



**NATIONAL OPEN UNIVERSITY OF NIGERIA**

**SCHOOL OF ARTS AND SOCIAL SCIENCES**

**COURSE CODE: ISL 438**

**COURSE TITLE: ISLAMIC LAW OF INHERITANCE AND  
PROPERTY DISPOSAL**



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COURSE TITLE: AL-MĪRĀTH : ISLAMIC LAW OF SUCCESSION AND  
PROPERTY DISPOSAL

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## MODULE 1

### UNIT 1 THE BASIC PRINCIPLES OF ISLAMIC LAW OF INHERITANCE

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#### 1.0 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:

كُلُّ نَفْسٍ ذَائِقَةُ الْمَوْتِ

(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 welfarism.

#### SELF ASSESSMENT EXERCISE I

##### Who is the Ultimate owner of Wealth?

#### 2.0 Objectives

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.

### 3.0 MAIN CONTENT

#### 3.1 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 ثُمَّ إِلَىٰ رَبِّهِمْ يُحْشَرُونَ

“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

#### 3.2 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 مَالٌ وَارِثُهُ 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 واريثه أحب إليه من ماله، مالك ما قدّمت ومال وارثك ما أخرت

“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 شحيح تخشى الفقر وتأمل الغنى ولا تؤمهل 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 لى 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)

### 3.3 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 فيأتى بحزمة الحطب على ظهره فيبيعها فيكف الله بها وجهه خير له من أن يسأل الناس أعطوه أو منعوه.

“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 what it earned and they will not be wronged”.(Q 2: 281)

## SELF ASSESSMENT EXERCISE II

State the 3 Principal ways of acquiring legitimate wealth in Islam

### 3.4 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.

إِنَّ اللَّهَ تَعَالَى طَيِّبٌ لَا يَقْبَلُ إِلَّا طَيِّبًا

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

### 3.5 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.

### 3.6 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 usurping 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 مَالِ 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.

لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ

“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 Judgement.

#### 4.0 Conclusion

Allah gives each heir his divinely-fixed shares. Efforts must be made to uphold the injunction of Allah no matter the temptations. The dead is not permitted to dispose the totality of his wealth according to his whims and caprices alone. There are rules and injunctions for all the acts and aspects of the life of a Muslim. These injunctions must be adhered to strictly. Knowledge of Islamic law of inheritance can reduce some devilish acts of man because knows that whatever he acquires whether lawfully or wrongly would be shared to his heirs including the ones he hates and those who hate him.

## 5.0 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.

## 6.0 Tutor – Marked Assignment

- Explain with Quranic verses the comprehensiveness of the Religion of Islam
- What are the ways by which the importance of the knowledge of Islamic Law of inheritance is shown?
- Why did the Prophet caution against delay in giving charity? Quote an Hadith to that effect.
- List five questions a person would be asked on the Day of Resurrection.
- Write short notes on ownership of property in Islam.

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## UNIT 2      LEGITIMATE MEANS OF ACQUIRING WEALTH IN ISLAM

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  - 3.2 Private Ownership of Property in Islam
  - 3.3 Three Ways of Acquiring Wealth in Islam
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### 1.0 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.

#### 2.0 Objectives

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.

#### 3.0 Main Contents

##### 3.1 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 الثَّرَى

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

آمِنُوا بِاللَّهِ وَرَسُولِهِ وَأَنْفِقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلَفِينَ فِيهِ فَالَّذِينَ  
آمِنُوا 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.

### **3.2 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.

### 3.3 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 as has earlier been explained.

### 4.0 Conclusion

It is clear that everything belongs to Allah and He is the absolute owner of all that exists, and that man is only a trustee of whatever Allah has bestowed upon him. When the conviction that man's worldly possessions belonged to Allah and that he is holding them only in trust is firmly embedded in his hearts, he is enjoined to spend in the way of Allah what is left of his wealth after meeting his basic needs. In fact, spending in the way of Allah will not be difficult. It will be as easy as water flowing from the top of a high mountain down the earth. He will not feel the pain of departing with the wealth given to him because the Owner is the one taking it back.

### 5.0 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.

## **6.0 Tutor – Marked Assignment**

- State the content of Q20:6 and relate it to ownership of property
- Discuss the private ownership of property in Islam
- What are the three ways of acquiring wealth in Islam

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- 7.0 References / further Reading

#### **1.0 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.

#### **2.0 Objectives**

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.

### **3.0 Main Content**

#### **3.1 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.

#### **3.2 The System of Inheritance among Igbos**

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 principle 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.

#### **3.3 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 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.

### **3.5 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 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.

### **3.7 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.

### **3.8 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.

#### **4.0 Conclusion**

From our discussion so far, it is abundantly clear that different cultures adopt varied methods of inheritance of properties. Women were victims of victimization virtually in all cultures and religions before the advent of Islam. They were denied their rights. Instead, both women and their rights were usurped. Some other injustices could be inferred from the attitude of some relatives to children and widows. They were maltreated. In Islam, all the incongruities of the past found in the question of inheritance in some cultures and religions, were removed.

#### **5.0 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.

#### **6.0 Tutor – Marked Assignment**

- List some of the practices of Yoruba system of inheritance
- Differentiate between the Igbo system of succession and Islamic law of succession.
- Discuss the Arab system of inheritance
- What was the status of woman in some Nigerian cultures and Islamic Religion

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## **MODULE 2**

### **UNIT 1 SOURCES OF ISLAMIC LAW OF INHERITANCE**

#### **CONTENTS**

- 1.1 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Sources of Islamic Law of Inheritance
    - 3.1.1 The first primary source of Islamic Law of Inheritance
    - 3.1.2 The second primary source of Islamic Law of Inheritance
    - 3.1.3 The secondary sources of Islamic Law of Inheritance
    - 3.1.4 Abubakr al-Sidiq's contribution to Legal knowledge on inheritance
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / Further Reading

#### **1.0 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.

#### **2.0 Objectives**

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

## SELF ASSESSMENT EXERCISE I

What is Islam?

### 3.0 Main Content

#### 3.1.1 The Primary Sources 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.

- اقْرَأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ
- خَلَقَ الْإِنْسَانَ مِنْ عَلَقٍ
- اقْرَأْ وَرَبُّكَ الْأَكْرَمُ
- الَّذِي عَلَّمَ بِالْقَلَمِ
- 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.

### 3.1.2 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 مَكْنُوبًا عِنْدَهُمْ فِي التَّوْرَةِ وَالْإِنْجِيلِ يَأْمُرُهُمْ بِالْمَعْرُوفِ وَيَنْهَاهُمْ عَنِ الْمُنْكَرِ وَيُحِلُّ لَهُمُ الطَّيِّبَاتِ وَيُحَرِّمُ عَلَيْهِمُ الْخَبَائِثَ وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلَالَ الَّتِي كَانَتْ عَلَيْهِمْ فَاَلَّذِينَ آمَنُوا بِهِ وَعَزَّرُوهُ وَنَصَرُوهُ وَاتَّبَعُوا النُّورَ الَّذِي أُنْزِلَ 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 EXERCISE II**

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

### **3.1.3 The Secondary Sources of Islamic Law of Inheritance and the process of Extraction of Legal Rules**

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. *Ijtiḥād* is the ability to interpret divine text by inferring new rulings in order to relate it to new situations. This makes *Sharī’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 *ijtiḥād*. A *Mujtahid* must be competent in Arabic language, knowledgeable in the Quran and Hadith. He must also be righteous, pious and reliable.

### **3.2.4 Abubakr al-Siddiq’s contributions 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 EXERCISE III

List the primary and secondary sources of Islamic Law of Inheritance

#### 4.0 Conclusion

The legislation of Allah on inheritance is contained in the Quran and the authority of the Prophet is next to the Qur'an. The Prophet was regarded as the expounder of the Quran particularly the legal injunctions contained therein. He was given the role because he is the authoritative representative of the political and legal sovereignty of Allah on earth because he was the one who received the revelation. Therefore, his decisions must be accepted and his commands must be followed without reservation. Where the Quran and the sunnah are silent, the contributions of his companions to legal issues and other matters count because they were well aware of the wisdom behind the Prophet's sayings and deeds.

#### 5.0 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.

#### 6.0 Tutor – Marked Assignment

- Mention the contributions of Abubakr to Islamic Law of inheritance.
- State one reason for considering the caliphs' contribution to the Islamic law of inheritance.

- What are the other names of the Quran. Mention their implication.
- Discuss the legislative power of the Prophet.
- Mention the first and the last portions of revelation.

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## **UNIT 2      ISLAMIC PROVISIONS FOR WEALTH CIRCULATION**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Quranic Basis for Wealth Circulation
  - 3.2 Islamic Institutions for Circulation of Wealth
  - 3.3 Prohibitions of Exploitations and Hegemony
  - 3.4 Nafaqah and Inheritance versus Gender Rights and Responsibilities
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### **1.0 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.

#### **2.0 Objectives**

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 re-distribution in Islam
- Write on gender equity in Islamic law of family maintenance and inheritance

#### **3.0 Main Content**

##### **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-privileged 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.

### **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-fitr)
- (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
  - Qaqf
  - 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.

### **3.3 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.

### **3.4 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.

#### **4.0 Conclusion**

It has been clearly shown that inheritance in Islam is one of many Islamic provisions for redistribution of wealth and that each of the provisions are interlinked with the others in order to allow circulation of wealth among the citizen. It is also clear that equality is not the same as equity. It is just to be equitable by weighing rights along with responsibilities. This is the case of Islamic provisions on Nafaqah (family maintenance) and inheritance.

#### **5.0 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.

#### **6.0 Tutor – Marked Assignment**

- Examine the position of Islam on exploitation and hoarding
- List some of the institutions of Islam which alleviate poverty in the society
- Explain the prohibition of usury and selfishness in Islam
- Compare the responsibilities of male members of the family with those of the female members in maintenance of the family
- Justify occasional gender disparity in Islamic law of inheritance

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## UNIT 3      FIRST-LINE      CHARGES AGAINST THE PROPERTY OF A DECEASED MUSLIM

### CONTENTS

- 8.0 Introduction
- 2.0 Objectives
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- 9.0 References / further Reading

#### 1.0 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.

#### 2.0 Objectives

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.

### **3.0 Main Content**

#### **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. Farā'id is the plural of farīdah 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

#### **3.2 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 lost. 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.

### **3.3 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.

#### **3.3.1 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.

#### **3.3.2 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 أتى بجنّازة فقالوا صلّ عليها فقال هل عليه دين؟ قالوا لا، قال فهل ترك شيئاً؟ قالوا لا فصلّى عليها. ثم أتى بجنّازة أخرى فقالوا يارسول الله صلّ عليها قال هل عليه دين قيل نعم، قال فهل ترك شيئاً قالوا ثلاثة دنانير فصلّى عليها. ثم أتى بالثالثة فقالوا صلّ عليها قال فهل ترك شيئاً؟ قالوا لا، قال فهل عليه دين؟ قالوا ثلاثة دنانير، قال صلّوا على صاحبكم، قال أبو قتادة صل عليه يا رسول الله وعَلَيَّ دينُهُ 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 بالرجل 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 بالمؤمنين من أنفسهم فمن توفّي من المؤمنين فترك ديناً فعلي قضاءؤه، ومن ترك مالا فَلَوَرَّثَتْهُ

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.

### 3.3.3 Bequests (Wasiyyah)

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.

### 3.3.4 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.

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِنْ قَلْبَيْنِ فِي جَوْفِهِ وَمَا جَعَلَ أَزْوَاجَكُمْ اللَّائِي تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكَ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ (4) ادْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَإِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا (5)

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 *Mawâlikum* (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 EXERCISE I**

State the first three charges against the properties of a deceased Muslim

#### **4.0 Conclusion**

It is clear that Allah takes control of the property of the person after his death. What a person needs is to judiciously use his wealth before he passes away. If one thinks he is smart and accumulates debt with a view of not repaying it, he would pay it on the Day of Judgement. It means there is no hidden place. No one can go scot free without paying for one's actions. One should realise that the opportunity given to man is to write a will before one dies. The opportunity is also restricted.

#### **5.0 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.

#### **6.0 Tutor – Marked Assignment**

- Mention the reaction of the Prophet when three dead people were brought to him.
- List the three heads of expenditure that may be incurred after a person dies
- Write notes on burial expenses of a dead Muslim
- Paraphrase two of the prophetic traditions on payment of debt.
- List 5 examples of debt a Muslim may incur.

- What is the maximum percentage of property on which a person can make a valid will?

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## MODULE 3

### UNIT 1 CATEGORIES OF HEIRS: As-Hābul Furūd (FIXED SHARERS)

#### CONTENTS

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- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Ahkamul mujmalwal mufassal approach on inheritance
  - 3.2 Types of Heirs
  - 3.3 *Dhawi Al-Furūd* (Fixed Sharers)
- 4.0 Conclusion
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#### 1.0 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.

