



**NATIONAL OPEN UNIVERSITY OF NIGERIA
FACULTY OF ART**

COURSE CODE: ISL438

COURSE TITLE: AL-MĪRĀTH: ISLAMIC LAW OF SUCCESSION

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Table of Contents

Page

Title Page	
Publisher	
Table of Contents	
Introduction.....	
The Aims and Objectives.....	
Working through this Course.....	
Study Units.....	
References and other Resources.....	
Assignment File.....	
Assessment.....	
Tutor – Marked Assignments.....	
Presentation Schedule.....	
Course Overview/Presentation Schedule.....	
Final Examination and Grading.....	
Course Marking Scheme.....	
How to Get the Most from this Course.....	
Tutor and Tutorials	
Conclusion.....	
Summary	

INTRODUCTION

Al-Mīrāth: Islamic Law of Succession is a two-credit unit compulsory course in the B.A. Degree, Islamic Studies programme of the National Open University of Nigeria. The course which is usually taught in the final year gives the reader a clear picture of broad principles of inheritance in Islam; the heirs and their shares; impediments; various kinds of elimination and substitutions; with particular emphasis on the verses of inheritance in *Sūratu `n-Nisā`*. The topics covered are as listed under the Study Units section of this Guide in the next page to be specific.

The Aims and Objectives of this Course.

The course has fourteen units each of which has its instructional objectives. You are expected to read the objectives of each unit and bear them in mind as you go through the unit. Nevertheless, the following are overall objectives of the course. After readers have gone through the whole course he/she should be able to expatiate and analyze the following:

- Principles of Islamic Law of Inheritance.
- Wealth acquisition in Islam.
- Inheritance and Cultural Practices.
- As-hābul Furūd (Fixed Sharers) in Islamic inheritance
- ‘*Asabah* (Residuaries).
- Duality of Status of Siblings in Islamic Law of Inheritance.
- *Dhul arHām*(Distant Relatives) in Islamic Inheritance.
- Impediments to Inheritance in Islam.
- Substitutes for Direct Ascendants and Direct Descendants in Islamic Inheritance
- *Hujb* in Inheritance.
- Women and Inheritance in the Islamic Law.
- Circumstances where Female Heirs are allotted the same or Higher Proportion of Inheritance Male Heirs.
- *Awl*: Equitable and Proportional Reduction of Fixed Shares in Inheritance

Working through this Course

The Components of this Course which you are expected to work through without leaving one on touched are:

1. This Course Guide
2. Study Units
3. Textbooks
4. Assignments File
5. Presentation Schedule

STUDY UNITS

There are sixteen (16) units (of five modules) in this course. These are listed thus:

MODULE 1

Unit 1 The Basic Principles of Islamic Law of Inheritance

Unit 2 Legitimate Means of Acquiring Wealth in Islam

Unit 3 Cultural Practices on Inheritance

MODULE 2

Unit 1 Sources of Islamic Law of Inheritance

Unit 2 Islamic Provisions for Wealth Circulation

Unit 3 First-Line Charges Against the Property of a Deceased Muslim

MODULE 3

Unit 1 Categories of Heirs: As-hābul Furūd (Fixed Sharers)

Unit 2 'Asabah (Residuaries)

Unit 3 Duality of Status of Siblings in Islamic Law of Inheritance

Unit 4 The Place of *dhul arHām*(Distant Relatives) in Islamic Inheritance

MODULE 4

Unit 1 Impediments to Inheritance in Islam

Unit 2 Substitutes for Direct Ascendants and Direct Descendants in Islamic Inheritance

Unit 3 Hujb: Displacement in Inheritance

MODULE 5

Unit 1 Women and the Islamic Law of Inheritance

Unit 2 Circumstances where Female Heirs are allotted the same or Higher Proportion of Inheritance Male Heirs

Unit 3 Awl: Equitable and Proportional Reduction of Fixed Shares in Inheritance

References and Other Resources

Every unit has a list of references and further reading designed to enhance and deepen learner's knowledge on the course. These are some of them, try as much as possible to lay your hands on the materials (some are in soft and hard copies).

- Oloyede Is-haq O. (1987) Shariah Versus Secularism in Nigeria, Lagos: IPB
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- Abdul Azim Islahi (1988) Economic Concept of Ibn Taimiyyah Leicester: the Islamic Foundation.
- Maulana Muhammad Ali (1986), The Religion of Islam. New Delhi: Taj Company.
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Printers Limited.

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- Ambali, M.A. (1995), *The Place of Women in Islamic Scheme of Things*, Ilorin: Kewulere Press Ltd.
- As-Sayyid Sabiq (1983), *Fiqhus-Sunnah*, Lebanon: Darul Fikr.
- Muhammad Rida (1975), *Muhammad Rasulullah*, Lebanon: Darul Fikr.
- Abdul Hamid Sidiqi (nd), *Sahih Muslim*, Lebanon: Dar Al-Arabia.
- Muhammad Asad (1980), *The Message of the Qur'an Gibraltar: Dar Al-Andalus*.
- Abdul Rahman Al-Jazairi (1986), *The Book of Jurisprudence on the Four Schools*, Lebanon: Darul Kutubul Ilmiyyah.
- Abubakr Jabir (1976), *Minhajul Muslim*, Lebanon: Darul Fikr.
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- Abdul Azim A (1978), *Faridatu Allah Fil Mirath, Wal Wasiya*, Darul Ansar, Cairo.
- Muhamad Asad (1980), *The Message of the Qur'an, Gibraltar: Dar Al-Andalus*.
- Asaf A.A. Fyzee (1981), *Outlines of Muhammadan Law New Delhi: Oxford University Press*.
- Abubakr b. Hasan Al-Katsin awi (nd) *As-halul Madarik Lebanon: Darul Fikr*.
- Salih Abdul Sami Al-Azhari (nd) *Jawahiril iklil, Commentary on Khalil's Muhkhtasar Lebanon: Darul Fikr*.

Assignment File

Here, there are details of work you must do and submit to your tutor for making. Your scores from these assignments shall be used as part of your final marks in the course. Detail of this shall be found in ASSIGNMENT FILE and in Course Guide in the assignment section. Note that ASSIGNMENT will be marked based on tutor-marked assignment (TMAs) and a final written examination at the end of the course.

Assessment

Your assessment will be based on tutor-marked assignments (TMAs) 30% and a final examination which you will write at end of the course 70%.

Tutor Marked Assignment

Each unit has at least three or four assignments. You are expected to work through all the assignments and submit them for assessment. Your tutor will assess the assignments and select four, which will constitute the 30% of your final grade. The tutor-marked assignments may be presented to you in a separate file. Note that there are tutor-marked assignments for you. It important you do them and submit for assessment.

Presentation Schedule

The Presentation Schedule included in your course materials gives you the important dates for the completion of tutor-marked assignments and attending tutorials. Remember, you are required to submit all your assignment by the due date. You should guard against falling behind in your work.

Course Overview and Presentation of Schedule (Module 1)

Unit Title of Work Weeks

Activity

Assignments

Module1 Sociological Impacts of the Fundamentals of Islam

Unit 1 The Basic Principles of Islamic Law of Inheritance – Week 1

Unit 2 Legitimate Means of Acquiring Wealth in Islam - Week 1

Unit 3 Cultural Practices on Inheritance - Week 2

MODULE 2

Unit 1 Sources of Islamic Law of Inheritance - Week 3

Unit 2 Islamic Provisions for Wealth Circulation - Week 3

Unit3 First-Line Charges Against the Property of a Deceased Muslim – Week 4

MODULE 3

Unit 1 Categories of Heirs: As-hābul Furūd (Fixed Sharers) – Week 5

Unit 2 ‘*Asabah* (Residuaries) - Week 6

Unit 3 Duality of Status of Siblings in Islamic Law of Inheritance – Week 7

Unit 4 The Place of *dhul arḤām*(Distant Relatives) in Islamic Inheritance – Week 8

MODULE 4

Unit 1 Impediments to Inheritance in Islam - Week 9

Unit 2 Substitutes for Direct Ascendants and Direct Descendants in Islamic Inheritance - Week 10

Unit 3 Hujb: Displacement in Inheritance - Week 11

MODULE 5

Unit 1 Women and the Islamic Law of Inheritance – Week 12

Unit 2 Circumstances where Female Heirs are allotted the same or Higher Proportion of Inheritance Male Heirs - Week 13

Unit 3 Awl: Equitable and Proportional Reduction of Fixed Shares in Inheritance – Week 13

Revision Week 14

Examination Week 15

Final Examination and Grading

At the end of this course, you will write a final examination, which shall constitute 70% of your grade. In the examination, you will be required to answer three (3) questions out of at least five (5) questions.

Course Marking Scheme

This table shows the actual marks allocations

Assessment	Marks
Four Assignments	Best three marks of the four assignments count as 30%
Final Examination	70% of overall marks
Total	100% of course marks

How to Get the Most from this Course

In distance learning, the study units replace the university lecture. This is one of its great advantages. You can read and work through specially designed study materials at your own pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to the lecturer. In the same way a lecturer might give you some reading to do, the study units tell you when to read, and which are your text materials or set books. You are provided exercises to do at appropriate points, just as a lecturer might give you an in-class exercise. Each of the study units follows a common format. The first item is an introduction to the subject matter of the unit, and how a particular unit is integrated with the other units and the course as a whole. Next to this is a set of learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. These learning objectives are meant to guide your study. The moment a unit is finished, you must go back and check whether you have achieved the objectives. If this is made a habit, then you will significantly improve your chances of passing the course. The main body of the unit guides you through the required reading from other sources. This will usually be either from your set books or from a Reading section. The following is a practical strategy for working through the course. If you run into any trouble, telephone your tutor. Remember that your tutor's job is to help you. When you need assistance, do not hesitate to call and ask your tutor to provide it.

1. Read this Course Guide thoroughly, it is your first assignment.
2. Organize a Study Schedule. Design a 'Course Overview' to guide you through the Course. Note the time you are expected to spend on each unit and how the assignments relate to the units. Important information, e.g. details of your tutorials, and the date of the first day of the Semester is available from the study centre. You need to gather all the information into one place, such as your diary or a wall calendar. Whatever method you choose to use, you should decide on and write in your own dates and schedule of work for each unit.
3. Once you have created your own study schedule, do everything to stay faithful to it. The major reason that students fail is that they get behind with their course work. If you get into difficulties with your schedule, please, let your tutor know before it is too late for help.
4. Turn to Unit 1, and read the introduction and the objectives for the unit.
5. Assemble the study materials. You will need your set books and the unit you are studying at any point in time.
6. Work through the unit. As you work through the unit, you will know what sources to consult for further information.
7. Keep in touch with your Study Centre. Up-to-date course information will be continuously available there.
8. Well before the relevant due dates (about 4 weeks before the dates), keep in mind that you will learn a lot by doing the assignment carefully. They have been designed to help you meet the objectives of the course and, therefore, will help you pass the examination. Submit all assignments not later than the due date.
9. Review the objectives for each study unit to confirm that you have achieved them. If you feel unsure about any of the objectives, review the study materials or consult your tutor.
10. When you are confident that you have achieved a unit's objectives, you can start on the next unit. Proceed unit by unit through the course and try to pace your study so that you keep yourself on schedule.
11. When you have submitted an assignment to your tutor for marking, do not wait for its return before starting on the next unit. Keep to your schedule. When the Assignment is returned, pay particular attention to your tutor's comments, both on the Tutor-Marked Assignment form and also the written comments on the ordinary assignments.

12. After completing the last unit, review the course and prepare yourself for the final examination. Check that you have achieved the unit objectives (listed at the beginning of each unit) and the course objectives (listed in the Course Guide).

Tutors and Tutorials

The dates, times and locations of these tutorials will be made available to you, together with the name, telephone number and address of your tutor. Your tutor will mark each assignment. Pay close attention to the comments your tutor might make on your assignments as these will help in your progress. Make sure that assignments reach your tutor on or before the due date. Your tutorials are important, therefore try not to skip any. It is an opportunity to meet your tutor and your fellow students. It is also an opportunity to get the help of your tutor and discuss any difficulties encountered on your reading.

Summary

In this Course Guide, we have provided you a general overview of *ISL438: Al-Mīrāth* – Islamic Law of Succession in which students pursuing Degree in Islamic Studies programme must two credit Units. The Course Aims and Objectives and what learners will gain working through the Course Material and its Study Units are stated clearly at the onset. We have also provided you a list of textbooks and references for your further reading. As an inference in the Guide, to develop an active interest in the Course is a prerequisite for its successful completion. Assess yourself through the Self Assessment Exercises (SAEs). You will equally be assessed for grading purposes through the Tutor-Marked Assignments (TMAs). Thus to do well- in the course, you must get yourself organized and try to conform to the presentation schedule.

Conclusion

Much as I cannot promise you a too-easy ride on this course, I equally do not envisage much difficulty as long as you play the roles assigned to you in the whole exercise.

We wish you best of luck and success in the course.

**COURSE
GUIDE**

ISL438: *Al-Mirath*: Islamic Law of Succession

CONTENT

MODULE 1

- Unit 1 The Basic Principles of Islamic Law of Inheritance
- Unit 2 Legitimate Means of Acquiring Wealth in Islam
- Unit 3 Cultural Practices on Inheritance

MODULE 2

- Unit 1 Sources of Islamic Law of Inheritance
- Unit 2 Islamic Provisions for Wealth Circulation
- Unit 3 First-Line Charges Against the Property of a Deceased Muslim

MODULE 3

- Unit 1 Categories of Heirs: As-hābul Furūd (Fixed Sharers)
- Unit 2 *Asabah* (Residuaries)
- Unit 3 Duality of Status of Siblings in Islamic Law of Inheritance
- Unit 4 The Place of *dhul arḤām* (Distant Relatives) in Islamic Inheritance

MODULE 4

- Unit 1 Impediments to Inheritance in Islam
- Unit 2 Substitutes for Direct Ascendants and Direct Descendants in Islamic Inheritance
- Unit 3 Hujb: Displacement in Inheritance

MODULE 5

- Unit 1 Women and the Islamic Law of Inheritance
- Unit 2 Circumstances where Female Heirs are allotted the same or Higher Proportion of Inheritance Male Heirs
- Unit 3 Awl: Equitable and Proportional Reduction of Fixed Shares in Inheritance

MODULE 1

Unit 1 The Basic Principles of Islamic Law of Inheritance

Unit Structure

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 Background to the basic principles of Islamic law of inheritance
- 1.4 Fundamentals in Islamic law of inheritance
 - 1.4.1 The Religion of Islam
 - 1.4.2 The importance of knowledge of inheritance
 - 1.4.3 Dignity of Labour
 - 1.4.4 The Distributable wealth
 - 1.4.5 Confirmation of death of the person as a pre-requisite for inheritance
 - 1.4.6 The shares and the principle of fairness
- 1.5 Summary
- 1.6 References / further Reading
- 1.7 Possible Answers to Self-Assessment Exercises (SAEs)

1.1 Introduction

The ultimate owner of all properties is Allah. This becomes very clear to one when one breathes one's last i.e when one is dead. Death is definitely inevitable. Every person shall taste it. The Qur'an says: Every soul shall taste death. After one's death, the real Owner (i.e. Allah) takes control of one's property and this is shared among one's heirs based on the divinely-fixed shares as contained in the holy Qur'an. A person's property includes all the property he leaves behind after his death such as money, clothes, cars, houses, jewelry, ring to mention but a few. In this unit, we shall examine the broad principles of inheritance in Islam. An attempt will also be made to discuss the importance of inheritance in the area of social welfares.

1.2 Learning Outcomes

At the end of this unit, you should be able to:

- Explain why it is Allah who fixes the shares in inheritance
- State the importance of inheritance in Islam.
- Explain how ownership of wealth is determined in Islam.
- Discuss Dignity of Labour in Islam
- Determine the beneficiaries of inheritance.
- Quote some prophetic traditions to show the excellence of *'ilmul farā'id*.

1.3 Background to the basic principles of Islamic law of inheritance

Islamic law of inheritance is a comprehensive and unique law on estate distribution. The formula for distribution of heirs is fully discussed in the Qur'an with few extension and modification by the Prophet under the guidance of Allah. It is a law that differ in nature and form from any form of estate distribution by any culture and tradition because it has justice as its pivot. The law takes care of the portion of all that are entitled to inherit from the property of the deceased either by marriage, by relation or by masterhood.

1.4 Fundamentals in Islamic Law of Inheritance

1.4.1 The Religion of Islam

Islam means peace and the religion is named by Allah (Q5:4). The religion of Islam covers all aspects of life, be it social, economic, moral or political. It leaves no stone unturned in relation to the life of man. Allah says: **مَا فَرَطْنَا فِي الْكِتَابِ مِنْ شَيْءٍ نُمُّ إِلَى رَبِّهِمْ** ...“We have not neglected in the Book a thing. Then unto their Lord they will be gathered (Q 6: 38)” The Glorious Qur’an, contains a number of different rights and restrictions particularly on matters affecting heirs. The Qur’an (Q4:7-13 and Q4:176-177) give specific injunctions as regards inheritance. However, some other verses refer to the issue of inheritance indirectly or broadly. Therefore, a dead person or his heirs are not allowed to dispose the totality of his wealth or estate according to his personal wishes alone. This is because man is guided through the Qur’an on how he can acquire and dispose wealth. Proper distribution of wealth among heirs is a form of *‘ibādah* (worship). Therefore, efforts must be made to seek the knowledge or the assistance of experts, in the administration of inheritance

1.4.2 The Importance of *‘ilmul Farā’id* (Knowledge of Inheritance)

Islamic law of inheritance is known as *‘ilmul farā’id* or *‘ilmul mīrāth*: meaning the knowledge of inheritance or the knowledge of succession. Both refer to the knowledge needed before one can expertly share the estate of a deceased person to its beneficiaries. Inheritance and its knowledge are so important that both the Qur’an and Hadith provide clear injunctions on how a dead person’s property should be shared. In fact, the Prophet did not only consider it to be half of knowledge, he also encouraged people to learn it when he said: “o people! Learn *farā’id* (knowledge of Inheritance). It is half of knowledge”. *‘ilmul farā’id* is also important in the sense that it is a way of alleviating poverty. It raises the living standard of its beneficiaries. It makes a person realise the reality of life in the sense that his wealth is shared to his immediate family and possibly to his extended ones including those people that did not give him helping hands when he needed them. Such persons may be one’s wives or husband. They may also be one’s children. It is therefore necessary for one to do what is most beneficial with one’s wealth before one passes on. The reality that while one accounts for acquisition of wealth, some others should freely inherit and benefit from it on one’s death, is sufficient to curb acquisition tendencies particularly through unlawful means. The allotment of one’s properties to others ought to caution one to limit one’s inordinate lust for wealth which Allah had allotted to others at one’s death.

Abdullah B. Mas’ud reported that the prophet asked me of his companions: -

أَيُّكُمْ مَالٍ وَّارِثُهُ أَحَبُّ إِلَيْهِ مِنْ مَالِهِ

“Who among you loves his heirs’ wealth more than his own?” Their reply was that none of them loved his heirs’ wealth more than his own. The Prophet then Said:

اعلموا أنه ليس منكم من أحد إلا مال وَّارِثُهُ أَحَبُّ إِلَيْهِ مِنْ مَالِهِ، مَالِكَ مَا قَدَّمْتَ وَمَالٍ وَّارِثِكَ مَا أَخَّرْتَ

“Know that none among you that do not prefer his heirs wealth to his own. Your wealth is that which you send forth (as charity etc), and your heirs’ wealth is that which you leave behind”.

