6 as sharer

Two daughters together inherit 2/3 as sharers

SS and DS inherit the remaining 1/6 as residuaries (SS 1/9 and DS 1/18)

The grandson (SS) is in this case a lucky kinsman for the granddaughter because if the only heirs were mother, two daughters and a granddaughter through son (DS), the DS would inherit nothing. The distribution after applying the doctrine of *Radd* (see chapter 46) would be thus:

Mother inherits 1/5 as sharer

Two daughters together inherit 4/5 as sharers

DS is excluded by the presence of two daughters.

Example 110

A woman dies leaving behind her husband, a father, a mother, a daughter, a grandson through son (SS) and a granddaughter through son (DS) as the only heirs.

Husband is assigned 1/4 as sharer (≡ 3/12)

Father is assigned 1/6 as sharer (≡ 2/12)

Mother is assigned 1/6 as sharer (≡ 2/12)

Daughter is assigned 1/2 as sharer (≡ 6/12)

DS is converted into a residuary by SS and both inherit nothing as residuaries

The total sum of the shares of the sharers is:

$1/4 + 1/6 + 1/6 + 1/2 = 3/12 + 2/12 + 2/12 + 6/12 = 13/12$

Because this sum is greater than one, we apply the doctrine

of *'Awl* (see section 46.2) and reduce all the shares proportionately, thus:

Husband inherits 3/13

Father inherits 2/13

Mother inherits 2/13

Daughter inherits 6/13

As there is no residue, the SS and DS inherit nothing. The grandson (SS) is in this case an unlucky kinsman for the granddaughter because if the only heirs were the husband, a father, a mother, a daughter and a granddaughter through son (DS), the DS would inherit 1/6 reduced to 2/15 by *Al-'Awl*. The distribution of inheritance would be thus:

Husband inherits 3/15 (≡ 1/5)

Father inherits 2/15

Mother inherits 2/15

Daughter inherits 6/15 (≡ 2/5)

Son's daughter 2/15

23.2 GRANDDAUGHTER THROUGH DAUGHTER (DD)

◆ The daughter's daughter (DD) inherits as a distant kindred (see sections 11.4.3 and 11.4.7). According to the *Hanafi Fiqh*, the daughter's daughter will only inherit in the absence of all of the following:

- children
- son's son h.l.s. (SS, SSS, SSSS etc.)
- son's daughter h.l.s. (DS, DSS, DSSS etc.)
- parents
- true grandparents h.h.s.
- brother (full, consanguine or uterine)
- sister (full, consanguine or uterine)
- full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)

- consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
- full paternal uncle (BfF)
- full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
- consanguine paternal uncle (BcF)
- consanguine paternal uncle's son h.l.s. (SBcF, SSBcF etc.)
- great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
- great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.

- It is not possible to list all heirs that exclude DD under *Ḥanafī Fiqh*. However, the above list demonstrates how long down the line of inheritance DD is.
- If the only other claimant is the husband/widow, the husband/widow is given his/her share and the residue is inherited by the daughter's daughter.
- For details of succession of the daughter's daughter (DD) according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.
- The daughter's daughter is not entitled to inherit at all according to traditional *Mālikī Fiqh*.

24. GREAT GRANDCHILD

Key points:

- The general term grandchild is often used to include more remote grandchildren such as great grandchildren. To be precise, great grandchildren are children of grandchildren.
- The great grandchildren are thus:

  SSS DSS

  SDS DDS

  SSD DSD

  SDD DDD

- SSS inherits as a class I residuary.
- DSS can inherit as a sharer or as a residuary.
- All the remaining great grandchildren inherit in the capacity of class I distant kindred.

24.1 GREAT GRANDSON THROUGH SON (SSS)

- In the absence of S and SS, the SSS inherits in a similar manner to S. In the absence of any daughters and DS, the agnatic great grandson (SSS) inherits in an identical manner to the son in the absence of the son and SS.
- SSS inherits as a residuary.
- After all the heirs who have a fixed share in the inheritance have been given their allotted share, the residue in the first instance devolves on the great grandson SSS in the absence of S and SS.
- The general rule that the male (SSS) takes a portion of

two females (DSS) of the same degree will apply. Under certain circumstances SSS (or even lower SS h.l.s.) will inherit twice the share of DS. See example 2.

- If SSS is the sole heir, then he takes the whole property.

24.1.1 Heirs excluded by SSS of deceased

The following potential heirs are excluded from inheriting by the presence of a SSS of the deceased:

- Grandchild through son of lower degree in relation to the deceased (e.g. SSSS, SSSSS, DSSS, DSSSS etc.).
- All siblings and their descendants.
- All uncles and their descendants.
- All more remote relatives who are not sharers.

24.2 GREAT GRANDDAUGHTER THROUGH SON (DSS)

- In the absence of D and DS, the DSS inherits in a similar manner to D.
- DSS can inherit either as a sharer or as a residuary.
- DSS inherit on a per capita basis. This means that the total share allocated to the son's son's daughters is divided equally amongst them irrespective of the number of grandsons through whom they are related to the deceased.

24.2.1 DSS is totally excluded by:

- Son
- Son's son of higher degree (i.e. SS).
- Two or more daughters unless converted into a residuary by presence of son's son of equal or lower degree.

- Two or more DS unless converted into a residuary by the presence of son's son of equal or lower degree.
- A combination of two or more of D and DS unless converted into a residuary by the presence of son's son of equal or lower degree.

24.2.2 DSS inheriting as a sharer

- DSS inherits as a sharer unless converted into a residuary by SSS.
- In the absence of any D and DS:
  1. one DSS inherits a fixed share of 1/2
  2. two or more DSS together inherit a fixed share of 2/3.

The maximum collective share allotted to the daughters and son's daughters h.l.s. inheriting as sharers is 2/3.

- In the presence of D or DS as heirs:
  1. DSS (one or more) inherit a fixed 1/6 if there is only one daughter or one DS who inherits 1/2, this makes a total of 2/3.
  2. DSS inherit nothing if there is a combination of two or more D or DS (i.e. 2D, 2DS or one D plus one DS) who together inherit 2/3; unless DSS is converted into a residuary by a son's son of equal or lower degree. See section 23.1.3 as well as examples 4 and 7.

24.2.3 DSS inheriting as a residuary:

- DSS is always converted into a residuary by the presence of a SSS.
- When DSS is excluded by the presence of two or more daughters or DS, DSS may inherit by being converted into a residuary by a son's son of equal or of a lower degree, that is SSS, SSSS and so on.

Once the principles of inheritance of grandchildren is appreciated by studying the examples in section 11.2.3, then one can apply these to other grandchildren of lower degrees in relation to the deceased (e.g. SSSS, SSSSS, DSSSS etc.) should the need ever arise in reality.

24.3 OTHER GREAT GRAND CHILDREN

- All the remaining great grandchildren will inherit in the capacity of distant kindred.
- According to the *Ḥanafī Fiqh*, these great grandchildren belong to class I distant kindred and are only entitled to inherit if there is none of the following amongst the heirs:
  - children
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - son's daughter h.l.s. (DS, DSS, DSSS etc.)
  - parents
  - true grandparents h.h.s.
  - brother (full, consanguine or uterine)
  - sister (full, consanguine or uterine)
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
  - full paternal uncle (BfF)
  - full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
  - consanguine paternal uncle (BcF)
  - consanguine paternal uncle's son h.l.s. (SBcF, SSBcF etc.)
  - great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
  - great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.
- It is not possible to list all heirs that exclude the great grandchildren who are distant kindred under *Ḥanafī Fiqh*. However, the above list demonstrates how long down the line of inheritance the class I distant kindred are.

- Note that distant kindred can inherit with spouse (husband/widow). If the only claimants are husband/widow and distant kindred, the husband/widow is given his/her share and the residue is inherited by the distant kindred.
- For details of succession of the great grandchildren as distant kindred according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.
- Note that the distant kindred are not entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

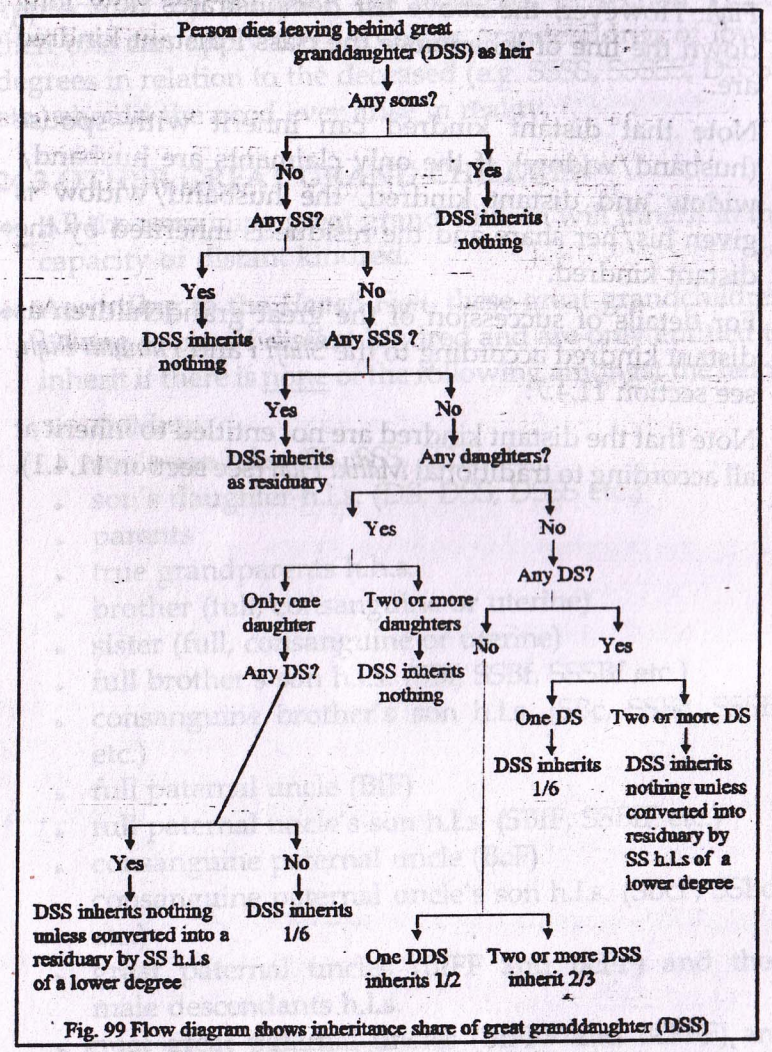


Fig. 99 Flow diagram shows inheritance share of great granddaughter (DSS)

25. GREAT GREAT GRANDCHILD

Key points:

- The general term grandchild is often used to include more remote grandchildren such as great great grandchildren. To be precise, great great grandchildren are children of great grandchildren.
- The great great grandchildren are thus:

SSSS	DSSS
SDSS	DDSS
SSDS	DSDS
SDDS	DDDS
SSSD	SSSD
SDSD	SDSD
SSDD	DSDD
SDDD	DDDD

- SSSS inherits as a class I residuary.
- DSSS can inherit as a sharer or as a class I residuary.
- All the remaining great great grandchildren inherit in the capacity of class I distant kindred.

25.1 GREAT GREAT GRANDSON THROUGH SON (SSSS)

- In the absence of S, SS and SSS, SSSS inherits in a similar manner to S.
- SSSS inherits as a residuary.
- After all the heirs who have a fixed share in the inheritance have been given their allotted share, the

residue in the first instance devolves on the grandson SSSS in the absence of S, SS and SSS.

- The general rule that the male (SSSS) takes a portion of two females (DSSS) of the same degree will apply. Under certain circumstances SSSS (or even lower SS h.l.s.) will inherit twice the share of DS or DSS. See examples 2 and 6.
- If SSSS is the sole heir, then he takes the whole property.

25.1.1 Heirs excluded by SSSS of deceased

The following potential heirs are excluded from inheriting by the presence of a SSSS of the deceased:

- Grandchild through son of lower degree in relation to the deceased (e.g. SSSSS, DSSSS etc.).
- All siblings and their descendants.
- All uncles and their descendants.
- All more remote relatives who are not sharers.

25.2 GREAT GREAT GRANDDAUGHTER THROUGH SON (DSSS)

- In the absence of D, DS and DSS, DSSS inherits in a similar manner to D.
- DSSS can inherit either as sharer or as a class I residuary.
- DSSS inherit on a per capita basis. This means that the total share allocated to the DSSS is divided equally amongst them irrespective of the number of grandsons through whom they are related to the deceased.

25.2.1 DSSS is totally excluded by:

- Son.
- Son's son of higher degree (i.e. SS and SSS).

- Two or more daughters unless converted into a residuary by presence of son's son of equal or lower degree.
- Two or more DS unless converted into a residuary by presence of son's son of equal or lower degree.
- Two or more DSS unless converted into a residuary by presence of son's son of equal or lower degree.
- A combination of two or more of D, DS and DSS unless converted into a residuary by presence of son's son of equal or lower degree.

25.2.2 DSSS inheriting as a sharer

- DSSS inherits as a sharer unless converted into a residuary by SSSS.
- In the absence of any D, DS and DSS:
  1. one DSSS inherits a fixed share of 1/2
  2. two or more DSSS together inherit a fixed share of 2/3
- In the presence of D, DS or DSS as heirs:
  1. DSSS (one or more) inherit a fixed 1/6 if there is any one of D, DS or DSS
  2. DSSS inherit nothing if there is two or more D, DS or DSS in any combination (i.e. 2D, 2DS, 2DSS, D plus DS, D plus DSS, DS plus DSS), unless DSSS is converted into a residuary by a son's son of equal or lower degree. See example 6.