#### 2.0 Objectives

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

#### 3.0 Main Content

##### 3.1 *Aḥkamul-Mujmal Wal-Mufaṣṣal*(Detail after Epitome)

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:

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

“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 فَلَكُمْ الرُّبْعُ مِمَّا تَرَكْنَ مِنْ بَعْدِ وَصِيَّةٍ يُوصِيَنَّ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكْتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُمْ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورِثُ كَالْأَلَةِ أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنَ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةً مِّنَ 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 *Aṣḥābul 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

### 3.2 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. *Aṣḥābul Furūd* (Fixed sharers)
2. *Aṣabah* (Residuaries)
3. *Dhawil arḥām* (Distant kindred)  
In some special cases the Public Treasury and Master of a bonded person can be beneficiaries too.

### 3.2.1. *Aṣḥābul 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 Sharī'ah. The following sharers are the fixed sharers mentioned in the Quran:

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

#### **SELF ASSESSMENT EXERCISE:**

List the fixed sharers in Islamic law of inheritance

*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.

<b>Beneficiary</b>	<b>Portion</b>	<b>Explanations</b>
Father takes	1/6	If al-mayt (the deceased) is survived by at least a child or son's son
	1/6 + balance (residues)	If the deceased is not survived by a son or grandsons, he takes 1/6.  After others such as brothers have been allotted, he would take the remaining balance as aṣbat (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	(A) If a mother has a son and that son died leaving his wife and mother behind i.e the man is survived by his

		wife and mother, the mother's share is $\frac{1}{3}$
		<p>(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 <math>\frac{1}{3}</math></p> <p><b>NOTE:</b> The <math>\frac{1}{3}</math> is deducted after deducting the wife's / the husband's share</p>
	$\frac{1}{3}$	If the deceased has neither children nor brothers/sisters
	$\frac{1}{3}$	If the deceased has none of the relatives in A and B, her share is $\frac{1}{3}$ .

Beneficiary	Portion	Explanations
Husband takes	$\frac{1}{2}$	The husband gets $\frac{1}{2}$ from his deceased wife's property if she has neither children nor any son's son
	$\frac{1}{4}$	The husband takes $\frac{1}{4}$ from his deceased wife property if she has children and or whether from the surviving husband or the previous husbands
Wife takes	$\frac{1}{4}$	The wife takes $\frac{1}{4}$ if her deceased husband has neither children nor grandchildren.
	$\frac{1}{8}$	The wife takes $\frac{1}{8}$ if her deceased husband has children or son's children. The children may be from another wife other than from surviving wife.
Daughter	$\frac{1}{2}$	A daughter takes $\frac{1}{2}$ from her deceased

takes		fathers' 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.

### 3.2.3 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 ½ 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 أُخْتُ 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 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 knowing all things”.

## 4.0 Conclusion

In this lesson, it is clear that Allah takes into consideration the level of responsibilities he has given to each heir deciding the portion of inheritance to each heir. The Quran explains itself at times. This is true of inheritance. The explanations given are in the first instance in line with the fixed sharers. They are the ones that are very close to one another in terms of showing affection and responsibilities put on them demand such shares.

## **5.0 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.

## **6.0 Tutor – Marked Assignment**

- Write the verse that gives the rules of sharing inheritance in a broad perspective
- Mention three categories of heirs
- Mention 6 of the fixed sharers
- Give the shares of a father and a mother under different conditions

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## UNIT 2 ‘AṢABAH (RESIDUARIES)

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Meaning of ‘Aṣabah
  - 3.2 Categories of Residuaries
  - 3.3 List of Residuaries
  - 3.4 Son as a Residuary
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### 1.0 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.

#### 2.0 Objectives

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.

#### 3.0 Main Content

##### 3.1 Meaning of Asabah

*At-Ta'sīb* (التعصيب) in the Islamic law of inheritance refers to a situation in which a heir (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.

##### 3.2 Types of Residuaries

Residuaries in their own right عصبية نسبية



عاصب بغير  
 عاصب مع غير

### 3.2.1 Residuaries in their own right عصبه نسبية

These are the residuaries that have the right of residue on the basis of blood relation عصبه 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.

### 3.2.2 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

### 3.2.3 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.

### 3.3 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)

### 3.4 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.

## 4.0 Conclusion

No condition is permanent. This is true of the issue of *at-ta'şīb*. Sometimes, the share of a residuary may be high. At other times, it may be very low. This means that a residuary position is not static. The issue of taking residue has put some sharers at a disadvantage particularly the son. In all the cases it is the need to be fair to other co-sharer(s) that causes the fluctuation in the portion due to an heir problem.

## 5.0 Summary

An attempt was made in this unit to explain *at-ta'şīb* (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.

#### **6.0 Tutor – Marked Assignment**

- Explain *at-ta 'şīb* and *'aşabah*.
- Mention 3 types of residuaries
- Explain *aşabiyatun nasabiyatun*.
- Give 4 examples of those that may convert to residuaries.
- Write a brief note on son as a residuaries.

#### **7.0 References / further Reading**

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## UNIT 3      DUALITY OF STATUS OF SIBLINGS IN ISLAMIC LAW OF INHERITANCE

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Full Brother as a residuary
  - 3.2 Full Sister as a fixed sharer and a Residuary
  - 3.3 Consanguine Brother as a Residuary
  - 3.4 Consanguine Sister as a fixed sharer and a Residuary
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### 1.0 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.

#### 2.0 Objectives

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.

#### 3.0 Main Content

##### 3.1 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 non-existent, 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 ration 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

### 3.2 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
1	+ Son/grandson/father	Sister(s) totally eliminated from inheritance
2	Absence of any under No 1	$\frac{1}{2}$ of the property as fixed sharer. Co-sharer of $\frac{2}{3}$ if she has other sister(s)
3	+ Her brother(s)	Full sister becomes a residuary co-shares with the brother(s) at the ratio of 2:1 (male/female)
4	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

### 3.3 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 ratio 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 a consanguine brother. The son, grandson or father of the deceased excludes consanguine (same father different mothers).

### 3.4 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  $\frac{1}{2}$  the estate if the deceased has only one consanguine sister. It is  $\frac{2}{3}$  that consanguine sisters will share equally if they are two or more. Consanguine sister will inherit  $\frac{1}{6}$  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  $\frac{1}{6}$  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)

<b>Full Sister</b>	
$\frac{1}{2}$	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)
<b>Consanguine Brother</b>	
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

<b>Consanguine Sister</b>	
$\frac{1}{2}$	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

#### 4.0 Conclusion

It is evident from the discussion that in Islamic law of inheritance, rights go along with responsibilities. Since males have more responsibilities to bear than female in family management; they are given larger share of the rights. Everything has its place. This is true of the theory of elimination and substitution in the Islamic law of inheritance. When the nearer relatives are around, the distant ones are excluded. This is what happens when a deceased leaves behind a full brother and a consanguine brother or consanguine sister. The latter group would not inherit and the full brother is given priority in inheritance.

#### 5.0 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.

#### **6.0 Tutor – Marked Assignment**

1. Define full brother and consanguine brother.
2. Compare and contrast the positions of full brother and full sister in Islamic Law of inheritance.
3. Consanguine brothers can be excluded, included and at times take the full residue. Explain
4. Consanguine sister wear many caps. Explain

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## UNIT 4      THE PLACE OF *DHUL ARḤĀM*(DISTANT RELATIVES) IN ISLAMIC INHERITANCE

### CONTENTS

- 1.0    Introduction
- 2.0    Objectives
- 3.0    Main Content
  - 3.1    Meaning of *Dhul Arḥām*
  - 3.2    Adoption of *Dhul Arḥām*
  - 3.3    List of *Dhul Arḥām*
  - 3.4    Categories of *Dhul Arḥām*
  - 3.5    General Rules Concerning the Distribution of Property among *Dhul Arḥām*
- 4.0    Conclusion
- 5.0    Summary
- 6.0    Tutor – Marked Assignment
- 7.0    References / further Reading

#### 1.0    **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.

#### 2.0    **Objectives**

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*

#### 3.0    **Main Content**

##### 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.

### 3.2 Adoption of *Dhul Arhām*

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

وَالَّذِينَ آمَنُوا مِنْ بَعْدُ وَهَاجَرُوا وَجَاهَدُوا مَعَكُمْ فَأُولَئِكَ مِنْكُمْ وَأُولُوا  
الْأَرْحَامِ بَعْضُهُمْ أَوْلَى 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 أَنْفُسِهِمْ وَأَزْوَاجُهُ أُمَّهَاتُهُمْ وَأُولُوا 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.

### **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.

### **3.4 Categories of *Dhul Arḥām***

#### **3.4.1 Deceased's descendants**

Children of the daughters and their descendants

Children of the son's daughters and their descendants

#### **3.4.2 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

### **3.5 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 takes the position of the mother and receives 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.

### **4.0 Conclusion**

In Islamic Law of inheritance, some blood relations are excluded particularly the relatives through female lineage. However, if fixed sharers and residuaries are absent, they enter into their shoes and take their shares. In this unit, rules concerning the distribution of a deceased's property show that fairness is employed in the allocation of shares. Those that are nearer relatives and will bear responsibilities are taken into consideration first.

### **5.0 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*.

## **6.0 Tutor – Marked Assignment**

1. Define *Dhul Arḥām*
2. Mention 2 of the Quranic verses on *Dhul Arḥām*
3. Give examples of *Dhul Arḥām*
4. State with examples the categories of *Dhul Arḥām*
5. What are the general rules concerning the distribution of estate among *Dhul Arḥām*

## **7.0 References / further Reading**

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## **MODULE 4**

### **UNIT 1 IMPEDIMENTS TO INHERITANCE IN ISLAM**

#### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Impediments to Inheritance in Islam
  - 3.2 Extraneous Circumstances that do not Constitute Legal Impediment
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### **1.0 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 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.

#### **2.0 Objectives**

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.

#### **3.0 Main Content**

##### **3.1 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

##### **3.1.1 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.

### 3.1.2 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 ميراث

A killer does not receive (a share of) inheritance ( from the killed)  
In another Hadith, he is reported to have said:

القاتل لا يرث

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 يَقْتُلْ مُؤْمِنًا مُتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ  
عَذَابًا عَظِيمًا



### **3.1.3 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.

### **3.1.4 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)

### **3.1.5 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.

### **3.1.6 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.

### **3.1.7 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.

## **3.2 Extremist Factors which do not Constitute Legal Impediments**

The following extremes factors are not impediments to inheritance:

### **3.2.1 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.

### **3.2.2 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.

### **3.2.3 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 EXERCISE:**

What can deprive an heir of inheritance?

## **4.0 Conclusion**

It is established in the Quran the divinely-fixed shares of each heir. Nobody, except the law, has any right to deprive heirs their inheritance. For those that should not inherit for one reason or the other, nobody has any right to give them inheritance no matter the affection and closeness.

## **5.0 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.

## **6.0 Tutor – Marked Assignment**

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

## **7.0 References / further Reading**

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## **UNIT 2      SUBSTITUTES FOR DIRECT ASCENDANTS AND DIRECT DESCENDANTS IN ISLAMIC INHERITANCE**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 The place and share of granddaughter in inheritance
  - 3.2 Grandmother as a substitute
  - 3.3 Grandson as a substitute
  - 3.4 Grandfather as a substitute heir for the father
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

### **1.0 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.

### **2.0 Objectives**

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

### **3.0 Main Content**

#### **3.1 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  $\frac{1}{6}$  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.

### **3.2 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  $\frac{1}{3}$  of the deceased's property. A grandmother in substitution, will get only  $\frac{1}{6}$ . It is this same  $\frac{1}{6}$  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.

### **3.3 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.

### **3.4 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  $\frac{1}{3}$  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.

<b>Granddaughter takes</b>	
<b>Portion</b>	<b>Explanations</b>
$\frac{1}{2}$	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
<b>Grandmother</b>	
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.
<b>Grandson</b>	
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

<b>Grandfather</b>	
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

#### **4.0 Conclusion**

We have examined the positions of grandfather, grandmother, grandson and granddaughter. They are not primary heirs. They are only substitutes for the primary heirs in the absence of the latter and they enjoy the same right as enjoyed by those fixed sharers. The level at which all these secondary heirs are, shows that they cannot inherit a deceased whose primary heirs are in existence. It is however to be noted that the existence of the mother does not exclude the paternal grandmother in the absence of father.

#### **5.0 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.

#### **6.0 Tutor – Marked Assignment**

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

#### **7.0 References / further Reading**

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## UNIT 3      HUJB: DISPLACEMENT IN INHERITANCE

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
  - 3.1 Definition of *al-ḥujb*
  - 3.2 Types of *Ḥujb*
  - 3.3 *ḤujbNuqṣān*
  - 3.4 *ḤujbḤirmān*
  - 3.5 Heirs who can never be deprived
  - 3.6 Relatives who are not heirs
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### 1.0 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.