Therefore, this knowledge encourages one to be generous and proactive. One does not need to wait till the time when one is experiencing the pangs of death before doing good

acts such as giving charity, helping the downtrodden etc. The Prophet was also reported to have advised against the delay of charity till the point of death. Those that are hale and hearty are encouraged to stretch their cloth when the sun is shining. He said:

أفضل الصدقة أن تتصدق وأنت صحيح تخشى الفقر وتأمل الغنى ولا تمهل حتى إذا بلغت الحلقوم قلت لفلان كذا ولفلان كذا، ألا وقد كان لفلان

“The best type of charity is that which you give when you are healthy and needful of funds, fearing poverty and hoping for wealth. Do not postpone it till when your soul reaches your throat. You then say, “Give so much to so and- so, and so much to so-and-so. Verily, by then, so-and-so had already gotten the much”. If a person is conscious of the Day of Reckoning, and he is taking account of how he amasses wealth, he would avoid corruption and allied offences. It does

not make sense to commit sins in the process of acquiring wealth which on the long run will be left for others to enjoy while one faces the consequence of the illegitimate acquisition one would know that one is accountable to Allah on the Day of Judgement

based on the Hadith of the Prophet which says:

لا تزول قدما ابن آدم يوم القيامة من عند ربه حتى يسأل عن خمس، عن عمره فيما أفناه، وعن شبابه (أو جسمه) فيما أبلاه وعن ماله من أين اكتسبه وفيما أنفقه، وماذا عمل فيما علم؟

A human being’s feet will not depart the presence of his Lord, on the Day of Resurrection, until he is questioned about five things His lifetime – how he spent it?

His youth (his body) - how did he utilise it?

His wealth -how did he earn it and how did he spend it?

And what did he do in regard to what he knew?

As regards its importance, the Prophet exhorted people to learn and teach it the knowledge of inheritance. He also predicted that there would be chaos in any society that abandons it.

عن ابن مسعود قال قال رسول الله صلى الله عليه وسلم: تعلموا العلم وعلموه الناس، تعلموا الفرائض وعلموه الناس، تعلموا القرآن وعلموه الناس،

Abdullah b. Mas’ud said the prophet (PBUH) said: “Learn the knowledge and teach it to the people. Learn the Qur’an and teach it to the people (Sunan ad- Dārimi)

Self-Assessment Exercises 1 (SAEs)

1. What are the ways by which the importance of the knowledge of Islamic Law of inheritance is shown?

1.4.3 Dignity of Labour

In Islam property or wealth is acquired through three lawful ways. One, one may acquire wealth through donations or gift *Hibah* . Islamic concept of gift is different from the concept of gift in other cultures. This will be elaborated upon in subsequent units of this course. Two, it may be acquired through mirath (inheritance) and lastly, it may be gotten through one’s effort i.e. the reward for one’s effort. There is dignity in labour in Islam. In

fact, the Prophet specifically praised the acquiring of wealth through one's sweat. He said:

لأن يأخذ أحدكم حبله فيأتي بحزمة الحطب على ظهره فيبيعهها فيكف الله بها وجهه خير له من أن يسأل الناس
اعطوه
أو منعه.

“That one of you takes his rope and goes to the mountain and brings back a bundle of wood on his back and sells it, so through that Allah save his honour. That is better for him than begging, whether they give him or not”. He also said: “Never has any one eaten better food than what he eats from work done by his hands”. The implication of these traditions of the prophet is that if one acquires wealth through lawful means one would enjoy such wealth which would not serve as a barrier for him in entrance to al-Jannah (Paradise). As good as donation is, a person should not accept it from a person whose source of wealth is unlawful.

If a person is conscious of *'ilmul farā'id*, he would not acquire wealth through unlawful means. The Qur'an constantly reminds man of his return and account to Allah.

وَاتَّقُوا يَوْمًا تُرْجَعُونَ فِيهِ إِلَى اللَّهِ ثُمَّ تُوَفَّى كُلُّ نَفْسٍ مَّا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

“And fear the Day when you will be returned to Allah. Then every soul will be compensated for that it earned and they will not be wronged”.(Q 2: 281)

Self-Assessment Exercises 2 (SAEs)

2. Discuss the dignity of labour in islam

1.4.4 The Distributable Wealth

It must be mentioned that not all the wealth of a person is acceptable for inheritance. The ill-gotten part of the wealth if it is known is not distributable in Islamic law of inheritance. The ill-gotten part should be given to the poor. However, the deceased should not expect rewards from the sadaqah because Allah is pure and he will not accept *sadaqah* that is impure.

إن الله تعالى طيب لا يقبل إلا طيبا

But if heirs do not know the part of wealth that is ill-gotten, there is no sin on them.

1.4.5 Confirmation of Death of the Person as a Condition for Inheritance

Before a person is inherited, he must be confirmed dead. The confirmation may be done by a doctor or through the experience of elderly people. It is not allowed to inherit a living person. Even when a person is missing, his or her property cannot be inherited until the expiration of a period long enough for the expiration of his/her life-span or a period long enough to presume that he is dead depending on the circumstances of his/her missing.

1.4.6 The Shares and the Principle of Fairness

Allah has given each heir his share. Therefore, no heir should take or be given more than his divinely-fixed share. If an heir should take more than his share, he is like a person usurping the rights of an orphan. He is eating nothing but Hell. The implication is that he

would be cast into Hell fire on the Day of Judgement. Even if one fasts through one's lifetime and prays all the five

daily prayers throughout his lifetime, he would be punished on the Day of Reckoning for surping the rights of other heirs. Usurpation of the rights of other heirs is a serious sin, it is a great transgression. This will be made known to such a person on the day when he would be asked to read the book of his deeds. On the day he would say which type of book is this that recorded both small and big sins

وَوُضِعَ الْكِتَابُ فَتَرَى الْمُجْرِمِينَ مُشْفِقِينَ مِمَّا فِيهِ وَيَقُولُونَ يَا وَيْلَتَنَا مَا لِ هَذَا الْكِتَابِ لَا يُغَادِرُ صَغِيرَةً وَلَا كَبِيرَةً إِلَّا أَحْصَاهَا وَوَجَدُوا مَا عَمِلُوا حَاضِرًا وَلَا يَظْلِمُ رَبُّكَ أَحَدًا

“And the record (of deeds) will be placed (open), and you will see criminals fearful of that within it, and they will say, “Oh, woe to us! What is this book that leaves nothing small or great except that it has enumerated it? And they will find what they did present (before them). And your Lord does injustice to no one” (Q18:49). Violation of the divine laws of inheritance attracts heavy punishment. In the same vein, no heir should also be given less than his rights. Every heir must

be adequately catered for. An heir is however allowed to give out his or her own share as charity.

If a person should be given more than his heir and he wants to be saved from the wrath of Allah, he should reject or give the excess to the person whose shares have been taken. Nobody should be wronged. “تُظْلَمُونَ وَلَا تَظْلَمُونَ لَا” “You do no wrong, nor are you wronged” (Q2:279) There must be fairness to every heir. Otherwise, the wrong-doers would not escape Allah's punishment on the Day of Judgment.

1.5 Summary

We have learnt in this unit that Islam regulates all aspects of man particularly the social aspects part of inheritance. The knowledge of Islamic law of inheritance is very important in the sense that it can curb corruption and other allied practices. You have also learned that Allah takes control of a person's property after the person's death. It is good to own property. However, our lecture reveals that it is better owned through lawful means so as not to serve as a barrier for us on the Day of Judgement. We also discussed the aspect of wealth that is distributable in Islamic law of inheritance. The study also touches on the confirmation of death of a person before he is inherited and that the sharing must be fair to all concerned parties.

1.6 References

DLC.

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2.7 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises 1 (SAEs)

1. What are the ways by which the importance of the knowledge of Islamic Law of inheritance is shown?

- The knowledge of Islamic law of inheritance is so important that the two primary sources of Islamic law (the Quran and the sunnah) discussed it
- The prophet Muhammad specifically enjoined Muslims to seek the knowledge of inheritance because of the importance attached to it
- The knowledge is unique in nature because it helps to alleviate poverty in the society
- Distribution of estate based on the principle of inheritance helps to reduce injustice and oppression in the distribution of wealth
- Chaos can be avoided with the distribution of the estate of the deceased based on the principle of *ilm fara'id*
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Self-Assessment Exercises 2 (SAEs)

2. Discuss the dignity of labour in Islam

- Islam has respect for the dignity of individual in the society
- Shariah discourages being idle and depending on people for sustenance
- Islam encourages individuals to have a work doing irrespective of how small the job is provided it can cater for the domestic need of the individual
- The rule for the job and individual will engage in is that it must be a lawful job. Whatever is acquired by a believer must be through a lawful means

UNIT 2 LEGITIMATE MEANS OF ACQUIRING WEALTH IN ISLAM

Unit Structure

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 Background to the basic principles of Islamic law of inheritance
- 2.4 Property and its Ultimate Owner
 - 2.4.1 Private Ownership of Property in Islam
 - 2.4.2 Three Ways of Acquiring Wealth in Islam
- 2.5 Summary
- 2.6 References / further Reading
- 2.7 Possible Answers to Self-Assessment Exercises (SAEs)

2.1 Introduction

To eat from one's labour is praised by the Prophet. This shows the importance of the source of wealth in Islam. When property is being acquired, one should be able to take into considerations the purpose of life (i.e to worship Allah). If this is well understood, one will be careful in the process of wealth acquisition. In this lecture, you will learn the real owner of wealth and that the creatures are trustees. You will also learn about private ownership of wealth and the three ways of acquisition of property.

2.2 Learning Outcomes

At the end of this lecture, you should be able to:

- Explain the definition of wealth
- Discuss how Allah is the real Owner of everything
- Discuss the trusteeship of man in relation to property
- Mention the three of the ways by which wealth is acquired
- Bring out some lessons from relevant Quranic quotations in this lecture.

2.3 Background to legitimate means of acquiring wealth in Islam

Wealth in Islam is an exclusive property of Allah. To Him belongs the dominion of the heaven and the earth. The coming to the world of everybody without anything is a testimony to the fact that whatever one acquires on earth belongs to the creator, the ultimate owner of everything. But even then, man struggles to acquire wealth on earth primarily for his sustenance but Islam enjoins the such struggle must be by legitimate means because he will be held accountable for all he acquired on the day of accountability

2.4 Property and its Ultimate Owner

Property is referred to as *māl* (plural *amwāl*). Allah is the creator of everything. In fact, His divine attributes of creation are seen in all living and non-living things He said, "Our Lord is He who gave each thing its form and then guided (it) Q20:50

On the issue of ownership, Islam affirms that the ultimate owner of everything is Allah.

The Quran Says:

لَهُ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَمَا بَيْنَهُمَا وَمَا تَحْتَ الثَّرَىٰ
تَحْتَ الثَّرَىٰ To Him belong what is in the heavens and what is on the earth and what is in between them and what is under the soil Q20:6 In this verse, Allah tells us that He is

absolute owner. This verse carries a comprehensive definition of everything we can conceive of. It mentions all that is in heaven, on earth, in between, or within the bowels of the earth. Therefore, man is never a real owner, but a trustee. The Quran says: Q57:7

آمَنُوا بِاللَّهِ وَرَسُولِهِ وَأَنْفَقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلِفِينَ فِيهِ فَالَّذِينَ آمَنُوا مِنْكُمْ وَأَنْفَقُوا لَهُمْ أَجْرٌ كَبِيرٌ

“Believe in Allah and His messenger and spend out of that in which He has made you successive inheritors (trustees) for those who have believed among you and spent, there will be a real reward”.

This verse clearly shows that “*khalq*” (creation) is only meant for Allah for He is the Creator of all those things that have fallen to the lot of man as His vicegerent. He did not only create everything (including man), he also subjugated to human being the basic requirements of life such as fire, water and food crops. What man does is to use basic ingredient provided by Allah such as air, water nerves etc to produce some other facilities and materials man does not create from nothing (ex-nihilo) Q..... Allah say: And have you seen that which you sow? Is it you who makes it grow, or are We the grower? If We willed, we could make it (dry) debris, and you would remain in wonders..... And have you seen the water that you drink? Is it you who brought it down from the clouds, or is it We who bring it down?... and have you seen the fire that you ignite? Is it you who produced its tree or are We the producer?”

All these assertions are obvious things man also confirms. Man came into this world with nothing and found everything therein. Who created them? It is Allah, the Owner of various forms of wealth on earth. From these self-evident truths, nothing should be really attributed to man or

regarded as his property. Allah owns everything. All the things considered to be the property of man and whose ownership he has assumed should be ascribed to Allah, the true Creator and Owner. Despite all the realities, Allah still gives man the opportunity of amassing wealth or property. He does not deprive man of owning property. He even allows him to enjoy the fruits of his labour. Allah wants man to search for ways of making progress within His creations and property. Allah gives man sense of possession to develop property for his use. Through His grace wealth or property has been ascribed to man.

2.4.1 Private Ownership of Property in Islam

The Qur’an attributes property to man to foster progress among them. The attribution of property is contained in the Quran. “And do not consume one another’s wealth unjustly or send it (in bribery) to the rulers in order that (they might aid) you to consume a portion of the wealth of the people in sin, while you know (it is unlawful). The examples of those who spend their wealth in the way of Allah and other verses related to man’s ownership are contained in the Quran(Q2:267, Q4:5, Q47:36 etc).

In many verses of the Quran, man is urged to spend in the way of the original Giver, Allah. Who is it that would loan Allah a goodly loan so He may multiply it for him many times over? (Q2:245) Man should see himself as a trustee who holds everything he has on behalf of Allah. Man should surrender his right to Him and so His wish. It is when a person believes that the wealth he has amassed is absolutely his, that he finds it difficult to spend it. But if he is convinced that all his properties are not ultimately his own, he

would readily transfer some the property in his custody to the owner by spending it to those people that deserve it. He will not hoard it instead it will be spent in His cause. Allah warns man not to lose his focus so as to gain His pleasure. This explains why on death of man, Allah, the ultimate owner legislates on the redistribution of the wealth through inheritance. Allah Says: Say (O Muhammad), “if your fathers, your sons, your brothers, your wives, your relatives, wealth which you have obtained, commerce where you fear decline and dwelling with which you are pleased are more beloved to you than Allah and His messenger and Jihad (i.e. striving) in His cause, then wait until Allah executes His command. And Allah does not guide the defiantly disobedient people (Q9:24)

So, it is when the conviction that their worldly possessions belong to them and not to Allah, and that they are not holding them only in trust that they find it extremely difficult to spend in the cause of Allah. But if they are totally convinced) that they own nothing and that their worldly possessions belong to Allah they would be able to spend in Allah’s cause.

Self-Assessment Exercises 1 (SAEs)

1. Discuss the private ownership of wealth in Islam

2.4.2 Three ways of Acquiring Wealth in Islam

As mentioned earlier in this course, in Islam property can only be legitimately acquired through *kasb* or *Iktisāb* (earning work), *Mīrath* (inheritance) and *Hibah*(gift).. It should be noted that *iktisāb* may be through salaries, paid jobs, self-employment, proprietorship etc. Whatever may be the case the sources of wealth must be Sharī‘ah compliant. It means it should not be from unlawful means such as brewery, prostitution, armed robbery and kidnapping. It is allowed for

both males and females to work. The Quran says: men shall have the benefit of what they earn and women shall have the benefit of what they earn (Q4:32). It must be mentioned that Islam does not discourage people (males and females) from becoming very rich even to the extent

of being millionaires or multi-billionaires, but the emphasis is on the source of wealth and the manners of spending. Therefore, no limitation is placed upon the property which an individual may acquire provided it is not sourced illegitimately.

Acquisition of wealth through unlawful means is discouraged. Many Quranic verses such as Q4:29 and Q2:188 speak against unlawful means of getting wealth. Allah says: O you who believed, do not consume one another’s wealth unjustly but only (in lawful) business by

mutual consent. And do not kill yourselves (or one another). Indeed, Allah is to you ever merciful (Q4:29). The following Quranic verses also speak against fraudulent means of acquiring wealth(Q2:188, Q4:58, Q5:33,38, Q2:219, Q5:90)In Islam, dignity of Labour is given priority

has earlier been explained.

Self-Assessment Exercises 2 (SAEs)

2. What are the three ways of acquiring wealth in Islam

2.5 Summary

In this lecture, you have learned:

- That property is referred to as *māl* in Arabic
- From Q20:6 that all that is in heaven, on earth, in between or within the bowels of the earth belongs to Allah alone
- That the corollary of Q20:6 is that man owns nothing. He is only a trustee.

He came to this world with nothing and found everything that makes his sojourn there comfortable. The day he is leaving, he is not taking anything along. All these indicate that he is not the owner. From these self evident truths, it should not be difficult for him to spend the wealth given to him or acquired through inheritance, Hibah (gifts) and work in the way of Allah.

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2.7 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises 1 (SAEs)

1. Discuss the private ownership of wealth in Islam

- The Qur'an attributes ownership of wealth to man
- The ultimate owner of the wealth is Allah, man is only an overseer of the wealth
- In the light of the above, man is enjoined to spend from the wealth in the way of Allah
- It should always be at the back of the mind of man that he is a trustee on the wealth and he shall be called to account for the wealth on the day of judgment
- Man is therefore warned severally not to loose his focus in disposing the wealth entrusted with him

Self-Assessment Exercises 2 (SAEs)

2. What are the three ways of acquiring wealth in Islam

- The shariah encourages man to seek wealth in a halal means
- The law indentifies three ways be which man can acquire wealth and claim its ownership

- the first of the ways is through earning work. Either acquiring it through his self established halal source of income or being engaged by someone to work and being paid for the service he is rendering
- the second means is the money acquired through inheritance
- lastly, one may be given money as a gift. Such money becomes his own wealth the moment he received it

Unit 3 Cultural Practices on Inheritance

Unit Structure

- 3.1 Introduction
- 3.2 Learning Outcomes
- 3.3 Background to cultural practices on inheritance
- 3.4 System of Inheritance in some tribes
 - 3.4.1 The System of Inheritance among Yoruba
 - 3.4.2 The System of Inheritance among Ibo
 - 3.4.3 English Law of Succession
 - 3.4.4 Jewish Law of Succession
 - 3.4.5 Law of succession among Semitic Tribe
 - 3.4.6 Law of Succession among the Arabs
- 3.5 Woman as a part of the share of Inheritance
- 3.6 Islamic Reformation concerning inheritance
- 3.7 Summary
- 3.8 References / further Reading
- 2.9 Possible Answers to Self-Assessment Exercises (SAEs)

3.1 Introduction

Different cultures regulate the distribution of inheritance in different parts of the world depending on the history, myths and understanding of the localities. Islam, being a universal fact, stipulates a system of inheritance that is based on equity and universality of humanity. In some cultures, only the son would inherit. In fact, females are not entitled to inheritance in many cultures, indeed. Instead, they are part of the property to be shared like utensils. In this

lecture, attempt is made to discuss inheritance in some cultures and religions with a view to highlighting the reformation introduced into the law of succession by the religion of Islam.

3.2 Learning Outcomes

At the end of this lecture, you should be able to:

- state the forms of inheritance in Yoruba culture.
- explain the difference between the Yoruba system of inheritance and Ibo law of succession.

- discuss the Arab system of inheritance before Islam
- compare the systems of inheritance in Ibo, Yoruba and Arab cultures with Islamic law of inheritance.

3.3 Background to cultural practices on inheritance

There are different ways by which estates are distributed before the coming of Islam. While some are practices adopted by a way of religious practices before islam, others are attached to cultures and tribes. A study of all these practices will reveal that the practices are characterized by oppression and injustice and it can be said that the injustice must have been recognised by the beneficiaries but their loyalty to custom must have informed why the practices are allowed to survived

3.4 The Different Laws of Succession

3.4.1 The System of Inheritance among Yoruba

Yoruba speaking peoples occupy a large area in West Africa particularly in Nigeria, Benin Republic and Republic of Togo. Yoruba considered the wife of a deceased as part of the property to be shared by the deceased’s brother or even son from another wife. Women were allotted along with utensils, houses and non-living things. This shows that there were no moral rights of inheriting each other as regards the death of one of the spouses. In this culture, children at times take equal shares individually. At other times, the children of a wife of the deceased constitute a block against the blocks of other children of each of the other wives as an equal unit for inheritance notwithstanding the number of children in each block. The brother, sisters and other distant relations would take their shares of the deceased’s property before the children. Many distant relatives would even accuse a wife of killing her husband. The woman and her children would be sent packing empty handed. Nowadays, courts have been of succour to such wives provided such wives take their cases to courts. The courts have made a line of demarcation between extended family and the immediate ones. Also, management of the deceased property is in the hands of the eldest son. Parents are excluded from inheriting their children by brothers and sisters.