25.2.3 DSSS inheriting as a residuary

- DSSS is always converted into a residuary by the presence of SSSS.
- when DSS is excluded by the presence of two or more daughters or DS or DSS, DSSS may inherit by being

converted into a residuary by a son's son of equal or of a lower degree, that is SSSS, SSSSS and so on.

Once the principles of inheritance of grandchildren is appreciated by studying the examples in section 11.2.3, then one can apply these to other grandchildren of lower degrees in relation to the deceased (e.g. SSSSS, DSSSS etc.) should the need ever arise in reality.

25.3 OTHER GREAT GREAT GRANDCHILDREN

- All the remaining great great grandchildren will inherit in the capacity of distant kindred.
- According to the *Ḥanafī Fiqh*, these great great grandchildren belong to class I distant kindred and are only entitled to inherit if there are none of the following amongst the heirs:
  - children
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - son's daughter h.l.s. (DS, DSS, DSSS etc.)
  - parents
  - true grandparents h.h.s.
  - brother (full, consanguine or uterine)
  - sister (full, consanguine or uterine)
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
  - full paternal uncle (BfF)
  - full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
  - consanguine paternal uncle (BcF)
  - consanguine paternal uncle's son h.l.s. (SBcF, SSBcF etc.)
  - great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.

  - great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.
- It is not possible to list all heirs that exclude the great great grandchildren who are distant kindred under *Ḥanafī Fiqh*. However, the above list demonstrates how long down the line of inheritance the class I distant kindred are.
- Note that distant kindred can inherit with spouse (husband/widow). If the only claimants are husband/widow and distant kindred, the husband/widow is given his/her share and the residue is inherited by the distant kindred.
- For details of succession of the great great grandchildren as distant kindred according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.
- Note that the distant kindred are entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

26. ILLEGITIMATE CHILD (*WALADUL-ZINĀ*)

Allāh's Prophet (ﷺ) said, *"If a man commits fornication with a free woman or a slave woman, the child is the product of fornication, he neither inherits nor may anyone inherit from him."* (Tirmidhī).

Key points:

- A child is illegitimate if born as a result of extra-marital sexual relationship (*Zinā*). Such a child cannot be legitimised.
- An illegitimate child (*Waladul-Zinā*) does not inherit from the father and the father does not inherit from the illegitimate child.
- The minimum and maximum gestation period allowed under Muslim law determine legitimacy and paternity of a child.

26.1 INHERITANCE SHARE OF AN ILLEGITIMATE CHILD

- Under *Sunni* Muslim law, the illegitimate child is entitled to inherit from the mother and her relations whether legitimate or illegitimate and they can inherit from him.

26.2 INHERITING FROM AN ILLEGITIMATE CHILD

- According to the *Ḥanafī, Māliki* and *Shāfi'ī Fiqh,* the mother and her relatives inherit from an illegitimate person according to normal rules of succession. An illegitimate person who does not leave a surviving son or son's son h.l.s. will have no agnatic residuary heirs.

- According to the *Ḥanbalī Fiqh,* the male agnatic relatives of the mother inherit from an illegitimate person as if they were the male agnate relatives of the illegitimate person when there are no true male agnates. All heirs inheriting as sharers are given their shares first before this rule comes into operation.
- Therefore, according to the *Ḥanbalī Fiqh,* the mother's son (uterine brother), mother's father (maternal grandfather) and mother's full brother (maternal uncle) will inherit as residuaries and exclude other surviving heirs in the capacity of "son", "father" and "full brother". However, such maternal male agnate relatives will not to agnatise their female counterparts into residuaries.

The uterine brother of the propositus can inherit in dual capacity as a Qur'ānic heir and as a residuary. He will also be able to inherit as a residuary in the presence of a daughter (or agnatic granddaughter) of the propositus. The rules of *Tanzīl* are applied as under normal principles.

26.3 GESTATION PERIOD

- The legitimacy of a child is based on the maxim, "The son belongs to the marriage bed." Paternity of a child in lawful wedlock is presumed to be in the husband of the mother.

Narrated Abū Hurayrah ﷺ: *The Prophet (ﷺ) said, "The son is for the owner of the bed."* (Ṣaḥīḥ Al-Bukhārī).

- Muslim jurists have placed limits on the minimum and maximum periods of gestation allowed under Islāmic law to determine the legitimacy of a child.

26.3.1 Minimum gestation period

- The minimum gestation period is six lunar months (deduced from the Qur'ān Verses 31:14 and 46:15).
- According to the *Ḥanafī Fiqh*, the presumption of legitimacy starts from the time of the marriage contract.
- If a woman gives birth to a child within six lunar months of her marriage, the child is not considered to be of the husband. However, if the husband accepts the child then the child is legitimate and is entitled to the same rights as any other legitimate child. Note that the husband in this situation acknowledges legitimacy which already exists, he is not making an illegitimate child legitimate.
- According to the other three schools of *Fiqh*, the minimum gestation period for presumption of legitimacy starts after consummation of the marriage whether acknowledged by the parties or presumed by law when there is no hindrance to sexual intercourse.
- If a divorced woman after her waiting period (*'Iddah*) remarries and a child is born within six lunar months of the second marriage and within the maximum gestation period allowed under Islāmic law, the child is of the first husband.
- If a divorced woman after her waiting period (*'Iddah*) remarries and a child is born within six months of the second marriage but after the maximum gestation period from termination of the first marriage allowed under Islāmic law, the child cannot be attributed either to the present or the previous husband.

26.3.2 Maximum gestation period

- The maximum gestation period is two lunar years from conception to delivery according to the *Ḥanafī Fiqh* and four lunar years according to the other *Sunni Fiqh* although more than one view has been attributed to Imām Mālik (رحمه الله), one of which puts the limit at five years and another at seven years.

26.4 INHERITANCE AND THE DISAVOWED CHILD

- if a man imprecates (*Li'ān*) his wife of adultery, the disavowed child (*Waladul-Mulā'inah*) that is born subsequently is treated as an illegitimate child. There is no mutual inheritance between the husband and wife after completion of *Li'ān* which operates as an irrevocable divorce according to all the schools of jurisprudence except Imām Abū Ḥanīfah (رحمه الله).
- In Sunni Islamic law there is no difference in the status of a disavowed child (*Waladul-Mulā'inah*) and an illegitimate child (*Waladul-Zinā*).

Example 111

A man who was an illegitimate child himself dies leaving behind a mother, a daughter and a uterine brother.

According to the *Ḥanafī, Mālikī* and *Shāfi'ī Fiqh* the uterine brother is not entitled to inherit. Both the remaing heirs, the mother and the daughter inherit as Qur'ānic sharers (M 1/6; D 1/2). After the application of the doctrine of *Radd* the mother inherits 1/4 and the daughter 3/4. Under the traditional *Mālikī Fiqh*, the residue of 1/3 goes to the *Baytul-Māl*.

The uterine brother is entitled to inherit as residuary under *Ḥanbalī Fiqh* and there inherits the 1/3 residue, the distribution being, M 1/3; D 1/2 and Bu 1/3. Note that under normal rules, the daughter excludes the uterine brother outright. However, in the *Ḥanbalī Fiqh*, the fact that the propositus is illegimate allows the uterine brother to

inherit as a residuary in the presence of a daughter.

Example 112

An illegimate person dies leaving behind a mother, a uterine brother and a uterine sister as the only heirs.

All the heirs inherit as Qur'ānic heirs (M 1/6; Bu 1/6; Su 1/6). The total sum of the shares is 1/2 the doctrine of *Radd* is applied by the *Ḥanafī* and *Shāfi'ī Fiqh* so the final distribution of shares M 1/3; Bu 1/3 and Su 1/3.In traditional *Mālikī Fiqh*, the residue of 1/2 goes to the *Baytul-Māl*.

In *Ḥanbalī Fiqh* the residue goes to the uterine brother acting as residuary, the distribution of shares is M 1/6, Bu 2/3 and Su 1/6. The uterine brother inherits both as sharer and residuary.

27. ADOPTED CHILD (*TABANNÎ*)

Key points:

- Legal adoption as practised in the West, which involves the total and legal transfer of a child from one set of parents to another set of parents, is forbidden in Islāmic law.
- Legal adoption which confers on the child the name of the adopted father, the rights of inheritance, permissibility of mixing with non- *Maḥram* members of the household and prohibition of marriage (arising due to adoption) is forbidden in Islām.
- Allāh (ﷻ) says in the Qur'ān (33:4-5):
- *"...Nor has He made your adopted sons your real sons. That is but your saying with your mouths. ....Call them by (the names of) their father ...."*
- The rules of inheritance applied to the adopted child are also applicable to an abandoned child which may have been brought up from a very young age.
- In matters of inheritance, according to the *Sharī'ah* the only three causes of inheritance are those listed in chapter 7.

28. UNBORN CHILD (*JANÎN*)

Allāh's Prophet (ﷺ) said: *"Prayer should not be said over an infant which has not uttered a sound, neither may he inherit nor leave an inheritance."* (Tirmidhī and Ibn Mājah, but the latter did not mention "nor leave an inheritance").

Key points:

- As a general rule, an unborn child is only entitled to inherit if born alive. The majority view is that the child should be alive after delivery has been completed.
- According to the *Ḥanafī Fiqh*, on the authority of the *Sirājiyyah*, if a child dies during birth, it will inherit if a greater part of the child comes out before it dies. If the head is delivered first the landmark is the chest and if feet are born first then the landmark is the navel.
- Evidence of life is based on voice, cry or movement of the child.
- If the child is born alive and dies subsequently, then its own heirs inherit from him/her (principle of devolution of vested inheritance).
- Only a child presumed to be in existence at the time of death of the propositus is entitled to inherit. This is determined by the legal gestation period as discussed below. See also section 26.3.
- In the case of an unborn potential heir, the *Ḥanafī*, *Shāfi'ī* and *Ḥanbalī Fiqh* allow the existing heirs to be given the smallest share after calculations of all the possible effects of the unborn child on the shares of the existing heirs.
- According to the *Mālikī Fiqh* the distribution of the whole

estate is suspended until the unborn child is born or it is established that there was in fact no pregnancy at the time of death of the propositus.

28.1 UNBORN CHILD OF THE PROPOSITUS

- If the unborn child is being carried by the wife of the propositus, then the child is eligible to inherit if born within the maximum period of gestation allowed by Sunni Muslim law.
- Consider the deceased leaving behind a pregnant widow or a pregnant divorcee. In these situations the woman's marriage is terminated and she has no further sexual relations (note that the *'Iddah* period lasts until the child is born). The child that she is carrying must be of the propositus (barring extra-marital relationships) and must have been conceived prior to the death of the propositus. Therefore, the maximum period of gestation is applied.
- The unborn child of a widow or divorcee is entitled to inherit from the father if he or she is born within the maximum period of gestation allowed by the Sunni Muslim law from the time of commencement of her *'Iddah*.
- The gender of the child will determine its effect on the overall distribution of the estate and other heirs.

28.2 UNBORN CHILD NOT OF THE PROPOSITUS

- If a potential heir is being carried by a female who is not the wife of the deceased, the child is only eligible to inherit if born within the minimum period of gestation which is six lunar months.
- Consider a situation where a deceased leaves behind a woman who may be pregnant with a potential heir. The

woman claiming to be pregnant in this situation is not the wife of the propositus, she could be the wife of his brother or his father etc. The woman in this situation is presumed to be having continual sexual relations with her husband. For the unborn child to be entitled to inherit from the propositus he/she must have been conceived prior to his death, so he/she must be born alive within the minimum gestation period of six lunar months.

- If the child is born after the minimum gestation period of six lunar months, it may have been conceived after the death of the propositus and hence cannot inherit from the propositus.
- The *Ḥanbalī Fiqh* allows the unborn child to inherit if born alive within the maximum gestation period allowed under Sunni Muslim law if it can be established that the woman had no further sexual relationships with her husband from the time of death of the propositus.

28.3 THE EFFECTS OF THE BIRTH OF A CHILD

- The unborn child as a potential heir may affect the existing heirs in several ways:
  1. absolute exclusion of one or more of the other heirs
  2. partial exclusion of one or more of the other heirs
  3. a mere addition to an existing class of heirs
- What should be done to the estate while awaiting birth of the unborn potential heir?

28.3.1 Child as an absolute excluder

- An unborn child may be an absolute excluder, that is to say that he or she may exclude all existing heirs.

- The estate of the deceased cannot be distributed until the child is born.

28.3.2 Child as partial excluder

- An unborn child may partially exclude existing heirs or just be an addition to the existing heirs.
- Calculations of all the possible effects of the unborn child on the shares of the existing heirs are made and the smallest share may be given to the existing heirs under *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh.*
- The remainder of the estate is reserved until the child is born. Distribution of the remaining estate will depend on the gender of the child.