#### 2.0 Objectives

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

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

#### 3.0 Main Content

##### 3.1 Definition of *al-ḥujb*

*Ḥujb* is derived from an Arabic word *ḥajaba* meaning veiled or screened. It means cutting off a person from heirship either partially or totally. In Islamic Law of inheritance, *al-ḥujb* 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.



### 3.2 Types of *Hujb*

There are two types of impediments. Classification is based on the relationship of heirs to a deceased

*HujbNuqṣān*(Partial Deprivation)

*HujbḤirmān*(Total Deprivation)

**3.2.1** *Hujb Ḥirmān*(partial deprivation or impediments) refers to a situation where the share of an heir reduces on account of the presence of certain relatives. It must be mentioned to you that this type of *hujb* affects all heirs without an exception. *HujbNuqṣān* affects only five 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	1/2	1/4	Wife's children from any man
Wife	1/4	1/8	Husband's children from any wife

### 3.2.1 *Hujb Ḥirmān* (Total Deprivation or Impediment)

*Hujb Ḥirmān* 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 agnatized
6	The daughters of the son	Uterine brother, daughters of the son of the deceased except if they are agnatized
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	Consanguine brother	All forms of uncles, the son of germane or consanguine brother (nephew)
10	The son of consanguine brother	All forms of uncles, the son of germane or consanguine brother nephew
11	Germane 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

### 3.3 Absolute Sharers

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.

### 4.0 Conclusion

Exclusion and reduction occurs in inheritance due to the presence of some relatives. It is seen from our discussion that the farther the responsibilities the higher the reduction. When the responsibilities are remote or may not be devolved on a person, such a person is excluded totally. It is noticed from the discourse that no matter the existence of close relatives, some heirs can never be excluded. The only thing that can happen to them is reduction in their shares of inheritance.

### 5.0 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.

### 6.0 Tutor – Marked Assignment

1. Explain literally and technically the meaning of *hujb*, list the two types of impediments
2. Give the Arabic words of partial deprivation and present the reduction of shares of displaced heir in a tabular form
3. What is *HujbHirmān*?
4. Give 6 of the heirs that are displaced, and those relatives that displaced them

## **7.0 References / further Reading**

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## **MODULE 5**

### **UNIT 1      WOMEN AND THE ISLAMIC LAW OF INHERITANCE**

#### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Quranic verse on disparity in shares of inheritance between male and female
  - 3.2 Reasons for the difference in inheritance between males and females
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### **1.0 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 short-changed 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.

#### **2.0 Objectives**

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

### 3.0 Main Contents

#### 3.1 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 وَلَدٌ وَلَهُ أُخْتُ 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 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 knowing of all things”.

Some critics consider as unfair the fact that a female is given half of what is given to a male counterpart.

#### 3.3 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:

### 3.3.1 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.

وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتُ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ  
فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ  
غَيْرِ مُضَارٍّ وَصِيَّةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

“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 as 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.

### **3.4 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.

#### **4.0 Conclusion**

It is seen that where much is given more is demanded. This is true of the case of male heirs in relation to female heirs. A male heir is expected to perform some financial roles such as household expenses, payment of a dowry which a female heir is exempted. She is allowed to use her income from inheritance for herself the way she wishes in addition to her financial upkeep by her male counterparts pending the time she would get married. Even when she gets married, the financial burdens shifted from her brother or father to her husband.

#### **5.0 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.

#### **6.0 Tutor – Marked Assignment**

- Write the Quranic verse usually quoted out of context to support the issue of disparity in the area of inheritance between males and females.
- List and explain the three reasons for the difference in the share of inheritance between males and females.
- In Islamic Law, list some areas where women are much more favoured financially than their male counterparts.

#### **7.0 References / further Reading**

DLC.

Kareem M.K. (2011) Advanced Stud of Muslim Law, Ibadan: University of Ibadan

Oloyede Is-haq O, Kaura J.M, Kareem M.K. and Abbas L.O. (2003) Exam Focus Islamic Studies for WASSCE and SSCE, Ibadan: University Press Plc.

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## **UNIT 2      CIRCUMSTANCES      WHERE      FEMALE      HEIRS      ARE ALLOTTED THE SAME OR HIGHER PROPORTION OF INHERITANCE MALE HEIRS**

### **CONTENTS**

- 1.0    Introduction
- 2.0    Objectives
- 3.0    Main Contents
  - 3.1    Males and females have equal shares
  - 3.2    Females inherit more than males
  - 3.3    Females inherit while males do not inherit
- 4.0    Conclusion
- 5.0    Summary
- 6.0    Tutor – Marked Assignment
- 7.0    References / further Reading

#### **1.0    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.

#### **2.0    Objectives**

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.

#### **3.0    Main Contents**

##### **3.1    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  $\frac{1}{2}$

Mother  $\frac{1}{6}$

Uterine Sister  $\frac{1}{6}$

Full brother  $\frac{1}{6}$

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

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

A mother takes  $\frac{1}{2}$

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  $\frac{1}{2}$

### **3.2 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.

### **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.

## **4.0 Conclusion**

It should be clear now that the allegation of unfairness to women in inheritance in Islam is not correct. If there is an advantage in inheritance in Islam, it is women that have upper hand. There are situation where a female inherits the same as a male. In some other situations, they inherit more than

males. There are situations where males do not inherit at all. The implication of these scenarios is that the law of inheritance in Islam is not fixed. It depends on the situation. It is Allah that gives and takes life. When He takes life, the arrangement changes. When He gives more life, the equilibrium is not also the same.

## **5.0 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.

## **6.0 Tutor – Marked Assignment**

1. Mention 4 of the areas where the shares of both males and females are the same in inheritance.
2. Give examples of the situations when a female inherit more than a male.
3. Describe a situation where a female inherits and a male does not.

## **7.0 References / further Reading**

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Kareem M.K. (2011) Advanced Stud of Muslim Law, Ibadan: University of Ibadan

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## **UNIT 3      AWL: EQUITABLE AND PROPORTIONAL REDUCTION OF FIXED SHARES IN INHERITANCE**

### **CONTENTS**

- 1.0    Introduction
- 2.0    Objectives
- 3.0    Main Content
  - 3.1    The meaning of Awl
  - 3.2    Different Classes of Denominators
  - 3.3    Specific Cases of Proportional Reductions
- 4.0    Conclusion
- 5.0    Summary
- 6.0    Tutor – Marked Assignment
- 7.0    Reference / Further Reading

The practice of `Awl-Proportionate Reduction in Islamic Law of Inheritance

#### **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.

#### **2.0    Objectives**

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

#### **3.0    MAIN CONTENT**

##### **3.1    The Meaning 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.

### SELF ASSESSMENT EXERCISE

What is `Awl in Mirath?

#### 3.2 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

$$\frac{1}{2} + \frac{1}{2} = 1 + 1/2 = 1 \quad \frac{2}{3} - \frac{1}{3} = 2 - 1/3 = 1/3$$

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:

**3.2.1 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  $1/6$ .

**3.2.2** 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  $1/4$ .  $1/4$  becomes  $2/8 = 1/4$ . If the denominators have the same Highest Common Factor (HCF) it is also known as (At-tawafuq) (.....).

**3.2.3** At-takhaluf is where a fraction is not a multiple of the other such as  $1/3$  and  $1/4$ . The LCM is used to find common denominator for 4 and 3. It is 12. A person entitled to  $1/4$  and  $1/3$  for example would have  $3/12$  and  $4/12$  respectively.  $3/12$  is still  $1/4$  while  $4/12$  is still  $1/3$ .

### 3.2.4 Al-Inkisar

The complex fractions where  $7/8$  or  $2/3$  had to be divided in 6 or 4 each. This involves finding the lowest figure which is divisible into each of the denominators.

## 3.3 Specific cases of Proportional Reductions

### 3.3.1 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  $7/6$  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 grand-mother (in the absence of parents). This means

$$\frac{1}{2} + \frac{1}{2} + \frac{1}{6} = \frac{3}{6} + \frac{3}{6} + \frac{1}{6} = \frac{7}{6}$$

`Awl changes 6 to 7 as each would have  $\frac{3}{7} + \frac{3}{7} + \frac{1}{7}$ .  $\frac{1}{2}$  ( $\frac{3}{6}$ ) becomes  $\frac{3}{7}$  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 4<sup>th</sup> Caliph) applied the same rule to change the denominator 24 to 27 to accommodate  $\frac{1}{8} + \frac{1}{6} + \frac{1}{6} + \frac{2}{3} = \frac{3}{24} + \frac{16}{24} + \frac{4}{24} + \frac{4}{24} = \frac{27}{24}$  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
		<b>1 <math>\frac{1}{6}</math></b>	<b><math>\frac{7}{6}</math></b>	<b><math>\frac{7}{7}</math></b>	<b>7</b>
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
		<b>1 <math>\frac{1}{3}</math></b>	<b><math>\frac{8}{6}</math></b>	<b><math>\frac{8}{8}</math></b>	<b>8</b>
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
		<b><math>\frac{19}{6}</math> or 1 <math>\frac{1}{3}</math></b>	<b><math>\frac{9}{6}</math></b>	<b><math>\frac{9}{9}</math></b>	<b>9</b>



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
		<b><math>\frac{10}{6}</math> or <math>1\frac{2}{3}</math></b>	<b><math>\frac{10}{6}</math></b>	<b><math>\frac{10}{10}</math></b>	<b>10</b>
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
		<b><math>1\frac{1}{12}</math></b>	<b><math>\frac{13}{12}</math></b>	<b><math>\frac{13}{13}</math></b>	<b>13</b>
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
		<b><math>1\frac{1}{4}</math></b>	<b><math>\frac{15}{12}</math></b>	<b><math>\frac{15}{15}</math></b>	<b>15</b>
G: 12-17	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	$\frac{4}{17}$	4
	Mother	$\frac{1}{6}$	2	$\frac{2}{17}$	2
		<b><math>\frac{15}{12}</math></b>	<b><math>\frac{17}{12}</math></b>	<b><math>\frac{17}{17}</math></b>	<b>17</b>
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
		<b><math>\frac{27}{24}</math></b>	<b><math>\frac{27}{27}</math></b>	<b><math>\frac{27}{24}</math></b>	<b>27</b>

#### 4.0 Conclusion

You have learned that `Awl is a practice of proportionate deductions from all shares to accommodate all heirs who are basic heirs without any legal deprivation. The shares are reduced in equitable proportion by upgrading the denominator to the nominator and giving the heirs their appropriate fractions.

#### 5.0 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.

#### 6.0 Tutor Marked Assignment

- Give the technical meaning of `Awl
- Write the different classes of denominators
- What is the justification for the application of `Awl?
- Calculate the shares of the estate in which the following were the heirs: (i) wife (ii) Mother (iii) 2 Germane (full) sisters and (iv) 2 uterine sisters.

## 7.0 Reference

A.A. Ad-Dibi (1978) Fandulullahi Fil-Mirath Wal-wasiya, Darul-Ansar Cairo  
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## MODULE 6

### UNIT 1 CONCEPT OF *AL-INFĀQ*

#### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 The Meaning of *al-Infāq*
  - 3.2 Validity of *al-Infāq*
  - 3.3 Objective of *al-Infāq*
  - 3.4 Kinds of *al-Infāq*
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

#### 1.0 Introduction

One of the ways by which a Muslim can receive Allah's pleasure is to spend in His cause and for His sake only. In fact, in many places in the Quran, there are exhortations to spend one's wealth in the cause Allah to gain His love and blessings on the Day of Judgement. In this lecture, you will be exposed to the meaning of *infāq* and other acts that are associated with *infāq*. You would also learn various kinds of *infāq*. This will serve as an introductory step to the next lecture.

#### 2.0 Objectives

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

- explain the meaning of *infāq*
- state the objectives of *infāq*
- mention and explain kinds of *infāq*
- list six categories of people that are entitled to *infāq* as contained in Q2:177

### 3.0 Main Contents

#### 3.1 The Meaning of *al-infāq*

*Infāq* is a word derived from an Arabic word *Anfaqa*. It is a verbal noun which means an act of spending or expenditure. Technically, *al-infāq* means spending for the sake of Allah. To show the importance of the word, it is mentioned directly or through its derivatives about 166 times in the Quran. Q2:215

يَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلْ مَا أَنْفَقْتُمْ مِنْ خَيْرٍ فَلِلَّهِ الدِّينِ وَالْأَقْرَبِينَ وَالْيَتَامَى  
وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ وَمَا تَفْعَلُوا مِنْ خَيْرٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

Those who spend their wealth (in Allah's way) by night and by day, secretly and publicly – they will have their reward with their Lord. And no fear will there be concerning them, nor will they grieve. (Q2:274)

The salient lessons contained in these verses are to:

- spend from our wealth particularly the one which we love most.
- spend lawful things – spend what is lawful.
- be rest assured that for every money we spend, there is rewards for it.