Self-Assessment Exercises (SAEs) 1

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|------------------------------------------------------------------|
| 1. Analyse some of the practices of Yoruba system of inheritance |
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3.4.2 The System of Inheritance among Ibo

The Igbo speaking people of Eastern Nigeria are strict in application of cultural practices. In the Igbo system of inheritance, males exclude females from inheritance. Widows are not reckoned with at all. Both ascendants and collaterals are excluded from inheritance. The eldest son who is called Okpala succeeds his father under the principle of primogeniture. This principles regulates the issue of inheritance in all intents and purposes. When the male head of a family passes away, his eldest son automatically

succeeds him. A female no matter her age and status can never be the head of the family. If a title should survive a deceased, the eldest son inherits the title. The eldest inherit even the furniture and clothes of his father to the exclusion of widows.

3.4.3 English Law of Succession

Under the English law of succession, ascendants and collaterals are prevented by children and descendants from inheriting the deceased. Children exclude them totally. Males were traditionally preferred to females. The eldest son and his issues are preferred over all other

children and their issues. However, the family Law Reform Act 1969 favoured surviving spouse. The interest of surviving spouse is more catered for than other relatives including children.

3.4.4 Jewish Law of Succession

The Jewish law prefers males to females in the area of succession. Daughters are excluded from inheritance of property of their parents

3.4.5 Law of Succession among the Arabs

Before the advent of Islam, males were used to inheriting their parents while females were not given any share. It was even only the adults among the males that could inherit. Infants were not reckoned with at all. Inheritance by confederation was also allowed in the Arab system of inheritance. Two strangers would enter into an agreement that the blood of one was the blood of the other. This meant that an attack on one was the attack on the other. They had the right to inherit each other. If one should die earlier, the other could inherit him/her.

Self-Assessment Exercises 2 (SAEs)

2. Discuss the Arab system of inheritance

3.5 Woman as a part of the share of Inheritance

It could be seen from the above discussed systems of inheritance that females particularly were not treated well. They were marginalized and humiliated. In the Arab custom, Yoruba culture and others, they were parts of the property to be inherited by the eldest son or the deceased's

brothers. A son by other wife could inherit as a wife, his late father's wife. He might decide to marry her or give her in marriage to another interested man. He would receive her dower if he gave her in marriage to another person.

3.6 Islamic Reformation on Inheritance

Islam removed all the abnormalities in inheritance through the proclamation made in Qur'an chapter 4 verse 7 as follows: "For men is a share and for women is a share of what is left by parents and those nearest related, whether, the property be small or large – a legal share"

Women were therefore made to inherit their husband and vice versa. And daughters, mothers, sisters and granddaughters were granted right to inheritance as their male counterparts. As reported by Ambali (1998). Children have right in the property of their

parents. Parents have shares in the estate of their children and vice versa. In fact, it is noteworthy that it was a woman according to Ambli (1997) that Allah used to liberate the weak from the injustice of the strong and caused a revolution the better of which human civilization is yet to witness. The widow of Sa'da to Rabi brought the two female orphans of Rabi to the Prophet protesting "Oh Apostle of God, here are the two daughters of Sa'da b. Rabi who was killed / martyred while fighting on your side in the war of Badr. Their uncle sat on their property and did not give them anything. They cannot be married without money. The Prophet replied that God will decide. Then the verse of succession was revealed. The Prophet (PBUH) sent for their uncle and said. Give the two daughters of sa'ad 2/3 of the estate, give their mother 1/8 of the estate. The rest is for you.

Self-Assessment Exercises 3 (SAEs)

3. Differentiate between the Igbo system of succession and Islamic law of succession

3.7 Summary

We have been able to examine law of inheritance in some religions and culture. In Yoruba system of inheritance, woman is part of the inheritance to be shared. She could neither inherit her husband nor her children. The eldest son was regarded as alpha and omega in some cultures such as English Law of succession and Igbo system of succession and inheritance. The issue was not different in the life of women with regard to law of inheritance and succession. However, Islam removed all the bad practices contained in the laws of inheritance by giving women their rightful shares. Instead of becoming parts of the property to be shared, they share part of the property of their husband, parents and relations.

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3.9 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises 1(SAEs)

1. Analyse some of the practices of Yoruba system of inheritance

-Yoruba speaking people are predominantly found in the Southwestern part of Nigeria

- The Yoruba has a special mode for estate distribution which is different from that of Islam
- Just like it is found in some other cultures, the Yoruba has no recognition for women
- Recognition is given to the elders in the family when it comes to estate sharing
- the two predominant formula for estate distribution among the Yoruba is *Ori o jori* and *Idi igi*
- For the *Ori o Jori* formula, individual among the family of the deceased is given equal share of the property irrespective of their sex
- As for the *Idi Igi*, the property is shared according to the number of wives irrespective of the number of children each of the wives has
- the two forms go contrary to the Islamic estate distribution

Self-Assessment Exercises 2 (SAEs)

2. Discuss the Arab system of inheritance

- Among the Arabs before the advent of Islam, male children were the only beneficiaries of the property of the deceased. Females were excluded from inheritance
- Infants are also precluded from having a share of the property of their parents
- The wife of the deceased was considered a property to be inherited so, she cannot inherit from the property of her husband
- Strangers can inherit one another if they entered into such agreement even when they are not related in any way

Self-Assessment Exercises 3 (SAEs)

3. Differentiate between the Igbo system of succession and Islamic law of succession

- The Igbo speaking people occupies the Eastern Nigeria
- The Ibo system of succession is quite different from that of Islam
- The Islamic system of succession is based on divine description while the Ibo depends on cultural practices
- In the Islamic system of succession, males and females are both entitled to inheritance while it is only the male that inherit in the Ibo system
- In the Islamic system of succession, all ascendants of the deceased are entitled to inheritance while in the Ibo system, it is the eldest that inherits the property and is expected to take up the role of the father or the mother in taking care of the younger ones

MODULE 2

Unit 1 Sources of Islamic Law of Inheritance

Unit Structure

1.1 Introduction

1.2 Learning Outcomes

1.3 Background to cultural practices on inheritance

1.4 Sources of Islamic Law of Inheritance

1.4.1 The first primary source of Islamic Law of Inheritance

1.4.2 The second primary source of Islamic Law of Inheritance

1.4.3 The secondary sources of Islamic Law of Inheritance

1.5 Abubakr al-Sidiq's contribution to Legal knowledge on inheritance

1.6 Summary

1.7 References / Further Reading

1.8 Possible Answers to Self-Assessment Exercises (SAEs)

1.1 Introduction

There is no river without at least a source. In the same vein, Islamic law of inheritance is derived from some sources. You will learn in this lecture, primary and secondary sources of Islamic law of inheritance. The Religion of Islam from which this discipline is derived was named by Allah (Q5:4). Many other religions are named after their founders such include Zoroastrianism from Zoroaster, Buddhism from Gotama Budha of India, Confucianism from Confucius to mention but a few. Islam means peace and it is derived from aslama, an Arabic word. Muslim is a person that practises Islam and is also derived from aslama meaning one who relates to others in peace and submits totally to the will of Allah. The implication of this in relation to the Islamic law of inheritance is that if people submit to the will of Allah and follow His injunctions as contained in the Qur'an, they will achieve peace in this world through distribution of wealth and alleviation of poverty. The multiplier effects are reduction in criminal acts, peaceful co-existence, love, security etc. On the Day of Judgement, there would be eternal rest for such people.

1.2 Learning Outcomes

At the end of this lecture, you should be able to:

- Mention the sources of Islamic Law.
- Mention other names of the first primary sources of Islamic Law of inheritance.
- List three Quranic verses on Islamic Law of inheritance.
- Give the first and last verses to be revealed

1.3 Background to Cultural Practices on Inheritance

the uniqueness in the Islamic law makes the religion of Islam a unique way of worship. The law on inheritance is an indication that Islam is a complete and a comprehensive way of life that leaves no stone unturned as far as issues that affect man is concerned. Sources from which the law on inheritance is drawn is majorly divined with some addendum from the Prophet Muhammad and his companions

1.4 Sources of Islamic Law of Inheritance

1.4.1 The first primary source of Islamic Law of Inheritance

The Qur'an The first primary source of Islamic Law of inheritance is Qur'an. This source represents the will of Allah communicated to man through Prophet Muhammad. Its messages are divine in both meaning and language. It is a source of law to guide practical life of man. The book has remained the same from its revelation till today. The promise as contained in the Qur'an is that it will be preserved till eternity (Q15:9). This source from which other sources are derived enjoys the special protection of Allah. The book is divided into 114 chapters and was revealed to Prophet Muhammad in piece meal about twenty three years. Other names of the Qur'an are al-Hukm (الحكم the Judgement Q13:37), al-Furqan (الفرقان the Criterion Q25:1), al-Kitab (الكتاب the Book Q2:2) and al-Huda (الهدى The Guidance Q72:13) to mention but a few. All these names indicate the functions which it performs. The first revelation is Q96:1-5.

- (1) أَفْرَأُ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ
- (2) خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ
- (3) أَفْرَأُ وَرَبُّكَ الْأَكْرَمُ
- (4) الَّذِي عَلَّمَ بِالْقَلَمِ
- (5) عَلَّمَ الْإِنْسَانَ مَا لَمْ يَعْلَمْ

Recite in the name of your Lord who created

Created man from a clinging substance.

Recite, and your Lord is the most Generous-

Who taught by the pen-

Taught man that which he knew not

The first revelation emphasises the importance of knowledge. This is true of Islamic law of inheritance. A person needs knowledge before he could discharge effectively or share a deceased's property among its beneficiaries. The last verse to be revealed is:

وَاتَّقُوا يَوْمًا تُرْجَعُونَ فِيهِ إِلَى اللَّهِ ثُمَّ تُوَفَّى كُلُّ نَفْسٍ مَّا كَسَبَتْ وَهُمْ لَا يُظْلَمُونَ

And fear the Day when you shall be made to return to God; then shall every soul be paid in full what it has earned and they shall not be wronged (Q2:281). It is believed that this revelation was given to the Prophet 9 days before he died. The importance of this verse in relation to Islamic law of inheritance is that man is reminded of the day he would return to his God. He would

abandon all both the wealth he got lawfully and the ill-gotten property. He is answerable to Allah. The other side of the story is that his property may be inherited by his friends and foes.

The Qur'an contains 'Āyatul 'Aḥkām (Legal injunctions) on many aspects of man's life particularly the social life such as inheritance. The injunction contained in the Qur'an are valid always because they concern not a particular fact in a particular time but absolute truths which being in the very nature of things are perennial and remain the same. The Quran uses some stylistic devices to give the summarization of some legal injunctions particularly in the case of inheritance. Some legal injunctions on inheritance that are contained in the Quran explicitly are Q4:11-13 and Q4:176.

Self Assessment Exercises 1 (SAEs)

1. Discuss al Qur'an as a primary source of the law of inheritance

1.4.2 The second primary source of Islamic Law of Inheritance

The second primary source of Islamic law of inheritance is Sunnah, the sayings and practices (tradition) of the Prophet Muhammad (SAW). Its importance with regard to the Islamic legislation particularly inheritance cannot be under estimated. The Sunnah is technically used to mean the precepts and decisions of the prophet, his conduct and practices, and pre- Islamic customs which had received his tacit approval. The Prophet in relation to the Quran is regarded as the expounder of the Quran as contained in the Quran itself

بِالْبَيِّنَاتِ وَالزُّبُرِ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَفَكَّرُونَ

“And with clear proofs and written ordinance and we have revealed to you the reminder so that you may explain to the people what was revealed to them” (16:44) The legislative power is given to the prophet based among others on the Quranic verse which says:

الَّذِينَ يَتَّبِعُونَ الرَّسُولَ النَّبِيَّ الْأُمِّيَّ الَّذِي يَجِدُونَهُ مَكْتُوبًا عِنْدَهُمْ فِي التَّوْرَةِ وَالْإِنْجِيلِ يَأْمُرُهُمْ بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ لَهُمُ الْفَاحِشَاتِ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ فَاَلَّذِينَ آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنزِلَ مَعَهُ أُولَئِكَ هُمُ الْمُفْلِحُونَ

“Those who follow the messenger the unlettered Prophet, whom they find written (i.e. mentioned) in what they have of the Torah and the Gospel, who enjoins upon them what is right and forbids them what is wrong and makes lawful for them the good things and prohibits for them the evil and relieves their burden and the shackles which were upon them. So they, who have believed in him, honoured him supported him and followed the light which was sent down with him- it is those who will be the successful” (Q7:157).

The commandment of Allah and His Prophet is binding on every Muslim. In fact, the life of Prophet Muhammad is a model. The sunnah explains the Quranic injunctions that are ambiguous, general and absolute. To put it differently and simply, there are legal injunctions in the Quran that are capable of many interpretations, the Prophet classified them. The general ones

were explained so as to make them specific. Restrictions were put on the absolute ones. Some of the books of Hadith that contained legal injunctions are Sahih al-Bukhari, Sahih al-Muslim, Sunnan Abu Dahud and al-Tirmidh to mention but a few. Muwatta of Imam Malik is a good collection in the area of legal traditions particularly inheritance. The importance of the Hadith in deriving Islamic laws is too obvious to be emphasised for many Quranic verses cannot be understood without the sunnah.

Self Assessment Exercises 2 (SAEs)

2. Why was the hadith taken as a primary sources of Islamic Law

1.4.3 The secondary sources of Islamic Law of Inheritance

It should be noted that where the Quran and the Sunnah are silent as regards legal injunction, *ijtihād*, *ijmā‘u*, *Qiyās* and other are resorted to. *Ijtihād* is the ability to interpret divine text by inferring new rulings in order to relate it to new situations. This makes *Shari‘ah* relevant to all times and eras. A person that infers details of Islamic practices from the primary sources is called

Mujtahid. To put it simply, a *Mujtahid* is he who possesses the capacity of *ijtihād*. A *Mujtahid* must be competent in Arabic language, knowledgeable in the Quran and Hadith. He must also be righteous, pious and reliable.

1.5 Abubakr al-Sidiq’s contribution to Legal knowledge on inheritance

The word *Kalālah* used in the Quran (Q4:176) in respect of inheritance posed a problem to some companions of the Prophet. Some people believed “*kalālah*” refers to a person that dies leaving no lineal heirs, neither issue nor father or grandfather. The opinion of some others was that it refers to a deceased without issue. Abubakr said that since the verse indicates that the sister of the *kalālah* is to receive a half of the inheritance, he therefore inferred that if the father had been alive, the sister would not have inherited from *kalālah*. The matter is not specified in the Quran. Abubakr therefore concluded that the word means one who dies leaving no lineal heirs in either

direction i.e no ascendants nor descendants. In addition, Abubakr cleared the issue of inheritance from Prophet Muhammad’s property. He did not grant the request of Fatimah who demanded for an inheritance from her father’s property. He said the Prophet said:

“ لا نورث ما تركنا فهو صدقة ”

we prophets do not inherit nor leave an estate for inheritance. Whatever we left is for charity (Bukhari).

Ijmā‘a is another source of Islamic *Shari‘ah* on inheritance. It means a consensus of opinion of the *Mujtahidīn* or an agreement of the Muslim jurists of a particular age on a question of law while a *qiyās* is a process of deduction by which the law of a text is applied to cases which though not covered by the language, are governed by the reason of the text. All secondary sources assist in the interpretation and understanding of the Quranic text and prophetic injunctions concerning inheritance.

Self Assessment Exercises 3 (SAEs)

3. Mention the contributions of Abubakr to Islamic Law of inheritance

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1.6 Summary

We have examined in this lecture the sources of Islamic law of inheritance such as the Quran, the Sunnah, *Ijtihād* and *Ijmā'u*. These sources are vital and one needs to be familiar with them if one wants to really understand the application of Shari'ah to inheritance.

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1.8 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises 1 (SAEs)

1. Discuss al Qur'an as a primary source of the law of inheritance

- The Qur'an is the primary source of Islamic law and so, it is the primary source of the law of inheritance
- Details of the estate distribution are contained in the Qur'an
- Portions of the Qur'an that discuss inheritance are Q4:11-13 and Q4:176.
- The science of inheritance is majorly on provisions of the Qur'an

Self-Assessment Exercises 2(SAEs)

2. Why was the hadith taken as a primary sources of Islamic Law

- The sunnah of the Prophet is considered a second source of Islamic law and hence, it is a second source of the law of inheritances
- Sunnah (Hadith) is considered a primary source because in Suratul Najm, Allah confirms that whatever is said by the Prophet is an inspiration
- Verses of the Qur'an allude to the fact that the Prophet is a model to be emulated
- Muslims are enjoined to follow the teachings of the Prophet (*Q7:157*)

Self-Assessment Exercises 3 (SAEs)

3. Mention the contributions of Abubakr to Islamic Law of inheritance.

- Some of the companions of the Prophet made contributions to the knowledge of *mirath*
- Among these companions is the second khalif, Abubakr As-siddiq
- During the time of Abubakr, he took a position in the interpretation of Q4:176 on the meaning of *kalala*
- His position was that since the verse indicates that the sister of the *kalālah*(a person that dies leaving no lineal heirs, neither issue nor father or grandfather.) is to receive a half of the inheritance, he therefore inferred that if the father had been alive, the sister would not have inherited from *kalālah*
- Abubakr interpreted *kalala* as one who dies leaving no lineal heirs in either direction i.e no ascendants nor descendants
- Among his contributions is that he remained firm in maintaining that the property of the Prophet is not to be inherited by his daughter but rather, it should be returned to the treasury and given out as charity

Unit 2 Islamic Provisions for Wealth Circulation

Unit Structure

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 Background to Wealth Circulation in Islam
 - 2.3.1 Quranic Basis for Wealth Circulation
 - 2.3.2 Islamic Institutions for Circulation of Wealth
- 2.4 Prohibitions of Exploitations and Hegemony
- 2.5 Nafaqah and Inheritance versus Gender Rights and Responsibilities
- 2.6 Summary
- 2.7 References / further Reading
- 2.8 Possible Answers to Self-Assessment Exercises (SAEs)

2.1 Introduction

The Shariah (Islamic Law) aims at a just and equitable society where all segments of the society is fairly treated. It is natural to have disparity in materials possessions of individual members of the society but efforts should, and is made under the Islamic system, for re-distribution of wealth to alleviate and remove the burden of poverty from the disadvantaged and vulnerable groups in the society. Inheritance, with its well articulated guidelines is one of such formal institutions in Islam. Efforts will be made in this unit to call attention to some of the Islamic provisions for poverty reduction and the interconnection among the various institutions.

2.2 Learning Outcomes

At the end of this unit, you should be able to:

- Discuss Islamic attitude to wealth circulation
- List some of the provisions made by Islamic Law for wealth distribution
- Locate law of inheritance as part of the general provisions for wealth redistribution in Islam
- Write on gender equity in Islamic law of family maintenance and inheritance
- 2.3 Background to Wealth Circulation in Islam
- 2.3 Background to Wealth Circulation in Islam
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2.3 Background to Wealth Circulation in Islam

Wealth in Islam is not to be in possession of a few people at the expense of others. Islam teaches and promotes a balanced economy with the objective of reducing the level of criminality in the society. If strategies for wealth circulation were adopted, the rate of poverty would reduce in the society and the challenge of insecurity will be a thing of the past.

2.3.1 Quranic Basis for Wealth Circulation

God in explaining why booty and other wealth should circulate among the citizens states in the Qur'an chapter 59 verse 7 that: ...“So that (circulation of wealth) is not restricted to only the rich among you...” Qur'an 47 verse 38; 2 verse 271 among others stipulate acts of charity involving redistribution of wealth. As a follow up Islam makes provisions for various channels through which wealth can be made available to the under-privilege through the acts of benevolence of the rich and virtuous acts of the citizens. Certain acts that are detrimental to equitable re-distribution of wealth are proscribed while provisions were made for institutions that promote circulation of wealth among the citizens.