28.3.3 Share to be reserved for unborn child

- According to the *Ḥanafī Fiqh,* the share of one son or daughter, whichever share is greater, should be withheld for the unborn child. This is the view of Imām Abū Yūsuf (ﷺ) who also stated that that the judge should take a security from the heirs in case more than one child is born.
- Abū Ḥanīfah (ﷺ) advocated that a share of four boys or four girls whichever is greater should be withheld.
- According to the *Mālikī Fiqh* distribution of the estate is withheld until the unborn child is born.
- According to the *Shāfi'ī Fiqh,* the share of two sons or daughters, whichever share is greater should be withheld. The shares of heirs who are of the same class as the unborn heir are also withheld.
- According to the *Ḥanbalī Fiqh* the share of two sons or daughters, whichever is greater should be withheld.

Example 113

Consider a person who dies leaving behind a full brother's pregnant widow and a full brother's son's son (SSBf). The unborn child will be either the brother's son or brother's daughter of the deceased.

If a male child (brother's son) is born within the lawful gestation period it would absolutely exclude the brother's son's son and would take the entire property, and if a female child (brother's daughter) is born, she would be a distant kindred, and would take nothing as against the brother's son's son. Therefore, the estate cannot be distributed until the birth of the child.

Example 114

A person dies leaving a pregnant widow and a full brother. The unborn child will be either a son or a daughter of the deceased.

If a male child (son) is born, it would exclude the brother and partially exclude its own mother, and if the child is a female (daughter) then the full brother would inherit as a residuary.

Hence, this is not a case of absolute exclusion. The heirs, the widow and the brother may therefore, be given the smallest possible share respectively on basis of their own right of inheritance.

The possibilities are:

	Widow	Child	Full brother
If a son is born	1/8	7/8	0
If a daughter is born	1/8	1/2	R = 3/8
If a dead child is born	1/4	0	3/4
Preliminary distribution	1/8		0

A preliminary distribution of the estate can be made as shown and the remaining 7/8 should be divided after the child is born.

Example 115 (*Ḥanafī Fiqh*)

A person dies leaving a pregnant widow, his father and his mother. The child will be either a son or daughter of the deceased. This is a case of the child, if born alive, acting as a partial excluder.

If a male child (son) is born, the father of the deceased will inherit 1/6 as sharer, if a female child (daughter) is born, then the father will get 1/6 as sharer plus any residue.

The following are the possibilities:

	Widow	Child	Father	Mother
If a son is born	1/8	13/24	1/6	1/6
If a daughter is born	1/8	1/2	5/24	1/6
If child born is dead	1/4	0	1/2	1/4
Preliminary distribution	1/8		1/6	1/6

A preliminary distribution of the estate can be made as shown and the remaining 13/24 should be divided after the child is born.

28.4 A STILLBORN CHILD

- It has already been stated above that only a child born alive can inherit, however, there is one exception to this rule.
- If intentional violence has been done to the mother and a fully formed child is stillborn, the special kind of blood-money paid called *Ghurrah*, belongs to the child itself and is inherited by the heirs of the stillborn child.

The *Ḥanafī Fiqh* further stipulates that because the legal

existence of the stillborn child is assumed in such exceptional circumstances, any property that the child would have inherited if born alive is also transmitted to its heirs. The other three *Sunni Madhāhib* do not allow such a stillborn child to inherit.

29. HERMAPHRODITE (*KHUNTHĀ*)

Key points:

- *Khuntā Al-Mushkal* is an individual whose gender cannot be determined.

The English word hermaphrodite, derived from the mythological character of the influential Roman poet Ovid, which is used here for translation purposes actually denotes an individual with both sex organs. There is no actual English word which denotes the Arabic word *Khuntā Al-Mushkal*.

- An individual who resembles a male inherits as a male; an individual who resembles a female inherits as a female. Physical appearance of the genital organs is the determining factor followed by secondary sexual characteristics (beard, breasts, menstruation).
- With current medical knowledge and advanced science techniques, an individual being labelled as a *Khuntā Al-Mushkal* is very unlikely.
- Heirs who can be hermaphrodite are child, a son's child, a brother and his child, an uncle and his child.
- The share of the hermaphrodite is calculated both as a male and as a female. According to the *Ḥanafī Fiqh* the hermaphrodite gets whichever share is the smaller. This is the majority opinion of the Companions of the Prophet (ﷺ).
- This is also one of the two views of Imām Shāfi'ī (رحمه الله). The other view being that the hermaphrodite is given the smaller share and the balance reserved until the gender is

determined. This is the view followed by the *Ḥanbalī Fiqh*. In case the hermaphrodite dies without the gender being determined or the gender cannot be determined even upon reaching puberty, the hermaphrodite is given the average share of the male and female, that is to say half the share of the male and the female combined as shown in the examples below.

- 'Amir bin Shuraḥbīl Al-Sha'bi (رحمه الله) (d103 AH/721 CE) who adopts the view of 'Abdullâh bin 'Abbās رضي الله عنه, states that the hermaphrodite takes half of the combined shares of the male and female. This is the view adopted by the *Mālikī Fiqh*.
- Imām Abū Yūsuf (رحمه الله) and Imām Muḥammad (رحمه الله) have interpreted the doctrine of Al-Sha'bī (رحمه الله) differently as illustrated in example below.

Example 116

A man dies leaving a son, a daughter and a child who is a hermaphrodite.

If the hermaphrodite is taken as a female she inherits as a daughter, thus:

Daughter	1/4
Hermaphrodite as daughter	1/4
Son	1/2

If the hermaphrodite is taken as a male, he inherits as a son, thus:

Daughter	1/5
Hermaphrodite as son	2/5
Son	2/5

So, if the hermaphrodite inherits as a female (i.e. a daughter) she would be entitled to 1/4 of the estate. However, if the

hermaphrodite inherits as a male (i.e. a son), he would be entitled to 2/5 of the estate. 1/4 is smaller than 2/5, therefore, the hermaphrodite would inherit 1/4 according to the *Ḥanafī Fiqh*.

According to the *Shāfi'ī* and *Ḥanbalī Fiqh* the hermaphrodite would be given 1/4, the daughter 1/5 and the son 2/5. This is the minimum share to which they are entitled. The balance of 3/20 would be distributed when the gender of the hermaphrodite is determined at puberty.

If we apply the doctrine of Al-Sha'bī (رحمه الله) in this example then according to Imām Abū Yūsuf (رحمه الله) the distribution would be thus:

Son	2 portions, this equivalent to 4/9
Daughter	1 portion, this is equivalent to 2/9
Hermaphrodite	1 and 1/2 portions, this is equivalent to 3/9

Imām Muḥammad (رحمه الله) applying the doctrine of Al-Sha'bī (رحمه الله) calculates thus:

If hermaphrodite is male, son gets 2/5, daughter gets 1/5 and the hermaphrodite as son gets 2/5.

If hermaphrodite is female, son gets 1/2, daughter gets 1/4 and the hermaphrodite as daughter gets 1/4.

Now we take the average of each of these calculated values, thus:

Son	$(1/2 + 2/5)/2 = 9/20$ ($\equiv$ 18/40)
Daughter	$(1/4 + 1/5)/2 = 9/40$
Hermaphrodite	$(1/4 + 2/5)/2 = 13/40$

It can be seen that Imām Abū Yūsuf (رحمه الله) merley fixes the ratios of the shares whereas Imām Muḥammad (رحمه الله) actually calculates the shares and the differnce in the results is very small.

Example 117

A man dies leaving a daughter and a full sibling who is a hermaphrodite.

Daughter	1/2
Hermaphrodite as full sibling	1/2 (residuary)

In this example the daughter and the hermaphrodite (Bf/ Sf) will inherit a half share each whatever the gender of the hermaphrodite.

Example 118

A woman dies leaving a husband, a father, a mother and a child who is a hermaphrodite.

If the hermaphrodite is taken as a female she inherits as a daughter, thus:

Widow	1/8 ≡ 3/24
Father	5/24 as residuary
Mother	1/6 ≡ 4/24
Hermaphrodite as daughter	1/2 ≡ 12/24

If the hermaphrodite is taken as a male, he inherits as a son. Thus:

Widow	1/8
Father	1/6
Mother	1/6
Hermaphrodite as son	13/24 as residuary

So, if the hermaphrodite inherits as a female (i.e. a daughter) she would be entitled to 1/2 of the estate. However, if the hermaphrodite inherits as a male (i.e. a son), he would be entitled to 13/24 of the estate. 1/2 is smaller than 13/24; therefore, according to the *Ḥanafī Fiqh* the hermaphrodite would inherit 1/2 and consequently the widow 1/8, the

mother 1/6 and the father 5/24.

According to the *Shāfi'ī* and *Ḥanbalī Fiqh*, each heir is given his/her minimum share; the widow 1/8, the mother 1/6, the father 1/6 and the hermaphrodite 1/2. The remaining 1/24 would be distributed when the gender of the hermaphrodite is established.

According to the doctrine of *Al-Sha'bī* (ﷺ), with each heir inheriting the average of the two calculated values, the distribution of the estate would be; widow 1/8, father 9/48, mother 1/6 and hermaphrodite (S/D) 25/48.

Example 119

A man dies leaving behind two daughters, a full brother's child whose sex is difficult to determine and a consanguine brother's son as the only heirs.

The full brother's child will inherit either as SBf or DBf. Note that SBf can inherit as a residuary whereas DBf is a distant kindred.

If the full brother's child inherits as a male (SBf), the distribution of inheritance is thus:

Two daughters	2/3 (1/3 each)
Hermaphrodite as SBf	1/3 as residuary
Consanguine brother's son	Nil (excluded by SBf)

If the full brother's child inherits as a female (DBf), the distribution of inheritance is thus:

Two daughters	2/3 (1/3 each)
Hermaphrodite as DBf	Nil
Consanguine brother's son	1/3 as residuary

According to the *Ḥanafī Fiqh* the hermaphrodite would inherit nothing, that is the smaller value of two calculated shares. The two daughers would therefore inherit 1/3 each

and the consanguine brother's son would also inherit 1/3.

According to the *Shāfi'ī* and *Ḥanbalī Fiqh* the two daughters would inherit 1/3. This is the minimum share to which they are entitled. The remaining 1/3 would be distributed when the gender of the full brother's son is determined at puberty.

According to the doctrine of Al-Sha'bī (ﷺ), with each heir inheriting the average of the two calculated values, the distribution of the estate would be; daughters 1/3 each, consanguine brother's son 1/6 and hermaphrodite (SBf/DBf) 1/6.

Example 120

A woman dies leaving behind a husband, a full sister and a consanguine sibling whose sex is difficult to determine as the only heirs.

The consanguine sibling will inherit either as Bc or ♀c. Note that Bc in this case will inherit as a residuary and ♀c will inherit as sharer.

If the consanguine sibling inherits as a male (Bc) the distribution of inheritance is thus:

Husband	1/2
Hermaphrodite as Bc	Nil as residuary
Full sister	1/2

If the consanguine sibling inherits as a female (♀c), all the heirs inherit as sharers, the sum total of the share is 8/6, the doctrine of *'Awl* is applied, thus:

Husband	1/2 reduced to 3/7
Hermaphrodite as ♀c	1/6 reduced to 1/7
Full sister	1/2 reduced to 3/7

Note that the hermaphrodite inherits more as a female than as a male.

According to the *Ḥanafi Fiqh* the hermaphrodite would inherit nothing, that is the smaller value of two calculated shares. The husband and the full sister would inherit 1/2 each.

According to the *Shāfi'ī* and *Ḥanbalī Fiqh* the husband and the full sister would be given 3/7 each. This is the minimum share to which they are entitled. The remaining 1/7 would be distributed when the gender of the full brother's son is determined.

According to the doctrine of *Al-Sha'bī* (ﷺ), with each heir inheriting the average of the two calculated values, the distribution of the estate would be; husband 13/28, full sister 13/28 and hermaphrodite (Bc/♀c) 1/14.

30. BROTHER

Key points:

- A brother may be full, consanguine or uterine. Note that in *Sharī* law only those brothers related to the deceased by blood (*Nasab*) are entitled to inherit.
- A full and consanguine brother inherit as class III residuaries whereas a uterine brother inherits as a sharer.

30.1 FULL BROTHER (*'AKH LA-HUMA*)

- A full brother (also called germane or real) has the same father and same mother as the propositus.
- A full brother inherits as a class III residuary.

30.1.1 Full brother's excluders

- A full brother is excluded by any one of the following:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - true grandfather h.h.s. according to the *Ḥanafī Fiqh*
- For the views of the other three *Sunni Fiqh* see sections 18.2.5 - 18.2.9.

30.1.2 Heirs excluded by full brother

- The following are excluded by the full brother:
  - consanguine brother
  - consanguine sister
  - full brother's son h.l.s.
  - consanguine brother's son h.l.s.
  - all uncles and their offspring.

