Shari‘ah Bar Reviewer on Succession, Wills, and Adjudication

* **Part I (Q1–12):** Foundations of Islamic Succession and Fixed Shares (*Fara’id*)
* **Part II (Q13–24):** Disqualifications, Wills (*Wasiyyah*), Bequests, Charitable Gifts, and Special Cases
* **Part III (Q25–35):** Parents’ Rights, Missing Persons, Adjudication, Estate Settlement, and Procedural Rules

**PART I – FOUNDATIONS OF ISLAMIC SUCCESSION AND FIXED SHARES (Questions 1–12).**

**1. Explain the principles of Islamic inheritance law (Fara’id).**

**Answer:**  
Islamic inheritance (*ʿilm al-farāʾid*) is the divinely ordained system for distributing a deceased Muslim’s estate among qualified heirs based on fixed Qur’anic shares and established juristic principles. Its core objectives are *ʿadl* (justice), *tanzīm* (order), and *taḥqīq al-maṣlaḥah* (ensuring welfare). The guiding principle is that “no estate shall remain undistributed” and “no rightful heir shall be deprived.” Distribution occurs only after payment of funeral expenses, debts, and valid legacies.

**Legal Basis:**

* Qur’an 4:11–12, 176 (foundation of *farāʾid*)
* PD 1083, Art. 100 (Modes of succession)
* PD 1083, Art. 106 (Disposable third)
* Ḥadīth: “Give the *farāʾid* (fixed shares) to those who are entitled to them, and what remains goes to the nearest male relative.” (Ṣaḥīḥ al-Bukhārī, 6732)

**Key Terms / Notes:**

* *Fara’id* = fixed shares
* *ʿAdl* = justice and balance
* *Taqsīm al-turāth* = division of inheritance
* Emphasizes equality, prevention of disputes, and divine command (*farḍ min Allāh*).

**2. What are the fixed shares (Fara’id) in Islamic inheritance, and who are the primary recipients?**

**Answer:**  
The *farāʾid* are the specific fractional shares assigned to heirs in the Qur’an. The primary sharers (*dhawu al-furūḍ*) include:

1. **Spouses:** Husband (½ or ¼); Wife (¼ or ⅛).
2. **Parents:** Father (⅙ or residuary); Mother (⅙ or ⅓).
3. **Children:** Daughter (½ if one, ⅔ collectively if two or more).
4. **Grandparents:** Paternal grandfather or grandmother (⅙ each).
5. **Siblings:** Full, consanguine, and uterine brothers/sisters (⅙, ⅓, or residuary, depending on circumstance).

**Legal Basis:**

* Qur’an 4:11–12
* PD 1083, Arts. 110–120 (Sharers and their specific shares)

**Key Terms / Notes:**

* *Ashāb al-furūḍ* = Qur’an-designated heirs
* Shares are determined prior to residuaries (*ʿasabah*).
* No human discretion: shares are divinely fixed.

**3. Discuss the concept of ‘Awl’ and ‘Usul’ in Islamic inheritance law.**

**Answer:**  
*‘Awl* refers to a proportional reduction of shares when the total exceeds the estate (e.g., combined shares > 1). Each share is reduced proportionally. *Usul* refers to ancestors (ascendants) who inherit—parents, grandparents.

**Example of ‘Awl’:**  
If the sum of shares equals 13/12, each share is scaled down proportionally.

**Legal Basis:**

* Derived from Qur’an 4:11–12 and classical fiqh of the Companions (Caliph ʿUmar’s ruling in “case of the woman and her husband”).
* PD 1083 implicitly allows proportional distribution in Art. 110–120.

**Key Terms / Notes:**

* *‘Awl* = increase in total shares; reduction in each.
* *Usul* = ancestors (parents, grandparents).
* Ensures full distribution without excess.

**4. What are residuaries (Asabah) in Islamic inheritance law?**

**Answer:**  
*Asabah* are heirs entitled to the residue of the estate after the *farāʾid* are distributed. They inherit by virtue of blood proximity and male lineage. Types include:

1. *Asabah bi-nafsihi* (by himself) – e.g., son, father, brother.
2. *Asabah bi-ghayrihi* (with others) – e.g., sister made residuary by brother.
3. *Asabah maʿa ghayrihi* (with others) – e.g., full sisters with daughters.