#### 3.2 Validity of *al-infāq*

Validity of *al-infāq* – it is clearly stated in many Quranic verses that it is not enough for people to worship Him with their parts of the body as in salat, but they should endeavour to spend out of their wealth in His cause to gain His favour and to achieve their desire. Two Quranic verses are quoted here to bring home our points

لَيْسَ الْبِرَّ أَنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ آمَنَ بِاللَّهِ  
وَالْيَوْمِ الْآخِرِ وَالْمَلَائِكَةِ وَالْكِتَابِ وَالنَّبِيِّينَ وَآتَى الْمَالَ عَلَى حُبِّهِ ذَوِي الْقُرْبَى  
وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ وَأَقَامَ الصَّلَاةَ وَآتَى الزَّكَاةَ  
وَالْمُوفُونَ بِعَهْدِهِمْ إِذَا عَاهَدُوا وَالصَّابِرِينَ فِي الْبَأْسَاءِ وَالضَّرَّاءِ وَحِينَ الْبَأْسِ أُولَئِكَ  
الَّذِينَ صَدَقُوا وَأُولَئِكَ هُمُ الْمُتَّقُونَ

“Righteousness is not that you turn your faces toward the east or the west, but (true) righteousness is (in) one who believes in Allah the Last Day, the angels, the Book and the Prophets and gives wealth in spite of love for it, to relatives, orphans, the needy, the traveller, those who ask

(for help), and for freeing slaves; (and who) establishes prayer and gives Zakah, (those who) fulfill their promise when they promise; and (those who) are patient in poverty and hardship and during battle. Those are the ones who have been true, and it is those who are the righteous”(Q2:177).

This verse emphasizes spending in the way of Allah even before the issue of salat is mentioned. Six categories of people are mentioned in this verse as regards spending in the way of Allah: kin, orphans, needy, wayfarer, those who ask and the ransom of slaves. All those six categories are mentioned before salat. This is to show the importance of spending. The other verse that encourages spending and discourages miserliness is Q47:38

هَآأَنْتُمْ هَؤُلَاءِ تُدْعَوْنَ لِتُنفِقُوا فِي سَبِيلِ اللَّهِ فَمِنْكُمْ مَّنْ يَبْخُلُ وَمَنْ  
يَبْخُلْ فَإِنَّمَا يَبْخُلْ عَن نَّفْسِهِ وَاللَّهُ الْغَنِيُّ وَأَنْتُمُ الْفُقَرَاءُ وَإِنْ  
تَتَوَلَّوْا يَسْتَبْدِلْ قَوْمًا غَيْرَكُمْ ثُمَّ لَا يَكُونُوا أَمْثَالَكُمْ

“Here you are – those invited to spend in the cause of Allah but among you are those who withhold (out of greed), and whoever withholds only withholds (benefit) from himself; and Allah is free of need, while you are the needy. And if you turn away (i.e refuse) He will replace you with another people, then they will not be the likes of you (Q47:38)

Therefore, it is good to spend one’s wealth to bring succor to the life of the suffering ones. From these verses and many others that are contained in the Quran, the objectives of spending should be in line with the intent of the Quran.

### 3.3 Objectives of *al-Infāq*

One of the basic objectives of spend is to win Allah’s favour in this world and the hereafter. Other objective is to give charity to fellow men with a view to relieving them of bodily pain or suffering. It is also to relieve people of adversities or hardships of all forms during the periods of peace and war. Another aim of spending is to spread the messages of Islam and to sponsor less privileged people in our society on education, health and shelter.

### 3.4 Kinds of *al-Infāq*

*Infāq* covers all forms of spending. It may be spent on the poor, needy, oneself, one's family, society and relatives. The four kinds are:

- *Al-Infāq* as a religious personal obligation
- *Al-Infāq* as a religious circumstantial personal obligation
- *Al-Infāq* as a religious community obligation
- *Al-Infāq* as a religious voluntary contribution

**3.4.1 *Al-Infāq* as a religious personal obligation** – it is a kind of spending that is religious in nature. It is a religious obligation on all Muslims that are capable of spending. An example of this category is Zakah which is expended on 8 categories of people (Q9:60)

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

Zakah expenditures are only for the poor and for the needy and for those employed for it and for bringing hearts together (for Islam) and for freeing captives (or slaves) and for those in debt and for the cause of Allah and (for the stranded) travellers an obligation (imposed) by Allah. And Allah is Knowing and Wise

**3.4.2 *Al-Infāq* as a circumstantial obligation.** It is when a person is spending as a result of certain circumstance such as spending on those that are near such as education, marriage, needy neighbours, libel, tort, civil liability and kaffarah.

**3.4.3 *Al-Infāq* as a religious community obligation.**

It is *al-Infāq* that is expected of every Muslim. The moment a person takes charge of fulfilling it, others are relieved of the personalisation of the duty e.g. construction of roads, public utilities, mosques, cemeteries, scientific research etc It is *farḍul kifāyah*.

**3.4.4 *Al-Infāq* as a religious – based voluntary spending**

As the name indicates, it is *al-Infāq* that deals with a running-stream spending and one-short spending. Helping the poor, the needy, the hungry, etc are some people in this category, Running-stream *infāq* is the spending on establishing trusts.

## 2.0 Conclusion

From the foregoing, it is clear that Quranic verses and Hadith are replete of this concept. *Al-Infāq* covers all kinds of spending and expenditure, the purpose of which is to seek Allah's favour in this world and the hereafter. This institution covers many areas. In fact Islamic economic system stands on the shoulder of the participants.

## 5.0 Summary

In this section, you have learned that *Al-Infāq* is an act of spending in the way of Allah if it is viewed technically. This is done to win His favour. We have also taught you the best objectives a person who wants to spend his property should have at the back of his mind. Various kinds of *Al-Infāq* such as *Al-Infāq* as a religious obligation and as a circumstantial obligation were discussed.

## 6.0 Tutor – Marked Assignment

1. Define literally and technically *al-Infāq*.
2. List 3 objectives of *al-Infāq*.
3. Give the six people mentioned in Q2:177 that are entitle to *al-Infāq*.
4. Mention and explain 2 with examples 3 of the divisions of *al-Infāq*.

## 7.0 References / further Reading

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## UNIT 2      WAQF: ENDOWMENT

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### 1.0 Introduction

Besides zakat and sadaqah, one of the other ways by which poverty can be alleviated in our society is through *waqf*. The socio-economic problems facing the country can be solved with ease if this institution is given the place it deserves in our society. In the light of its importance, you will learn in this unit the meaning of *Waqf*, its legality from the Quran and the sunnah; types of waqf; management of waqf, its disposal and the significance of *al-waqf*.

### 2.0 Objectives

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

1. Define *waqf* literally and technically.
2. Mention the reference to *al-waqf* in the Quran and the Sunnah.
3. State clearly the types of *al-waqf*.
4. Discuss how *waqf* should be managed.
5. List the importance of *waqf* in relation to poverty alleviation.

6. Discuss the ways to dispose or liquidate *waqf*.

### 3.0 Main Contents

#### 3.1 The Meaning of *Waqf*

*Waqf* literally means to tie down, to forbid movement, to become still or stationary. Other synonymous words used for *waqf* are *ḥabs* or *tahbīs* and *tasbīl*. Lexically, *ḥabs* and *waqf* are very close in meaning to each other as both convey the idea of endowing, restricting, confining and detaining. *Tasbīl* which is a verbal noun of four letter-verb is coined from *sabīl* Allah which means in the cause of Allah.

In Islamic law, it means the settlement in perpetuity of the usufruct of any property for the benefit of individuals or for a religious or charitable purpose. It may simply be defined as tying up a specific thing in a way that the owner's proprietary title in it may subsist and the profits thereof may go to charitable purposes. *Waqf* is usually referred to as endowment.

However, the Arabic terminology "*waqf*" is still favoured by many scholars. For it conveys the meaning of retaining the ownership of the substance of a property and devoting its fruit to the course of Allah. *Waqf* can, therefore, be referred to a property which its proceeds are devoted to charitable purpose but its ownership or proprietorship is retained by the owner.

#### 3.2 Legality of *al-Waqf*

*Waqf* is established by the Quran and the Sunnah. *Waqf* was originally introduced by the Religion of Islam. Although the word *waqf* is not used in the Quran, there are many verses that allude to it. Some of them are

يَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلْ مَا أَنْفَقْتُمْ مِنْ خَيْرٍ فَلِلْوَالِدَيْنِ وَالْأَقْرَبِينَ الْيَتَامَى  
وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ وَمَا تَفْعَلُوا مِنْ خَيْرٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

They ask you (O Muhammad) what they should spend. Say, "Whatever you spend of good is (to be) for parents and relatives and orphans and the needy and the traveler. And whatever you do of good indeed Allah is Knowing of it. (Q2:215)

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ



Never will you attain the good (reward) until you spend (in the way of Allah) from that which you love. And whatever you spend indeed Allah is Knowing of it. (Q3:92).

These verses and other many ones in the Quran encourage people to take care of under-privileged people irrespective of their religion, race and sex (male or female). *Waqf* is one of the ways by which one can sacrifice what one cherishes for Allah's sake. It is also one of the ways one can do good things that would make him successful not only in this world but also in the hereafter.

It must also be mentioned that many cases of *waqf* are stated in Hadith of the Prophet. The Prophet's companions were moved and determined to do away with their most cherished assets when they listened to Q3:92. In reaction to this verse, Abu Talhab decided to give away his most cherished property (i.e. date plantation) that faced the Prophet's Mosque in Madinah. The Prophet was fond of going there to take water.

*Anas said when Q3:92 was revealed, Abu Talhah said: Oh messenger of Allah, Allah said, "you cannot attain piety unless you spend out of what you cherish",*

The most valued of my property to me is the date plantation. I declare it as charity to God expecting the reward it can earn me. I keep it with God, the Most High. Oh Prophet, put it anywhere God directs you to place it. The Prophet, (PBUH) reacted saying that is beautiful and that is a profitable venture. I have heard you and my opinion is that you endow it for the (your) relatives. "Abu Talhat replied, Do as you wish Oh Prophet" Abu Talhat then shared it among his relations and the children of his uncle (Bukhari and Muslim)

Upon listening to Q3:92, Umar went to the Prophet and said: I have never had any property that is more precious to me more than my share of parcel of land which is at Khaybar. What do you advise me to do with it? He replied him saying, "Retain the substance of the property and devote the proceeds to the cause of God".

This is to mention instant reactions of some companions of the Prophet to Q3:92. The importance of *Waqf* is also clear in another Hadith that says all the actions of man cease to generate reward, when a person dies except or is from three acts.

إذا مات ابن آدم انقطع عنه عمله إلا من ثلاث: صدقة جارية أو  
علم ينتفع به أو ولد صالح يدعو له

“When a person dies, his work ceases except three categories of deeds that perpetually continue to yield reward: charity in perpetuity (*waqf* for charity), knowledge which is beneficial to people or good offspring who prays for him”.

It is evident from the Quranic verse and the Hadith that the roles of *waqf* in raising the standards of living of people are obvious.

### 3.3 Types of *Waqf*

There are two types of *Waqf* in Islamic law:

- *Al-Waqful Ahliyy / Dhuriy*
- *Al-Waqful Khayriy*

#### 3.3.1 *Al-Waqful Ahliyy / Dhuriy*

It is endowment made for the purpose of using the income generated or the fruits of the *waqf* for a donor's family. The donor may also include himself among the beneficiaries of the fruits of his *waqf*.

#### 3.3.2 *Al-Waqful Khayriy*

It is endowment made in favour of people other than the donor and his immediate family. Anybody can benefit from this type of *waqf* such as the rich the poor, Muslims and non-Muslims, females and males, young and old etc.

### 3.4 Object that cannot be used as *Waqf*

It is not permissible to use perishable items as *waqf* items: thus money, dirhams, food, drinks, cannot be used as *waqf*. What cannot be benefited from while its capital still remains cannot be *waqf*. A *waqf* must be an item from which people can benefit and the capital asset will still remain.

### 3.5 Management of *Waqf*

#### 3.5.1 *Wāqif* (the donor)

Before a *waqf* is valid, the *wāqif* must be the owner of the property i.e. the ownership of the property must not be in doubt. The ownership must be devoid of encumbrance. It must have been acquired through lawful means in the first instance by the donor. The donor must also be

an adult, sane and has full right to dispose his property. Therefore, a minor, a slave and an insane person cannot be a donor. This is because their property is supposed to be under the care of sane and reliable people who could manage it for them effectively. In Islamic law, a woman can give out her property as *waqf*. But it should not be more than 1/3 of her property. If it will be more than that, her husband must consent to it

The *wāqif* has every right to appoint an agent (*mutawalli*) who is going to manage the affairs of the *waqf*. He has the right to give conditions for the operation of the *waqf*. He may give the agent the sharing formula for the proceeds from the *waqf* for the benefit of people. As said, he may also be one of the beneficiaries.