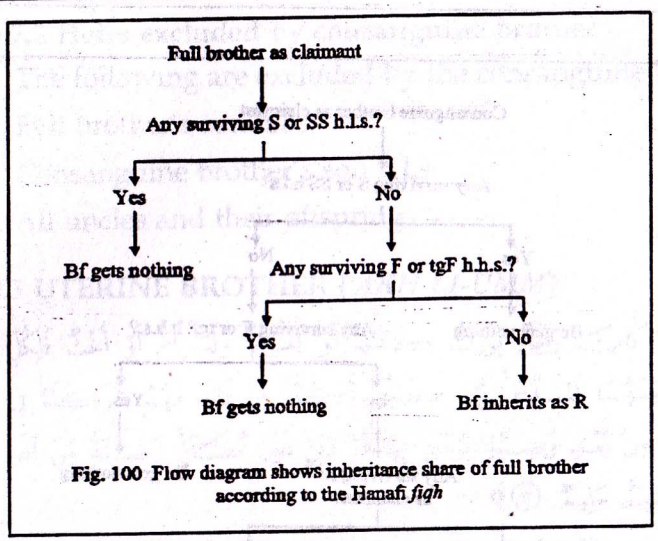


Fig. 100 Flow diagram shows inheritance share of full brother according to the Ḥanafi *fiqh*

30.2 CONSANGUINE BROTHER (*'AKH LI-AB*)

- The consanguine (agnate) brother has the same father as the propositus but they have different mothers.
- The consanguine brother inherits as a class III residuary.
- In the absence of the full brother, the consanguine brother inherits in the position of full brother.

30.2.1 Consanguine brother's excluders

- A consanguine brother is excluded by any one of the following:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - true grandfather h.h.s. according to the *Ḥanafī Fiqh*
  - (for the views of the other *Sunni Fiqh* see sections 18.2.5-18.2.9.)
  - full brother
  - full sister inheriting as a residuary (*'Aṣabah Ma'ah Ghayrihā*)

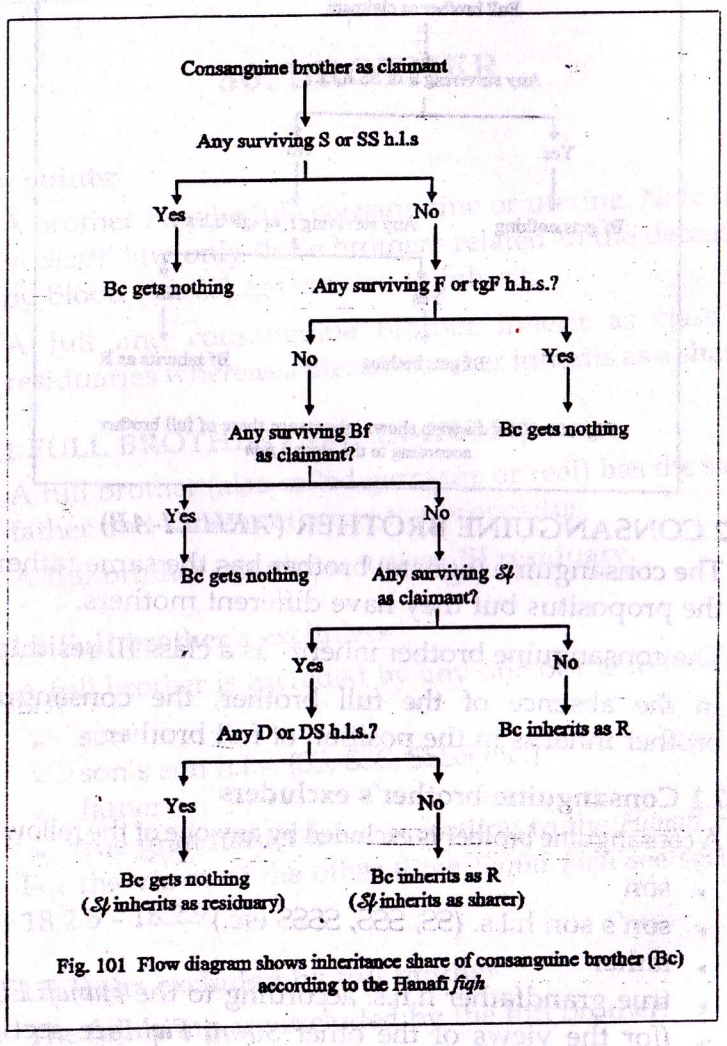


Fig. 101 Flow diagram shows inheritance share of consanguine brother (Bc) according to the Ḥanafī *fiqh*

30.2.2 Heirs excluded by consanguine brother

- The following are excluded by the consanguine brother:
- Full brother's son h.l.s.
- Consanguine brother's son h.l.s.
- All uncles and their offspring

30.3 UTERINE BROTHER (*'AKH LI-UMM*)

﴿وَإِن كَانَ رَجُلٌ يُورَثُ كَلَٰلَةً أَوِ ٱمْرَأَةٌ وَلَهُۥٓ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ ۚ فَإِن كَانُوٓا۟ أَكْثَرَ مِن ذَٰلِكَ فَهُمْ شُرَكَآءُ فِى ٱلثُّلُثِ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَآ أَوْ دَيْنٍ غَيْرَ مُضَآرٍّ ۚ وَصِيَّةً مِّنَ ٱللَّهِ ۗ وَٱللَّهُ عَلِيمٌ حَلِيمٌ ﴿١٢﴾﴾

"And if a Kalāla man or woman (one who has neither ascendants nor descendants) is inherited from, and he (or she) has a (uterine) brother or (uterine) sister then for each of them (there is) one-sixth. But if they (uterine brothers and sisters) are more than that then they are sharers in one-third (equally) after (fulfilling) any legacy he may have bequeathed or (after payment of any) debt without causing loss (to anyone). This is the Commandment from Allāh; and Allāh is Ever All-Knowing, Most-Forbearing." (Qur'ān 4:12)

- The uterine (cognate) brother has the same mother as the propositus but they have different fathers.
- The uterine brother inherits as a sharer.
- The uterine brother when entitled to inherit, if alone inherits a fixed 1/6 share, if there are two or more uterine siblings they together inherit a fixed 1/3 share equally.
- The general rule that the male inherits the portion of two females does not apply to uterine siblings.

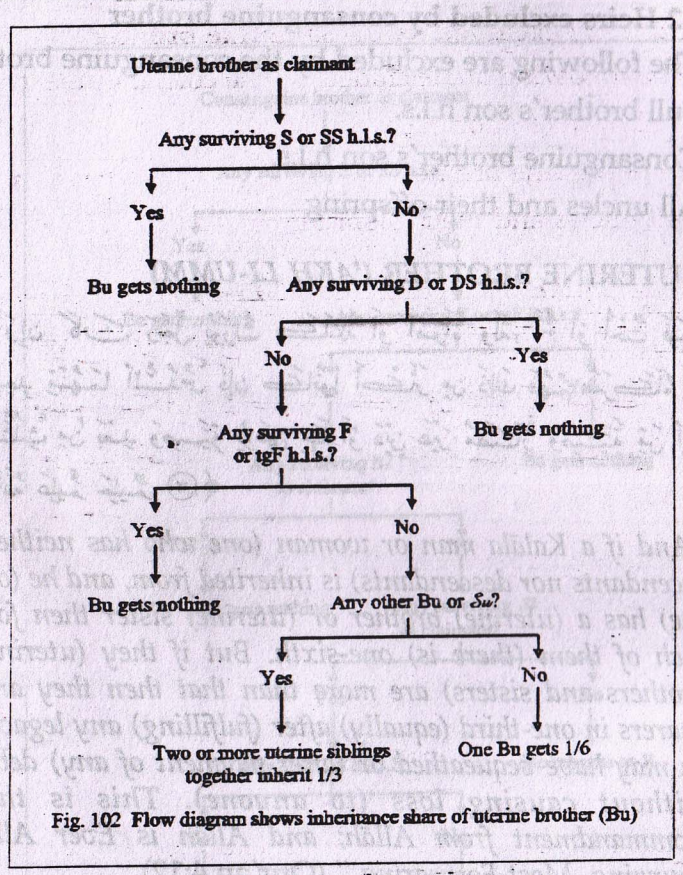


Fig. 102 Flow diagram shows inheritance share of uterine brother (Bu)

30.3.1 Uterine brother's excluders

- The uterine brother is excluded by any one of the following:
  - child
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - son's daughter h.l.s. (DS, DSS, DSS etc.)
  - father
  - true grandfather h.l.s. (FF, FFF, FFFF etc.)

30.3.2 Heirs excluded by uterine brother

- The following are excluded by the uterine brother:
  - son of uterine brother
  - daughter of uterine brother

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31. SISTER

﴿يَسْتَفْتُونَكَ قُلِ ٱللَّهُ يُفْتِيكُمْ فِي ٱلْكَلَٰلَةِ ۚ إِنِ ٱمْرُؤٌا۟ هَلَكَ لَيْسَ لَهُۥ وَلَدٌ وَلَهُۥٓ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَآ إِن لَّمْ يَكُن لَّهَا وَلَدٌ ۚ فَإِن كَانَتَا ٱثْنَتَيْنِ فَلَهُمَا ٱلثُّلُثَانِ مِمَّا تَرَكَ ۚ وَإِن كَانُوٓا۟ إِخْوَةً رِّجَالًا وَنِسَآءً فَلِلذَّكَرِ مِثْلُ حَظِّ ٱلْأُنثَيَيْنِ﴾

"They ask you for a legal decision. Say: Allāh directs you concerning a kalāla relation. Should a man die childless but have a sister then for her there is one-half of the inheritance, and he would inherit from her should she die childless. And if there are two sisters they shall have two-thirds of the inheritance (between them): and if there are brothers with sisters then for the males there is a share of two females." (Qur'ān 4:176)

Note: The word *"Walad"* in 4:176 is interpreted as "son" by all four *Madhāhib*.

Key points:

A sister may be full, consanguine or uterine. Note that in *Sharī'* law only those sisters related to the deceased by blood (*Nasab*) are entitled to inherit.

31.1 FULL SISTER (*'UKHT LA-HUMA*)

Key points:

- A full sister (also called germane or real) has the same father and same mother as the propositus.
- When the full sister is entitled to inherit, she may inherit as a sharer or as a residuary.

31.1.1 Full sister's excluders

- The full sister is excluded by any one of the following:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - true grandfather h.h.s. according to the *Ḥanafī Fiqh* (see sections 18.2.5 - 18.2.9 for other views.)

31.1.2 Full sister as a sharer

- When entitled to inherit, the full sister inherits as a sharer unless converted into a residuary.
- A full sister inherits as a sharer if there is:
  - no excluder
  - no full brother
  - no daughter
  - no son's daughter h.l.s.
- When inheriting as a sharer, one full sister alone inherits a fixed 1/2 share; two or more full sisters when inheriting as sharers together inherit a fixed 2/3 share.
- The maximum collective share allotted to the sisters (full and consanguine) inheriting as sharers is 2/3. This is analogous to the inheritance of daughters and agnatic granddaughters.

31.1.3 Full sister as a residuary

- A full sister is always converted into a residuary by a full brother (*'Aṣabah Bighayrihā*). This is the principle of *Ta'sīb*, the male inherits the portion of two females.
- A full sister (or consanguine sister) also inherits as a residuary (*'Aṣabah Ma'a Ghayrihā*) when inheriting with

daughter or son's daughter h.l.s. who themselves are inheriting as sharers. This is based on the *Sunnah* of the Prophet Muḥammad (ﷺ).

> Narrated Huzail bin Sharaabīil ؓ: *Abū Mūsa was asked regarding (the inheritance of) a daughter, a son's daughter, and a sister. He said, "The daughter will take half and the sister will take the half. If you go to Ibn Mas'ūd, he will tell you the same." Ibn Mas'ūd was asked and was told of Abū Mūsa's verdict. Ibn Mas'ūd then said, "If I give the same verdict, I would stray and would not be of the rightly-guided. The verdict I will give in this case, will be the same as the Prophet (ﷺ) did, i.e., one-half is for the daughter, and one-sixth for the son's daughter, i.e. both shares make two-thirds of the total property; and the residue is for the sister." Afterwards we came to Abū Mūsa and informed him of Ibn Mas'ūd's verdict, whereupon he said, "So, do not ask me for verdicts, as along as this learned man is among you."* (Ṣaḥīḥ Al-Bukhārī, Tirmidhī and Ibn Mājah)

- This is an exception to the rule that no female is a primary residuary but only becomes a residuary when co-existing with a male residuary.
- When inheriting as a residuary (*'Aṣaba Ma'a Ghayrihā*), *Sf* excludes Bc, *Sc*, SBf and SBc as well as more remote residuary heirs. In this situation, *Sf* is in fact inheriting in a manner similar to Bf.

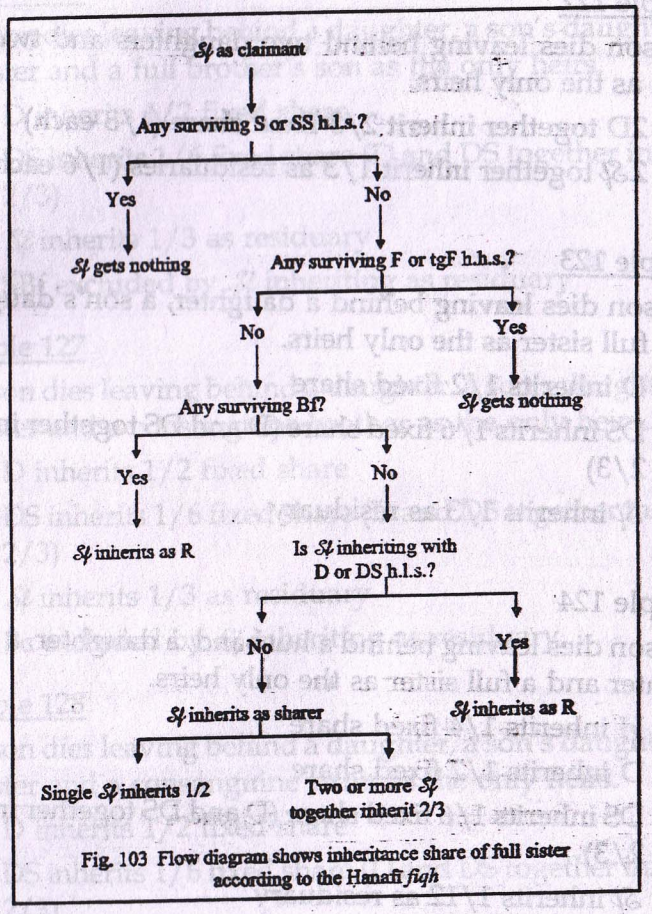


Fig. 103 Flow diagram shows inheritance share of full sister according to the Ḥanafī *fiqh*

Example 121

A person dies leaving behind a daughter and a full sister as the only heirs.