**Legal Basis:**

* Qur’an 4:176; Ḥadīth: “Whatever remains, it belongs to the closest male relative.” (Bukhārī 6732)
* PD 1083, Arts. 121–125 (Residuaries defined).

**Key Terms / Notes:**

* *Asabah* = agnatic heirs
* *ʿAṣaba* ensures no part of estate is wasted.
* Heirs of the male line take precedence.

**5. Explain the difference between 'Tanzil' and 'Hajb' in Islamic inheritance.**

**Answer:**  
*Tanzīl* means representation—allowing descendants of a predeceased heir to inherit their parent’s share (legal substitution). *Ḥajb* means exclusion—an heir is barred by the presence of a nearer relative.

**Legal Basis:**

* PD 1083, Art. 107 (Bequest by operation of law — analogous to *tanzīl*).
* *Ḥajb*: Qur’an 4:11; classical fiqh.

**Key Terms / Notes:**

* *Tanzīl* = substitution (e.g., grandson inherits portion of predeceased father’s share).
* *Ḥajb* = blocking by closer heir (e.g., father blocks grandfather).
* *Ḥajb bi-nafsihi* (complete exclusion) vs. *ḥajb bi-ghayrihi* (partial reduction).

**6. Describe the rules governing the inheritance rights of grandchildren in the absence of their parents.**

**Answer:**  
Grandchildren (through sons) inherit by *tanzīl* if their parent (the decedent’s child) predeceased the grandparent. Under PD 1083, Art. 107, they are entitled to one-third of what their parent would have received, by way of *wasiyyah wājibah* (obligatory legacy).

**Legal Basis:**

* PD 1083, Art. 107
* Qur’an 4:11; Fiqh al-Mīrāth (Shafi‘i, Hanafi views).

**Key Terms / Notes:**

* *Tanzīl* = representation
* *Wasiyyah wājibah* = compulsory bequest for orphaned grandchildren.
* If their father is alive, they are excluded (*ḥajb*).

**7. What is the role of an executor (Wasi) in the settlement of an Islamic estate?**

**Answer:**  
A *waṣī* (executor) administers the deceased’s estate: settling debts, fulfilling legacies, and distributing shares. The *waṣī* acts as fiduciary, not owner, and must act with integrity and according to the Qur’an and PD 1083.

**Legal Basis:**

* PD 1083, Art. 102–103 (proof and execution of wills)
* Qur’an 4:58 (“Render trusts to whom they are due.”)

**Key Terms / Notes:**

* *Wasi* = executor
* Must be of sound mind, trustworthy, and Muslim.
* Subject to supervision of the Shari‘ah Court.

**8. How are debts settled before the distribution of an estate in Islamic law?**

**Answer:**  
Debts and funeral expenses are prioritized over inheritance. Distribution occurs only after obligations are settled. The order is:

1. Burial expenses;
2. Debts (*dayn*);
3. Legacies (*wasiyyah*, up to ⅓);
4. Distribution to heirs.

**Legal Basis:**

* Qur’an 4:11–12 (“after payment of any bequest or debt”).
* PD 1083, Art. 100, 101, 106.

**Key Terms / Notes:**

* *Dayn* = debt
* *Tartīb al-taqsīm* = order of settlement
* Heirs cannot claim until obligations are cleared.

**9. What is the maximum portion of an estate that can be bequeathed through a will (Wasiyyah) in Islamic law?**

**Answer:**  
A Muslim may bequeath by will (*wasiyyah*) only up to one-third of his estate if there are legal heirs; if none, the entire estate may be bequeathed. Excess beyond one-third is valid only with heirs’ consent.

**Legal Basis:**

* Qur’an 2:180; PD 1083, Art. 101 & 106.
* Ḥadīth: “The one-third, and one-third is much.” (Bukhārī & Muslim)

**Key Terms / Notes:**

* *Thulth* = one-third rule
* *Wasiyyah li-ghayr warith* (to non-heir only).
* Protects heirs’ Qur’anic rights.

**10. Explain the concept of 'Mahjur' and its relevance in the settlement of estates.**

**Answer:**  
A *mahjūr* is a person legally incapacitated from managing property due to minority, insanity, or prodigality. In estate settlement, a guardian (*wali* or *waṣī*) must protect the interest of the *mahjūr* heir.