2.3.2 Islamic Institutions for Circulation of Wealth

Islam establishes and makes elaborate details for the following poverty alleviation devices which, if properly executed in the society. The institutions include:

(a) Education

(b) Zakat – compulsory due from the well to do to the less privileged in the society. It is generally about 2 ½ % of the net property of the rich. It means 40 rich persons can annually turn a person in abject poverty into a rich person. Also prescribed are mandatory gift of prescribed quantity of food items for the poor at the end of Ramadan fast (zakatul-fitri)

(c) Inheritance – It is also a veritable means of wealth circulation to those connected with the deceased by:

- Blood (kinship)

-Matrimony (Marriage bond)

- Master / servant (slave – bond)

- Common-citizenship (Public Treasury)

(d) Charity – Recommended acts of charity:

- *Sadaqah*

- *Hibah*

- *Waqf*

- *Wasiyyah*

- Hard-work labour

(e) Restitution (Kafarah) – When a person commits an error or omission in its religious rites and has to rectify them through some prescribed acts of charity to the poor. Such included feeding of

prescribed number of poor persons; manumission of those in bondage; gifts etc.

Self Assessment Exercises 1 (SAEs)

1. Identify and discuss the Islamic institutions for wealth circulation

2.4 Prohibitions of Exploitations and Hegemony

Islam prohibits the use of wealth to pauperise the poor. This explains why Islam prohibit usury through the wealthy exploit the poor and subjugate them to abject and perpetual

poverty. Islam also prohibits hoarding, profiteering, monopoly and cheating. These vices widen the gap between the rich and the poor in the society. Islam therefore sets to create a just and balance society where the poor is provided with an environment to get out of poverty.

2.5 Nafaqah and Inheritance Versus Gender Rights and Responsibilities

Islamic law makes balanced provisions of rights and obligations in socio-economic activities of each segment of the community. A member of the family enjoys, when appropriate, a share of the wealth of his or her dead relations as a benefit of their relationship through marriage or blood ties. Conversely, the same person has the obligation of maintenance, where applicable of his or her poor relations. Some rights and responsibilities are in kind while some are material and in cash. For example, keeping company of spouse and looking after a sick relation is non-material responsibility and rights. On the other hand, maintenance and inheritance are largely material.

To whom much is given, much is expected. The closer the blood tie, the heavier the responsibility of maintenance of the relation as well as the right of inheritance from the relation. In the same vein, male are entrusted with a large percentage of material responsibility of

maintenance in the family. For example as husband, son, father etc, the male is charged with the

material responsibility of the female as contained in, among others, the following quotations from the Qur'an:

(a) Qur'an 2 verse 33 – 4 “men shall take care of women with the bounties which Allah has bestowed more abundantly on the former than the later, and with what they spend of their wealth”

(b) Qur'an 65:6 And mothers shall give such to their children..... And the man to whom the child belongs shall be responsible for their (mothers) food and clothing in a befitting manner.

(c) Qur'an 17:23 “Lodge them (your wives) where you live within your capacity and do not hurt them to incapacitate them. And if they are pregnant, spend on them until they deliver their burden. Then if they suckle for you, give them the recompense...”

It is therefore expected that in inheritance too, general material benefits in favour of male, should be understood as justifiable. In many cases males have advantage in inheritance just as females have in maintenance. It should however be noted, from subsequent units of this lecture, that, there are situations in inheritance where female are equally treated or even allotted greater portion of inheritance than their male counterparts.

It is thus not gender discrimination but gender equity which pairs legal rights with legal responsibilities. Since laws are made based on what is normal and most usual, exceptions to the rule, where the female discharges the legal responsibilities of the male cannot be made the

basis of the norm.

Self Assessment Exercises 2 (SAEs)

2. Examine the position of Islam on exploitation and hoarding
3. Compare the responsibilities of male members of the family with those of the female members in maintenance of the family
4. Justify occasional gender disparity in Islamic law of inheritance

2.6 Summary

The unit has been made to provide the primacy of just and equitable society where the poor are relieved by the rich and wealth is not allowed to be restricted to a particular group. The Quranic basis of the goal and some of the provisions for poverty alleviation are enumerated along with inheritance which is the subject of this course. We have also explained how rights are balanced with responsibilities in the Islamic law of inheritance.

2.7 References / further Reading

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2.8 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises 1 (SAEs)

1. Identify and discuss the Islamic institutions for wealth circulation

- Islam encourages wealth circulation in the society
- It is believed that when wealth circulates in the society, poverty will be alleviated
- It is in the light of the above that Islam identified some institutions for wealth circulation
- These institutions include *zakat*(Compulsory tax), *mirath* (inheritance), *sadaqah* (charity) and *hibah* (gift)
- Others are waqf(endowment), *wasiyyah* (will), *jizyah* (booty) *kafarah* (restitution) and *kasb* (hard labour)
- If these institutions are properly managed, wealth will circulate in the society and poverty will be alleviated

Self-Assessment Exercises 2(SAEs)

2. Examine the position of Islam on exploitation and hoarding

- Islam prohibits the use of wealth to punish the poor
- punishing the poor through the use of wealth include hoarding goods at the time of its need
- Islam therefore prohibits hoarding, cheating and monopolizing market
- This prohibition is meant to protect the poor and the less privileged in the society

3. Compare the responsibilities of male members of the family with those of the female members in maintenance of the family

- In islam, the husband is the head of the family
- The husband is to provide for the entire family
- In addition, the husband is to protect the family from both physical and psychological attacks
- The wife is expected to support the husband in the management of the family
- She is to take care of the baby for the husband. She sucks the baby for the husband and help in the organization of the house
- She is to make herself a source of comfort and joy for the husband so that the husband will remain psychologically balanced to take care of the family

4. Justify occasional gender disparity in Islamic law of inheritance

- Justice is a principle that Islam does not compromise but justice should not be taken to mean equality
- In Islamic law of inheritance, men are allotted double the portion of women
- This disparity is irrespective of the age of the female to the male
- Even though it may look like women are being cheated, the fact remains that when a father takes his portion, he takes care of the children with it and when a husband takes a share, he takes care of the wife with it. This is not the situation with a female taking her share as a mother or as a wife.
- The female as a mother receives the care of the children than the father and so, if she takes less than the portion of the father, she has a place to make up for the difference
- Despite the additional responsibility of the male, there are circumstances in inheritance where the female takes the same or more portion of the inheritance over the male

Unit 3 First-Line Charges Against the Property of a Deceased Muslim

Unit Structure

- 3.1 Introduction
- 3.2 Learning Outcomes
- 3.3 Background to Wealth Circulation in Islam
 - 3.3.1 Meaning of *Mīrāth*
 - 3.3.2 The Importance of Fulfillment of Obligations in Islam
- 3.4 The Obligatory three Heads of Expenditure before Sharing
 - 3.4.1 Burial Expenses
 - 3.4.2 Outstanding Debts of the Deceased
 - 3.4.3 Will
- 3.5 Abuse of Inheritance
- 3.6 Summary
- 3.7 References / further Reading
- 3.8 Possible Answers to Self-Assessment Exercises (SAEs)

3.1 Introduction

The heirs are given their divinely-fixed shares as contained in the Qur'an. The dead person or his/her heir is not permitted to dispose of his estate through whims and caprices. In this unit, you will read about the meaning of inheritance literally and legally. Allah, the ultimate owner has assigned how property of a dead person should be shared. Sentiments of love or hatred should not be allowed to deprive an heir his share or increase the share of heirs. However, before the distribution of the divinely-fixed shares of each beneficiary, we would discuss first the avoidable pitfalls which many people including some scholars fall into. We need to sift the chaff from the wheat. In relation to the sharing of deceased's property. Three items take precedent in the property of the deceased. It is the residue that is shared among the fixed sharers and the residuaries. You will learn of the reactions of the Prophet to outstanding debt based on the three corpses brought before him at different occasions for prayers.

3.2 Learning Outcomes

You should be able to:

- Explain the literal meaning of *mirāth*.
- Give the legal meaning of *mirāth*.
- State the three heads of expenditure that need to be taken care of before the distribution of an estate among heirs.

3.3 Background to the Property of the Deceased

At the time the life of a Muslim is taken away from him, his property no longer belong to him and he has no say on how the property are to be distributed except for the ones he willed out before his death. The Quran is detailed on how the property is to be shared without living any opportunity for human intervention except for the few inputs of the Prophet and his companions.

3.3.1 The meaning of *Mirāth*

Mirāth means inheritance it is a divine right of heirs in the assets of a deceased. It is contained in the Quran (4:7, 11,12 and 196). Other word that is used for inheritance is *fara'id*. *Fara'id* is the plural of *faridah* the prescribed shares which are called *furūd* (singular *fard*) are the specific shares mentioned in the Qur'an such as one-half, one-third, one-fourth, one-sixth, one-eighth and two-thirds. Therefore, the Islamic Law of inheritance is called '*ilmul farā'id*', knowledge of inheritance. It deals with the calculation of inheritance and distributing it among the heirs mentioned in the Quran and the Hadith. The deceased person whether male or female, young or old is called *al-mayt* and the assets or liabilities left behind is called *Tarikah*. The asset is also called *Warasah* which is the plural form of *waaris*. Heir is the person who inherits the assets of a deceased. *Siham* is the plural of Arabic word *sahm* (a portion). It means respective portions of the heirs that they get from the assets based on the Quranic injunction

3.3.2 The Importance of Fulfillment of Obligations in Islam

In Islam obligation are sacred and must be fulfilled. The Qur'an emphasis the fulfillment of obligation and settlement of debt in so many verses among which are the following:

(i) Qur'an 61:2-3 "O you who believe! Why do you say that which you do not do?" "Most hateful it is with Allah that you say that which you do not do".

(ii) Qur'an 3:76 which says: Yes who ever fulfill his pledge and be conscious of Allah indeed Allah loves the pious

(iii) Qur'an 23:8 which says: Those who are through to their pledges and trust (are the believers) other verses include Q2:27 and Q2:140 If death is to be the end of fulfillment of legal obligation by the deceased, the society would be in chaos as the creditor would suffer irreparable loss. Consequently, the Quran emphasizes the fulfillment of legal obligations of the deceased even when he or she is no more in position to personally fulfill the obligation. This explains why legal commitment of the deceased should be promptly settled by his or her heirs. The Qur'an 4:11 and 4:12 each distinctively calls for settlement of debt and bequest before the distribution of inheritance from the estate of the deceased. Qur'an chapter 4 verse 11 says that inheritance should be distributed "...only after the payment of bequest he may have made or debt he may have incurred..." as if that was not strong enough the verse that follows repeat the same clause as a condition precedent before distribution of inheritance.

3.4 The Obligatory three Heads of Expenditure before Sharing

Before the distribution of the property of the deceased, the following heads of expenditure must be taken into consideration: burial expenses; debt and bequest.

3.4.1 Burial Expenses

It is only fair to the deceased that from his own wealth, he should be given proper burial therefore, when a person dies, preparations must be made to take care of his corpse. During the course of doing this, some expenses such as the bricks to be used in his grave, the cost of digging

his grave, and transporting his dead body to his grave, the payment made to the washer i.e. the person who will wash his body, the cloth to be used to wrap him, the piece of land to be used to bury him and other related expenses must be taken into consideration before

the estate is shared among his heirs unless the cost had been voluntarily defrayed by others. Only the basic expenses that are incurred wholly and exclusively for the burial are chargeable to the estate of the deceased. If a deceased does not have enough funds to pay for his burial expenses, his wife or

husband should finance them if he or she is financially capable. If the spouse is not capable, the children should, then the dead person's neighbor or the Muslim community around the area must take up the challenge. The burial expenses that are chargeable to the property of the deceased do not include extravagant expenses incurred in the process of a wasteful burial or ceremony such an extravagant ceremony is not only illegal but sinful.

3.4.2 Outstanding debts of the deceased

Debts incurred by the deceased are front line charge against his or her property. Efforts must be made to settle the debt from his or her property. Announcement may be made to inform people of the person, to contact for the settlement of the deceased's debts. However, care must be taken to prevent fraudsters from taking undue advantage of the situation. Verification must be done based on the Quranic injunction (Q49:6) Paying debts before a corpse is buried is so important that the Prophet refused to pray *salatul janazah* for one of his followers who was in debt. He only prayed for him when his debts had been settled.

عن سلمة بن الأكوع رضي الله عنه قال: كنا جلوسا عند النبي صلى الله عليه وسلم إذ أتني بجنزة فقالوا صلّ عليها فقال هل عليه دين؟ قالوا لا، قال فهل ترك شيئاً؟ قالوا لا فصلّى عليها. ثم أتني بجنزة أخرى فقالوا يا رسول الله صلّ عليها قال هل

عليه دين قيل نعم، قال فهل ترك شيئاً قالوا ثلاثة دناني فصلّى عليها. ثم أتني بثلاثة فقالوا صلّ عليها قال فهل ترك شيئاً؟ قالوا لا، قال فهل عليه دين؟ قالوا ثلاثة دناني، قال صلوا على صاحبكم، قال أبو قتادة صلّ عليه يا رسول الله وعلّي دينه، فصلّى عليه

Salamah, son of Akwa, narrated that: “(one day) when we were sitting with the Prophet (PBUH), a dead person was brought (to us). They said (O Prophet), Pray for the deceased. He said, “Is he in debt?”. The people replied “No”. He said, “Has he left any wealth?” They said, “No” So, he led his funeral prayer. Another dead man was brought and the people said, “O Allah's messenger! Lead his funeral prayer. “The Prophet said, “is he in debt”. They said, “Yes” He said, “Has he left any wealth?” They said, “Three Dinars” so, he led the prayer. Then a third dead

man was brought and the people said (to the Prophet), please lead his funeral prayer”. He said, “Has he left any wealth?” They said, “No” He asked, is he in debt? “They said, (“yes he has to pay) three Dinars”. He (refused to pray and) said, “Then pray for your dead companion. “Abu

Qatadah said, “O Allah's messenger! Lead his funeral pray and I will pay his debt “.So, he led the prayer (Sahih Bukhari). To show the importance of paying debts, when the Prophet was financially capable, he took it upon himself to pay the debts of a dead Muslim when the person's property could not be sufficient to pay his debts. This is contained in the Hadith compiled by Bukhari, one of the six authentic collectors of Hadith.

عن أبي هريرة رضي الله عنه أن رسول صلى الله عليه وسلم كان يُوتى بلرجل المتوفى عليه الدين فيسأل هل ترك لدينه فضلا فإن حدث أنه ترك لدينه وفاءً صلى، وإلا قال للمسلمين صلّوا على صاحبكم. فلما فتح الله عليه الفتوح قال أنا أولى

بلمؤمنين من أنفسهم فمن توفّي من المؤمنين فترك ديناً فعلي قضاؤه، ومن ترك مالا فلورثته

Abu Hurayrah narrated that whenever a dead man in debt was brought to the messenger of Allah, he would ask, “Has he left anything to repay his debt?” if he was informed that he had left something to repay his debts, he would offer his funeral prayer, otherwise he would tell the Muslims to offer their friend’s funeral prayer. When Allah made the Prophet wealthy through conquests, he said, “I am more rightful than other believers to be the guardian of the believers so, if a Muslim dies while in debt, I am responsible for the repayment of his debt, and whoever

leaves wealth (after his death) it will belong to his heirs (sahih Bukhari).

The prophetic tradition suggests that a dead person in debt would be in bondage on account of his debt. This shows that death of a debtor does not deprive the creditors his/her entitlements. As much as possible, people should avoid being in debt, and if they are, arrangement should be made to pay it as early as possible. Some of the debts that may pertain to religious obligations such as *mahr* (bridal gift), outstanding zakat, *kaffarah* (the cost of restitution) confirmed money or value borrowed from individuals and corporate bodies.

3.4.3 Will

Bequests can be made by a Muslim against him or her property subject to a maximum of 1/3 of the estate. Will is thus allowed provided it distributes not more than a third of one’s property and not in favour of a legal heir. Will is another expense that has to be deducted from a dead person’s property before sharing the rest among his heirs. It should not be more than 1/3 of a dead person’s property. The will must have been made when a owner is hale and hearty. It is not permissible a will on a death-bed (when death is imminent). (i.e *maradul mawt* – the illness in which a person dies). During this period, he does not have any say again as regards his property. The property has returned to the real Owner (Allah) who would decide the distribution. A will can also not be made in favour of any legal heir.

Self Assessment Exercises 1 (SAEs)

1. List the three heads of expenditure that may be incurred after a person dies
2. Write notes on burial expenses of a dead Muslim

3.5 Abuse of Inheritance

Some Muslims put in their will fictitious bequest and fake debts so as to deprive their real heirs of their rightful shares. This is a violation of the Quranic injunction and the Sunnah (Q4:2) the Prophet said:

لا ضرر ولا ضرار، من ضار ضاره الله، ومن شاق شاقه الله

“One should not initiate harm, nor be harmed (them). Whoever harms others, Allah will harm him, and whoever troubles others, Allah will trouble him” It is not correct to make adopted children biological in inheritance sharing. This is a clear violation of the Quranic

injunction. Only natural children are entitled to inheritance. As stated in Q33:4-5 adopted children do not have the status natural children (sons and daughters of the deceased). They cannot inherit the person who adopted them and vice versa in Islam. Some people elevated adopted children to the status of a natural son or daughter. This is against Q33:4-5.

وَتَوَكَّلْ عَلَى اللَّهِ وَكَفَى بِاللَّهِ وَكِيلاً (3) مَا جَعَلَ اللَّهُ لِرَجُلٍ مِنْ قَلْبَيْنِ فِي جَوْفِهِ وَمَا جَعَلَ أَزْوَاجَكُمْ اللَّائِي تَظَاهَرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكَ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ ادْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا

Allâh has not put for any man two hearts inside his body. Neither has He made your wives whom you declare to be like your mothers' backs, your real mothers. [AzZihâr is the saying of a husband to his wife, "You are to me like the back of my mother" i.e. You are unlawful for

me to approach.], nor has He made your adopted sons your real sons. That is but your saying with your mouths. But Allâh says the truth, and He guides to the (Right) Way (Q33:4). Call them (adopted sons) by (the names of) their fathers, that is more just with Allâh. But if you know

not their father's (names, call them) your brothers in faith and *Mawâlîkum* (your freed slaves). And there is no sin on you if you make a mistake therein, except in regard to what your hearts deliberately intend. And Allâh is Ever Often Forgiving, Most Merciful (Q33:5). It is wrong to contrive a situation that would give some heirs more than their dues. This is an abuse and a violation of the Quranic injunction on justice (Q5:8). The excess should be returned to the right owner. It is not legal to deny minors or the child in the womb their due shares in inheritance. Minors are denied inheritance. In the rule of Shariah, every related person, young and old, male and female are entitled to inheritance. If a person is aware of injustice and he is capable of stopping it, he should do so.

Self Assessment Exercises 2 (SAEs)

3. Write a short note on abuse of inheritance

3.6 Summary

In this unit, we have examined some of the acts that must be avoided when one is writing a will or sharing a property. Sentiments must be avoided. We have also discussed the issue of funeral rites. All the expenses wholly and exclusively incurred must be deducted from the estate before sharing it among a dead person's heirs. Payment of debt is very important and must be paid

before or immediately a person is buried. Hadith of the Prophet is cited to show the importance of paying debts. Will is limited to 1/3 of a dead person's property. Any will above 1/3 of his property should be ignored. Similarly, a legal heir cannot be favoured with additional share based on a will.