D inherits 1/2 fixed share

Sf inherits 1/2 as residuary

Example 122

A person dies leaving behind two daughters and two full sisters as the only heirs.

2D together inherit 2/3 fixed share (1/3 each)

2Sf together inherit 1/3 as residuaries (1/6 each)

Example 123

A person dies leaving behind a daughter, a son's daughter and a full sister as the only heirs.

D inherits 1/2 fixed share

DS inherits 1/6 fixed share (D and DS together inherit 2/3)

Sf inherits 1/3 as residuary

Example 124

A person dies leaving behind a husband, a daughter, a son's daughter and a full sister as the only heirs.

H inherits 1/4 fixed share

D inherits 1/2 fixed share

DS inherits 1/6 fixed share (D and DS together inherit 2/3)

Sf inherits 1/12 as residuary

Example 125

A woman dies leaving behind a mother, husband, uterine brother, a full brother and a full sister as the only heirs.

M inherits 1/6 fixed share

H inherits 1/2 fixed share

Bu inherits 1/6 fixed share

Bf and Sf inherit 1/6 as residuaries (Bf 1/9; Sf 1/18)

Example 126

A person dies leaving behind a daughter, a son's daughter, a full sister and a full brother's son as the only heirs.

D inherits 1/2 fixed share

DS inherits 1/6 fixed share (D and DS together inherit 2/3)

Sf inherits 1/3 as residuary

SBf excluded by Sf inheriting as residuary

Example 127

A person dies leaving behind a daughter, a son's daughter, a full sister and a consanguine brother as the only heirs..

D inherits 1/2 fixed share

DS inherits 1/6 fixed share (D and DS together inherit 2/3)

Sf inherits 1/3 as residuary

Bc excluded by Sf inheriting as residuary

Example 128

A person dies leaving behind a daughter, a son's daughter, a full sister and a consanguine sister as the only heirs.

D inherits 1/2 fixed share

DS inherits 1/6 fixed share (D and DS together inherit 2/3)

Sf inherits 1/3 as residuary

Sc excluded by Sf inheriting as residuary

Example 129

A man dies leaving behind a widow, a mother, two daughters, 12 full brothers and a full sister as the only heirs.

This case has been variously named as *Al-Dīnāriyyah*, *Al-*

Dāwūdiyyah and *Al-Dināriyyah Al-kubrâ*. The judge awarded the full sister one dinar out of a total inheritance of 1200 dinars. She reported the matter to 'Alī bin Abī Ṭālib ﷺ who informed her that one dinar was indeed her entitlement.

Widow inherits 1/8
Mother inherits 1/6
2D inherit 2/3 (1/3 each)
12 Bf inherit 1/25 (1/300 each)
Sf inherits 1/600

31.2 CONSANGUINE SISTER (*'UKHT LI-AB*)

Key points:

- The consanguine sister (also called agnate or half-sister by father) has the same father as the propositus but they have different mothers.
- When the consanguine sister is entitled to inherit, she may inherit as a sharer or as a residuary.
- In the absence of a full sister, the consanguine sister inherits in the position of full sister.
- The consanguine sister inherits in a manner very similar to that of an agnatic granddaughter (DS), the only difference being that DS can be converted into a residuary by a SS of a lower degree which Sc cannot.

31.2.1 Consanguine sister's excluders

- The consanguine sister is excluded by any one of the following:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - true grandfather h.h.s. according to the *Ḥanafī Fiqh*

  - full brother
  - full sister inheriting as residuary
  - two or more full sisters inheriting as sharers (unless Sc is accompanied by Bc)

31.2.2 Consanguine sister as a sharer

- When the consanguine sister is entitled to inherit, she inherits as a sharer unless converted into a residuary by Bc.
- A consanguine sister inherits as a sharer if there is:
  - no excluder
  - no consanguine brother
  - no daughter
  - no son's daughter h.l.s.
- In the absence of any full sisters:
  1. One Sc inherits a fixed share of 1/2.
  2. Two or more Sc together inherit a fixed share of 2/3.

     The maximum collective share allotted to the full and consanguine sisters inheriting as sharers is 2/3. This concept of the full and consanguine sisters inheriting a collective share (similarly with daughters and granddaughters) rather than individual separate shares may become important in situations where the right of preemption (*Shuf'ah*) is exercised by the co-heir.
- In the presence of full sister(s) as heirs:
  3. Sc (one or more) inherits a fixed 1/6; if there is only one Sf who inherits 1/2, this makes a total of 2/3.
  4. Sc inherits nothing if there are two or more Sf who together inherit 2/3 unless there is a Bc who converts the Sc into a residuary.

     However, 'Abdullâh bin Mas'ūd ﷺ held the view that when a consanguine sister inherits with one full sister and consanguine brother, the consanguine sister

inherits either a fixed 1/6 share or as a residuary whichever is less. This view is not accepted by the mainstream Muslim jurists.

31.2.3 Consanguine sister as a residuary

- The consanguine sister is always converted into a residuary (*'Aṣabah Bighayrihā*) by a consanguine brother. The is the principle of *Ta'sīb*, the male inherits the portion of two females.
- The consanguine sister (in default of full sister) also inherits as a residuary (*'Aṣabah Ma'a Ghayrihā*) when inheriting with daughter or son's daughter h.l.s. who themselves are inheriting as sharers. This is based on the tradition of the Prophet Muḥammad (ﷺ). See section 31.1.3. This is an exception to the rule that no female is a primary residuary but only becomes a residuary when coexisting with a male residuary.
- When inheriting as a residuary (*'Aṣabah Ma'a Ghayrihā*), Sc excludes SBf and SBc as well as more remote residuary heirs. In this situation, Sc is in fact inheriting in a manner similar to Bc
- When the consanguine sister is excluded by the presence of two or more full sisters, the consanguine sister may inherit by being converted into a residuary by a consanguine brother.
- 'Abdullâh bin Mas'ūd (رضي الله عنه) held the view that when Sc is excluded by the presence of two or more Sf, Sc cannot be converted into a residuary by Bc and will hence in such situations inherit nothing. This view is not accepted by the mainstream Muslim jurists.

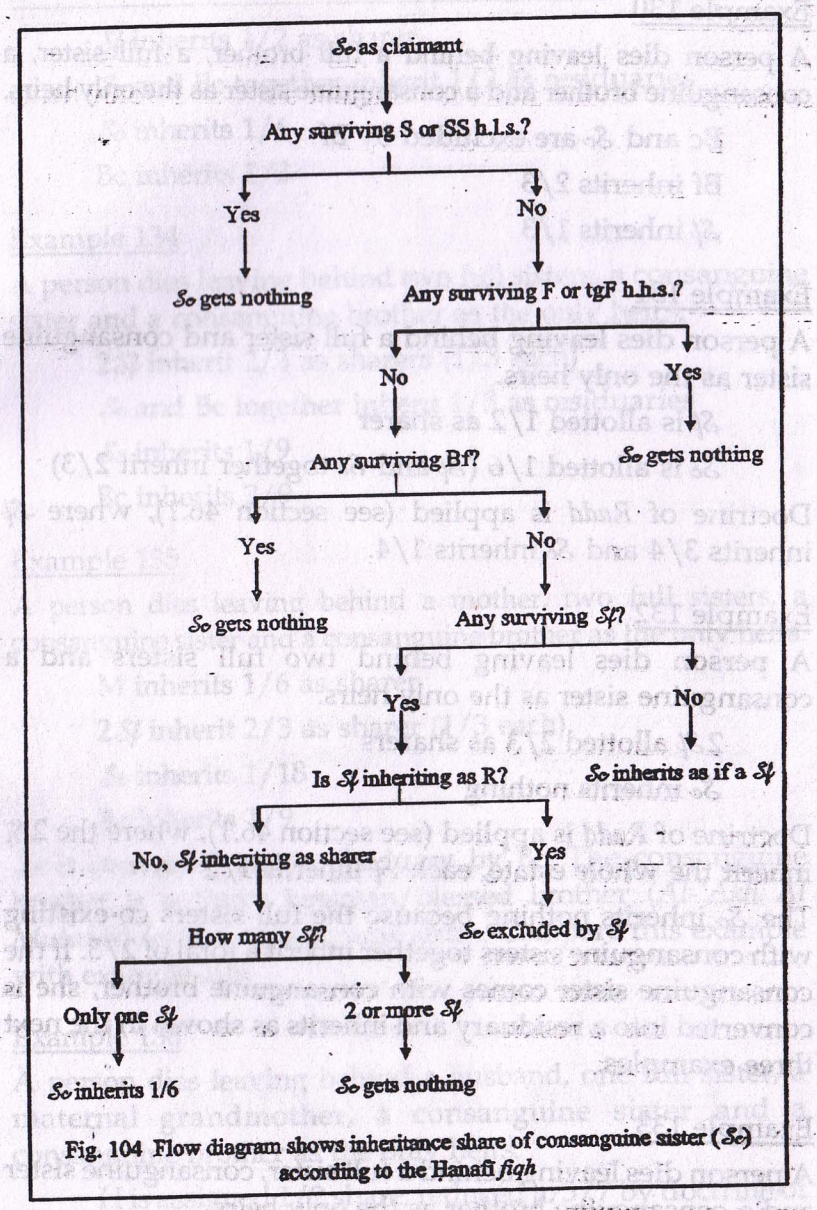


Fig. 104 Flow diagram shows inheritance share of consanguine sister (Sc) according to the Ḥanafī *fiqh*

Example 130

A person dies leaving behind a full brother, a full sister, a consanguine brother and a consanguine sister as the only heirs.

Bc and $\mathcal{S}c$ are excluded by Bf

Bf inherits 2/3

$\mathcal{S}f$ inherits 1/3

Example 131

A person dies leaving behind a full sister and consanguine sister as the only heirs.

$\mathcal{S}f$ is allotted 1/2 as sharer

$\mathcal{S}c$ is allotted 1/6 ($\mathcal{S}f$ and $\mathcal{S}c$ together inherit 2/3)

Doctrine of *Radd* is applied (see section 46.1), where $\mathcal{S}f$ inherits 3/4 and $\mathcal{S}c$ inherits 1/4.

Example 132

A person dies leaving behind two full sisters and a consanguine sister as the only heirs.

2$\mathcal{S}f$ allotted 2/3 as sharers

$\mathcal{S}c$ inherits nothing

Doctrine of *Radd* is applied (see section 46.1), where the 2$\mathcal{S}f$ inherit the whole estate, each $\mathcal{S}f$ inherits 1/2

The $\mathcal{S}c$ inherits nothing because the full sisters co-existing with consanguine sisters together inherit a total of 2/3. If the consanguine sister comes with consanguine brother, she is converted into a residuary and inherits as shown in the next three examples.

Example 133

A person dies leaving behind a full sister, consanguine sister and a consanguine brother as the only heirs.

$\mathcal{S}f$ inherits 1/2 as sharer

$\mathcal{S}c$ and Bc together inherit 1/2 as residuaries

$\mathcal{S}c$ inherits 1/6

Bc inherits 1/3

Example 134

A person dies leaving behind two full sisters, a consanguine sister and a consanguine brother as the only heirs.

2$\mathcal{S}f$ inherit 2/3 as sharers (1/3 each)

$\mathcal{S}c$ and Bc together inherit 1/3 as residuaries

$\mathcal{S}c$ inherits 1/9

Bc inherits 2/9

Example 135

A person dies leaving behind a mother, two full sisters, a consanguine sister and a consanguine brother as the only heirs.

M inherits 1/6 as sharer

2$\mathcal{S}f$ inherit 2/3 as sharer (1/3 each)

$\mathcal{S}c$ inherits 1/18

Bc inherits 1/9

$\mathcal{S}c$ is converted into a residuary by Bc. The consanguine brother is a lucky kinsman/blessed brother (*Al-'Akh Al Mubarak*) for the consanguine sister. Compare this example with example 109.

Example 136

A person dies leaving behind a husband, one full sister, a maternal grandmother, a consanguine sister and a consanguine brother as the only heirs.

H is assigned 1/2 share, reduced to 3/7 by doctrine of *'Awl*

MM is assigned 1/6 share, reduced to 1/7 by doctrine of *'Awl*

Sf is assigned 1/2 share, reduced to 3/7 by doctrine of *'Awl*

Sc and Bc inherit nothing as residuaries

Compare this example with example 110 and note the similarity between DS inheriting with SS and *Sc* inheriting with Bc.