**Legal Basis:**

* PD 1083, Art. 9 (restrictions on capacity); Art. 105 (capacity for will).
* Qur’an 4:5–6 (“Do not give to the foolish your property… test the orphans until they reach maturity.”).

**Key Terms / Notes:**

* *Mahjūr* = legally incapacitated
* Court supervision ensures protection of shares.

**11. What are the conditions under which a will (Wasiyyah) can be revoked in Islamic law?**

**Answer:**  
A *wasiyyah* can be revoked expressly or impliedly by the testator at any time before death. Any waiver or restriction of this right is void.

**Legal Basis:**

* PD 1083, Art. 108.
* Fiqh principle: “Al-wasiyyah lā talzam illā ba‘da al-mawt” (a will is binding only after death).

**Key Terms / Notes:**

* *Naskh al-wasiyyah* = revocation
* May be revoked by new will, destruction, or contrary act.

**12. Describe the inheritance rights of a surviving spouse in Islamic law.**

**Answer:**  
The husband inherits **½** if there are no descendants, or **¼** if there are. The wife inherits **¼** if there are no descendants, or **⅛** if there are.

**Legal Basis:**

* Qur’an 4:12; PD 1083, Arts. 111–112.

**Key Terms / Notes:**

* *Zawj* (husband), *Zawjah* (wife)
* Shares may be reduced by *ʿawl*; excluded only by apostasy or prior death.
* Spousal share acknowledges mutual rights within *nikāh*.

**PART II — DISQUALIFICATIONS, WILLS, BEQUESTS, AND CHARITABLE GIFTS**

*(Shari‘ah Bar Reviewer — Mixed Bar Exam Mode)*  
Covers Questions **13–24**

**13. Discuss the inheritance rights of adopted children under Islamic law.**

**Answer:**  
Adopted children (*maqtūn awlād al-tabannī*) are **not legal heirs** under Islamic law. Adoption does not create a blood or nasab relationship; thus, they do not inherit by *farāʾid* or *ʿasabah*. However, the adoptive parent may grant them property through **gift (hibah)** during life or **will (wasiyyah)** up to one-third of the estate.

**Legal Basis:**

* Qur’an 33:4–5 (“God has not made your adopted sons your real sons… call them by [the names of] their fathers.”)
* PD 1083, Art. 101 (Wasiyyah) & 106 (Disposable third)
* Fiqh: Ibn Qudāmah, *al-Mughnī*, Vol. 6, p. 3

**Key Terms / Notes:**

* *Tabannī* = adoption (non-heritable)
* *Wasiyyah li-ghayr warith* = bequest to non-heir permissible within ⅓
* Protects blood lineage (*nasab*) as immutable in Shari‘ah.

**14. How does Islamic law address the inheritance rights of non-Muslim heirs?**

**Answer:**  
A non-Muslim cannot inherit from a Muslim decedent, nor vice versa, because of the difference in religion (*ikhtilāf al-dīn*). However, a Muslim may make a *wasiyyah* (bequest) or gift (*hibah*) to a non-Muslim during his lifetime or up to one-third by will.

**Legal Basis:**

* Ḥadīth: “A Muslim does not inherit from a kāfir, nor does a kāfir inherit from a Muslim.” (Ṣaḥīḥ Muslim 1614)
* PD 1083, implied under Art. 106 (Wasiyyah only for non-heirs)
* Qur’an 5:51 (principle of community distinction)

**Key Terms / Notes:**

* *Ikhtilāf al-dīn* = difference of faith (bar to inheritance)
* Non-Muslim may receive under *wasiyyah* within ⅓.

**15. Explain the principle of 'Radd' (return) in the context of Islamic inheritance.**

**Answer:**  
*Radd* (return) occurs when after giving all fixed shares, there remains surplus and no residuary (*ʿasabah*) exists. The residue “returns” to the sharers in proportion to their shares, except the surviving spouse, whose share is not increased by *radd*.

**Legal Basis:**

* Fiqh rule: “If there is no residuary, the return shall be to the heirs of fixed shares according to their portions except the spouse.”
* PD 1083, implicit under Art. 110–125 (Sharers and residuaries).