### 3.5.2 *Mawqūf* (property)

The subject-matter i.e the property must not include unlawful things in Islam. It is forbidden for a muslim to acquire or use as *waqf* things that the Sharī‘ah has declared *haram*. The property must be owned. Its owner must be clear and not in doubt. There should be also no encumbrance or right attached to the property if someone should give a building that has been used for mortgages, such a *waqf* is null and void. This is because the rights of creditor are linked to the mortgaged property which can be disposed of so as to recoup their money.

The property must be in existence. It is not right to use as *waqf* what is not in existence. The Hadith of the Prophet:

لا يبيع لمن ليس عندك

“Do not sell what is not with you” may be relevant. The *wāqif* cannot use as *waqf* what he does not own. The subject matter of *waqf* must be precisely determined as regards its quantity, essence and value. A *waqf* should not be utilized for criminal or sinful goals.

### 3.5.3 *Mawqūf alayh* (Donee)

In Islamic law, the beneficiaries of *waqf* can be poor individuals, students, institutions, (mosques, schools, hospitals, libraries etc). *Waqf* is not confined to Muslims alone. Non-Muslims can also benefit from it if they are qualified as beneficiaries. They also can benefit from the subject-matters such as schools, hospitals, recreation grounds and libraries can be used by both Muslims and non-Muslims.

#### 3.5.4 *Sighah*(Form)

*Sighah* is the instrument or the means by which an endowment is made. An endowment may be made in a number of ways such as by speech and by writing. If it is made by speech, it is in order because words are considered to be the basis of all kinds of expression. It can be said in a number of ways that could not pose doubt. It may be said thus:

“I have given this property as *waqf* in the way of Allah”. It may be written down according to Q2:282. There is no fixed format. But what is important is that it should not leave a doubt in the minds of the beneficiaries.

#### 3.5.5 The roles of management of *Waqf*

Management of *Waqf* can also be referred to as the agents that are in charge of the operation of the *waqf*. Mutawalli has to follow the instruction of *wāqif*. The property should be managed based on the rules and regulations laid down by the *wāqif* (the donor)

*Mutawalli* should not be a minor nor an insane person. He should not be a person under interdiction. He must be competent to carry out the assignment i.e. he should possess the capacity to carry the work. He should be honest and pious. He should also know that he is holding the property on behalf of the donor, and that he is answerable to him in this word and to Allah on the Day of Judgement. He should exercise due care and skill. He should not allow a conflict of interest to arise i.e. he is not allowed to keep for himself proceeds of the *waqf* that are not part of his salary or to make use of the property in a wrong way. The agents of *waqf* can be terminated by *wāqif* through mutual agreement, unilateral termination, destruction of the subject-matter, loss of legal capacity and death.

#### 3.6 Features of *Waqf*

*Waqf* can be done for a specific period say, a week, a month, a year or ten years etc. it depends on the *wāqif* (the Donor). When the time expires or lapses the ownership reverts back to the original owner and that marks the end of *waqf*. It is also allowed to restrict the proceeds to a specific cause. The proceeds may be used to give only scholarship to indigent Muslim students in tertiary institutions. Another form may be to ask the management to divide the proceeds into say three and allocate each share to three different projects for the benefits of people in the cause of Allah. *Waqf* can also be total (i.e. *mutlaq* in Arabic). Its donor allows the agent managing the *waqf* to use all the proceeds in the cause of Allah based on their discretion. The agents can then decide on

the number of projects to finance using the proceeds to give scholarship, construct roads, build mosques and hospitals and to feed the poor. The instruction of the *wāqif* must be obeyed and followed to the letter whether he is alive or dead.

If it is not a *waqf* for a specific period, the *waqf* is said to be complete and irrevocable the moment the property (*mawqūf*) is transferred to the possession of *mūwquf alayhi* (donee). The transfer of the property should be done during the lifetime of the donor, otherwise, the property is part of the inheritance. It cannot be *waqf* again. If a donor is declared bankrupt before the transfer of *waqf* to donee, the *waqf* is cancelled. If a donor could not transfer his *waqf* before he dies, such a *waqf* is cancelled. The property earmarked for the *waqf* should be part of the inheritance. If a donor should give an heir a *waqf* but he has not transferred it before he dies, such a *waqf* is cancelled i.e is ineffective. Other heirs may allow the heir to take the *waqf*. But if the donee is not an heir, the *waqf* can be deducted from the deceased's property within the allowable one-third of the property.

Therefore, taking possession of *waqf* called *Hawz* by donee is very important in the operation of *waqf*. *Hawz* is assumed to have taken place the moment a mosque, a road, a toilet etc have been declared open for public use.

*Hawz* is assumed to have taken place the moment the subject-matters of the *waqf* such as mosques, roads, toilets, recreation grounds, hospitals have been declared open.

**3.7 Cancellation or liquidation of *Waqf*** – it is not allowed to liquidate *waqf*. One should not sell, dispose inherit, give it as a gift or use it as a collateral security for a loan. It may be leased because the lease payment is used for the beneficiaries of the *waqf*. It can be modified or rebuilt if the structure is dilapidated because it may stop providing the benefits.

**3.8 The importance of *Waqf* in alleviating poverty**

*Waqf* is one of the ways by which poverty can be alleviated in our society if it is properly managed. It allows redistribution of wealth in a society. If a *waqf* is used to construct roads, build toilets, schools and hospitals, the standards of living of people would be raised. Where *al-waqf* is used judiciously it creates jobs for people.

*Waqf* that is used to give scholarship for indigent students has prepared the leaders of tomorrow for that society. Bequest in the cause of Allah is a kind of gratitude to the beneficent and an acknowledgment of his blessings and gifts. Through *waqf*, basic needs can be provided for people in a society.

Through *waqf*, the poor are given their rights when Allah praises such givers:

وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌّ مَّعْلُومٌ  
لِّلسَّائِلِ وَالْمَحْرُومِ

“And those within whose wealth is a known right  
For the petitioner and the deprived (70:24-25)”.

#### 4.0 Conclusion

Allah has provided for His creatures what is sufficient for them to live a comfortable life. The rich have been admonished by Islam to share their wealth with the poor. While general charity is good, *waqf* is better as it provides sustainable inflow of resources for the purpose of the *waqf*. A society can flourish when its members do not spend all their wealth on the satisfaction of their own desires but reserve a portion of it for others particularly the under privileged and the general good of the society. *Waqf* is one of the ways by which this can be done.

#### 5.0 Summary

In this lecture you have learned:

- the meaning of *waqf* to be endowment in the cause of Allah
- that the Quran and the sunnah establish the legality of *waqf* particularly Q3:92
- the reactions of the Prophet’s companions to the issue of spending in the way of Allah when Q3:92 was revealed. Many companions spent the property they cherish most in the way of Allah
- that everything will stop when a person dies except the acts of *waqf* knowledge one imparts on others, and prayer by one’s offsprings
- The two divisions of *waqf*, one for one’s family and oneself and the other for the public
- Elements of *waqf*, how *waqf* can be managed, its features,
- *Waqf* liquidation and its management and
- how it can alleviate poverty in our society.

## 6.0 Tutor – Marked Assignment

- Define *waqf* fully both literally and technically
- Write notes on the validity of *al-waqf*
- What are the reactions of the Prophet's companions to Q3:92?
- List 4 of the examples of items that can be used as *waqf*
- Mention and explain 2 types of *waqf*
- What are the objects that cannot be used as *waqf*
- List and explain 3 of the elements of *waqf*
- What are the features of *waqf*
- Discuss liquidation of *waqf*
- State the roles of management of *waqf*
- What are the ways to show the importance of *al-waqf*

## 7.0 References / further Reading

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## UNIT 3      CONCEPT OF WAṢIYYAH (Bequest)

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### 1.0 Introduction

When a person's life comes to an end, he will not be able to act again except what he has done before death comes to him. When Allah created man, he gave him everything that could make his life comfortable. All the provisions given to him would not be able to save him when he is asked to leave this world. He is left with *'Ibādah* and his good deeds or bad deeds. He would no longer be able to share his property the way he wishes. All his heirs have been given their shares in the Quran. However, before he dies, he has been graciously favoured that he can allot 1/3 of his property. He has a say on only 1/3 of his property but he can give out immediately as much of his wealth as he wants as gift which should be with immediate effect but commitment which becomes effective at the death of a donor is called bequest. *Waqf* can also be effective at death but it will be treated as bequest which is subject to a maximum limit of 1/3 of the estate. *Wasiyyah* or bequest has its rules and regulations in Islam. In this unit, you will learn the rules and regulations attached to the right given to the maker of the bequest.

### 2.0 Objectives

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

- Give both literal and legal meanings of *waṣiyyah*.
- Mention the religious obligation of *waṣiyyah*
- Differentiate between inheritance and will
- Mention the maximum share a person has the right to share
- Mention those that should be present when the will is being sealed
- List the elements of will / bequest
- Mention some abuses and violations of will



### 3.0 Main Contents

#### 3.1 Interpretation of *Waṣiyyah*

#### 3.2 Literal meaning of *Waṣiyyah*

Bequest/Will is called *waṣiyyah* in Arabic. The three-letter verb *means to convey*. The word *waṣiyyah* is commonly used instead of the more technical word *tawṣiyyah*.

The word is at times used in the Qur'an to mean being fore-told. Examples of such use are as follows:

وَلَقَدْ وَصَّيْنَا الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ وَإِيَّاكُمْ أَنْ اتَّقُوا اللَّهَ وَإِنْ تَكْفُرُوا فَإِنَّ  
لِلَّهِ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَكَانَ اللَّهُ غَنِيًّا حَمِيدًا

“And we have instructed (*waṣiyyah*) those who were given the scripture before you and yourselves to fear Allah...

(Q29:8)(Q46:15) Q31:14

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ حُسْنًا

And we have enjoined (*waṣiyyah*) upon man goodness to parents...

(Q6:15 1-153)

To convey a list of prohibitions and commands to us

(Q103:3)

The Quran also states the true believers are those who give each other *waṣiyyah* of saying the truth. They also advise each other to persevere

(Q2:132)

*waṣiyyah* is also given by a person who is about to die e.g. Prophet's Ibrahim and Ya'qub

It is clear from the examples that *wasiyyah* can also mean being instructed or commanded.

#### 3.3 Legal meaning of *waṣiyyah*

The legal meaning is evident in the Quran as contained in Q4:11, 12. It is said that property left should be divided after payment of a bequest that may have been made or a debt.

*Waṣiyyah* refers to “a gift which can be in form of cash, claim of debt or any other benefit in which the transfer of the right from the benefactor to the beneficiary becomes effective only after the death of the benefactor” (Ambali, 1998)

It is evident from this definition that *waṣiyyah* is not confined to bequest of gift. Liabilities or debts owed by the deceased can also be stated in the will. Whether stated or not, the debt, once confirmed, is to be settled from the estate of the deceased or by his/her heirs if the estate is insufficient to bear the debt.

### 3.4 Legality of will

The Quran and Hadith permit the making of will or bequest with some regulations. There are Quranic injunctions relating to will. One of the Quranic verses on will is Q2:180

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدُكُمْ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةُ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ  
بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

“It is prescribed for you when death approaches (any) one of you if he leaves wealth (is that he should make) a bequest for the parents and near relatives according to what is acceptable – a duty upon the righteous”

مَنْ بَعْدَ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ

... After any bequest they (may have) made or debt...Q4:11

مَنْ بَعْدَ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ

... After any bequest they (may have) made or debt (Q4:12)

مَنْ بَعْدَ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ

... After any bequest you ( may have ) made or debt (Q4:12)

مَنْ بَعْدَ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ

.... After any bequest which was made or – debt, as long as there is no detriment (caused)(Q4:12)

Mention of a bequest is made in the verses that give *aṣhābul-furūd* (fixed sharers) their divinely – fixed shares. In verse 11, bequest is

mentioned once while in verse 12, this is done three times with some variations in the morphological patterns of the verb used. The Prophet also encouraged the writing of the will in his traditions. He said:

من حق امرئ مسلم له شيء يوصي به بيت ليلتين إلا ووصيته مكتوبة عنده

“It is not rightful for a Muslim who has property to bequest to sleep two consecutive nights without having his bequest written with him”.

Therefore, the obligation of writing will or bequest is confirmed in this prophetic tradition. In fact, the origin of will is stated in Hadith reported by Sa’d ibn Abi Waqqas.