31.3 UTERINE SISTER (*'UKHT LI-UMM*)

Key points:

- The uterine (cognate) sister has the same mother as the propositus but they have different fathers.
- The uterine sister inherits as a sharer.
- The uterine sister when entitled to inherit, if alone, inherits a fixed 1/6 share, if there are two or more uterine siblings, they together inherit a fixed 1/3 share.
- The general rule that the male inherits the portion of two females does not apply to uterine siblings.

31.3.1 Uterine sister's excluders

- The uterine sister is excluded by any one of the following:
  - child
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - son's daughter h.l.s.(DS, DSS, DSS etc.)
  - father
  - true grandfather h.l.s. (FF, FFF, FFFF etc.)

Example 137

A person dies leaving behind a mother, a uterine sister and a full brother as the only heirs.

M inherits 1/6 as sharer

Su inherits 1/6 as sharer

Bf inherits 2/3 as residuary

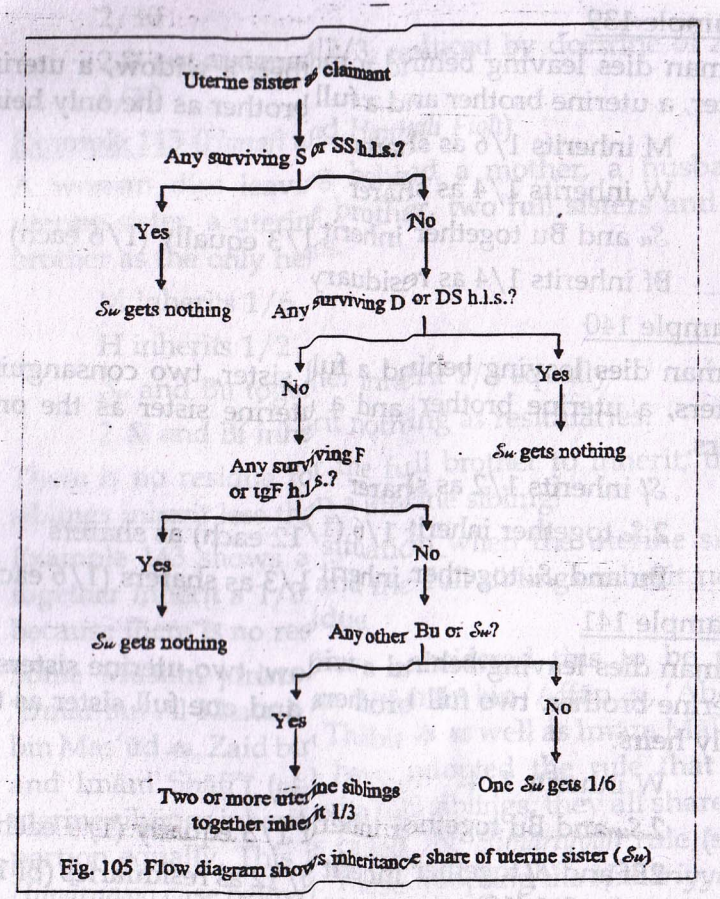


Fig. 105 Flow diagram shows inheritance share of uterine sister (*Su*)

Example 138

A person dies leaving behind a mother, two uterine sisters and three full brothers as the only heirs.

M inherits 1/6 as sharer

2$\mathcal{S}_u$ together inherit 1/3 (1/6 each) as sharer

3Bf together inherit 1/2 as residuaries (1/6 each)

Example 139

A man dies leaving behind a mother, a widow, a uterine sister, a uterine brother and a full brother as the only heirs.

M inherits 1/6 as sharer

W inherits 1/4 as sharer

$\mathcal{S}_u$ and Bu together inherit 1/3 equally (1/6 each)

Bf inherits 1/4 as residuary

Example 140

A man dies leaving behind a full sister, two consanguine sisters, a uterine brother and a uterine sister as the only heirs.

$\mathcal{S}_f$ inherits 1/2 as sharer

2$\mathcal{S}_c$ together inherit 1/6 (1/12 each) as sharers

Bu and $\mathcal{S}_u$ together inherit 1/3 as sharers (1/6 each).

Example 141

A man dies leaving behind a widow, two uterine sisters, a uterine brother, two full brothers and one full sister as the only heirs.

W inherits 1/4

2$\mathcal{S}_u$ and Bu together inherit 1/3 equally (1/9 each)

2Bf and $\mathcal{S}_f$ together inherit 5/12 as residuaries (Bf 1/6 each; $\mathcal{S}_f$ 1/12)

Example 142

A woman dies leaving behind a mother, a husband, two uterine sisters, and two full sisters as the only heirs. This case has been named *Ummul-Furukh* (mother of chicks) and is also referred to as *Al-Shuraihiyyah.*

M is assigned 1/6, reduced by doctrine of *Awl* to 1/10

H is assigned 1/2, reduced by doctrine of *Awl* to 3/10

2$\mathcal{S}_u$ are assigned 1/3, reduced by doctrine of *Awl* to 2/10

2$\mathcal{S}_f$ are assigned 2/3, reduced by doctrine of *Awl* to 4/10

Example 143 (*Ḥanafī* and *Ḥanbali Fiqh*)

A woman dies leaving behind a mother, a husband, a uterine sister, a uterine brother, two full sisters and a full brother as the only heirs.

M inherits 1/6

H inherits 1/2

$\mathcal{S}_u$ and Bu together inherit 1/3 equally

2 $\mathcal{S}_f$ and Bf inherit nothing as residuaries.

There is no residue for the full brother to inherit; the full siblings inherit less than a uterine sibling!

Example 143 shows a situation when the uterine siblings together inherit a 1/3 and the full siblings inherit nothing because there is no residue.

Some Muslim jurists have considered this to be unfair. 'Umar bin Al-Khattāb ﷺ, 'Uthmān bin 'Affān ﷺ, 'Abdullâh bin Mas'ūd ﷺ, Zaid bin Thābit ﷺ as well as Imām Mālik (ﷺ) and Imām Shāfi'ī (ﷺ) have adopted the rule that when uterine siblings inherit with full siblings, they all share a 1/3 portion equally. This is called the *Ḥimāriyyah* rule (see *Al-Ḥimāriyyah* case below). Those adopting the *Ḥimāriyyah* rule

question as to how the uterine brothers can be allowed to inherit while the full brother who are nearer to the deceased are prevented.

The only combination of heirs which results in the *Ḥimāriyyah* rule is that of a husband, mother (or true grandmother), two or more uterine siblings and one or more full brothers.

However, other Companions of the Prophet Muḥammad (ﷺ) such as Abū Bakr ؓ, 'Alī bin Abī Ṭālib ؓ and 'Abdullâh bin 'Abbās ؓ, were of the opinion that the full brothers would be excluded under such circumstances. In accordance with this opinion, Imām Abū Ḥanīfah (ؒ) and Imām Aḥmad bin Ḥanbal(ؒ) have not adopted the *Ḥimāriyyah* rule whatever the logic may be. Because firstly, the *Aṣḥābul-Furūd* have priority and secondly, the *Ḥimāriyyah* rule goes against the Qur'ānic text which states that two or more uterine siblings should get 1/3 which they do not under this rule; and the male should inherit the portion of two females whereas under this rule full brothers and sisters inherit equally.

They state that the rule on uterine siblings as stated in the Qur'ān must be left unchanged, even if under some circumstances the full siblings inherit less than the half-uterine siblings, and that the first ruling of 'Umar bin al-Khattāb ؓ in *Al-Ḥimāriyyah* case was sound.

From a juristic reasoning point of view the *Ḥimāriyyah* rule is an interesting discussion point. The *Ḥimāriyyah* rule rests upon the juristic principle of *Istihsān* (jursitic preference or seeking the the best solution). All the jurists try to seek a solution which is just for the full brothers, those who reject the *Ḥimāriyyah* rule strictly adhere to the letter of the law while those who adopt the *Ḥimāriyyah* rule give preference

to the spirit of the law rather than the letter itself. Interesting enough the *Ḥanafī* jursits who are foremost in advocating the principle of *Istihsān* reject the *Ḥimāriyyah* rule while the *Shāfi'ī* and *Mālikī* jursists who do not in theory approve of *Istihsān* actually accept the *Ḥimāriyyah* rule. The *Ḥanbalī* jurists appears to be consistent in their thinking in this case.

***Al-Himāriyyah* case**

In this case, also known as *Al-Ḥajariyyah* (the stone), *Al-Yammiyyah* (the sea) and the *Mushtarakah* case (case of the divided inheritance), a deceased woman left behind a husband, a mother, two uterine brothers and two full brothers.

This case was decided by 'Umar bin Al-Khattāb ؓ as follows:

H M 2Bu 2Bf

1/2 1/6 1/3 Residue

The two full brothers acting as residuaries receive nothing because there is no residue. The two brothers argued that even if their father was a donkey (*Ḥimār*) or a stone cast into the sea and they had no paternal relationship, they still had the same and equal relationship with the deceased as the uterine brothers through the same mother. 'Umar bin Al-Khattāb ؓ reconsidered and made the final verdict as follows:

H M 2Bu 2Bf

1/2 1/6 1/6 1/6

The full siblings share equally with the uterine siblings. Both male and female full siblings inherit equally according to the *Ḥimāriyyah* rule since they are inheriting in the capacity of their uterine relationship.

The *Ḥimāriyyah* rule does not apply to the consanguine

brother or consanguine sister because they do not have a maternal connection with the propositus. It is only applicable when there is no residue. The *Ḥimāriyyah* rule ignores the principle of *'Aṣabah*.

32. NEPHEW

- Nephews are defined as sons of brothers and sisters. Note that in *Sharī'* law only those nephews related to the deceased by blood are entitled to inherit.
- Since there can be three types of brothers and three types of sisters (full, consanguine and uterine), it follows that there can be six types of nephews.
- The six types of nephews are:
  - son of full brother SBf
  - son of consanguine brother SBc
  - son of uterine brother SBu
  - son of full sister S$\mathcal{S}f$
  - son of consanguine sister S$\mathcal{S}c$
  - son of uterine sister S$\mathcal{S}u$
- Different nephews inherit in different capacities.
- Sons of full and consanguine brothers inherit as class III residuaries. All other nephews inherit as distant kindred.

32.1 SON OF FULL BROTHER

- The son of the full brother (SBf) inherits as a class III residuary.
- This means that SBf can only inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother

- consanguine brother
- full sister inheriting as residuary
- consanguine sister inheriting as residuary

32.2 SON OF CONSANGUINE BROTHER

- The son of the consanguine brother (SBc) inherits as a class III residuary.
- This means that SBc can only inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother
  - full sister inheriting as residuary
  - consanguine sister inheriting as residuary
  - full brother's son
- If both SBf and SBc are claimants, then SBf totally excludes SBc.

32.3 ALL OTHER NEPHEWS

- All other nephews (SBu, S$\mathcal{S}f$, S$\mathcal{S}c$ and S$\mathcal{S}u$) inherit in the capacity of distant kindred.
- According to the *Ḥanafī Fiqh*, these nephews belong to class III distant kindred and are only entitled to inherit if none of the following are amongst the heirs:
  - children
  - grandchildren (no matter how low)
  - parents
  - grandparents (no matter how high)
  - brother (full, consanguine or uterine)

  - sister (full, consanguine or uterine)
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
  - full paternal uncle (BfF)
  - full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
  - consanguine paternal uncle (BcF)
  - consanguine paternal uncle's son h.l.s. (SBcF, SSBcF etc.)
  - great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
  - great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.
- It is not possible to list all heirs that exclude the nephews who are under *Ḥanafī* law. However, the above list demonstrates how long down the line of inheritance the class III distant kindred are.
- The rules concerning the order of preference amongst the nephews and nieces in class III distant kindred are detailed in section 11.4.5.
- For details of succession of the nephews and nieces as distant kindred according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.
- Note that the distant kindred are entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

33. NIECE

- Nieces are defined as daughters of brothers and sisters.
- Since there can be three types of brothers and three types of sisters (full, consanguine and uterine), it follows that there can be six types of nieces. Note that in *Sharī'* law, only those nieces related to the deceased by blood are entitled to inherit.
- The six types of nieces are:

daughter of full brother	DBf
daughter of consanguine brother	DBc
daughter of uterine brother	DBu
daughter of full sister	D*Sf*
daughter of consanguine sister	D*Sc*
daughter of uterine sister	D*Su*

- All the nieces inherit in the capacity of distant kindred and hence are a long way down the inheritance line.
- According to the *Ḥanafī Fiqh*, these nieces belong to class III distant kindred and are only entitled to inherit if <u>none</u> of the following are amongst the heirs:
  - children
  - grandchildren (no matter how low)
  - parents
  - grandparents (no matter how high)
  - brother (full, consanguine or uterine)
  - sister (full, consanguine or uterine)
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)

  - full paternal uncle (BfF)
  - full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
  - consanguine paternal uncle (BcF)
  - consanguine paternal uncle's son h.l.s. (SBcF, SSBcF etc.)
  - great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
  - great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.
- It is not possible to list all heirs that exclude the nieces who are distant kindred under *Ḥanafī* law. However, the above list demonstrates how long down the line of inheritance the class III distant kindred are.
- The rules concerning the order of preference amongst the nephews and nieces in class III distant kindred are detailed in section 11.4.5.
- For details of succession of the nephews and nieces as distant kindred according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.
- Note that the distant kindred are entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

34. GRAND-NEPHEWS AND GRAND-NIECES

- Grand-nephews and grand-nieces are children of nephews and nieces. There are also called great nephews and great nieces.
- Since there are six different types of nephews and six different types of nieces, it follows that we can theoretically have 24 different types of grand-nephews and grand-nieces. Note that in *Sharī'* law only those grand-nephews and grand-nieces related to the deceased by blood are entitled to inherit.
- Different grand-nephews and grand-nieces inherit in different capacities.
- The grand-nephews SSBf and SSBc inherit as class III residuaries. All other grand-nephews and all grand-nieces inherit as distant kindred.