**Key Terms / Notes:**

* *Radd* = reversion of surplus to Qur’anic heirs
* *ʿAsabah* = absent, so *ashāb al-furūḍ* take the remainder.

**16. What is the legal status of a predeceased heir's share in Islamic inheritance law?**

**Answer:**  
If an heir predeceases the decedent, his or her share lapses and does not transmit to descendants, except as allowed by *wasiyyah wājibah* (obligatory bequest) for orphaned grandchildren (PD 1083, Art. 107). Thus, no “representation” as in civil law except under statutory bequest.

**Legal Basis:**

* PD 1083, Art. 107
* Qur’an 4:11 (“For the child, a portion…”) implies living heirs only.

**Key Terms / Notes:**

* *Takhalluf* = predecease
* *Wasiyyah wājibah* = statutory continuation of deceased heir’s benefit
* Prevents orphaned grandchildren’s deprivation.

**17. Describe the inheritance rights of full siblings versus half-siblings in Islamic law.**

**Answer:**

* **Full siblings (akh shāqiq):** inherit as sharers (sister: ½ or ⅔) or residuaries (with brother).
* **Consanguine siblings (same father, different mothers):** inherit if no full siblings; sister’s share ½ or ⅔.
* **Uterine siblings (same mother, different fathers):** inherit as sharers — one gets ⅙, two or more share ⅓.

**Legal Basis:**

* Qur’an 4:12, 176
* PD 1083, Arts. 118–120 (Siblings’ shares)

**Key Terms / Notes:**

* *Shāqiq* = full sibling
* *Akh li-ab* = consanguine brother
* *Akh li-umm* = uterine brother
* Priority: full > consanguine > uterine.

**18. How does Islamic law handle the inheritance of joint property owned by the deceased and another person?**

**Answer:**  
If property was jointly owned, only the deceased’s proportionate share is included in the estate. Ownership must be clearly established (*bayyinah*). If the co-owner contributed equally, the division follows actual equity, not assumption of equal halves.

**Legal Basis:**

* Qur’an 4:29 (“Do not consume one another’s property unjustly.”)
* PD 1083, general inheritance principles (Art. 100 et seq.)
* Fiqh: Ibn ʿAbidin, *Radd al-Muḥtār*, on *mushāʿ property*.

**Key Terms / Notes:**

* *Mushāʿ* = co-owned or undivided property
* Court determines ownership by proof (*bayyinah*).

**19. What are the procedural steps for adjudicating an inheritance dispute in Shari'ah Court?**

**Answer:**

1. **Filing of Petition** for *taqsīm al-turāth* (division of estate).
2. **Verification of Heirs** by lineage or civil registry.
3. **Settlement of debts and legacies** (Art. 100).
4. **Computation and distribution** according to *farāʾid*.
5. **Issuance of decree of partition.**

**Legal Basis:**

* PD 1083, Book IV, Arts. 155–158 (Jurisdiction and procedure of Shari‘ah Courts)
* Supreme Court Admin. Circular on Special Rules for Shari‘ah Courts.

**Key Terms / Notes:**

* *Taqsīm* = division
* *Iqrār bi-nasab* = acknowledgment of kinship
* Court acts as *qāḍī al-mawārith* (judge of estates).

**20. Explain the concept of 'Hibah' and its impact on the distribution of an estate.**

**Answer:**  
*Hibah* is an inter vivos gift transferring ownership immediately during the donor’s lifetime without consideration. Once validly given and possessed, it is excluded from the estate and cannot be contested as inheritance. However, if made in *marad al-mawt* (death-illness), it may be treated as a testamentary disposition subject to the one-third rule.

**Legal Basis:**

* Qur’an 2:177; PD 1083, Art. 37 (gifts in marital context) and general fiqh.
* Fiqh: al-Kāsānī, *Badā’iʿ al-Ṣanā’iʿ*, Vol. 6.

**Key Terms / Notes:**

* *Hibah* = lifetime gift
* *Marad al-mawt* = death sickness (restricts validity)
* Prevents evasion of heirs’ rights.

**21. What are the inheritance rights of an illegitimate child under Islamic law?**

**Answer:**  
An illegitimate child (*walad al-zinā*) inherits only from the mother and maternal relatives, not from the father, because there is no recognized *nasab* through unlawful intercourse.