“Sa’d Ibn Abi Waqqas said, The Messenger of Allah (PBUH) used to visit me at Makkah, in the year of the farewell pilgrimage. On account of my illness which had become very severe, so I said, my illness has become very severe and I have much property and there is none to inherit from me except a daughter. Shall I then bequeath two thirds of my property, as a charity? He said ‘No’ I said, Half? He said, ‘No’, then, he said, bequeath one-third and – one – third is much, for if you leave your heirs free from want, it is better than that you leave them in want begging other people. You do not spend anything seeking the pleasure of God except that God rewards you including what you put in the mouth of your wife”.

It is clearly shown here that the maximum a person may bequeath in his will is one-third of the entire property. The one-third must be taken out of the property before dividing the rest among the legal heirs as contained in the Quran. It is better a person has sincere intention to please Allah when bequeathing for people in his will so as to have good rewards after his death. It is evident here that inheritance and will are two of what Allah has provided for people to assist others. One should not take law into one’s hand by changing the rules and regulations of inheritance and will.

All these confirm that writing will is not borrowed from other culture. It is within Islam as shown above.

### **3.5 Legal heirs and Will Beneficiaries**

In the Quran and Hadith, the people that are entitled to inheritance have been stated clearly. Their shares are also mentioned. Our concern is not about the inheritance. However, before giving fixed sharers their sharers, the chaff must be removed from the wheat. Therefore three things are deducted from a deceased estate. The first which it has been

discussed earlier is burial expenses. We also said debts must be paid based on the injunctions of the Quran. We mentioned in passing, the third aspect “will” for those that will not share from inheritance. Who are the beneficiaries of will and who should not be given? These are the questions that we will answer here.

### 3.6 Beneficiaries of a Will

Relatives who are not legal heirs are entitled bequests if made by the deceased within the limits of the 1/3 or the property. This should be taken out of the property after the burial expenses and debts have been deducted. The rest is then shared to legal heirs.

Unrelated individuals, institutions, such as hospitals, schools and libraries may be beneficiaries of a bequest. Some people that are excluded from inheritance can also be accommodated in the will or bequest. For instance, a non-Muslim can be accommodated in a will if a Muslim should have a non-Muslim wife, the wife cannot inherit the Muslim man because the Prophet said

لا يرث الكافر المسلم ولا المسلم الكافر

“A non-Muslim cannot inherit a Muslim, nor does a Muslim inherit a non-Muslim”. Similarly, a non-Muslim mother, daughter or wife can be accommodated in a will within the one-third. This provides an opportunity to assist such individuals after one’s death.

### 3.7 Non-Beneficiaries of a Will

Some people are not only excluded from inheritance, they are also excluded from a will i.e. they are not also accommodated in a will. A person that kills another person cannot inherit the victim i.e. the killer cannot inherit the killed person. He is not also entitled to the will of the killed.

You cannot eat your cake and have it. This is true of legal heirs that have divinely-fixed shares. Since they are entitled to inheritance, they should not be given a share in a will. This is because Allah has given them their shares. In relation to this, the Prophet is reported to have said in a speech during his farewell message

إن الله قد أعطى كل ذي حق حقه فلا تنفق المرأة شيئاً من بيتها إلا بإذن زوجها

“Allah has ordained for everyone his due right, thus no bequest may be made to a legal heir. And a woman may not spend anything from her house without her husband’s permission”. A bequest to an heir is subject to approval of other heirs

### 3.8 Presence of witnesses and their Qualifications –

It is part of control that Allah puts the verses in the Qur'an in respect of writing a will. The Qur'an (5:106 – 108) specifically spells out the roles and the number of witnesses. The removal of witnesses is also clearly mentioned in the following:

يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةُ بَيْنَكُمْ إِذَا حَضَرَ أَحَدُكُمُ الْمَوْتُ حِينَ الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِنْكُمْ أَوْ آخَرَانِ مِنْ غَيْرِكُمْ إِنْ أَنْتُمْ ضَرَبْتُمْ فِي الْأَرْضِ فَأَصَابَتْكُمْ مُصِيبَةُ الْمَوْتِ تَحْبِسُونَهُمَا مِنْ بَعْدِ الصَّلَاةِ فَيُقْسِمَانِ بِاللَّهِ إِنْ ارْتَبْتُمْ لَا نَشْتَرِي بِهِ ثَمَنًا وَلَوْ كَانَ ذَا قُرْبَى وَلَا نَكْتُمُ شَهَادَةَ اللَّهِ إِنَّا إِذَا لَمِنَ الْأَثِمِينَ (106) فَإِنْ عَثَرَ عَلَى أَنَّهُمَا اسْتَحَقَّا إِثْمًا فَآخَرَانِ يَقُومَانِ مَقَامَهُمَا مِنَ الَّذِينَ اسْتَحَقَّ عَلَيْهِمُ الْأُولَيَانِ فَيُقْسِمَانِ بِاللَّهِ لَشَهَادَتُنَا أَحَقُّ مِنْ شَهَادَتِهِمَا وَمَا اعْتَدَيْنَا إِنَّا إِذَا لَمِنَ الظَّالِمِينَ (107) ذَلِكَ أَذْنَى أَنْ يَأْتُوا بِالشَّهَادَةِ عَلَى وَجْهٍ أَوْ يَخَافُوا أَنْ تُرَدَّ أَيْمَانٌ بَعْدَ أَيْمَانِهِمْ وَاتَّقُوا اللَّهَ وَاسْمَعُوا وَاللَّهُ لَا يَهْدِي الْقَوْمَ الْفَاسِقِينَ (108)

“O you who believe, testimony (should be taken) among you when death approaches one of you at the time of bequest (that of) two just men from among you or among others outside your circle. If you are travelling through the land and the disaster of death should strike you. Detain them after the prayer and let them both swear by Allah if you doubt (their testimony saying), “we will not exchange it (i.e. our oath) for a price (i.e. worldly gain), even if he should be a near relative, and we will not withhold the testimony of (i.e. ordained by) Allah. Indeed, we would then be of the sinful. But if it is found that those two were guilty of sin (i.e. perjury) let two others send in their place (who are ) foremost (in claim) from those who have and lawful right. And let them swear by Allah, “Our testimony is truer than their testimony, and we have not transgressed indeed, we would then be of the wrong doers. That is more likely that they will give testimony according to its (true) objective, or (at least) they would fear that (other) oaths might be taken after their oaths. And fear Allah and listen (i.e. obey Him) and Allah does not guide the defiantly disobedient people” (Q5:106 – 108).

Based on the Quranic verses quoted above, it is allowed for a person to write his will when two men are required as witnesses to the authenticity of the will or bequest. These two men must witness the

verbal or written will. It is expected that both should all be Muslims that are close to the owner. In case Muslims are not around, non-Muslims may be asked to be witnesses.

The witnesses have to swear that they will testify accordingly without favour or prejudice for or against beneficiaries. It is also allowed to replace any two witnesses that violated their oath. They should be replaced by two other witnesses.

### **3.9 Kinds of *Waṣiyyah***

*Waṣiyyah* is divided into five categories which are on the injunctions of the Qur'an and the Sunnah. Circumstances dictate the status of a bequestor will. A *waṣiyyah* may be compulsory in a situation while it is not in another situation. If it is compulsory, we say the omission is punishable, and if it is done it is rewardable. Being punishable may not mean it is punishable in this world it means the person that failed to write it will be punished for denying the beneficiaries of such will. Islamic law of inheritance is not like common law that can only have its cases brought to the court of law in this world. The cases of Islamic inheritance and will in Islam are both taken in this mundane world and the hereafter. In fact cases that escape right judgment here because parties to the cases are smart cannot escape on the Day of Judgment because nothing is hidden as far as Allah is concerned. The punishment of the hereafter awaits such offenders. These five classifications assist Muslims to know the right from the wrong.

#### **3.9.1 *Waṣiyyah*(Compulsory)*Wājibh***

It is compulsory to write a will if he has some obligations which he must perform particularly if he must discharge some liabilities. For instance, if he has some debts he must pay or he has some articles of trust (*amanah*) which he must return to their owner, he must say them openly or write them down in his will. This is to prevent loss of property of others or mixing other people's property with his own. The Quran is very clear on these issues. The Hadith on the reactions of the Prophet to the three dead persons brought to him for *salatul janāzah* as cited below speaks volume. No Muslim should play with these two issues : debts and items of trust in his will. He should neither reduce nor remove anything from them. He should say them or write them the way they are.

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

“Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing” (Q4:58).

عن سلمة بن الأكوع رضي الله عنه قال: كنا جلوسا عند النبي صلى الله عليه وسلم إذ أتى بجنابة فقالوا صلّ عليها فقال هل عليه دين؟ قالوا لا، قال فهل ترك شيئا؟ قالوا لا فصلّى عليها. ثم أتى بجنابة أخرى فقالوا يارسول الله صلّ عليها قال هل عليه دين قيل نعم، قال فهل ترك شيئا قالوا ثلاثة دنانير فصلّى عليها. ثم أتى بالثالثة فقالوا صلّ عليها قال فهل ترك شيئا؟ قالوا لا، قال فهل عليه دين؟ قالوا ثلاثة دنانير، قال صلّوا على صاحبكم، قال أبو قتادة صل عليه يا رسول الله وعَلَيَّ 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).

It is also compulsory to make a will of restitution for Zakah, Ramadan fast and kaffārah outstanding against one.

### 3.9.2 *Waṣiyyah* (Desirable)*Mustahābah*

It is desirable to make a will for the poor, relations that are not heirs, charitable works such as Mosque, and Quran Arabic schools if one has abundant wealth. This is because the poor needy and others have right in his abundant property. The Quran say

وَفِي أَمْوَالِهِمْ حَقٌّ لِّلسَّائِلِ وَالْمَحْرُومِ

And from their properties was (given) the right of the  
(needy) petitioner and the deprived (Q51:19)

### 3.9.3 *Waṣiyyah* (Disliked)*Makrūhah*

It is disapproved and disliked to make a will when the wealth is not much because this will reduce the share of heirs.

### 3.9.4 *Waṣiyyah* or *Jā'izah* (Tolerable / Permissible)

It is permissible to make *waṣiyyah* of all things that are considered permissible in Islam. For instance, it can be included in a will the name of a person who should conduct one's *salatu Janāzah*.

### 3.9.5 *Wasiyyah* (Prohibited) that is Haram

It is prohibited to make a will of anything which is not permissible in Islam. For instance, if the aim of making *waṣiyyah* is to harm the heirs. It is unlawful to bequest wealth for a person or an institution that will utilise the funds in unlawful activities or criminal acts. It is also unlawful to dispose one's property during one's lifetime with a view to depriving one's heirs their inheritance. If anyone is involved in making unlawful will, the person has transgressed the limit and he will be punished on the Day of Judgment

### 3.10 Essentials of *Waṣiyyah* (Bequest/will)

Before a *waṣiyyah* is valid, the following elements must be present.

**3.10.1** *Mūsī* (the Testator) – This is the person that makes the will. He must be an adult, sane and independent. He must not be coerced in making his decision to make a will. He is free to withdraw his decision any time before he passes away to the great beyond.

**3.10.2** *Al-Mūsā Lahu* (the Beneficiary of *Waṣiyyah*) –

The beneficiary of *Waṣiyyah* should not be one of those people that the Quran has given their shares in inheritance because the Prophet said:

لا وصية لوارث

“No will should be made in favour of an heir”.



However, if other co-heirs approve it, he can enjoy it. If some heirs refuse to approve it, the will shall affect only the shares of those that approve it.

### 3.10.3 The quality of the item of property –

The property on which will is made must be valuable at the time of the death of the testator and it should be lawful (*halāl*).

### 3.10.4 *Sighah* Form

A bequest must not be ambiguous. It must be exact and direct specific format is required. The practice of the Prophet's companions is to start with the following:

هذا ما أوصى فلان ابن فلان أن يشهد أن لا إله إلا الله وحده لا شريك له وأن محمدا عبده ورسوله، وأن الساعة آتية لا ريب فيها وأن الله يبعث ما في القبور. وأوصى من ترك من أهله أن يتقوا الله ويصلحوا ذات بينهم ويطيعوا الله ورسوله إن كانوا مؤمنين، وأوصاهم بما أوصى به إبراهيم بنيه ويعقوب) أن الله اصطفى لكم الدين فلا تموتن إلا وأنتم مسلمون

In the name of Allah, the Most Gracious, the Most Merciful. This is the instruction of X the son of Y. that he testified that nobody deserved worship but Allah. He is alone and He has no associate. He also testified that Muhammad was His servant and apostle. He testified that the appointed time shall no doubt come to pass and that God will cause the dead to resurrect. The testator instructed his people who survived him to fear Allah and keep alive the bonds of brotherhood among themselves. They should obey Allah and follow the footsteps of His apostle if they are faithful. The words he left behind for them are the same as those left behind by Prophet Ibrahim and Ya'qub for their children. God has chosen religion for you and ensure that death overtakes you only as Muslims. He then states his will.