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Self-Assessment Exercises 1 (SAEs)

1. List the three heads of expenditure that may be incurred after a person dies

- When a person dies, three things must be taken care of from the property left behind before estate distribution

-The three heads of expenditure are;

Burial expenses; whatever expenses incurred at the time of burial must be deducted from the property of the deceased except if the burden is shouldered by the family or other relatives

Outstanding debt; the debt incurred by the deceased shall be deducted from his property except when it is waived by the creditors

Will; whatever is willed out by the deceased shall be deducted from the heirs before estate distribution

2. Write notes on burial expenses of a dead Muslim

-Some expenses on the burial of the deceased shall be deducted from the heirs of the deceased

-These expenses include the bricks to be used in his grave, the cost of digging his grave, and transporting his dead body to his grave,

-Other expenses are the payment made for washing his body, the cloth to be used to wrap him, the piece of land to be used to bury him and other related expenses

-The burial expenses should be those that are reasonable and should not include what is used to organize any burial program

Self-Assessment Exercises 2 (SAEs)

3. Write a short note on abuse of inheritance

- Abuse of inheritance include the diversion of inheritance to un-islamic purposes or the denial of some people to their right to inheritance.
- some wills are unjustly turned down during distribution of wealth
- minors in the family are denied inheritance simply because they are under aged
- adopted children are given portion of the inheritance in the manner the real children benefit from the inheritance
- some children that were born bastard benefit from the property of their illegal father especially if they happen to be the eldest of the family
- There are those who put in their will fictitious bequest and fake debts so as to deprive their real heirs of their rightful shares. Some even write a will to disqualify a rightful heir from benefitting from the property of the deceased
- All these practices are abuse of inheritance and they are against the Islamic law of inheritance

MODULE 3

Unit 1 Categories of Heirs:

Unit Structure

1.1 Introduction

1.2 Learning Outcomes

1.3 Background to the style on inheritance in the Qur'an

1.4 Types of Heirs

1.4.1 *Dhawi Al-Furūd* (Fixed Sharers)

1.5 Summary

1.6 References / further Reading

1.7 Possible Answers to Self-Assessment Exercises (SAEs)

1.1 Introduction

In Islamic Law of inheritance, a subset of the Sharī'ah, there is a well established principle for the distribution of the property of a dead Muslim. After deducting all basic expenses mentioned in one of the earlier units as burial expenses, debts and bequest, the rest property is shared based on the divine injunction. The holy Quran is a book that uses so many styles to put across its message to people. One of the styles is *Aḥkamul-Mujmal Wal-Mufaṣṣal*. In this lecture, you will learn how the Quran uses this style in passing across its message on inheritance to people.

1.2 Learning Outcomes

At the end of this lecture, you should be able to:

- explain the style adopted to present injunctions on inheritance
- mention Quranic verses on fixed sharers.
- list the fixed sharers.
- mention the types of sharers

1.3 Background to the style on inheritance in the Qur'an

Of all the styles used in the Quran, only *mujmal wal-mufaṣṣal* is used by the Qur'an to convey its messages on inheritance. This stylistic device gives summarized legal injunctions to which other verses are to give details. Hadith and *ijtihād* are used to convey the rest details. As regards inheritance in Islam, Q4:7 gives the summary of how the property is shared to the close relatives

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا "For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much – an obligatory share" (Q4:7).

In this verse, details are not given. Allah mentions shares without being specific as regards the percentage. Parents and close relatives mentioned are also general. The mentioning of women in this verse needs explanation because it is in form of *mujmal*. The statements are not specific. The details of this verse are given in the subsequent

verses particularly Q4:11, 12 and 176. The one that is relevant here to the explanations of Q4:7 is Q4:11 when Allah says:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ

“Allah instructs you concerning your children (i.e their portions of inheritance) for the male, what is equal to the share of two females. But if there are (only) daughters, two or more, for them is two thirds of one’s estate. And if there is only one, for her is half. And for one’s parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents (alone) inherit from him, then for his mother is one third. And if he had brothers

(and/or sisters), for his mother is a sixth after any bequest he (may have) made or debt. Your parents or your children – you know not which of them are nearest to you in benefit.

[These shares are] an obligation (imposed) by Allah. Indeed, Allah is ever knowing and wise”.

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلِكُمُ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثَّمَنُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورِثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةٍ مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

“And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave after any bequest they (may have) made or debt. And (for them) (i.e. the wives) is one fourth if you leave no child but if you leave a child, then for them is an eighth of what you leave, after any bequest you (may have) made or debt.

And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [this is] an

ordinance from Allah, and Allah is knowing and forbearing” (4: 12). In this verse of the Quran, other members of *Ashābul Furūd* are mentioned. They are husband and wife. These verses explain in details the content of Qur’an 4:7 earlier quoted. Both give the details regarding the beneficiaries and the portions or shares for each of the beneficiary.

We can therefore easily

extract exact portion for the heirs from the verses

1.4 Categories of Heirs

Types of beneficiaries in Inheritance

There are three majortypes of beneficiaries as far as inheritance in Islam is concerned they are:

1. *Ashābul Furūd* (Fixed sharers)
2. *Ashabah* (Residuaries)
3. *Dhawil arḥām* (Distant kindred)

In some special cases the Public Treasury and Master of a bonded person can be beneficiaries too.

1.4.1 *Dhawi Al-Furūd* (Fixed Sharers)

These are the beneficiaries who have fixed shares in the sharing of inheritance based on the injunctions of the Qur'an, the Sunnah and other sources of Shari'ah. The following sharers are the fixed sharers mentioned in the Quran:

- Father
- Mother
- Husband
- Wife
- Daughter
- Full Sister
- Uterine Brother
- Uterine Sister

Aṣḥābul Furūd (Fixed Sharers) come first in the distribution and receiving of inheritance because they are the most important group of beneficiaries of inheritance. We shall take the fixed sharers one after the other and state their shares with explanations.

beneficiary	portion	Explanation
Father takes	1/6	If al-mayt(the deceased)is survived by at least a child or son's son
	1/6+balance (residual)	If the deceased is not survived by a son or grandson, he takes 1/6. After others such as brothers have been allotted, he would take the remaining balance as asbat(residuary)
Mother takes	1/6	If the deceased has children or son's children or If the deceased has more than one brother or sister of any kind
	1/3	If a mother has a son and that on died leaving his wife and mother behind i.e the man is survived by his wife and mother, the mother's share is 1/3

		(B)If a mother has a daughter and that daughter died leaving her husband and mother behind i.e the wife is survived by her husband and mother, the mother's share is 1/3 NOTE: the 1/3 is deduced after reducing the wife's /husband's share
	1/3	If the deceased has neither children nor brothers/sisters
	1/3	If the deceased has none of the relatives in A and B, her share is 1/3

beneficiary	portions	explanations
Husband takes	1/2	The husband gets 1/2 from his deceased wife's property if she has neither children nor any son's son
	1/4	The husband takes 1/4 from his deceased wife property if she has children and or whether from the surviving husband or the previous husbands
Wife takes	1/4	The wife takes 1/4 if her deceased husband has neither children nor grandchildren
	1/8	The wife takes 1/8 if her deceased husband has children or son's children The children may be from another wife other than the surviving wife.
Daughter takes	1/2	a daughter takes 1/2 from her deceased father's property if

		he has no son's but only one daughter.
	2/3	Two or more daughters take 2/3 if their deceased father has no son. They share 2/3 equally among themselves
	2:1 Male:female	Each daughter takes half the share of the son from their deceased father's property if he has a son

The Daughters as Primary Heirs

Daughter

One of the fixed sharers is daughter. She has a fixed share in case a son is absent. She becomes residuary in the presence of a son. An only daughter of a deceased gets 1/2 of the property if a son is absent. Two or more daughters in the absence of a son takes 2/3 of the property and share it equally among themselves. In the presence of a son, the daughter (one or more) becomes a residuary. Each daughter takes half the share of the son. This issue is discussed in the following Quranic verse

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنْ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الشُّلْثَانِ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضَلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

“They request from you a (legal) ruling. Say, “Allah gives you a ruling concerning one having neither descendants nor ascendants (as heirs)”. If a man dies, leaving no child but (only) a sister, she will have half of what he left. And he inherits from her if she (dies and)has no child. But

if there are two sisters (or more) they will have two thirds of what he left. If there are both brothers and sisters, the male will have the share of two females. Allah makes clear to you (His Law), lest you go astray. And Allah knows all things”.

Self Assessment Exercises 1 (SAEs)

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| <ol style="list-style-type: none"> 1. Discuss the various categories of inheritance in the Qur'an 2. Give the shares of a father and a mother under different conditions |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

1.5 Summary

We have examined in this chapter the stylistic devices used to convey inheritance. The device prepares one's mind for the explanations. We also discussed categories of heirs such as fixed sharer and residuaries. The table was used to illustrate the shares of two of the fixed, sharers father and mother with explanations.

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1.7 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises (SAEs)

1. Discuss the various categories of inheritance in the Qur'an

-Categories of inheritance in the Qur'an are basically three

-1. *Aṣḥābul Furūd* (Fixed sharers); these are the people who have their portion already determined in the Qur'an. These people are Father, Mother, Husband, Wife, Daughter, Full Sister, Uterine Brother, and Uterine Sister

-2. *Aṣabah* (Residuaries). 'Aṣabah are residuaries i.e the persons that inherit what is left of the entire property after the fixed sharers have taken their own portions. If there is no fixed sharer, they take the entire property.

3. *Dhawil arḥām* (Distant kindred) these are categories of people that do not belong to either the fixed shares or the residuaries but are entitled to inherit because of their relationship with the deceased

2. Give the shares of a father and a mother under different conditions

Father takes 1/6 If al-mayt(the deceased)is survived by at least a child or son's son

-If the deceased is not survived by a son or grandson, he takes 1/6.After others such as brothers have been allotted, he would take the remaining balance as asabat(residuary)

-The Mother takes 1/6 if If the deceased has children or son's children or If the deceased has more than one brother or sister of any kind

-She takes 1/3 If a mother has a son and that on died leaving his wife and mother behind i.e the man is survived by his wife and mother,

-the mother's share is 1/3 If a mother has a daughter and that daughter died leaving her husband and mother behind

- She takes 1/3 If the deceased has neither children nor brothers/sisters

Unit 2' *Aṣabah* (Residuaries)

Unit Structure

2.1 Introduction

2.2 Learning Outcomes

2.3 Background to *Aṣabah* (Residuary)

2.4 Categories of Residuary

2.5 List of Residuary

2.5.1 Son as a Residuary

2.6 Summary

2.7 References / further Reading

2.8 Possible Answers to Self-Assessment Exercises (SAEs)

2.1 Introduction

The knowledge of Islamic Law of inheritance is a key issue in Islamic Law. In fact, the place it occupies in promoting social welfarism is very important. There are common family situations that might occur after a person's death. The Quran is not silent as far as those situations are concerned. One of those issues is the issue that makes some people become residuaries. In this unit, you will learn about the second category of heirs.

2.2 Learning Outcomes

At the end of this lecture, you should be able to:

- explain residuaries.
- categorise residuaries.
- list residuaries.
- mention the share of a son at different situations.

2.3 Background to *Aṣabah* (Residuaries)

(in the Islamic law of inheritance refers to a situation in which a heir **التعصيب** *At-Ta'sīb*) (or a class of heirs) inherits the whole estate or takes the residue after other heirs had taken their fixed sharers. '*Aṣabah* are residuaries i.e the persons that inherit what is left of the entire property after the fixed sharers have taken their own portions. If there is no fixed sharer, they take the entire property.

2.4 Categories of Residuaries

Residuaries in their own right

عصبة نسبية

Residuaries in another's right

عاصب بغير

Residuaries together with another

عاصب مع غير

2.4.1 Residuaries in their own right

عصبة نسبية

These are the residuaries that have the right of residue on the basis of blood relation *عصبة نسبية*. This is when a male residuary is directly linked to the deceased without a female intervention. i.e. no female is found in the chain. The residuaries in this group are divided into four

groups as contained in the table immediately below. The first excludes the second, and the second excludes the third while the third excludes the fourth. The residuaries are the descendants of the deceased (*Asabatun sababiyah*). If there is no female and the sons are residuaries, the residue is divided among the sons equally. If it is only one son, he takes everything. A grandson may take everything in the absence of granddaughter. Son, grandson, father and grandfather are some examples of residuaries in this category. *Asabatu nasabiyah* – they are the male ascendants, descendants brothers and their sons to mention but a few.

Group I Male Ascendants	Group II Male Ascendants	Group III Siblings	Group IV Descendants of one's ascendants who are not one's siblings
e.g. Son/Sons Grandson etc.	Father paternal grandfather etc	Real brothers Real sisters etc.	Descendants of the grandfather etc.

2.4.2 Residuaries through another's rights

عاصب بغير

These are the residuaries that agnatised with their male counterparts. i.e. female relatives of the same degree that entitled to fixed share but become residuaries if they co-exist with brothers. For example the existence of a son as residuary makes the son's sister(s) to be residuaries since the daughter(s) are of the same degree of relationship to the dead as the son

2.4.3 Residuaries with another

عاصب مع غير

A female that becomes a residuary with another female e.g. a real sister with a daughter or granddaughters and no son or any other male *aṣbah*. A residuary can be a sharer depending on the availability or otherwise some other particular heirs.

2.5 List of those that may convert from fixed sharers to residuaries

- Father
- Paternal grandfather
- Daughter
- Son
- Son's daughter
- Full Sister
- Consanguine Sister (i.e sister by the father alone)

2.5.1 Son as a Residuary

- Son is a member of *asbabul furūd*. Children whether male or female always inherits.
- After the fixed sharers have taken their own shares, son takes the whole residue (and converts his own sister(s) to residuaries)
- If there is no son, grandson gets the whole residue. (In each case the son(s) is treated along with his female counterparts (daughter))
- The residue must be shared equally among two sons or more or grandsons.
- A daughter becomes a residuary by the presence of a son.

In all the examples, the male (son) or grandson is entitled to double the amount due to his female counterpart. This is in accordance with the Quranic injunction,
For men are the portions of two females. In the same manner are given responsibilities of providing the sustenance of and maintenance of the home, in the spirit of to whom much is given much is expected.

Self Assessment Exercises (SAEs)

- | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none">1. Mention 3 types of residuaries2. Give 4 examples of those that may convert to residuaries.3. Write a brief note on son as a residuaries. |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2.6 Summary

An attempt was made in this unit to explain *at-ta'ṣīb* (residue) and all the conditions attached to it. Types of residuaries were discussed. Some residuaries are in their own rights while others rely on others. A table that shows some members in every group was provided. List of those that was converted to residuaries were provided. A comprehensive example of residuary was given. This was done to illustrate the rules.

2.7 References / further Reading

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2.8 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises (SAEs)

1. Mention the three types of residuaries

- Residuaries are of three types; ;Residuaries in their own right Residuaries in another's right and Residuaries together with another

عاصب مع غير

2. Give 4 examples of those that may convert to residuaries.

Those that may convert to residuaries include Father, Paternal grandfather, Daughter, and Son

3. Write a brief note on son as a residuaries.

- The son is a member of *asbabul furūd*. .
- After the fixed sharers have taken their own shares, son takes the whole residue
- A daughter becomes a residuary by the presence of a son.
- If there is no son, grandson gets the whole residue.

Unit3: Duality of Status of Siblings in Islamic Law of Inheritance

Unit Structure

3.1 Introduction

3.2 Learning Outcomes

3.3 Background to Status of Siblings in Islamic Law of Inheritance

3.4 Residuary

3.4.1 Full Brother as a residuary

3.4.2 Full Sister as a fixed sharer and a Residuary

3.4.3 Consanguine Brother as a Residuary

3.4.4 Consanguine Sister as a fixed sharer and a Residuary

3.5 Summary

3.6 References / further Reading

3.7 Possible Answers to Self-Assessment Exercises (SAEs)

1.1 Introduction

This lecture focuses on various kinds of elimination and substitution in relation to inheritance in Islam. Some heirs cannot inherit in the presence of *aṣḥābul furūd*. However, if fixed sharers (*aṣḥābul furūd*) are not present, they would not only inherit but they take the residue. In this unit, an attempt is made to explain them one after the other.

3.2 Learning Outcomes

At the end of this lecture, you should be able to:

- Explain the shifting status of siblings as fixed sharers and Residuaries
- State the conditions that can make a real brother become a residuary.
- List the situations that put a full sister in two situations; fixed sharers and residuary.
- Mention the position(s) of both consanguine brother and consanguine sister.

3.3 Background to Status of Siblings in Islamic Law of Inheritance

Under the Islamic law of inheritance, heirs shift in their status to another. Some of the heirs assume double status when the situation warrants that and others are debarred

3.4 Residuary

3.4.1 Full Brother as a residuary

Full brother is a descendant of father (just as he is also of the mother). In the presence of the father of the deceased (his own full brother), son and grandson, he cannot inherit the deceased. However, if they are nonexistent, he inherits as a residuary. If he is alone and no other heir, he

takes the full residue. But if he has sisters, he shares the residue with the sister(s) in the ratio 2:1. If there are two or more brothers, they share the residue equally among themselves.

Full Brother's Changing Status

S/No	Situation	Portion and Status
1	+ Son/father/grandson of the Deceased	The brother is Debarred from inheritance
2	In the absence of heir in situation number 1	He inherits the residue along with other entitled heirs e.g his brothers, sisters etc.
3	If he is the only heir	He inherits the whole property as residue

3.4.2 Full Sister as a Fixed Sharer and a Residuary

If the deceased has a son, grandson and father, full sister cannot inherit the deceased because of closer relations. However, if she is alone without the deceased's son or grandson or father, she will inherit $\frac{1}{2}$ of the property. It is $\frac{2}{3}$ if the full sisters are two or more and the deceased does not have a son, grandson or father. Full sister becomes a residuary if she has a full brother who became an agnate. Both share the residue in the ratio 2:1. But if there is no full brother and the

deceased has a daughter or granddaughter full sister becomes a residuary along with the daughter. Full sister is excluded if the deceased has a son, grandson or father.

Full Sister’s Changing Fortunes in Inheritance from Fixed Sharer to Residuary

S/No	Situation	Portion and Status
	+ Son/grandson/father	Sister(s) totally eliminated from inheritance
	Absence of any under No 1	½ of the property as fixed sharer. Co-sharer of 2/3 if she has other sister(s)
	+ Her brother(s)	Full sister becomes a residuary co-shares with the brother(s) at the ratio of 2:1 (male/female)
	No son/grandson/father/full brother but with daughter(s) or son’s daughter(s)	Full sister becomes a residuary along with the daughters or son’s daughters

3.4.3 Consanguine Brother as a Residuary

What is the meaning of consanguine? Consanguine means two or more people with the same father but different mothers. If a full brother is absent, consanguine brother takes his position and

inherits as a full brother. If he is alone, he takes the full residue. But if he has consanguine sisters, he shares the residue with the consanguine sister(s) in the ration

2:1. The consanguine sisters share their own share of the residue equally among themselves.

A full brother excludes consanguine brother. He cannot inherit the deceased in the presence of the deceased’s full brother. A full sister cannot exclude consanguine brother. Consanguine brother takes the residue if there is full sister(s). This is after the full sister(s) has taken

her fixed share. Consanguine sisters become residuaries if there is aconsanguine brother. The son, grandson or father of the deceased excludes consanguine (same father different mothers).

3.4.4 Consanguine Sister as a Fixed Sharer and a Residuary

It is not allowed for consanguine sisters to inherit when the son, grandson, father or full brother of the deceased is in existence. Consanguine sister will take ½ the estate if the deceased has only one consanguine sister. It is 2/3 that consanguine sisters will share equally if they are two or more. Consanguine sister will inherit 1/6 of the total property when there is one full sister with her. If two or more consanguine sisters are in existence with one full sister, they share 1/6

equally among themselves. If there are two or more full sisters, consanguine sisters are excluded totally. Consanguine sister becomes a residuary if she is in existence with a

consanguine brother both consanguine sister and brother share the property in the ratio 2:1. Consanguine sister cannot inherit in the presence of the son, grandson, father and full brother of the deceased.