34.1 FULL BROTHER'S SON'S SON (SSBf)

- The full brother's son's son (SSBf) inherits as a class III residuary.
- See section 11.2.5.
- SSBf can only inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother

  - full sister inheriting as residuary
  - consanguine sister inheriting as residuary
  - full brother's son (SBf)
  - consanguine brother's son (SBc)

34.2 CONSANGUINE BROTHER'S SON'S SON (SSBc)

- The consanguine brother's son's son (SSBc) inherits as a class III residuary.
- See section 11.2.5.
- SSBf can only inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother
  - full sister inheriting as residuary
  - consanguine sister inheriting as residuary
  - full brother's son (SBf)
  - consanguine brother's son (SBc)
  - full brother's son's son (SSBf)
- If both SSBf and SSBc are claimants, then SSBf totally excludes SSBc

34.3 ALL OTHER GRAND-NEPHEWS AND GRAND-NIECES

- All the remaining grand-nephews and all the grand-nieces who belong to class III distant kindred.
- According to the *Ḥanafī Fiqh*, these grand-nephews and grand-nieces belong to class III distant kindred and are only entitled to inherit if none of the following are

amongst the heirs:

- children
- grandchildren (no matter how low)
- parents
- grandparents (no matter how high)
- brother (full, consanguine or uterine)
- sister (full, consanguine or uterine)
- nephew
- niece
- full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
- consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
- full paternal uncle (BfF)
- full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
- consanguine paternal uncle (BcF)
- consanguine paternal uncle's son h.l.s. (SBcF, SSBcF etc.)
- great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
- great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.

- It is not possible to list all heirs that exclude the grand-nephews and grand-nieces under *Ḥanafī* law. However, the above list demonstrates how long down the line of inheritance the class III distant kindred are.
- The rules concerning the order of preference amongst the grand-nephews and grand-nieces in class III distant kindred are detailed in section 11.4.5.
- For details of succession of the grand-nephews and grand-nieces as distant kindred according to the Shāfi'ī and *Ḥanbalī Fiqh*, see section 11.4.7.
- Note that the distant kindred are entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

35. UNCLE

- An uncle is defined as the brother of one's father or mother. Note that in Islāmic law only those uncles related to the deceased by blood are entitled to inherit.
- There are theoretically six different types of uncles who are entitled to inherit. We shall discuss each of these individually.
- Not all uncles inherit in the same capacity.
- The full and consanguine paternal uncles inherit in the capacity of class IV residuaries. All the other uncles as well as all the aunts inherit in the capacity of distant kindred.

35.1 FULL PATERNAL UNCLE (BfF)

- The full paternal uncle (BfF) has the same parents as the father of the deceased.
- The full paternal uncle inherits as a class IV residuary.
- The full paternal uncle will only be entitled to inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother
  - full sister inheriting as residuary
  - consanguine sister inheriting as residuary
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)

35.2 CONSANGUINE PATERNAL UNCLE (BcF)

- The consanguine paternal uncle (BcF) and the father of the deceased both have the same father but different mothers.
- The consanguine paternal uncle inherits as a class IV residuary.
- The consanguine paternal uncle will only be entitled to inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother
  - full sister inheriting as residuary
  - consanguine sister inheriting as residuary
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
  - full paternal uncle

35.3 ALL OTHER UNCLES (BuF, BfM, BcM and BuM)

- The uterine paternal uncle (BuF), the full maternal uncle (BfM), consanguine maternal uncle (BcM) and uterine maternal uncle (BuM) all inherit in the capacity of distant kindred.
- The uterine paternal uncle (BuF) and the father of the deceased have the same mother but different fathers.
- The full maternal uncle (BfM) and the mother of the deceased have the same mother and father.
- The consanguine maternal uncle (BcM) and the mother of the deceased have the same father but different mothers.
- The uterine maternal uncle (BuM) and the mother of the deceased have the same mother but different fathers.
- According to the *Ḥanafī Fiqh*, all these uncles belong to class IV distant kindred and are only entitled to inherit if none of the following are amongst the heirs:
  - children
  - grandchildren (no matter how low)
  - parents
  - grandparents (no matter how high)
  - brother and all his descendants h.l.s.
  - sister and all her descendants h.l.s.
  - full paternal uncle (BfF)
  - full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
  - consanguine paternal uncle (BcF)
  - consanguine paternal uncle's son h.l.s. (SBcF, SSBcF etc.)
  - great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
  - great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.
- It is not possible to list all heirs that exclude the uncles who are distant kindred under Ḥanafī law. However, the above list demonstrates how long down the line of inheritance the class IV distant kindred are.
- All the uncles and aunts belonging to class IV distant kindred do not have equal preference. The rules concerning the order of preference amongst the uncles and aunts in class IV distant kindred are detailed in section 11.4.6a.
- For details of succession of the uncles and aunts as distant kindred according to the *Shāfi'ī* and *Ḥanbalī Fiqh*,

see section 11.4.7.

- Note that the distant kindred are entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

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36. GREAT UNCLE

- A great uncle is defined as the brother of one's grandfather or grandmother. Note that in *Sharī'* law, only those great uncles related to the deceased by blood are entitled to inherit.
- Not all great uncles inherit in the same capacity.
- The full and consanguine great paternal uncles (BfFF and BcFF) inherit in the capacity of class IV residuaries. All the other great uncles inherit in the capacity of distant kindred.

36.1 FULL GREAT PATERNAL UNCLE (BfFF)

- The full great paternal uncle (BfFF) is the full brother of the paternal grandfather of the deceased.
- The full great paternal uncle inherits as a class IV residuary.
- The full great paternal uncle will only be entitled to inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother
  - full sister inheriting as residuary
  - consanguine sister inheriting as residuary
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)

- full paternal uncle
- consanguine paternal uncle
- full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
- consanguine paternal uncle's son h.l.s. (SBcF, SSBcF etc.)

36.2 CONSANGUINE GREAT PATERNAL UNCLE (BcFF)

- The consanguine great paternal uncle (BcFF) is the consanguine brother of the paternal grandfather of the deceased.
- The consanguine great paternal uncle inherits as a class IV residuary.
- The consanguine great paternal uncle (BcFF) will only be entitled to inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother
  - full sister inheriting as residuary
  - consanguine sister inheriting as residuary
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
  - full paternal uncle
  - consanguine paternal uncle
  - full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
  - consanguine paternal uncle's son h.l.s. (SBcF, SSBcFF etc.)
  - full great paternal uncle (BfFF)

36.3 ALL OTHER GREAT UNCLES

- All other great uncles inherit in the capacity of distant kindred.
- According to the *Ḥanafī Fiqh*, these great uncles belong to class IV distant kindred and are only entitled to inherit if none of the following are amongst the heirs:
  - children
  - grandchildren (no matter how low)
  - parents
  - grandparents (no matter how high)
  - brother and all his descendants h.l.s.
  - sister and all her descendants h.l.s.
  - all uncles and all their descendants h.l.s
  - all aunts and all their descendants h.l.s
  - great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
  - great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.
- It is not possible to list all heirs that exclude the great uncles who are distant kindred under Ḥanafī law. However, the above list demonstrates how long down the line of inheritance the class IV distant kindred are.
- All the great uncles and great aunts belonging to class IV distant kindred do not have equal preference. The rules concerning the order of preference amongst the great uncles and great aunts in class IV distant kindred are detailed in section 11.4.6c.
- For details of succession of the uncles and aunts as distant kindred according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.
- Note that the distant kindred are entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

37. AUNT

- An aunt is defined as a sister of one's father or mother. Note that in Islāmic law only those aunts related to the deceased by blood are entitled to inherit.
- There are theoretically six different types of aunts who are entitled to inherit, thus:

full paternal aunt	$\mathcal{S}f$F
full maternal aunt	$\mathcal{S}f$M
consanguine paternal aunt	$\mathcal{S}c$F
consanguine maternal aunt	$\mathcal{S}c$M
uterine paternal aunt	$\mathcal{S}u$F
uterine maternal aunt	$\mathcal{S}u$M

- All aunts (paternal and maternal) inherit in the capacity of distant kindred.
- According to the *Ḥanafī Fiqh*, all aunts belong to class IV distant kindred and are only entitled to inherit if none of the following are amongst the heirs:
  - children
  - grandchildren (no matter how low)
  - parents
  - grandparents (no matter how high)
  - brother and all his descendants h.l.s.
  - sister and all her descendants h.l.s.
  - full paternal uncle (BfF)
  - full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
  - consanguine paternal uncle (BcF)
  - consanguine paternal uncle's son h.l.s. (SBcF, SSBcF etc.)
  - great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.

  - great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.
- It is not possible to list all heirs that exclude the aunts who are distant kindred under Ḥanafī law. However, the above list demonstrates how long down the line of inheritance the class IV distant kindred are.
- All the uncles and aunts belonging to class IV distant kindred do not have equal preference. The rules concerning the order of preference amongst the class IV distant kindred are detailed in section 11.4.6.
- Study the examples 32-38 for illustration of the rules governing inheritance amongst the uncles and aunts of class IV distant kindred.
- For details of succession of the aunt according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.
- Note that the distant kindred are entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

38. GREAT AUNT

- A great aunt is defined as the sister of one's grandfather or grandmother. Note that in *Sharī'a* law only those great aunts related to the deceased by blood are entitled to inherit.
- All great aunts inherit in the capacity of class IV distant kindred.
- According to the *Ḥanafī Fiqh*, all the great aunts belong to class IV distant kindred and are a very, very long way down the inheritance line. Amongst the class IV distant kindred, the great aunts are a long way down and therefore, very unlikely to inherit under normal circumstances. Great aunt will only be entitled to inherit if none of the following are amongst the surviving heirs:
  - children
  - grandchildren (no matter how low)
  - parents
  - grandparents (no matter how high)
  - brother and all his descendants h.l.s.
  - sister and all her descendants h.l.s.
  - all uncles and all their descendants h.l.s
  - all aunts and all their descendants h.l.s
  - great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
  - great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.
- It is not possible to list all heirs that exclude the great aunts who are distant kindred under *Ḥanafī* law. However, the above list demonstrates how long down the line of inheritance the class IV distant kindred are.
- All the great uncles and great aunts belonging to class IV distant kindred do not have equal preference. The rules concerning the order of preference amongst the great uncles and great aunts in class IV distant kindred are detailed in section 11.4.6.
- For details of succession of the great uncles and great aunts according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.
- Note that the distant kindred are entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

39. COUSINS

- Cousins are defined as children of uncles and aunts. They are also referred to as first cousins. Note that in *Sharī'* law only those cousins related to the deceased by blood are entitled to inherit.
- The cousin may be male or female and the uncle and aunt may be full, consanguine or uterine. Therefore, there are theoretically 24 different types of cousins based on the "blood" of their immediate ancestor, thus:

SBfF	S$\mathcal{S}_f$F
DBfF	D$\mathcal{S}_f$F
SBcF	S$\mathcal{S}_c$F
DBcF	D$\mathcal{S}_c$F
SBuF	S$\mathcal{S}_u$F
DBuF	D$\mathcal{S}_u$F
SBfM	S$\mathcal{S}_f$M
DBfM	D$\mathcal{S}_f$M
SBcM	S$\mathcal{S}_c$M
DBcM	D$\mathcal{S}_c$M
SBuM	S$\mathcal{S}_u$M
DBuM	D$\mathcal{S}_u$M

- Before one can ascertain the share of the cousin, it is necessary to know the exact blood relationship between the deceased and the claimant cousin. Different cousins claim in different capacities.
- SBfF (full paternal uncle's son) and SBcF (consanguine paternal uncle's son) inherit as class IV residuaries.

- All the other cousins inherit in the capacity of distant kindred.