### 3.10.5 Appointment of a *Wāsī* (Executor or administrator)

An executor is a person appointed by *amūṣī* (testator) to attend to his property when he dies. A *wāṣī* can accept verbally or through his

conduct. His work starts when his testator dies. A non-Muslim should not be appointed as one's *wāṣī* if two executors were appointed, besides the funeral arrangements, all other acts and decisions must be jointly taken by the two.

### 3.11 Amendment of Request by the Administrators

If a will or bequests contain an apparent injustice or can lead to harm, the administrators are at liberty to vary the content. The Qur'an says:

فَمَنْ خَافَ مِنْ مُوصٍ جَنَفًا أَوْ إِثْمًا فَأَصْلَحَ بَيْنَهُمْ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ حِيمٌ

“But if one fears from the bequeather (some) error or sin and corrects that which is between them (i.e. the concerned parties) there is no sin upon him. Indeed, Allah is forgiving and merciful” (Q2:182). On the whole, we should not allow our sentiments to affect our relationship with our heirs. Allah's general command to the believers is to be fair even towards those whom they hate Q5:8.

### 3.12 Content of a Will

In addition to what is contained in 3.10.4 above, a standard bequest should contain the followings:

- Testator's expression of writing the will in sound health and without being under duress
- Starting with Basmalah ( the saying of Bismillah Rahmān Rahīm) and declaration of Islamic faith i.e. monotheism (Sha hādah)
- Will or inheritance is one of the opportunities of admonishing a deceased's survivors – they should be advised and admonished in the will whatever they hear during that period is likely to have impact on them forever.
- **List of person's assets and Liabilities**  
Special attention should be given to hidden or undocumented property.
- Executor and Guardian appointed should be stated in one's will. A note of warning is that all those in charge a deceased's property should be honest, reliable and they should take good care of the deceased's property. No injustice must be done Q4:9. An aspect of inheritance that is for “will” must be set aside. Legal heirs must be consulted.
- A note of warning against a person who wants to change the will (Q2:181)

فَمَنْ بَدَّلَهُ بَعْدَمَا سَمِعَهُ فَإِنَّمَا إِثْمُهُ عَلَى الَّذِينَ يُبَدِّلُونَهُ إِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ

“Then whoever alters it (i.e the bequest) after he has heard it- the sin is only upon those who have altered it. Indeed, Allah is Hearing and Knowing”

- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment

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## UNIT 4 ISLAMIC CONCEPT OF GIFT (*HIBAH*)

### CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Definition of *Hibah*
  - 3.2 Status of *Hibah*
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  - 3.6 *Hibah* and *Wasiyyah*
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### 1.0 Introduction

Exchange of gifts is a common feature in the society. Various reasons are behind gift. Some are given in anticipation of similar gesture while some are done simply to please the beneficiary. The gift made for the sake of Allah alone is known as sadaqah (charity) Hibah, on the other hand, is a kind of gift which requires some explanations. The meaning, essentials and purpose of Hibah would be listed in this unit, while the possibility or otherwise of its revocation will also be addressed.

### 2.0 Objectives

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

- Give different definitions of *hibah* in Islam
- Mention the status of *hibah* in Islamic Law
- State clearly the essentials of *hibah*
- Explain revocation and the rule of exception in relation to *hibah*
- Describe how lack of possession can render *hibah* null and void
- State the similarities and dissimilarities between *hibah* and other forms of transfer of property

### 2.0 Main Contents

#### 3.1 Definition of *Hibah*

The concept of *hibah* is very difficult to define for it belongs to the category of terminologies, which are not amenable to a single definition. Lexically, *hibah* is a verbal noun of *wahaba* which means to

dash, .....bless, endow etc. In the Quran the word and its derivatives are used 25 times.

*Hibah* can therefore be translated as gift. Other terms which are synonymous to it are *hadiyah* and *atiyah*. Although *sadaqah* also involves transfer of ownership, it is not totally the same with *Hibah* for it is done to win the pleasure of Allah on the Day of Judgment. This is not the case with *Hibah* to some extent. *Hibah* is done to win the heart of the beneficiary. *Hibah* is defined by various jurists in different ways. These are some of their definitions:

- *Hibah* is a transfer of the right of the property in the substance (*tamlikul'ayn*) by one person to another without any return (Ameer Ali)
- *Hibah* is a transfer of a tangible property from the offeror to the offeree with a view to obtaining the pleasure of the latter without asking for any compensation or attaching any condition (ibn Arafah)
- *Al-Hibah* is transfer of the ownership of the substance of a property unconditionally to the donee to seek his favour. It is also called *hadiyah*, (gift)
- It is unconditional transfer of the right of ownership of the property which is transferable in Islamic Law by (a *Rāhid*), a person who is sane, mature and capable in Shariah to administer all his/her affairs by himself or herself. (Sirajus-salik)
- *Hibah* is a contract which a person transfers, during his lifetime, the right of ownership of what he owns to another person without demanding any compensation (Sayyid Sabiq)

All these definitions and meanings have a common feature of stressing the point that *hibah* involves transfer of the right of the property from a giver to a receiver during the giver's lifetime to the receiver when he is alive without necessarily expecting any return except the pleasure of the beneficiary.

### 3.2 STATUS OF *HIBAH*

When a Muslim does something, he must not only know the legality of the thing but also he must know the status of the thing whether it is punishable or rewarding. This will assist him to take a decision that will benefit him in this world and the hereafter. Therefore, our attempt to discuss here the status of *Hibah* as well as its legality is to assist you to make a decision anytime you confront a case of this nature. *Hibah* has only two status. ***Wājib*(compulsory) and *mandūb* (recommended)**

**Wājib** means it a compulsory duty, the omission of which the person who leaves it undone is punishable in the hereafter while **mandūb** means giving out *hibah* is recommended, but the person that leaves it undone will not be punished. But if he does, it he is rewarded.

### 3.2.1 *Hibah aswājib* (compulsory)

Circumstances will determine the obligation of *hibah* on a rich person. If a person is exposed to a serious problem or some challenges such as hunger, sickness and lack of shelter to the extent that if he is not helped, he would not get out of the difficult situation, *hibah* becomes compulsory for a rich person to get the person suffering out of the problem. The Quran say:

وَفِي أَمْوَالِهِمْ حَقٌّ لِّلسَّائِلِ وَالْمَحْرُومِ

And from their properties was (given) the right of the (needy) petitioner and the deprived (Q51:19)

If a rich person fails to give *hiba* to a person in a very serious situation, he will be punished for neglecting him and for failing to use Allah's wealth to assist Allah's creatures. He is not the owner of the wealth he has, he is only a trustee that is holding the property on behalf of the real owner.

### 3.2.2 *Hibah as Mandūb* (Recommended)

It is *mandūb* for a rich person to give *hibah* if the situation is not serious. If a rich person gives *hibah*, he is rewarded. But he fails to give it when the situation is bearable for a person that is suffering from tribulations, the rich will not be punished for not giving it. However, he is encouraged by the following verses to come to the aid of those who need his help.

“And help one another in righteousness and piety” (Q5:2)

And spends his property however such he himself may cherish it – upon his near of kin and the orphans and the needy and the way farer and the beggars and for freeing of human beings from bondage. (Q2:177)

The Prophet also encouraged giving of gift when he said, “Exchange gift to promote love”.

It is clear that while sadaqah seeks the pleasure of Allah, the main target of *Hibah*, is to please or ameliorate the suffering of the beneficiary who may on the basis of the act love the benefactor and promote social integration.

### 3.3 Essentials of *Hibah*

*Hibah* has some principles called *arkanul Hibah* for any *Hibah* to be complete, the four principles or elements must be present. They are:

#### 3.3.1 Al-Wāhib(The donor)

He must have the ownership of the property if he is not the owner, he cannot give it. He must not suffer from insanity (*junūn*). Insanity serves a barrier for a person suffering from it. Bankruptcy (*taflīs*) prevents one from giving *Hibah*. A person is bankrupt if his debts exceed his assets, and court on the demand of his creditors passes a prohibitory order restraining all alienation by him, and directs the sale of his property for the benefit of his creditors.

He must not be under duress when he is giving it. If he is suffering from partial insanity ('atah) and forgetfulness (*nisyān*), he cannot make a valid gift. *Safah* is another factor that can prevent a person from making a valid gift. *Safah* is weakness of intellect which urges a person to act with respect to his property contrary to the dictates of intellect with the non-existence of mental disorder *safah* is opposite of *rushd* which means the handling of financial matters in accordance with the dictates of reason.

A sick person particularly if it is *maradul mawt* (death-illness) cannot dispose more than one-third of his estate as *Hibah* because it is likened to *wasīyyah* if he should die in the process. And *wasīyyah* cannot be more than one-third of a person's property. A wife is expected to inform her husband if the *hibah* she is giving out is more than one-third of her property. However, if it is less, the consent of her husband is irrelevant.

**3.3.2 *Mawhūb lahu* (donee)** A gift should not be given to a person that is not qualified to use it. A golden ring cannot be legally received by a male for it is unlawful for him to use it. Another example is that a Muslim slave should not be given as *hibah* to a non-Muslim. The non-Muslim is not qualified to have a Muslim slave for the reason of difference in religion. (Q4:141) Allah will not grant the disbelievers a way to prevail over the believers (Q4:141)

**3.3.3 *Al-mawhūb* (the actual gift)** - The subject matter of *hibah* must be something that is permissible in Islam. It must be religiously and legally clean e.g pork, intoxicants etc. The gift must be fully owned by the benefactor and must exist.

**3.3.4 *Sighah* (Form)** - It is the statement made by the donor that he gives a particular property as *hibah* to an individual or a corporate body. No contract in Islam can be regarded as complete without *al-hawz* i.e possession. If a person has indicated his intention to give out his property as *hibah* but has not transferred it to the donee, many things can happen that can make him cancel the *hibah*. Some of them are sickness, bankruptcy, lunacy and death. And in infact, he can cancel it without violating the principles of Shariah. Therefore, *hibah* is said to be complete after possession has taken place.

**3.3.5 Al-Hawz (Possession)** Taking of possession of gift completes the contract. A gift that has not be taken over by the donee is subject to review during the life time or after the death of the donor. It is so essential that some jurists make it the fifth essential of Hibah.

### **3.4 Revocation and the rule of exception**

It is allowed in Islam to revoke Hibah . If a gift has not been taken (i.e.if it is not in the hands of donee), it can be revoked. For instance, if a donor has not released the property to a donee and he dies, that marks the end of the *hibah*. However, if the heirs of the donor approve it, it is lawful and must not be more than 1/3 of the property. But if it is more than one-third, the consent of the heirs or other heirs if the donee is also one of them is compulsory. If they approved it, it is lawful for him to take it. Otherwise, the gift is null and void. If a donor is declared bankrupt and the gift has not been transferred to the donee, the gift is revoked.

A father can revoke his gift to his son if it has not been used by the son to serve as a collateral security for a loan or has not been used to contract a marriage or he has not given it out to another person. A mother can revoke her gift to her child if the father of the child is still alive. However, a mother cannot get back the gift he has given to her child if the child has thereafter lost his father. In every rule there is always an exception. This is also applicable to the issue of gift. If a wife should offer her husband a house and both of them are living there, she cannot rescind the *hibah*. This is because the husband has consented to the gift by living there with her. It is the duty of the husband to provide accommodation for her. For him to have consented, he has accepted the gift.

In conclusion, it is not morally right for a person to give a person *Hibah* and later rescind it. The Prophet discouraged it when he said



عن ابن عباس رضي الله عنهما قال: قال النبي صلى الله عليه وسلم العائد في هبته كالكلب يقى ثم يعود في قيئه. وفي رواية للبخاري ليس لنا مثل السوء الذي يعود في هبته كالكلب يقى ثم يرجع في قيئه

On the authority of Ibn Abbas, may Allah be pleased with him, the Prophet (PBUH) said: A person who rescinds his decision of gift is like a dog which vomits and returns to swallow its vomit (Bukhari and Muslim). In another form Bukhari reported it thus: we do not have an example that is as bad as a person who revokes his gift like a dog vomiting then going back to swallow it. The exception to the rule of revocation as stated earlier is contained in this Hadith

وعن ابن عمر وابن عباس رضي الله عنهم وعن النبي صلى الله عليه وسلم قال لا يحل لرجل مسلم أن يعطى العطية ثم يعود فيها إلا الوالد فيما يعطى ولده

On the authority of Ibn Umar and Ibn Abbas that the Prophet peace and blessings of God be on him said. It is not lawful for a Muslim to make an offer of gift and rescind his decision except in a gift from the father to his child.