**Legal Basis:**

* Ḥadīth: “The child belongs to the bed (marriage), and for the adulterer is the stone.” (Bukhārī & Muslim)
* PD 1083, Art. 58 (in divorce context) and fiqh rules on *nasab*.

**Key Terms / Notes:**

* *Nasab* = legitimate descent
* *Walad al-zinā* = child of fornication
* May receive through *wasiyyah* up to one-third.

**23. What is the significance of a 'Mahjub' (excluded heir) in the context of inheritance?**

**Answer:**  
A *mahjūb* is an heir excluded totally or partially due to the presence of a nearer heir. Complete exclusion (*ḥajb ḥirmān*) removes entitlement altogether (e.g., brother excluded by father), while partial exclusion (*ḥajb nuqṣān*) reduces the share (e.g., mother’s ⅓ reduced to ⅙ by presence of child).

**Legal Basis:**

* Qur’an 4:11–12; fiqh doctrines of *ḥajb*.
* PD 1083, implied under Articles 113–115 (priority of ascendants and descendants).

**Key Terms / Notes:**

* *Ḥajb* = exclusion
* *Mahjūb* = excluded heir
* Reflects proximity principle in *farāʾid*.

**24. How are bequests to charitable organizations treated under Islamic inheritance law?**

**Answer:**  
Bequests for charitable or religious purposes (*wasiyyah li-l-khayr* or *waqf bill-wasiyyah*) are valid within the one-third disposable portion. Such *waqf* becomes binding after death and must serve a lawful (*sharʿī*) purpose (e.g., mosque, orphanage).

**Legal Basis:**

* PD 1083, Art. 104 (Testamentary *waqf*).
* Qur’an 2:261 (encouragement of charity).
* Ḥadīth: “When a person dies, his deeds end except three: continuing charity, knowledge, and a righteous child.” (Muslim 1631)

**Key Terms / Notes:**

* *Waqf bill-wasiyyah* = testamentary endowment
* *Sadaqah jāriyah* = continuing charity
* Must not exceed one-third of net estate.

**PART III – PARENTS’ RIGHTS, MISSING PERSONS, ADJUDICATION, AND ESTATE DISTRIBUTION DISPUTES**

*(Shari‘ah Bar Reviewer — Mixed Bar Exam Mode)*  
Covers Questions **25–35**

**25. Explain the inheritance rights of parents in Islamic law.**

**Answer:**  
The **father** inherits as a *sharer* (one-sixth) if the deceased has a son or son’s son, and as a *residuary* if none exist. The **mother** inherits one-third if there are no children or multiple siblings, but only one-sixth if there is a child or two or more siblings.

**Legal Basis:**

* Qur’an 4:11 (“For parents, each one-sixth of what he leaves if he has a child…”)
* PD 1083, Arts. 113–114.

**Key Terms / Notes:**

* *Ab* = father; *Umm* = mother
* Parents always inherit unless disqualified (e.g., apostasy, homicide).
* The father’s dual status: *sharer + residuary.*

**26. What is the procedure for distributing the estate of a missing person presumed dead under Islamic law?**

**Answer:**  
A person missing (*mafqūd*) is presumed alive until a Shari‘ah Court declares death after a reasonable time—usually **seven years** under PD 1083, Art. 11. Only upon declaration may the estate be distributed among heirs existing at that time. If the missing person later appears, distribution is rescinded to restore rights.

**Legal Basis:**

* PD 1083, Art. 11 (presumption of death after seven years).
* Fiqh: *al-Majalla* Art. 35; *Mafqūd al-athar* rules.

**Key Terms / Notes:**

* *Mafqūd* = missing person
* Distribution deferred pending judicial declaration.
* Protects both estate integrity and absent person’s rights.

**27. Describe the concept of 'Wasiyyah wajibah' (obligatory will) and its application.**

**Answer:**  
*Wasiyyah wājibah* is a **compulsory bequest** to certain relatives (usually orphaned grandchildren or disqualified heirs) mandated by law when the deceased failed to make one. Under PD 1083, Art. 107, such heirs receive **one-third of what their parent would have inherited** if alive.