39.1 FULL PATERNAL UNCLE'S SON (SBfF)

- The cousin who is the full paternal uncle's son (SBfF) inherits as a class IV residuary.
- The full paternal uncle's son (SBfF) is like the full paternal uncle in his absence.
- The cousin who is the full paternal uncle's son (SBfF) will only be entitled to inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother
  - full sister inheriting as residuary
  - consanguine sister inheriting as residuary
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
  - full paternal uncle
  - consanguine paternal uncle

39.2 CONSANGUINE PATERNAL UNCLE'S SON (SBcF)

- The cousin who is the consanguine paternal uncle's son (SBcF) inherits as a class IV residuary.
- The consanguine paternal uncle's son (SBcF) is like the consanguine paternal uncle in his absence.
- The cousin who is the consanguine paternal uncle's son (SBcF) will only be entitled to inherit if none of the

following are amongst the heirs:

- son
- son's son h.l.s. (SS, SSS, SSSS etc.)
- father
- father's father h.h.s. (FF, FFF, FFFF etc.)
- full brother
- consanguine brother
- full sister inheriting as residuary
- consanguine sister inheriting as residuary
- full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
- consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
- full paternal uncle
- consanguine paternal uncle
- full paternal uncle's son (SBfF)

39.3 ALL OTHER COUSINS

- All the other cousins inherit as class IV distant kindred.
- According to the *Ḥanafī Fiqh*, these nieces belong to class IV distant kindred and are only entitled to inherit if none of the following are amongst the heirs:
  - children
  - grandchildren (no matter how low)
  - parents
  - grandparents (no matter how high)
  - brother and all his descendants h.l.s.
  - sister and all her descendants h.l.s.
  - all uncles
  - all aunts
  - full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
  - consanguine paternal uncle's son h.l.s. (SBcF, SSBcF etc.)
  - great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
  - great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.
- It is not possible to list all heirs that exclude the cousins who are distant kindred under *Ḥanafī* law. However, the above list demonstrates how long down the line of inheritance the class IV distant kindred are.
- All the cousins belonging to class IV distant kindred do not have equal preference. The rules applicable to inheritance amongst class IV distant kindred are detailed in section 11.4.6.
- For details of succession of cousins as distant kindred according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.
- Note that the distant kindred are entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

40. CHILDREN OF GREAT UNCLE AND GREAT AUNT

- The children of great uncles and great aunts do not all inherit in the same capacity.
- The sons of full and consanguine great paternal uncles (SBfFF and SBcFF) inherit in the capacity of class IV residuaries. All the other children of great uncles and great aunts inherit in the capacity of class IV distant kindred.

40.1 FULL GREAT PATERNAL UNCLE'S SON (SBfFF)

- SBfFF inherits as a class IV residuary.
- SBfFF is like the full great paternal uncle (BfFF) in his absence.
- The full great paternal uncle's son (SBfFF) will only be entitled to inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother
  - full sister inheriting as residuary
  - consanguine sister inheriting as residuary
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
  - full paternal uncle
  - consanguine paternal uncle
  - full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
  - consanguine paternal uncle's son h.l.s.(SBcF, SSBcFF etc.)
  - full great paternal uncle
  - consanguine great paternal uncle

40.2 CONSANGUINE GREAT PATERNAL UNCLE'S SON (SBcFF)

- SBcFF inherits as a class IV residuary.
- SBcFF is like the consanguine great paternal uncle (BcFF) in his absence.
- The consanguine great paternal uncle's son (SBcFF) will only be entitled to inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother
  - full sister inheriting as residuary
  - consanguine sister inheriting as residuary
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
  - full paternal uncle
  - consanguine paternal uncle
  - full paternal uncle's son h.l.s. (SBfF, SSBfF etc.)
  - consanguine paternal uncle's son h.l.s.(SBcF, SSBcFF etc.)
  - full great paternal uncle (BfFF)
  - consanguine great paternal uncle (BcFF)

- full great paternal uncle's son (SBfFF)

ALL OTHER CHILDREN OF GREAT UNCLES AND AUNTS

- All the other children of great uncles and great aunts (DBfFF, DBcFF, S*S*FF, SBuFF etc.) inherit in the capacity of class IV distant kindred.
- Note that the distant kindred are entitled to inherit according to the *Ḥanafī, Shāfi'ī* and *Ḥanbalī Fiqh* but are not entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).
- Children of great uncles and great aunts in class IV distant kindred are a very, very long way down the inheritance line and very unlikely to inherit under normal circumstances.
- Children of great uncles and great aunts will only be entitled to inherit if none of the following are amongst the surviving heirs:
  - children
  - grandchildren (no matter how low)
  - parents
  - grandparents (no matter how high)
  - brother and all his descendants h.l.s.
  - sister and all her descendants h.l.s.
  - all uncles and all their descendants h.l.s
  - all aunts and all their descendants h.l.s
  - great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
  - great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.
- It is not possible to list all heirs that exclude the children of great uncles and great aunts under Ḥanafī law.

However, the above list demonstrates how long down the line of inheritance the class IV distant kindred are.

- The rules applicable to inheritance amongst class IV distant kindred are detailed in section 11.4.6.
- For details of succession of distant kindred according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.
- Note that the distant kindred are entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

41. CHILDREN OF COUSINS

- Because there are 24 different types of cousins, it means there are 48 different types of children of cousins. That is to say a son and a daughter of each cousin.
- Note that in *Sharī* law, only those children of cousins related to the deceased by blood are entitled to inherit.
- Before one can ascertain the share of the child of a cousin it is necessary to know the exact blood relationship between the deceased and the child of the cousin. Different children of cousins claim in different capacities.
- SSBfF (full paternal uncle's son's son) and the SSBcF (consanguine paternal uncle's son's son) inherit as class IV residuaries.
- All other children of cousins belong to class IV distant kindred.

41.1 FULL PATERNAL UNCLE'S SON'S SON (SSBfF)

- The claimant who is the full paternal uncle's son's son (SSBfF) inherits as a class IV residuary.
- The full paternal uncle's son's son (SSBfF) will only be entitled to inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother
  - full sister inheriting as residuary

  - consanguine sister inheriting as residuary
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
  - full paternal uncle
  - consanguine paternal uncle
  - full paternal uncle's son (SBfF)
  - consanguine paternal uncle's son (SBfF)

41.2 CONSANGUINE PATERNAL UNCLE'S SON'S SON (SSBcF)

- The claimant who is the consanguine paternal uncle's son's son (SSBcF) inherits as a class IV residuary.
- The consanguine paternal uncle's son's son (SSBfF) will only be entitled to inherit if none of the following are amongst the heirs:
  - son
  - son's son h.l.s. (SS, SSS, SSSS etc.)
  - father
  - father's father h.h.s. (FF, FFF, FFFF etc.)
  - full brother
  - consanguine brother
  - full sister inheriting as residuary
  - consanguine sister inheriting as residuary
  - full brother's son h.l.s. (SBf, SSBf, SSSBf etc.)
  - consanguine brother's son h.l.s. (SBc, SSBc, SSSBc etc.)
  - full paternal uncle
  - consanguine paternal uncle
  - full paternal uncle's son (SBfF)
  - onsanguine paternal uncle's son (SBcF)
  - full paternal uncle's son's son (SSBfF)

41.3 ALL OTHER CHILDREN OF COUSINS

- All the other children of cousins inherit in the capacity of class IV distant kindred.
- Note that the distant kindred are entitled to inherit according to the *Ḥanafī*, *Shāfi'ī* and *Ḥanbalī Fiqh* but are not entitled to inherit at all according to traditonal *Mālikī Fiqh* (see section 11.4.1).
- Children of cousins in class IV distant kindred are a very, very long way down the inheritance line and will only be entitled to inherit if none of the following are amongst the surviving heirs:
  - children
  - grandchildren (no matter how low)
  - parents
  - grandparents (no matter how high)
  - brother and all his descendants h.l.s.
  - sister and all her descendants h.l.s.
  - all uncles
  - all aunts
  - all cousins
  - full paternal uncle's son h.l.s. (SSBfF, SSSBfF etc.)
  - consanguine paternal uncle's son h.l.s. (SSBcF, SSSBcF etc.)
  - great paternal uncles (BfFF and BcFF) and their male descendants h.l.s.
  - great great paternal uncles (BfFFF and BcFFF) and their male descendants h.l.s.
- It is not possible to list all heirs that exclude the children of cousins under *Ḥanafī* law. However, the above list demonstrates how long down the line of inheritance the class IV distant kindred are.
- The rules and order of inheritance amongst the children of cousins in class IV distant kindred are detailed in section 11.4.6.
- For details of succession of the distant kindred according to the *Shāfi'ī* and *Ḥanbalī Fiqh*, see section 11.4.7.
- Note that the distant kindred are entitled to inherit at all according to traditional *Mālikī Fiqh* (see section 11.4.1).

42. MISSING PERSON (*MAFQŪD*)

Key points:

- A missing person is someone whose whereabouts are unknown, it is not certain whether he is dead or alive.
- The share of the missing heir is reserved until he returns or is declared dead and the other existing heirs are given the minimum share after calculating all the possibilities as shown in the examples in this chapter.
- If it is established that the missing heir was alive at the time of death of the propositus, the share reserved for the missing heir is distributed amongst his own heirs.
- If it is established that the missing heir died before the death of the propositus, then the share reserved for the missing heir devolves upon the heirs of the propositus who were alive at the time of death of the propositus and not upon the heirs of the missing person.
- If a judicial decree of death is passed on a missing person, then for the purposes of the missing heir inheriting from others, his time of death is considered to be the date of his disappearance and not the date of his judicial decree of death.

Positive evidence is required that a missing heir was indeed alive at the time of death of the propositus for the missing heir's reserved share to go to his own heirs.

42.1 HOW LONG SHOULD ONE WAIT FOR A MISSING HEIR

- Opinions vary as to the length of time that should elapse before a missing person is presumed dead. The time period is based on what is considered to be the normal life span.
- It is reported that the view of Imām Abū Ḥanīfah (رحمه الله) was 120 years from the time of birth, 110 years according to Imām Muḥammad (رحمه الله) and 105 years according to Imām Abū Yūsuf (رحمه الله).
- The *Ḥanafī* jurists have taken the normal life span of a man to be 90 years, thereafter he is presumed dead.
- The dominant view of the *Mālikī Fiqh* is that the normal life span is seventy years although disappearance under specific situations, such as war and fatal epidemic, a judicial decree of death may be obtained prior to the expiry of the recognised life span.
- The *Shāfi'ī* and *Ḥanbalī Fiqh* allow the court to determine the length of time that should elapse before a missing person is declared dead.
- This time period may be as short as 4 years from the time of disappearance according to Imām Ibn Ḥanbal(رحمه الله) when there is strong presumption of death (such as a shipwreck, battle, plague) and seven years according to the *Shāfi'ī Fiqh*.
- One view of the *Shāfi'ī Fiqh* is that decree of death for a missing person may be issued by the court after

expiration of a period that no one of his kind is living.

Example 144

A man dies leaving behind two daughters, a missing son and a son's son.

The estate will be distributed as follows:

	2D	SS	S (missing)
If the missing son is alive	1/2	Excluded	1/2
If the missing son is dead	2/3	1/3	–
Preliminary distribution	1/2	Nil	

If the missing son is found to be alive, he will totally exclude the son's son. A preliminary distribution of the estate can be made as shown until it is determined whether the son is alive or dead.

Example 145

A woman dies leaving behind a husband, a mother, a paternal uncle (BfF) and a missing father.

The estate will be distributed as follows:

	H	M	BfF	F (missing)
If the missing father is alive	1/2	1/6	Excluded	1/3
If the missing father is dead	1/2	1/3	1/6	–
Preliminary distribution	1/2	1/6	Nil	

If the missing father is found to be alive he, will totally exclude the paternal uncle (BfF). A preliminary distribution of the estate can be made as shown until it is determined whether the father is alive or dead. See section 15.2.

Example 146

A woman dies leaving behind a husband, a mother, a full sister and a missing full brother.

The estate will be distributed as follows:

	H	M	Sf	Bf (missing)
If the missing brother is alive	1/2	1/6	1/9	2/9
If the missing brother is dead	3/8	1/4	3/8	–
Preliminary distribution	3/8	1/6	1/9	

Note that the doctrine of *'Awl* (see section 46.2) is applied if the full brother is dead.

In this case the husband inherits more if the full brother is alive than if he is dead. A preliminary distribution of the estate can be made as shown until it is determined whether the brother is alive or dead. This example shows why it is necessary to work out all possibilities prior to distributing the minimum share to each heir.

Example 147

A woman dies leaving behind a husband, a full sister, a consanuine sister and a missing consanguine brother.

The estate will be distributed as follows:

	H	Sf	Sc	Bc (missing)
If the missing brother is alive	1/2	1/2	Nil	Nil
If the missing brother is dead	3/7	3/7	1/7	–
Preliminary distribution	3/7	3/7	Nil	

In this case if the consanguine bother is alive he converts the consanguine sister into a residuary and both inherit nothing as there is no residue. If the consanguine brother is dead the consanguine sister inherits as a sharer and the doctrine of *'Awl* is applied. The consanguine brother is an unlucky kinsman or ominous brother (*Al-'Akhul-Mash'um*) for the consanguine sister (see section 23.1.4).

42.2 INHERITING FROM A MISSING PERSON (*MAFQŪD*)

Key points:

- A missing person is someone whose whereabouts are unknown, it is not certain whether he is dead or alive.
- A person is alive unless proven otherwise, which means that a missing individual's estate cannot be inherited until the person is dead (actual or declared dead by a court of law).
- All the four *Sunni Fiqh* agree that the estae of a missing person is protected form being inherited.
- Succession to a missing person's estate starts from time of judicial decree of death
- See section 42.1 for the length of time that should elapse before a missing person is presumed dead.
- Only heirs alive at the time of death (actual or declared by a court of law) of an individual are entitled to inherit.
- If a missing person turns up alive after he has been declared dead, the judicial decree of death is obviously no longer applicable and he can recover his estate which is still in the possession of the heirs.