Full Brother	
Portion	Circumstances
Full residue	If full brother is alone he takes the full Residue
Full residue in the ratio 2:1	If full brothers have sisters, both full brothers and full sisters share it in the ratio of 2:1(male/female)

Full sister	
$\frac{1}{2}$	If the deceased has only one full sister and no fixed sharers, full sister takes $\frac{1}{2}$ of the property.
$\frac{2}{3}$	2 or more full sisters without fixed sharers. They share it equally among themselves.
Residuary	Full sister of the deceased becomes residuary if the deceased does not have a full brother but has a daughter or granddaughter
Excluded	The son, grandson or father of the deceased excludes full sister(s)
Consanguine brother	
Full residue	If consanguine brother is alone with the deceased, he takes the full residue.
Full residue in the ratio 2:1	If the deceased has consanguine brother and consanguine sisters, both share it in the ratio 2:1 respectively

Full residue shared equally	If the deceased has only consanguine brothers, then share the residue equally among themselves
Excluded	Full brother of the deceased excluded consanguine brother
Residue	If the deceased has full sister(s) and after the full sisters take their fixed share, consanguine brother takes the residue
Excluded	The son, grandson and father of the deceased excluded consanguine brother

Consanguine Sister

$\frac{1}{2}$	If the deceased has only consanguine sister, she takes $\frac{1}{2}$ of the deceased's property
$\frac{2}{3}$	If consanguine sisters are 2 or more, they shared $\frac{2}{3}$ of the deceased's property equally among themselves
$\frac{1}{6}$	A consanguine sister of the deceased takes $\frac{1}{6}$ if the deceased has one full sister
$\frac{1}{6}$	If consanguine sisters of the deceased are 2 or more, they take $\frac{1}{6}$ and share it equally
Excluded	If the deceased has 2 or more full sisters, consanguine sister is excluded
Residuary 2:1 Male:Female	If a deceased has a consanguine brother and a consanguine sister, both co-share the residue in the ration of 2:1 (male/female)
Excluded	The son, grandson, father or full brother of the deceased excludes consanguine sister

3.5 Summary

We have examined in details some aspects of elimination and substitution in the area of inheritance in Islam. We discussed the situations that can make full brother or sister inherit the full residue. The place of consanguine sisters and brothers is discussed. They take different positions. At times, they are excluded. At other times they take the full residue. In other situation, they have fixed shares. All these positions show the fairness of the Islamic law of inheritance and that the degree of close relation determines the priority in inheritance.

Self Assessment Exercises (SAEs)

1. Define full brother and consanguine brother.
2. Consanguine brothers can be excluded, included and at times take the full residue. Explain
3. Consanguine sister wear many caps. Explain

3.6 References / further Reading

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3.7 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises (SAEs)

1. Define full brother and consanguine brother.

-Full brother is a descendant of father just as he is also of the mother. This is a brother with whom one shares the same father and mother

- Consanguine brothers means two or more brothers with the same father but different mothers.

2. Consanguine brothers can be excluded, included and at times take the full residue. Explain

- If a full brother is absent, consanguine brother takes his position and Inherits as a full brother.

-If he is alone, he takes the full residue.

-But if he has consanguine sisters, he shares the residue with the consanguine sister(s) in the ration

3. Consanguine sister wears many caps. Explain

- Consanguine sister will take $\frac{1}{2}$ the estate if the deceased has only one consanguine sister.
- she will share $\frac{2}{3}$ equally if they are two or more.
- She will take $\frac{1}{6}$ of the total property when there is one full sister with her.
 - If there are two or more full sisters, consanguine sisters are excluded totally
- Consanguine sister becomes a residuary if she is in existence with a consanguine brother both consanguine sister and brother share the property in the ratio 2:1.

Unit 4: The Place of *Dhul ArḤām*(Distant Relatives) on Islamic Inheritance

Unit Structure

4.1 Introduction

4.2 Learning Outcomes

4.3 Background to *Dhul ArḤām* (Distant Relatives) in Islamic Inheritance

4.3.1 Meaning of *Dhul Arḥām*

4.3.2 Adoption of *Dhul Arḥām*

4.3.3 List of *Dhul Arḥām*

4.3.4 Categories of *Dhul Arḥām*

4.4 General Rules Concerning the Distribution of Property among *Dhul Arḥām*

4.5 Summary

4.6 References / further Reading

4.7 Possible Answers to Self-Assessment Exercises (SAEs)

4.1 Introduction

Islam is a total way of life. In the area of family life, the stipulations of Islamic law are all encompassing. As the Islamic Law of inheritance discusses those relatives that have fixed shares, it also discusses the issue of other relatives that are not covered under the fixed inheritance. It takes into consideration every blood relation of the deceased person who whenever it is

appropriate enjoys some benefits. In this chapter, we shall discuss the issue of Dhul arham and the relationship in the Islamic Law of inheritance.

4.2 Learning Outcomes

At the end of this lecture, you should be able to:

- define *Dhul Arḥām*
- explain the four classes of *Dhul Arḥām*
- state the rules that should be applied in determining the inheritance of such relatives
- list the relatives who are excluded from inheriting
- state the legality of *Dhul Arḥām*

4.3 Background to *Dhul Arḥām* (Distant Relatives) in Islamic law of Inheritance

You may be wondered that why should distant relatives inherit from the property of the deceased when it is the close relatives that are discussed as having shares in the property of the deceased from the beginning of our discussion in this course. Yes, it shall be so because Islam is all encompassing in nature. It takes care of everything. Even though they are called distant relatives, they are still related to the deceased in one way or the other and for that, situation on ground may give them the opportunity to inherit from the property of the deceased as will be discussed.

4.3.1 Meaning of *Dhul Arḥām*

Literally, *Dhul Arḥām* means the people of the womb. This is because they share the same womb. Its technical meaning is relatives through female lineage. They are the relatives whose relationship to the deceased occurs through one or more female links, and who do not normally inherit from a deceased. This set of people neither inherit by prescription from the Holy Qur'an nor by *ta'sīb* i.e. by a sole heir who inherits the whole property or the residue after others had taken their fixed shares. The set of people are neither sharers nor residuaries. It must be mentioned that generally all blood relations of a deceased who are neither sharers nor residuaries fall under this category.

This has indirect support in the Qur'an chapter 4 verse 8 which says: "And when the relatives and the orphans and the poor are present at the time of division (of inheritance) give them out of the property and address them kindly and justly". If there are no sharers or residuaries, they would take the whole estate. When a spouse is the only inheritor, they are entitled to the residue after deducting the fixed share of the surviving spouse.

Self Assessment Exercises 1 (SAEs)

1. Define *Dhul Arḥām*

4.3.2 Adoption of *Dhul Arḥām*

The direct support for distant relations is found in Q8:75 which states:

وَالَّذِينَ آمَنُوا وَهَاجَرُوا وَجَاهَدُوا فِي سَبِيلِ اللَّهِ وَالَّذِينَ آوَوْا وَنَصَرُوا أُولَئِكَ هُمُ الْمُؤْمِنُونَ حَقًّا لَهُمْ مَغْفِرَةٌ وَرِزْقٌ كَرِيمٌ (74) وَالَّذِينَ آمَنُوا مِنْ بَعْدِ وَهَاجَرُوا وَجَاهَدُوا مَعَكُمْ فَأُولَئِكَ مِنْكُمْ وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ إِنَّ اللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ

"And those who believed after (the initial emigration) and emigrated and fought with you – they are of you. But those of (blood) relationship are more entitled (to inheritance) in the decree of Allah. Indeed, Allah is knowing of all things (Q8:75).

النَّبِيُّ أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنفُسِهِمْ وَأَزْوَاجُهُ أُمَّهَاتُهُمْ وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ مِنَ الْمُؤْمِنِينَ وَالْمُهَاجِرِينَ إِلَّا أَنْ تَفْعَلُوا إِلَىٰ أَوْلِيَائِكُمْ مَعْرُوفًا كَانَ ذَلِكَ فِي الْكِتَابِ مَسْطُورًا

The Prophet is more worthy of the believers than themselves, and his wives are (in the position of) their mothers. And those of (blood) relationship are more entitled (to inheritance) in the decree of Allah than the (other) believers and the emigrants, except that you may do to

your close associates a kindness through bequest. That was in the Book inscribed. (Q33:6).

These two verses describe close maternal relations of the deceased who are not entitled to fixed inheritance. They could neither be sharers nor residuaries.

4.3.3 List of *Dhul Arḥām*

- Maternal grandfather of the deceased
- The mother of the grandfather of the deceased
- The son of uterine brother of the deceased
- The son of uterine sister of the deceased
- Maternal uncles
- Maternal aunts
- Aunts of maternal uncles
- Aunts of maternal aunts
- Children of maternal uncles and aunts
- Children of aunts of maternal uncles and aunts
- Uterine paternal uncle
- The sons of the daughters
- The sons of all forms of sisters
- The daughters of the maternal aunts

Although they may not benefit from inheritance, they should come before the generality of people, Muslims and others who would benefit from the property of a deceased person.

4.3.4 Categories of *Dhul Arḥām*

Deceased's descendants

Children of the daughters and their descendants Children of the son's daughters and their descendants

Deceased's ascendants - if the distant relatives of the first class are non-existent, the second class distant relatives take their position. They are:

Non – inheriting grandfather – paternal or maternal. Non – inheriting grandmothers.

Parents' descendants of the third class distant relatives take the queue if the first and second distant relatives are absent. Members of this group include:

- Daughters of the real brother and their descendant's
- Daughters of the consanguine brother and their descendants
- Children of the uterine brother and their descendants
- Daughters of the full brother's sons and their descendants
- Daughters of the consanguine brother's sons and their descendants
- Children of full sister and consanguine and their descendants

Near Grandparents' Descendants

The last group takes the queue if the first three groups are not in existence. Some members of this group are:

- Paternal aunts
- Father's full sisters
- Maternal uncles
- Maternal aunts

Full paternal uncles' sons and daughters and their descendants
Consanguine paternal uncles' sons and daughters and their descendants
Self Assessment Exercises 2 (SAEs)

2. State with examples the categories of *Dhul Arḥām*

4.4 General Rules Concerning the Distribution of Property among *Dhul Arḥām*

- The nearer relatives cut off the remote one. If there is only one relative, he or she takes the whole estate.
- Maternal uncles and maternal aunts take the position of the mother and receive her share of the inheritance.
- Members of the same sex take equal shares of the inheritance.
- A male will have the share of two females i.e a male will receive a double share of a female.
- Father's maternal brothers and paternal aunts substitute for the father and receive his share.

Self Assessment Exercises 3 (SAEs)

3. What are the general rules concerning the distribution of estate among *Dhul Arḥām*

4.5 Summary

A working definition of *Dhul Arḥām* is given in this lecture to serve as a framework for other discussions. The legality of *Dhul Arḥām* is situated in the context of Q8:75 and Q33:6. Some members of *Dhul Arḥām* were provided in the write-up to serve as a clue and to bring home our point of discussion. *Dhul Arḥām* has four categories which are all mentioned in this unit. The unit ended with the rules concerning the distribution of property among *Dhul Arḥām*.

4.6 References / further Reading

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4.7 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises 1 (SAEs)

1. Define *Dhul Arhām*

- *Dhawul Arham* are relatives through female lineage. They are the relatives whose relationship to the deceased occurs through one or more female links, and who do not normally inherit from a deceased.

Self-Assessment Exercises 2 (SAEs)

2. State with examples the categories of *Dhul Arhām*

Dhawul Arham are of three categories

- **Deceased's descendants.** These are children of the daughters and the son's daughters and their descendants

- **Deceased's ascendants.** These include Non – inheriting grandfather – paternal or maternal. Non – inheriting grandmothers. Others include Daughters of the real brother and their descendant's, Daughters of the consanguine brother and their descendants and Children of the uterine brother and their descendants

- **Near Grandparents' Descendants.** This group include Paternal aunts, Father's full sisters

Maternal uncles and Maternal aunts

Self-Assessment Exercises 3 (SAEs)

3. What are the general rules concerning the distribution of estate among *Dhul Arhām*

-Rules concerning the distribution of estate among *dhawul arham* are;

-The nearer relatives cut off the remote one

- Members of the same sex take equal shares of the inheritance.

-A male will have the share of two females

- Father's maternal brothers and paternal aunts substitute for the father and receive his share.

MODULE 4

Unit 1 Impediments to Inheritance in Islam

Unit Structure

- 1.1 Introduction
- 1.2 Learning Outcomes
- 1.3 Background to impediments to inheritance in Islam
- 1.4 Factors that prevent Heirs from Inheritance
 - 1.4.1 Religious Differences
 - 1.4.2 Homicide
 - 1.4.3 Bondage
 - 1.4.4 Prophethood
 - 1.4.5 Concurrent Death of Relatives
 - 1.4.6 Illegitimate or Illegal Child
 - 1.4.7 Lian
- 1.5 Extremist Factors which do not Constitute Legal Impediments
 - 1.5.1 Distance
 - 1.5.2 Disobedient Child
 - 1.5.3 Minor
- 1.6 Summary
- 1.7 References / further Reading
- 1.8 Possible Answers to Self-Assessment Exercises (SAEs)

1.1 Introduction

The Heirs are given their divinely-fixed shares as contained in the Qur'an. A dead person is not allowed to disqualify his heir from inheriting him/her. However, certain heirs may legally be prevented from inheriting a dead relation. If a person is in a group that should not inherit, no amount of affection could make him inherit. In this lecture, you would learn the factors that can deprive an heir from inheriting his dead relation. You will also learn the factors that cannot prevent an heir from inheriting his dead relative.

1.2 Learning Outcomes

At the end of this unit, you should be able to:

- State some factors that can prevent a person from inheriting his dead person's property.
- List some facts that cannot prevent heirs from inheritance.
- Mention some Quranic verses on factors that can prevent one from inheritance.

1.3 Background to impediments to inheritance in Islam

It is relevant to make it clear that notwithstanding the relationship of a person with the deceased, some factors can prevent him from inheriting the property of the deceased. This is considered an exceptional rule from a general rule. This exceptional rule is to put Muslims at caution regarding their rights to inheritance.

1.4 Factors that prevent Heirs from Inheritance

Allah has assigned how property of a dead person should be shared. Certain circumstances create obstacles to inheritance. The obstacles or impediments are stated in the Sunnah of the Prophet

1.4.1 Religious Differences

Non-Muslims cannot inherit Muslims. In the same vein, Muslims cannot inherit the property of a non-Muslim. Restrictions on inheritance are based on the difference of religion. This issue is related to the issue of marriage. Prevention of a non-Muslim from inheriting a Muslim is in accordance with the position of the religion of Islam which is clearly stated in the Quran. Therefore, a Muslim should not inherit a non-Muslim and vice-versa.

لا يرث الكافر المسلم ولا المسلم الكافر

A non-Muslim does not inherit a Muslim just as a Muslim does not inherit a non-Muslim. A Muslim that does not have an heir would have all his property deposited in Baytul mal (Islamic State Treasury). The property may also be used for the propagation of Islam. It may also be used to give assistance to the poor. Mosques may also benefit from the property of a Muslim whose relatives are non-Muslims. Non-Muslims can only benefit from the property of a Muslim before the death of a Muslim or through his will after his death. The benefit should not be more than 1/3 of his property.

1.4.2 Homicide

Manslaughter – If an heir kills a person with a view to inheriting him, he is deprived of inheriting the killed person. Killer cannot inherit a person that he kills irrespective of whether the killing is by mistake or by design i.e. both deliberate killing and killing by mistake prevent the killer from inheriting the killed. The Prophet is reported to have said:

ليس لقاتل مياث

A killer does not receive (a share of) inheritance (from the killed) In another Hadith, he is reported to have said: لا يرث القاتل A killer does not inherit (from the killed) However, if a mad person and a minor should kill a person, they can inherit. They would not be prevented from inheriting the person's property. This is because they are unconscious of their action. In addition, if a person whom an heir can inherit attacks the heir and the heir defended himself, the heir will inherit the person if the person should die during the struggle. Killing a person outside the injunctions of Allah is totally prohibited. In fact, if a person should kill a Muslim, the punishment of the killer is hell.

وَمَنْ ي قَتَلَ مُؤْمِنًا مَتَّ عَمَدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا

1.4.3 Bondage

A slave is under bondage. He could not own any property. Whatever he owns belongs to his master. If his master should die, he cannot inherit him because he is even part of the property of his master until he is set free. In order not to pass property in default to the master, the slave is not allotted a share.

1.4.4 Prophethood

Prophets did not inherit and they were not inherited. When Fatimah demanded for an inheritance from the Prophet's property, Abubakr rejected the request. He reminded

Fatimah of his father's sayings. "We prophets do not inherit nor leave an estate for an inheritance" (Bukhari)

1.4.5 Concurrent Death of Relatives

If there is a plane crash, ship-wreck, fire outbreak, or any such accident involving close relatives who die without knowing the one who died before the other, that constitutes mutual disqualification of inheritance. In all these examples, property of those dead relatives would be

inherited by those heirs that are alive. Wealth acquired by a person through unlawful means such as gambling, prostitution, bribery and corruption, theft, riba (usury) etc is not inherited because it is impure. Lease is not inherited. If the asset belongs to a dead person, it is shared among his heirs. Lessees should not inherit leased asset. It must be returned to the lessor.

1.4.6 Illegitimate or Illegal Child

A child born out of biological wedlock cannot inherit the father because matrimony is the basis of legitimacy of child. Any child born out of wedlock is an illegal child. There is no mutual right of inheritance between him /her and the purported father. She / he can inherit from the mother and vice versa.

1.4.7 Lian

A child whose paternity has been legally denied by the father loses mutual right of inheritance between him and the father. The right of inheritance however exists between the child and the mother.

Self Assessment Exercises 1 (SAEs)

- | |
|------------------------------------------------------------------------|
| 1. Discuss the various factors that can deprive an heir of inheritance |
|------------------------------------------------------------------------|

1.5 Extremist Factors which do not Constitute Legal Impediments

The following extremes factors are not impediments to inheritance:

1.5.1 Distance

If a Muslim is living in a country and his heirs are in another country or towns, distance cannot prevent them from inheriting one another. The close relative Muslims must inherit one another irrespective of where they are settled.

1.5.2 Disobedient Child

A disobedient child should not be prevented from inheritance for reason of his disobedience. Both obedient and disobedient children should inherit their parents if they survive them. If a person decides to distribute all his property during his lifetime with a view to depriving

disobedient children of inheritance, it is not proper. One can only make gifts to people including the obedient ones and disobedient ones. One should avoid any form of discrimination. If a will should contain a clause of deprivation, it should be set aside.

1.5.3 Minor

A minor cannot be deprived of inheritance because he is not of age. A minor and even unborn baby in its mother's womb will inherit his/her parents and other relatives based on the divinely-fixed shares.

Self Assessment Exercises 2 (SAEs)

2. State and explain factors that cannot prevent one from inheritance.
3. Can an unborn child in its mother's womb inherit its dead father?
4. Can a Muslim leaving in Makkah inherit his dead brother in Nigeria?

1.6 Summary

We discussed in this unit, the factors that can deprive a person of inheritance such factors include killing, difference of religion and bondage. We also mentioned some circumstances which are misconstrued as impediments to inheritance such as infancy and disobedience.

1.7 References / further Reading

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1.8 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises 1 (SAEs)

1. Discuss the various factors that can deprive an heir of inheritance

The following are factors that preclude an heir from inheritance

- Religious Differences: If the religion of deceased differ from that of the person to inherit him such as a Muslim survived by a non Muslim or a non Muslim survived by a Muslim, either of the two categories cannot inherit the other.

- Homicide. Any person who participate in the intentional killing of a person shall not inherit that person
- Bondage: A slave cannot inherit his master in the presence of biological children of the master neither can a master inherit his slave because the slave and what he has belong to the master, so , the master will take over the property by procession.
- Prophethood. Prophets are not to be inherited. Their property belong to the treasury
- Concurrent Death of Relatives: In the case of concurrent death of relatives such that it is not easy to identify who dies first or who dies last, non shall inherit the other
- Illegitimate or Illegal Child. A child born out of illegal sex shall not inherit his father but he shall inherit his mother
- Lian: A child whose paternity has been legally denied by the father shall not inherit the father but can inherit the mother

Self-Assessment Exercises 2(SAEs)

2. State and explain factors that cannot prevent one from inheritance.

- Distance: a person who is entitled to inherit by law shall not be denied the right to inherit because he stays in a place far from where the deceased died
- Disobedient Child: A child cannot be disallowed from inheriting any of his parents because he is a disobedient child
- Minor:Age is not a barrier to inheritance. A legitimate heir shall take his portion of the property irrespective of his age

3. Can an unborn child in its mother's womb inherit its dead father?

- An unborn child shall inherit the property of his dead father provided he is born alive. If the property is shared before his birth, his portion shall be preserved for him or her

4. Can a Muslim leaving in Makkah inherit his dead brother in Nigeria?

- Difference or distance in location is not a barrier to inheritance. A legitimate heir shall inherit the property of the deceased irrespective of where he lives at the time of the death of his brother

Unit2: Substitutes for Direct Ascendants and Direct Descendants in Islamic Inheritance

Unit Structure

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 Background to Substitutes in Islamic Inheritance
- 2.4 The place and share of granddaughter in inheritance
- 2.5 Substitute
 - 2.5.1 Grandmother as a substitute
 - 2.5.2 Grandson as a substitute
 - 2.5.3 Grandfather as a substitute heir for the father
- 2.6 Summary
- 2.7 References / further Reading
- 2.8 Possible Answers to Self-Assessment Exercises (SAEs)

2.1 Introduction

The direct ascendant is the father or mother. Their own parents are indirect ascendants of the grandchildren just as children are direct descendants and grandchildren indirect. No condition is permanent. This is true of the positions occupied by granddaughter, grandmother, grandson and grandfather. They take the position of others and enjoy their rights. This is called substitution in inheritance. Our focus here is mainly on this theory. We shall explain to you the roles the above-mentioned categories of heirs play in the area of elimination and substitution. You will also be taught how to calculate their shares.