**Legal Basis:**

* PD 1083, Art. 107.
* Modern Egyptian and Syrian fiqh influences (codified form of *tanzīl*).

**Key Terms / Notes:**

* *Wasiyyah wājibah* bridges the gap between *wasiyyah* and *farāʾid*.
* Prevents hardship on orphans due to predeceased parents.
* Operates by law, not by decedent’s declaration.

**28. Discuss the role of the Shari'ah Court in overseeing the execution of wills (Wasiyyah).**

**Answer:**  
The Shari‘ah Court supervises the **proof, allowance, and execution** of wills. It ensures compliance with formalities (Art. 102–103), verifies witnesses, settles debts first, and enforces the one-third limit. The court may appoint a *waṣī* (executor) and issue orders for distribution.

**Legal Basis:**

* PD 1083, Arts. 102–103, 155–158.
* Shari‘ah District Court jurisdiction includes testamentary succession.

**Key Terms / Notes:**

* *Qāḍī* acts as probate judge.
* Court ensures that *wasiyyah* does not infringe heirs’ fixed rights.
* Resembles civil “probate,” but under Shari‘ah principles.

**29. Explain the procedure for challenging the validity of a will (Wasiyyah) in the Shari'ah Court.**

**Answer:**  
A will may be contested on grounds of **incapacity, coercion, undue influence, excess beyond one-third, or lack of witnesses.** The challenge is filed before the Shari‘ah District Court which hears evidence, may invalidate specific clauses (Art. 109), or the whole will. Partial invalidity does not void the rest unless interdependent.

**Legal Basis:**

* PD 1083, Arts. 105–109.
* Qur’an 2:282 (testimony in contracts); fiqh on *batil wasiyyah*.

**Key Terms / Notes:**

* *Bāṭil* = void; *Fāsid* = irregular
* Will stands unless proven defective.
* Court may preserve lawful portions (*ṣaḥīḥ* parts).

**30. What are the legal requirements for a valid will (Wasiyyah) under Islamic law?**

**Answer:**  
A valid *wasiyyah* requires:

1. **Competent testator** – Muslim, sane, of age of puberty.
2. **Voluntary declaration** – no coercion.
3. **Permissible object** – lawful property.
4. **Proper witnesses** – at least two competent Muslims.
5. **Within one-third** – unless heirs consent.
6. **Beneficiary not a legal heir** (unless ratified).

**Legal Basis:**

* PD 1083, Arts. 101–106.
* Qur’an 2:180–182; fiqh consensus.

**Key Terms / Notes:**

* *Wasiyyah* = will/bequest
* *Shurūṭ al-wasiyyah* = requisites of a valid testament.
* Becomes binding only after testator’s death.

**31. Describe the process of estate administration in cases where there is no will (intestacy) under Islamic law.**

**Answer:**  
When a person dies intestate, the estate passes automatically to Qur’anic heirs. The process:

1. Payment of burial expenses and debts.
2. Judicial confirmation of heirs.
3. Computation of *farāʾid* shares.
4. Distribution under PD 1083 Book III, Titles II–III.  
   If heirs dispute, the Shari‘ah Court adjudicates the partition.

**Legal Basis:**

* PD 1083, Arts. 100, 110–125.
* Qur’an 4:11–12, 176.

**Key Terms / Notes:**

* *Mawārith* = inheritance
* *Taqsīm* = distribution
* Intestacy governed strictly by divine allocation (*farḍ min Allāh*).

**32. Explain the concept of 'Takhalluf' and its implications for inheritance distribution.**

**Answer:**  
*Takhalluf* refers to a person’s death before the decedent whose estate is being distributed (predeceased heir). The *takhalluf* heir is excluded; his descendants cannot inherit directly unless entitled under *wasiyyah wājibah* (Art. 107).

**Legal Basis:**

* PD 1083, Art. 107.
* Fiqh: “No inheritance to one who predeceases.” (*lā mīrāth li-man mata qabla al-mūrith*).

**Key Terms / Notes:**

* *Takhalluf* = predecease
* Distinguishes from *simultaneous death* (Art. 12).
* Avoids double succession conflicts.