### 3.5 Hibah Sadaqah and Zakah

*Hibah* is a gift to win the heart of a person. And it may only be for this world while sadaqah is given to win the pleasure of Allah in this world and the next. *Hibah* just sadaqah is not confined to a specific object, it can be made out of any articles of property that are shari'ah compliant. Zakah is compulsory dues on specific items while *Hibah* is not confined to any particular items. Zakah is given to 8 categories of people while Hibah can be given to all the 8 categories of recipients and others not mentioned in Q9:60. Zakah of money is given once while *Hibah* may be given as many times as possible for the giver. Zakah has specific amounts to be given and time. This is not peculiar to sadaqah. *Hibah* can be given to the rich and the poor, the young and the old, the male and females. Of all these, zakah cannot be given to the rich. It is meant for specific categories of person, including the poor.

### 3.6 Hibah and Wasiyyah

Wasiyyah is limited to 1/3 of the property a deceased person while there is no minimum and no maximum to be given as Hibah. Wasiyyah is given after the death of a person while Hibah is given when the

donor is still alive. Hibah is transferred immediately while the transfer of *wasīyyah* is after the death of a donor that the ownership is moved to receivers.

- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment

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## **UNIT 5 SADAQAH AND ITS ROLE IN A MODERN ECONOMY**

### **CONTENTS**

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Contents
  - 3.1 Meaning of Sadaqah
  - 3.2 Forms of Sadaqh
  - 3.3 Recipients of Sadaqah
  - 3.4 Difference between Zakah and Sadaqah
  - 3.5 Socio-economic importance of Sadaqah
  - 3.6 Spiritual benefits of Sadaqah
  - 3.7 Attitudes of givers and receivers of Sadaqah
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
- 7.0 References / further Reading

### **1.0 Introduction**

Prayer (salat) and charity (Zakat / Sadaqah) go together in the holy Quran to show their importance. This unit is devoted to the examination of Sadaqah and its role in a modern economy. You will learn the meaning, merits and spiritual effects of Sadaqah in this unit. Attention is also paid to the difference between Zakah and Sadaqah, attitudes of the givers. What should be the attitude of Sadaqah givers and takers is highlighted. You will learn some forms of sadaqah and those that should receive it in this lecture.

## **2.0 Objectives**

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

- Define correctly Sadaqah
- Distinguished between Sadaqah and Zakah
- State forms of Sadaqah and its recipients
- List the differences between Zakah and Sadaqah
- Mention the socio-economic importance of Sadaqah and its spiritual benefits
- Describe the attitudes of both givers and takers of Sadaqah

## **3.0 Main Contents**

### **3.1 Meaning of Sadaqah**

Sadaqāt is the plural of sadaqah. The Quran uses sadaqāt to refer to all social expenditure or spending for the pleasure of Allah. The word sadaqah comes from the Arabic word *sadaqa* which means to speak the truth, to be sincere. Other derivative of the word is sadaqah which means friendship. Sadaqah can also mean charitable deeds or gifts (Q2:263-264, Q9:79, Q58:13), obligatory tax of zakah and purifying dues. The Quran in some places uses the term sadaqat for Zakah (e.g. Q9:58, 60,103,104 etc). Zakah is a form of sadaqah. Sadaqah involves non-zakah voluntary charitable and social spending (*infāq*).

Technically, sadaqah can be defined as the voluntary offerings made for the sake of Allah by a Muslim out of love, and concern for others as well as what he is morally or legally obliged to give without expecting any worldly gains. It may also mean a voluntary charity given to individual over and above the payment of the compulsory zakat to relieve sufferings of fellow human beings

### **3.2 Forms of Sadaqah**

Unlike Zakah which are to be given on specific items Sadaqah has no precise number of objects on which it can be paid. Zakah for instance, is confined to about six subject matters. They are: Zakat of animals, crops, gold and silver (minerals) commodities of business, and mines.

There are also zakat of idul fitril. Both zakah and zakat tul-fitr Sadaqat is wider than zakah in the sense that it can be paid on any commodities that are lawful (halāl) in Islam. The Prophet stated some things that could serve as sadaqah some of them are:

- Removing from the road anything that may cause harm
- Doing justice among people
- Helping a person to ride his animal
- Uttering good words
- Every step one is taking in going to pray
- Showing the way for a lost person
- Salutation of people
- Enjoining what is good
- Forbidding what is evil
- Giving food to one's wife or one's children
- Maintaining oneself
- Birds and beasts eating in a farm tilled by a person
- Having sexual relations with one's wife or husband
- Giving money to beggars
- Offering any form of relief
- Parting with one's wealth or pleasure for the benefit of others
- Provision of facilities for common religious social or economic use
- Teaching (or any other positive use of knowledge including writing)

Zakah has specific recipients mentioned in the holy Quran (Q9:60). Sadaqah is wider than zakah in terms of recipients. Sadaqat has no specific beneficiaries; it can be given to any person or body. The most beneficial is for it to be given to those that need the gift.

### **3.3 Difference between Zakah and Sadaqah**

- Zakah is an obligatory levy on all surplus wealth and agricultural income of a Muslim while sadaqah is not compulsory
- The objective is to provide financial support to specified categories (8) of people such as the poor and the destitute sadaqah provides financial supports for more than 8 categories of people
- Zakah has fixed rate and amounts that should be deducted or given as zakah. There is no limit as regards those who could benefit from sadaqah. There are specific time for the giving out of zakah. For instance, zakat is paid on money once in a year. For animals, it is paid when they attain certain age. Sadaqah has no time. It can be paid as many times as possible even in a day not to talk of a year. Sadaqah can be given to both Muslim and non-Muslims, this is not true of zakah.

- It is preferable to give zakah to Muslims while sadaqah can be given to both Muslim and Non-Muslims

### **3.4 Socio-economic importance of Sadaqah**

In addition to the reward a giver of zakat and sadaqah would take on the Day of Judgment, there are socio-economic benefits of sadaqah. If a Muslim gives sadaqah, he experiences a rare feeling of satisfaction and tranquility in his heart that he has helped someone no matter how small the amount. The social relations between a giver and a recipient of sadaqah are strengthened.

Another merit is that in most cases, the poor who receive sadaqah would not feel jealous of the giver's wealth because they also benefit from it. The poor instead of being a giver's enemies, they pray for him, wish him well and look towards him with love and admiration. In fact, the world would hold him in high esteem for being generous to people that do not work for him. Everyone likes him and feels drawn towards him.

The promises of rewards attached to sadaqah can make people work i.e. it can encourage dignity of labour. This is because many poor people can go out in search of work so that they could earn some money to spend for the sake of Allah as it happened during the time of the Prophet. When his companions listened to Q2:261-262, the poor ones who did not have money had to go out and search for jobs so that they could spend in the way of Allah. The multiplier effect of this would be the raising in the standards of living of people, reduction in the rate of criminal acts and abundant wealth.

The reverse of usury is charity while usury leads or fosters the concentration of wealth in the hands of a few, and breeds egotism, parsimony mistrust, covetousness. Sadaqah re-distributes wealth, promotes faith, develops the spirit of brotherhood and fellow-feeling and generates love in the hearts of the receivers.

### **3.5 Spiritual benefits of sadaqah**

A giver of sadaqah becomes a friend of God. God bestows prosperity on him and multiplies his wealth. The Prophet is reported to have said: the mandate of God is ... O son of Adam! Go on spending the wealth I have given you (on the poor, the needy and the destitute): I shall give you more". There is every assurance from Prophet Muhammad that his Lord told him that "I can swear no one will become poor because of spending in the way of Allah" Despite the wealth is given to people by

Allah, Allah places extra ordinary and enormous rewards on sadaqah given out of their wealth. If Allah is well pleased with the behavior and conduct of people when they give out sadaqah, and if the sources of their property are clean and He is pleased with them, He gives in the Quran the assurance of a rich and fantastic premium on their sadaqah. Allah says:

مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ  
أَنْبَتَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ سُنبُلَةٍ مِئَةُ حَبَّةٍ وَاللَّهُ  
يُضَاعِفُ لِمَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ

“The example of those who spend their wealth in the way o Allah is like a seed (of grain) which grows seven spikes in each spike is a hundred grains. And Allah multiplies (His reward) for whom He wills. And Allah is all-encompassing and knowing. Those who spend their wealth in the way of Allah and then do not follow up what they have spent with reminders (of it) or (other) injury will have their reward with their Lord and there will be no fear concerning them nor will they grieve”. Q2:261-262. Allah makes three promises to those who give sadaqah or spend in the way of Allah. One, they will be repaid hundred-fold in this world for spending in the cause of Allah. Two, on the Day of Judgment, Allah will give them enormous rewards and three, on that Day, they will neither fear nor grief.

The importance of sadaqah is also seen in the tradition of the Prophet which goes thus: “There are three things, whoever acquires them acquires the real joy of faith. First, to worship Allah and no one besides Him. Second, to believe sincerely in La ilaaha illa Allah and the last (to pay the Zakat cheerfully on one’s possession every year”. The promises of reward by Allah can encourage dignity. Sadaqah cleanses the heart of a giver of conceit, selfishness and cruelty. It brings sanctity, effulgence and prosperity in the wealth of a giver through sympathy and solicitude for the poor and the downtrodden. This basic significance of zakat is pointed out in the Quran

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ  
صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ

Take, (O Muhammad), from their wealth a charity by which you purify them and cause them increase, and invoke (Allah's blessing) upon them. Indeed, your invocations are reassurance for them. And Allah is hearing and knowing (Q9: 105).

This is also stated in Q30:39 when Allah is drawing the distinction between usury (i.e. interest) and charity. Usury cannot lead to increase in wealth. The effects of usury are seen in our society. There are many global financial crises in the society as a result of imposing usury. Allah promises increase for the acts of charity sadaqah in the same verse. Allah says.

Q.....“And whatever you give for usury (i.e. advantage) to increase within the wealth of people will not increase with Allah. But what you give in zakah desiring the face (i.e. approval) of Allah – those are the multipliers. If a person gives sadaqah, his infatuation for wealth will be softened and it will be a source of advantage to him in the end. In the Quran, charity is mentioned side by side with prayer on as many as 32 occasions.

### 3.6 Attitudes of givers and receivers of sadaqah

A giver of charity (sadaqah) should consider its charity very little because all the resources he uses the sadaqah were provided by Allah. Allah gave him eyes, intellect, hands, legs and all parts of his body free of charge. He also provided the capital and other factors of production for him. All the resources used to produce and market the produce are provided by Allah. Man should give something that is pure and lawful. A giver of sadaqah should not rebuke, ridicule or insult the beneficiary. If it is given it can be given openly to encourage others to give charity.

However, it is better to give it secretly in order to protect the dignity of the receivers. The attitude of a giver of sadaqah is to express gratefulness for the gifts of Allah by giving them out to the poor. A payer of sadaqah can look for those people when paying sadaqah. In addition to the eight categories of people (Q9:60) who should be given charity, a giver can also give charity to God-fearing men, students seeking knowledge, truthful and sincere people, poor people that refrain from begging, a person with a big family and near relatives.

Sadaqah receivers should increase their services (iba'adat) and thank Allah for giving them means of livelihood. They should be grateful to the givers by praying for them and praising them. They should think sadaqah as great and should not accept charity from unlawful sources. They should not take more than they need.

#### **4.0 Conclusion**

It is evidently clear from our discussion that sadaqah is a blessing in disguise and openly if it is made to work. It helps in the re-distribution of wealth. Sadaqah generates wealth which can assist in the performance of other pillars of Islam. With wealth from lawful sources, a person's faith is protected. Not only that, he is able to pray with full concentration; and he is able to get food and drinks to undertake fasting in the month of Ramadan. With wealth, pilgrimage to Makkah is possible. The corollary of these assertions is that the role of sadaqah is unique to the extent that other acts revolve around it for their correct performance

#### **5.0 Summary**

In this lecture, you have learned:

- That sadaqah mean charity
- Forms of sadaqah i.e. those actions and services that could amount to sadaqah e.g. removing harmful
- That objects from roads
- Recipients of sadaqah are not limited like that of zakah receivers
- The difference between sadaqah and zakah
- The socio-economic and spiritual roles of sadaqah e.g purification of wealth and poverty reduction
- That the givers of sadaqah should perceive what he gives as mere token no matter how large, while the receivers should consider it great and large no matter how small.

#### **6.0 Tutor – Marked Assignment**

- Give the literal and legal meanings of sadaqah
- What are the items of sadaqah?
- Mention the recipients of sadaqah
- Differentiate between sadaqah and zakah
- What are the socio-economic benefits of sadaqah?
- State with relevant quotations the spiritual benefits of sadaqah
- What should be the attitudes of zakah's givers and receivers?



## **7.0 References / further Reading**

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