2.2 Learning Outcomes

At the end of this lecture, you should be able to:

- State the shares of grandmothers
- Compare and contrast the position of grandmother and granddaughter in Islamic Law of inheritance.
- The position place of son and grandson in Islamic Law of inheritance

2.3 Background to Substitutes in Islamic Inheritance

The logic in Islamic estate distribution is that the closer in relation to the deceased is more entitled to his property because even when the deceased was alive, he sees the closer that the farer more often. A situation where the direct ascendant or the direct descendant is not on alive to inherit, his own ascendant will substitute him and it will be considered as if the ascendant or the descendant of the deceased is the one that has taken his portion

2.4 The place and share of granddaughter in inheritance

If the daughter is non-existent and there is no son, a granddaughter inherits the deceased. i.e. she takes the position of a daughter. The share of only a granddaughter is $\frac{1}{2}$ if she is alone i.e. if the deceased does not have a son and daughter. If they are two or more, they share $\frac{2}{3}$ of the deceased's property among themselves. A granddaughter takes $\frac{1}{6}$ if the

deceased has a daughter. Two granddaughters of the deceased share 1/6 among themselves if the deceased has a daughter. Granddaughters are excluded if the deceased has two or more daughters. They are also excluded if the deceased has a son. In summary 2 daughters or a son excludes granddaughter. The share of a granddaughter varies by the existence of a daughter or non existence of a daughter and on the existence of other granddaughters.

2.5 Substitute

2.5.1 Grandmother as a substitute

If a deceased’s mother is not in existence, grandmother takes her place. Grandmothers can only inherit a deceased if the mother is not in existence. A mother can get as much as 1/3 of the deceased’s property. A grandmother in substitution, will get only 1/6. It is this same 1/6 that

more than one grandmothers will share among themselves. If the deceased’s father or mother is living paternal, grandmother cannot inherit the deceased. Maternal grandmothers can inherit the deceased even when the deceased’s father or grandfather is in existence. The grandmother takes position of the direct mother.

2.5.2 Grandson as a substitute for the son in Inheritance

Grandson takes the place of a son if the son is non-existent. He takes the whole residue after the shares of fixed sharers have been taken care of. If a deceased has only grandson, the grandson takes the whole residue if the grandsons are 2 or more, they take the residue equally among themselves after the shares of fixed sharers have been taken care of. The grandson, in the absence of the son is treated as the son.

2.5.3 Grandfather as substitute heir for the Father

A paternal grandfather takes the place of a father and enjoys his rights in his absence. However, the presence of grandfather cannot reduce the share of the mother. The mother’s share remains 1/3 of the balance if the only person to inherit the deceased is the surviving spouse (wife or husband). Grandfather cannot exclude paternal grandmother. He can only inherit with her. Grandfather also inherits with brothers and sisters.

Granddaughter takes	
Portion	Explanations
1/2	If the deceased does not have a son and daughter but has only one granddaughter. She stands in place of the daughter.
2/3	If the deceased does not have a son and daughter but has two or more granddaughters, the granddaughters

	share 2/3 among themselves
1/6	If the deceased has a single daughter, granddaughter takes 1/6 of the property
1/6	Two or more granddaughters of a deceased who has a daughter would still share 1/6 among themselves
Excluded	Two or more daughters of a deceased will exclude his granddaughter from inheritance just as a son excludes the granddaughter
Grandmother	
Excluded	If the mother of a deceased is in existence, grandmother from that mother is excluded from inheritance
1/6	Where a mother of a deceased inherits 1/3 of the property, grandmother who is not the mother of the existing mother will get only 1/6 – i.e a paternal grandmother is not excluded by the mother.
Grandson	
Excluded	Where the deceased has a son, grandson is excluded
Residue	Where the deceased does not have a son, grandson takes the whole residue after the fixed sharers have taken

	their own portion
Sharing of the residue Equally	Two or more grandsons will share the residue equally if the deceased has no son
Grandfather	
Excluded	Where the deceased has a father, grandfather cannot inherit
1/6	Grandfather inherits with the deceased's brothers and sisters. Grandfather will take 1/6 of the whole property

2.6 Summary

An attempt was made in this unit to explain the shares of some secondary heirs. Granddaughters and grandmother can be excluded and can be given some fixed shares. We were able to explain that grandson enjoys the right of a son while grandfather enjoys the right of a father. To make you understand the lecture and have easy assimilation, we put all the sharers of each of the secondary share in tables.

Self Assessment Exercises (SAEs)

1. Explain the rights enjoyed by the grandmother
2. List and explain the shares of a granddaughter
3. Compare the shares of grandson and grandfather

2.7 References / further Reading

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2.8 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises (SAEs)

1. Explain the rights enjoyed by the grandmother

- the grandmother shall be excluded from inheritance when the mother is present. In the absence of the mother, the grandmother is entitled to 1/6 of the property Where a mother of a deceased inherits 1/3

2. List and explain the shares of a granddaughter

-The granddaughter takes 1/2 of the property If the deceased does not have a son and daughter but has only one granddaughter

-she takes 2/3 If the deceased does not have a son and daughter but has two or more Granddaughters

-She takes 1/6 If the deceased has a single daughter irrespective of the number of the granddaughters

-

3. Compare the shares of grandson and grandfather

-The grandson is excluded where the deceased has a son but if the deceased has no son, the grandson takes the residue after the fixed sharers have taken their portion irrespective of the number of the grandson

-just like the grandson, the grandfather is also excluded where the deceased has a father

-in the presence of the deceased's brothers and sisters, the grandfather takes 1/6 of the whole property

Unit 3 Hujb: Displacement in Inheritance

Unit Structure

3.1 Introduction

3.2 Learning Outcomes

3.3 Background to Displacement (*Hujb*) in Inheritance

3.4 Types of *Hujb*

3.4.1 *HujbNuqṣān*

3.4.2 *HujbHirmān*

3.5 Heirs who can never be deprived

3.6 Summary

3.7 References / further Reading

3.8 Possible Answers to Self-Assessment Exercises (SAEs)

3.1 Introduction

Some heirs are barred from inheritance partially while others are barred totally not because of defect in themselves, but the impediment is due to the existence of others. In this unit, your attention will be drawn to those that are deprived of inheritance partially and totally and the reasons for the impediment. There are some heirs who can never be prevented from inheritance no matter the situation. This issue is also discussed in this lesson.

3.2 Learning Outcomes

At the end of this lecture, you should be able to:

- explain *al-hujb*
- mention each type of *al-hujb* with examples
- explain each type of *al-hujb* with examples
- list those who can never be barred from inheritance

3.3 Background to Displacement (*Hujb*) in Inheritance

Hujb is derived from an Arabic word *hajaba* meaning veiled or screened. It means cutting off a person from heirship either partially or totally. In Islamic Law of inheritance, *al-hujb* occurs when an heir is partially or totally deprived of his normal share due to the existence of a nearer heir who takes precedence over him.

3.4 Types of *Hujb*

There are two types of impediments. Classification is based on the relationship of heirs to a deceased *Hujb Nuqṣān* (Partial Deprivation)

Hujb Ḥirmān (Total Deprivation)

3.4.1 *Hujb Nuqṣān*

This affects only four heirs or person.

- The share of a father reduces from residue to 1/6 if the deceased has a child.
- The mother's share falls from 1/3 to 1/6 due to the presence of a deceased's sons, daughter or son's children.
- The share of a husband falls from 1/2 to 1/4 in the presence of the wife's children or wife's grandchildren that she had for the surviving husband or another man.
- The share of wife or wives reduces from 1/4 to 1/8 if the surviving husband has children or grandchildren from any wife. There are variations of reduction. The share of a granddaughter i.e. son's daughter's is reduced from 1/2 to 1/6 if the deceased has a daughter

The reductions in shares are tabulated in the table below:

Heirs displaced partially	From	To	Causes of Displacement
Father	Residue	1/6	Child of the deceased,
Father	1/2	co-sharers of 2/3	daughters, son's daughters
Mother	1/3	1/6	Sons, daughters son's children

Mother	1/3	1/6	Brother or sister of the deceased
Husband	1/4	1/4	Wife's children from any man
Wife	1/4	1/8	Husband's children from any wife

Self Assessment Exercises 1 (SAEs)

1. Identify the category of people that are partially deprived from inheritance

3.4.2 *HujbHirmān*(Total Deprivation or Impediment)

HujbHirmān means total deprivation of an heir from inheritance. This is when the presence of some heirs cuts off other heirs totally from inheritance. For instance, if a deceased is survived by a son, grandsons are totally cut off from inheritance. Ambali (1998) presents this aspect of *hujb* in a table as cited below:

s/no	Heirs of Priority	Displaced Heirs
1	Son	Grandchild, any brother and any uncle
2	Grandson	Grand grandchild and all others barred by the son
3	Daughter	Uterine brother
4	The daughter of the son	Uterine brother
5	Daughters	Uterine brothers granddaughter except if she is agnatised
6	The daughters of the son	Uterine brother, daughters of the son of the deceased except if they are agnatised
7	Germane Brother	Consanguine brother and all forms of uncle – germane, uterine or consanguine
8	The son of germane brother	All forms of uncles, the son of consanguine Brother
9		All forms of uncles, the son of germane or

	Consanguine Brother	consanguine brother (nephew)
10	The son of consanguine brother	All forms of uncles, the son of germane or consanguine brother nephew
11	Consanguine uncle	Consanguine uncle
12	The son of full uncle (cousin)	The son of consanguine uncle (cousin)
13	Consanguine	All sons of all forms of uncle
14	Germane sister present with the daughter	Consanguine brother
15	Consanguine brother present with the daughter of the son of the deceased	Consanguine
16	Full sisters	Consanguine sister, except if agnatised
17	Father	Grandfathers, paternal grandmother, all the uncles and the brothers
18	Grandfather	Great grandfather uterine brothers, uncles and the children of the brother, (nephews and nieces)
19	Mother	Grandmother

Self Assessment Exercises 2 (SAEs)

2. what is *hujb hirman*
3. identify and discuss any three category of people that could be totally deprived from inheritance

3.5 Heirs who can never be deprived

It has to be mentioned that some heirs cannot be totally excluded under any circumstance. They are the son, the daughter, the mother, the father, the wife and the husband.

3.6 Summary

Hujb in all its ramifications has been examined in this unit. The meaning and divisions of *hujb* and its other related issues have been discussed in this lecture. Some facts were presented in tables so as to bring home our discussions on the issue. We also enumerated some relatives such as husband, wife, son and daughter who must inherit in all situations.

There is no any circumstance that can prevent them from inheritance. This is because of their strong relationship with and closeness to the deceased.

3.7 References / further Reading

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3.8 Possible Answers to Self-Assessment Exercises (SAEs)

Self-Assessment Exercises 1 (SAEs)

1. Identify the category of people that are partially deprived from inheritance

-Partial deprivation from inheritance refers to the situation where a legitimate heir descend from his portion to a lower portion

-those that are partially deprived from inheritance are

-father-----he moves from residue to $1/6$

-mother---she moves from $1/3$ to $1/6$

-the husband--he moves from $1/2$ to $1/4$

-the wife----she moves from $1/4$ to $1/8$

Self-Assessment Exercises 2 (SAEs)

2. what is *hujb hirman*

HujbHirmān means total deprivation of an heir from inheritance. This is when the presence of some heirs cuts off other heirs totally from inheritance

3. Identify and discuss any three category of people that could be totally deprived from inheritance

-People who can be totally deprived of inheritance are;

1-Grandson. He shall be totally deprived by the son

2-grandfather or grandmother. He or she shall be totally deprived by the father or the mother

3- Uterine brother. He shall be totally deprived by the daughter

MODULE 5

Unit 1 Women and the Islamic Law of Inheritance

Unit Structure

1.1 Introduction

1.2 Learning Outcomes

1.3 Background to Women and the Islamic Law of Inheritance

1.4 Quranic verse on disparity in shares of inheritance between male and female

1.5 Reasons for the difference in inheritance between males and females

1.6 Summary

1.7 References / further Reading

1.8 Possible Answers to Self-Assessment Exercises (SAEs)

1.1 Introduction

One of the issues that has been generating hot debate in the circle of scholars both Muslims and non-Muslims is the unequal proportion of inheritance between males and females in Islam. It is believed that women are being shortchanged by making their portion half that of men. The holders of this erroneous belief could not see the reasons behind the unequal shares between

men and women in Islam. For this reason, this unit is devoted to the examination of this issue. You will learn in this unit, Quranic verses on it and the reasons for disparity in the allocation of shares. We would also highlight instances males and females have equal shares of inheritance and occasions when women have better shares than their men counterparts. You will be aware in this unit of the time when females inherit and men are totally excluded.

1.2 Learning Outcomes

At the end of this lecture, you should be able to:

1. Mention the Quranic verse on disparity in the proportion of inheritance due to male and female heirs
2. State the reasons for the disparity in the sharing of inheritance
3. Mention the time when both share equally and when women share more than men
4. List the situations that can make women inherit where their male counterparts cannot

1.3 Background to Women and the Islamic Law of Inheritance

Unlike what is obtainable in other religions and cultures, Islam has an special package for women as far as inheritance is concerned. In some cultures, women are totally derived from inheritance and in other cultures, women are placed as having equal shares with men under the propagation of gender equality. In Islam, women are adequately positioned in inheritance and the rationale behind the positioning of women in what they are remains unchallengeable.

1.4 Quranic verse on Disparity in Shares of Inheritance between Male and Female

3.2 Q4:176 Stipulates different proportions of inheritance between male and female. It reads:

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنْ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَدٌّ وَرِثَةٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا
وَدٌّ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا التَّثْلَاثُ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ
تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

“They request from you a (legal) ruling. Say, “Allah gives you a ruling concerning one having neither descendants nor ascendants (as heirs)”. If a man dies, leaving no child but (only) a sister, she will have half of what he left. And he inherits from her if she (dies and)has no child. But if

there are two sisters (or more) they will have two thirds of what he left. If there are both brothers and sisters, the male will have the share of two females. Allah makes clear to you (His Law), lest you go astray. And Allah is knower of all things”. Some critics consider as unfair the fact that a female is given half of what is given to a male counterpart.

Self Assessment Exercises 1 (SAEs)

1. Write the Quranic verse usually quoted out of context to support the issue of disparity in the area of inheritance between males and females.

1.5 Reasons for the difference in inheritance between male and female

Before Islam, particularly during the Jahiliyyah period, women were denied inheritance. They were part of the property to be shared. Islam introduced a number of reforms into the life of Arabs before Islam. One of the areas reformed is inheritance. Inheritance rights of beneficiaries are based on the relationship of consanguinity, marriage contract and Islam. If Q4:176 is considered in isolation from other legislations and other issues or it is taken out of context, the issue of unfairness to females may be mistakenly justified. However, if it is considered along with its other accessories, no atom of injustice is sensed. It is then one is able to

see clearly how Allah is fair to both men and women. Because it is stated in many verses of the Quran that He Allah is just. Some of them are Q22:10 and Q18:49. Therefore, the reasons for the disparity are based on the following:

Financial Responsibility

It is one of the reasons and in fact, it may be the major reason for giving a male twice the amount given to a female is financial obligation placed on men. This is because males are

responsible for the financial upkeep of his family, wife and children. In a situation where a husband or a father dies, the financial responsibilities are on the male. He is to take care of his mother and sisters. It is not the responsibilities of the sister to provide for her mother. The income she receives through inheritance is for her alone. It is not to be used for household expenses. She is free to use it the way she likes. Because of this, she is not likely to face financial constraints. In addition, if she gets married, she receives as a matter of right, her bridal gift and other support from her husband. The payment of a dowry is the responsibility of a man. His brother out of his wealth will pay a dowry whereas the sister who receives half of a man's share will receive dowry (bridal gift). She does not only pay but she also receives income from her husband. Whatever she receives from her husband is not to be shared or used at home either for household expenses or for her husband. She is free to use it for herself the way she wants. Even after she has left home, the financial responsibilities at home devolve on the male children. She does not need to carry the financial burdens of their extended family except voluntary. It is not her responsibility.

Women are protected in terms of their wealth. It is for these reasons that a male is given twice the amount of a female. But in the area where financial burdens are not involved, Allah makes the share of inheritance of a male equal to that of a female. "And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each of them is a sixth..."

The equality of males and females is obvious in this verse because there is no financial burden attached. This is because they don't have the same father but have the same mother. If they were to have the same father, the male child would have inherited the father's financial burdens without involving his sister. Therefore, a man spends on his wife, children and parents. While a

woman uses her wealth the way she likes. It is justifiable and fair that a man should take more than a woman. If a deceased leaves a daughter and a son, the son should take twice as much

a female. This is because the son would take care of the daughter. The financial responsibilities of the father have shifted to the son. Therefore, he is entitled to two times the share of the daughter. If the deceased leaves full sisters and brothers, full sisters are entitled to half the share of a man because her affairs will be taken care of by the male. Her own inheritance is for her

alone. If the deceased leaves paternal half sisters and brothers, the brothers' share should double the amount of the sisters because the former will bear their financial burdens. Another reason which can make a male receive a greater share than a female is in the area of generation to which the heir belongs. Grandchildren would take a larger share of the inheritance of a deceased than grandparents. This is because they are not in the same generation. And in fact, the grandchildren

would take care of the grandparents financially. So, they are entitled to more shares. In addition, they also will face more financial challenges than their grandparents. It is also important to note that the daughter of the deceased would inherit more than the

deceased's mother because they belong to different generations. The daughter will face more financial responsibilities than the mother. Therefore, Islamic law of inheritance empowers the daughter more than the mother notwithstanding that both of them are females.

Closeness to the deceased determines the share

Without looking at the issue of gender, male or female, closeness to the deceased gives one edge over the other. For instance, a daughter of a deceased woman is entitled to half (1/2) while the deceased's husband will receive one fourth (1/4) because the daughter is an immediate blood relative and is closer in relation to the mother than the husband. Other areas where women are much more favoured financially than men include:

- Whatever a woman had before marriage is her property. The husband has no legal right on it.
- Marriage gift is for her alone. It is neither for her husband nor her parents. She doesn't have to spend it i.e it is not compulsory for her to spend her property for household keep (Q4:4)
- The husband bears the responsibilities of food, shelter, clothing, medications and other things that could make her comfortable.
- Her investment income and her salary belong to her alone.
- If a woman is divorced, her unpaid *mahr* (marriage gift) must be paid immediately.
- During *iddah* period, she is to be maintained financially.

Self Assessment Exercises 2 (SAEs)

2. List and explain the three reasons for the difference in the share of inheritance between males and females.
3. In Islamic Law, list some areas where women are much more favoured financially than their male counterparts

1.6 Summary

In this unit, you have learned that:

1. The Quranic verse on the issue of disparity of the shares between male and female is a misunderstood verse. This has been explained very well to uphold the justice of Allah.
2. There are about three reasons for the disparity in the sharing of inheritance in the ratio 2:1 for males and females respectively. The first is financial responsibility a man is bearing. The differences in generation of the heirs and closeness to the deceased in terms of blood relations are another two reasons for the gap in the allocation of the shares in Islamic law of inheritance.

1.7 References / further Reading

DLC.

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1.8 Possible Answers to Self-Assessment Exercises (SAEs)

Self Assessment Exercises 1 (SAEs)

1. Write the Quranic verse usually quoted out of context to support the issue of disparity in the area of inheritance between males and females.