**33. Discuss the rules for distributing joint property among heirs under Islamic law.**

**Answer:**  
Joint property (*mushāʿ*) is divided according to proportionate ownership established by evidence. The decedent’s undivided share enters the estate. The court may order *taqsīm al-mushāʿ* (partition), ensuring each heir’s fractional right. If indivisible, property may be sold and proceeds distributed.

**Legal Basis:**

* Qur’an 4:7 (“For men and for women there is a share from what parents and kindred leave.”)
* PD 1083, general inheritance principles.
* Fiqh: rules on *iqsām al-milk al-mushtarak*.

**Key Terms / Notes:**

* *Mushāʿ* = co-owned property
* *Qismah* = division
* Court determines shares equitably.

**34. What is the procedure for resolving disputes among legal heirs regarding the distribution of an estate in the Shari'ah Court?**

**Answer:**  
Heirs may bring an action for *taqsīm al-turāth*. The Shari‘ah Court first encourages *sulh* (amicable settlement) or *Agama Arbitration Council* mediation. If unresolved, the court:

1. Identifies heirs and shares;
2. Verifies assets and liabilities;
3. Orders distribution per *farāʾid*;
4. Issues judgment subject to appeal.

**Legal Basis:**

* PD 1083, Book IV, Arts. 155–160 (jurisdiction and arbitration).
* Qur’an 49:9 (reconciliation among believers).

**Key Terms / Notes:**

* *Sulh* = conciliation
* *Agama Arbitration Council* aids pre-trial resolution.
* Court’s decision (*ḥukm qada’i*) binding upon all heirs.

**35. Explain the concept of 'Hajb' (exclusion) and its application in Islamic inheritance law.**

**Answer:**  
*Hajb* is the exclusion or reduction of an heir’s share due to the presence of a closer relative.

* **Complete exclusion (ḥajb ḥirmān):** heir totally deprived (e.g., brother excluded by father).
* **Partial exclusion (ḥajb nuqṣān):** heir’s share reduced (e.g., mother’s ⅓ reduced to ⅙ due to child).  
  It preserves fairness by prioritizing nearer kin.

**Legal Basis:**

* Qur’an 4:11–12; classical *farāʾid* manuals.
* PD 1083, Arts. 113–115 (priority of closer ascendants/descendants).

**Key Terms / Notes:**

* *Hajb* = blockage/exclusion
* Ensures proximity (*aqrabiyyah*) governs inheritance hierarchy.
* Core mechanism for balancing shares.

**🕌 SUMMARY TABLE (Key Doctrines across Parts I–III)**

| **Concept** | **Arabic Term** | **PD 1083 Article(s)** | **Qur’anic / Fiqh Basis** |
| --- | --- | --- | --- |
| Fixed shares | *Fara’id* | Arts. 110–120 | Qur’an 4:11–12, 176 |
| Residuaries | *Asabah* | Arts. 121–125 | Ḥadīth “Whatever remains…” |
| Exclusion | *Hajb* | Arts. 113–115 | Derived from proximity rule |
| Return | *Radd* | – | Classical fiqh (no residuary) |
| Bequest | *Wasiyyah* | Arts. 101–109 | Qur’an 2:180–182 |
| Obligatory will | *Wasiyyah wajibah* | Art. 107 | Modern codification |
| Gift | *Hibah* | General fiqh | Qur’an 2:177 |
| Executor | *Wasi* | Arts. 102–103 | Qur’an 4:58 |
| Missing person | *Mafqud* | Art. 11 | Customary fiqh rule |

**Key Takeaways**

* Islamic inheritance (*farāʾid*) is a **divine ordinance (farḍ min Allāh)**, not subject to private alteration.
* Distribution follows the order: **funeral → debts → legacies → heirs.**
* **Wasiyyah** is limited to **⅓ of the estate**, unless heirs consent.
* The **Shari‘ah Court** ensures equitable settlement and upholds *ʿadl* (justice) and *maṣlaḥah* (welfare).
* Mechanisms like *hajb*, *radd*, and *wasiyyah wajibah* preserve fairness among generations.

**Disclaimer:**  
This document is for **academic and bar review purposes only.** It summarizes PD 1083, Qur’anic law, and classical fiqh principles. It **does not constitute legal advice or a binding fatwa.** For case-specific guidance, consult a **Shari‘ah lawyer or judge.**