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنْ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا
وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ يُبَيِّنُ اللَّهُ لَكُمْ أَنْ
تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ

“They request from you a (legal) ruling. Say, “Allah gives you a ruling concerning one having neither descendants nor ascendants (as heirs)”. If a man dies, leaving no child but (only) a sister, she will have half of what he left. And he inherits from her if she (dies and)has no child. But if

there are two sisters (or more) they will have two thirds of what he left. If there are both brothers and sisters, the male will have the share of two females. Allah makes clear to you (His Law), lest you go astray. And Allah is knower of all things”.

In the above verse, some critics consider as unfair the fact that a female is given half of what is given to a male counterpart without considering other reasons why a male should inherit more than a female

Self Assessment Exercises 2 (SAEs)

2. List and explain the three reasons for the difference in the share of inheritance between males and females.

-Moral justification for the male to inherit more than a female include

-The male as a father over other children has the financial responsibility of taking care of the children

-the male as a husband has the financial responsibility of taking care of his wife wives

-A woman starts enjoying financial freedom from the time she is given her bridal gift. Such gift is to be enjoyed exclusively by her

3. In Islamic Law, list some areas where women are much more favoured financially than their male counterparts

- Women are more favoured than men in the ownership of the bridal gift
- women are more favoured in the financial maintenance of the house. The responsibility is exclusively for the men
- at the time of divorce, women are entitled to maintenance allowance of the child under her custody
- during the time of iddah, a woman is entitled to the maintenance of the husband in the provision of food and shelter

Unit 2 Circumstances Where Female Heirs are Allotted the same or Higher Proportion of Inheritance with Male Heirs

Unit Structure

- 2.1 Introduction
- 2.2 Learning Outcomes
- 2.3 Background to Differences in Heirs
- 2.4 Differences in Heirs
 - 2.4.1 Males and females have equal shares
 - 2.4.2 Females inherit more than males
 - 2.4.3 Females inherit while males do not inherit
- 2.5 Summary
- 2.6 References / further Reading
- 2.7 Possible Answers to Self-Assessment Exercises (SAEs)

2.1 Introduction

To appreciate the position of women in Islam, you should find out what the Quran says about inheritance in relation to them. Your findings will tell you that Islamic law of inheritance does not put females at a disadvantage but gives them equal opportunity and rights with their male counterparts. In this section, you will learn how Islam deals with male and female shares. You will also be taught that at times females inherit higher proportion of inheritance than male.

2.2 Learning Outcomes

At the end of this lecture, you should be able to:

- list the shares given to both males and females on an equal basis.
- mention the circumstances that can make a female inherit more than a male.
- discuss the areas where females inherit and males do not inherit.

2.3 Background to Differences in Heirs

Originally, males take double the portion of female in the property left behind by the deceased but then, where the law finds it justifiable for a woman to take the same proportion with a man or even take higher, women are not denied their right. In fact, a woman may inherit and a man will not. When the need for such arises in estate distribution, women are not denied the right

2.4 Differences in Heirs

2.4.1 Males and females have equal shares

During the Jahiliyyah period, daughters, wives, mothers and other female beneficiaries were not entitled to inheritance at all not to talk of having equal number of shares with their male counterparts. They were even parts of the property to be inherited. When Islam came, it forbade

totally the practice of inheriting widows. This is one of the reformations brought to the lives of females by Islam. Females have equal shares in the following situations:

- If a deceased leaves a father, a mother and grandson. The father will take 1/6 and the mother will also take 1/6.

Portion	Father 1/6 and Mother 1/6
1/6 each	If a deceased should have a father, mother and grandson, each father and mother share 1/6

- Six people that are never fully excluded from inheritance but they may have their shares reduced. They are father, husband, son, mother, wife and daughter.

Males	Females
Father	Mother
Husband	Wife
Son	Daughter

We have three males and three females. So, there is the equality of the number of males and females in the above-mentioned category.

- The situations in which females inherit as much proportion as males include the following: when a deceased has a husband, mother, uterine sister and a full brother, their shares are:

Husband ½

Mother 1/6

Uterine Sister 1/6

Full brother 1/6

It is seen that uterine sister and full brother, female and male respectively each has 1/6 of the share and full brother will take the residue which is 1/6.

- A deceased with a mother and brothers would have his property shared as follows: A mother takes ½

Brothers also shares $\frac{1}{2}$

Both have equal shares. They are female and male respectively.

- A deceased that leaves her husband and a full sister would have her property shared by the husband and the full sister. Both have equal shares each i.e. the husband inherits $\frac{1}{2}$ the same as the female i.e the sister ($\frac{1}{2}$). Both have the same percentage each.

Husband $\frac{1}{2}$

Full sister $\frac{1}{2}$

Self Assessment Exercises 1 (SAEs)

1. Mention four of the areas where the shares of both males and females are the same in inheritance.

2.4.2 Females inherit more than males

There are some situations when females inherit more than males some of them are:

- If a deceased leaves a husband and one daughter, the husband gets $\frac{1}{4}$ and the daughter gets $\frac{1}{2}$.
- If the deceased leaves a husband and two daughters, the husband receives $\frac{1}{4}$ and the two daughters receive $\frac{2}{3}$.
- If the deceased leaves a daughter and maternal uncles, the daughter takes more than the maternal uncles.
- If a deceased leaves two paternal sisters and paternal brothers, the two paternal sisters inherit more than the two paternal brothers.
- If a deceased leaves a father, mother and husband, the father takes $\frac{1}{6}$, the mother takes $\frac{1}{3}$ and the husband takes $\frac{1}{2}$. The remaining $\frac{1}{6}$ which goes to the father after the mother and the husband have taken their shares is half of his wife's share. Here females inherit more than males. Moreover, if a woman leaves a husband, uterine sister and two full brothers, the husband takes $\frac{1}{2}$, the uterine sister takes $\frac{1}{3}$, the two full brothers inherit the residue $\frac{1}{6}$. It is clear that uterine sister who is a female and farther relative of the deceased inherit more than two full brothers who are males. From the foregoing, it is clear that it is not gender discrimination that makes a female to be allotted half of the male's portion but the responsibilities.

Self Assessment Exercises 2 (SAEs)

2. Give four examples of the situations when a female inherit more than a male.

2.4.3 .3 Females inherit while males do not inherit

There are situations where males do not inherit at all and females inherit. Some examples of such a situation are:

- If a deceased leaves a husband, full sister and paternal brother, the husband takes $\frac{1}{2}$ and the full sister takes $\frac{1}{2}$ the paternal brother takes nothing.
- The grandmother in many cases has a share in the inheritance while the grandfather does not.
- If a deceased leaves a maternal grandfather and maternal grandmother, then the maternal grandmother inherits the whole estate by taking one-sixth as a sharer and the rest as residuary while the maternal grandfather inherits nothing.

Self Assessment Exercises 3 (SAEs)

3. Describe three situations where a female inherits and a male does not

2.5 Summary

In this lecture, you have learned that:

- Females inherit as much as males particularly when a deceased leaves a father, a mother and a grandson. Both mother and the father take $\frac{1}{6}$ each.
- Females inherit more than males e.g if a deceased leaves a daughter and husband, the daughter gets ($\frac{1}{2}$) more than the husband who has $\frac{1}{4}$.
- We also discussed some situations where females inherit and males do not inherit.

2.6 References / further Reading

DLC.

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2.7 Possible Answers to Self-Assessment Exercises (SAEs)

Self Assessment Exercises 1 (SAEs)

1. Mention four of the areas where the shares of both males and females are the same in inheritance.

1-- If a deceased leaves a father, a mother and grandson. The father will take $\frac{1}{6}$ and the mother will also take $\frac{1}{6}$.

2- when a deceased has a husband, mother, uterine sister and a full brother, uterine sister takes $\frac{1}{6}$ and full brother takes $\frac{1}{6}$

3- A deceased with a mother and brothers, A mother takes $\frac{1}{2}$ and brothers also share $\frac{1}{2}$

4- A deceased that leaves her husband and a full sister would have her property shared by the husband and the full sister. The husband will take $\frac{1}{2}$ and the full sister will take $\frac{1}{2}$

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Self Assessment Exercises 2 (SAEs)

2. Give four examples of the situations when a female inherit more than a male.

1- If a deceased leaves a husband and one daughter, the husband gets $\frac{1}{4}$ and the daughter gets $\frac{1}{2}$.

2- If the deceased leaves a husband and two daughters, the husband receives $\frac{1}{4}$ and the two daughters receive $\frac{2}{3}$.

3- If the deceased leaves a daughter and maternal uncles, the daughter takes more than the maternal uncles.

4- If a deceased leaves two paternal sisters and paternal brothers, the two paternal sisters inherit more than the two paternal brothers

Self Assessment Exercises 3 (SAEs)

3. Describe three situation where a female inherits and a male does not

1- If a deceased leaves a husband, full sister and paternal brother, the husband takes $\frac{1}{2}$ and the full sister takes $\frac{1}{2}$ the paternal brother takes nothing

2- The grandmother in many cases has a share in the inheritance while the grandfather does not.

3- If a deceased leaves a maternal grandfather and maternal grandmother, then the maternal grandmother inherits the whole estate by taking one-sixth as a sharer and the rest as residuary while the maternal grandfather inherits nothing.

Unit 3 Awl: Equitable and Proportional Reduction of Fixed Shares in Inheritance

Unit Structure

3.1 Introduction

3.2 Learning Outcomes

3.3 Background to the practice of `Awl

3.4 Different Classes of Denominators

3.4.1 At-tamathul

3.4.2 The second is Attadakhul

3.4.3 At-takhaluf

3.4.4 Al-Inkisar

3.5 Specific Cases of Proportional Reductions

3.6 Summary

3.7 Reference / Further Reading

3.8 Possible Answers to Self-Assessment Exercises (SAEs)

3.1 Introduction

It has been learned that Al-Mighty Allah has allotted certain proportions, the property of a deceased to specific relations. These proportions are fixed but can be reduced proportionally across the various heirs if the primary heirs cannot all be accommodated with each having the full fraction allotted to him or her. In this unit the circumstances and specific solutions are mentioned and explained.

3.2 Learning Outcomes

At the end of this unit, you should be able to:

- Define and explain `Awl
- Explain the necessity for `Awl
- Discuss the different classes of denominators used in Islamic law of inheritance
- Determine cases which require the application `Awl
- Apply the rule of `Awl on the sharing of inheritance

3.3 Background to the practice of `Awl

`Awl literally means non-precisions, in-accurate and deviation from the ideal.

The terminology can be deduced from the verse of chapter 4 verse 3 of the Qur'an which states that "....." "that will make it more likely that you will not deviate (Awl) from the right path".

Technically, in Islamic Law of inheritance, it is used to depict an arithmetical solution of proportionate reduction of fixed shares across the heirs in case where the due fractions (of the property) are more than the whole number. The nominator is, in such cases higher than the denominator. In such a case, the denominator is changed to the higher number (the nominator) while each heir retains the fraction specified for him/her.

3.4 Different Classes of Denominators

It should be noted that when calculating the (fractions) subtraction, multiplication, addition and division of fractions, it is easier to find what is called Lowest Common Factor (LCM) of the denominators. For example $\frac{1}{2} + \frac{1}{2} = 1 + 1 / 2 = 1 \frac{2}{3} - \frac{1}{3} = 2 - 1 / 3 = 1/3$

The LCM of the denominators in the two cases are 2 and 3 respectively. In Islamic law of inheritance there are 4 or (5) classes of denominators. They are:

3.4.1 At-tamathul (.....): Where there are equal denominators and straight forward fractions. For example if the heirs of a deceased are just the husband and full (Germane) sister. Each is entitled to 1/2. The denominator is 2 and each has 1 out of 2 $\frac{1}{2} + \frac{1}{2} = 1 + 1/2 = 2/2 = 1$

When there are 6 sons for the deceased and each is entitled to equal share. The denominator of each is 6 and each is entitled to 1/6.

3.4.2 The second is Attadakhul (.....) and Attawa fuq (.....) where the fractions are not equal but are in multiples of one another or each other. Such as 1/3 and 1/6 or 1/2, 1/4 and 3/8. In the second case 6 is a multiple of 3; while 4 and 8 are multiples of 2.

In this case if one is entitled to 1/3 it becomes 2/6 = 1/3. While 1/6 remains as 1/6. If one is entitled to 1/8 and the other 1/4 . 1\4becomes 2/8 = 1/4 . If the denominators have the same Highest Common Factor (HCF) it is also known as (At-tawafuq) (.....).

3.4.3 At-takhaluf is where a fraction is not a multiple of the other such as $\frac{1}{3}$ and $\frac{1}{4}$.

The LCM is used to find common denominator for 4 and 3. It is 12. A person entitled to $\frac{1}{4}$ and $\frac{1}{3}$ for example would have $\frac{3}{12}$ and $\frac{4}{12}$ respectively. $\frac{3}{12}$ is still $\frac{1}{4}$ while $\frac{4}{12}$ is still $\frac{1}{3}$.

3.4.4 Al-Inkisar. The complex fractions where $\frac{7}{8}$ or $\frac{2}{3}$ had to be divided in 6 or 4 each. This involves finding the lowest figure which is divisible into each of the denominators.

Self Assessment Exercises 1 (SAEs)

1. Give the technical meaning of `Awl
2. Write the different classes of denominators

3.5 Specific cases of Proportional Reductions

Changing Denominator 6 to 7, 8, or 9. For example 6 changes to 7 where the shares are $\frac{1}{2} + \frac{1}{2} + \frac{1}{6}$. The total becomes $\frac{7}{6}$ then the 6 is changed to 7. For example where the heirs are one full sister who is entitled to $\frac{1}{2}$ (in the non-existence of child and father of the deceased) husband ($\frac{1}{2}$ in the non-existence of child of the deceased) and a grandmother (in the absence of parents). This means $\frac{1}{2} + \frac{1}{2} + \frac{1}{6} = \frac{3+3+1}{6} = \frac{7}{6}$ `Awl changes 6 to 7 as each would have $\frac{3}{7} + \frac{3}{7} + \frac{1}{7} = \frac{7}{7}$ while $\frac{1}{6}$ becomes $\frac{1}{7}$.

Where the heirs are husband, full sister and uterine sister and the shares are $\frac{1}{2} + \frac{1}{2} + \frac{1}{3} = \frac{3}{6} + \frac{3}{6} + \frac{2}{6} = \frac{8}{6}$. The denominator 6 is changed to 8 and the shares become $\frac{3}{8} + \frac{3}{8} + \frac{2}{8} = \frac{8}{8} = 1$ respectively. Where the heirs are husband ($\frac{1}{2}$) two full sisters ($\frac{2}{3}$) and 2 uterine sisters

($\frac{1}{3}$) = $\frac{3}{6} + \frac{4}{6} + \frac{2}{6} = \frac{9}{6}$. The 6 is changed to 9 (the nominator) and the shares become $\frac{3}{9} + \frac{4}{9} + \frac{2}{9} = \frac{9}{9}$.

Caliph Umar (the second Caliph) was the first to apply `awl, while caliph Ali (the 4th Caliph) applied the same rule to change the denominator 24 to 27 to accommodate $\frac{1}{8} + \frac{1}{6} + \frac{1}{6} + \frac{2}{3} = \frac{3}{24} + \frac{4}{24} + \frac{4}{24} + \frac{16}{24} = \frac{27}{24}$ for wife, 3 daughters grandfather and mother respectively.

The table provided by Ambali and reproduced below gives a comprehensive instances where `awl is applied to effect equitable proportionate reduction of fixed shares.

Denominator	Heirs	Basic	Share Based on `AWL		
A: 6-7	Husband	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{7}$	3
	Germane Sister	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{7}$	3
	Consanguine Sister	$\frac{1}{6}$	$\frac{1}{6}$	$\frac{1}{7}$	1
		$1 \frac{1}{6}$	$\frac{7}{6}$	$\frac{7}{7}$	7
B: 6-8	Husband	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{8}$	3
	Germane Sister	$\frac{1}{2}$	$\frac{3}{6}$	$\frac{3}{8}$	3
	Uterine Sister	$\frac{1}{3}$	$\frac{2}{6}$	$\frac{1}{4}$	2
		$1 \frac{1}{3}$	$\frac{8}{6}$	$\frac{8}{8}$	8

C: 6-9	Husband	$\frac{1}{2}$	3	$\frac{1}{3}$	3
	2 Full Sisters	$\frac{2}{3}$	4	$\frac{4}{9}$	4
	2 Uterine Sisters	$\frac{1}{3}$	2	$\frac{2}{9}$	2
		$\frac{19}{6}$ or $1 \frac{1}{3}$	$\frac{9}{6}$	$\frac{9}{9}$	9
D: 6-10	Husband	$\frac{1}{2}$	3	$\frac{3}{10}$	3
	2 Full Sisters	$\frac{2}{3}$	4	$\frac{4}{10}$	4
	2 Uterine Sisters	$\frac{1}{3}$	2	$\frac{2}{10}$	2
		$\frac{1}{6}$	1	$\frac{1}{10}$	1
		$\frac{10}{6}$ or $1 \frac{2}{3}$	$\frac{10}{6}$	$\frac{10}{10}$	10
E: 12-13	Wife	$\frac{1}{4}$	3	$\frac{3}{10}$	3
	2 Full Sisters	$\frac{2}{3}$	8	$\frac{8}{13}$	8
	2 Uterine Sisters	$\frac{1}{6}$	2	$\frac{2}{13}$	2
		$1 \frac{1}{12}$	$\frac{13}{12}$	$\frac{13}{13}$	13
F: 12-15	Wife	$\frac{1}{4}$	3	$\frac{1}{5}$	3
	2 Germane Sisters	$\frac{2}{3}$	8	$\frac{8}{15}$	8
	2 Germane Sisters	$\frac{1}{3}$	4	$\frac{4}{15}$	4
		$1 \frac{1}{4}$	$\frac{15}{12}$	$\frac{15}{15}$	15
G: 12-17 Wife $\frac{1}{4}$ 3 3/17 3 2	Wife	$\frac{1}{4}$	3	$\frac{3}{17}$	3
	2 Germane Sisters	$\frac{2}{3}$	8	$\frac{8}{17}$	8
	2 Uterine Sisters	$\frac{1}{3}$	4	$\frac{4}{7}$	4
	Mother	$\frac{1}{6}$	2	$\frac{2}{17}$	2
		$\frac{15}{12}$	$\frac{17}{12}$	$\frac{17}{17}$	17
H: 24-27	Wife	$\frac{1}{8}$	3	$\frac{1}{9}$	3
	2 Daughters	$\frac{2}{3}$	16	$\frac{16}{27}$	16
	Mother	$\frac{1}{6}$	4	$\frac{4}{27}$	4
	Father	$\frac{1}{6}$	2	$\frac{4}{27}$	4
		$\frac{27}{24}$	$\frac{27}{27}$	$\frac{27}{24}$	27

.3.6 Summary

The unit has provided the meaning of the term `Awl. It has provided the justification and need for it as a child of circumstance. You have also been given the different classes of denominators in Islamic law of inheritance involving LCM and HCF. Specific instances of the application of `Awl have also been given with a table provided by M.A. Ambali.

3.7 Reference / Further Reading

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3.8 Possible Answers to Self-Assessment Exercises (SAEs)

Self Assessment Exercises 1 (SAEs)

1. Give the technical meaning of `Awl

-Awl is an arithmetical solution of proportionate reduction of fixed shares across the heirs in case where the due fractions (of the property) are more than the whole number.

-The nominator is, in such cases higher than the denominator.

-In such a case, the denominator is changed to the higher number (the nominator) while each heir retains the fraction specified for him/her.

2. Write the different classes of denominators

There are four classes of denomination in Islamic law of inheritance and they are

1- At-tamathul Where there are equal denominators and straight forward fractions

2- Attadakhul and Attawa fuq where the fractions are not equal but are in multiples of one another or each other.

3- At-takhaluf is where a fraction is not a multiple of the other

4- Al-Inkisar. The complex fractions where $\frac{7}{8}$ or $\frac{2}{3}$ had to be divided in 6 or 4 each. This involves finding the lowest figure which is divisible into each of the denominators.

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