



# NALSAR UNIVERSITY OF LAW HYDERABAD



*Lecture on:*

## ***SUCCESSION UNDER MUSLIM LAW***

### *Concept of Succession under Islamic Law*

by

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18-03-2023

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1. General Principles
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# **PART-A**

# **GENERAL PRINCIPLES & RULES**

# 1. GENERAL PRINCIPLES OF LAW OF INHERITANCE

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- **What is inheritance?:** What the relatives of a deceased person get without the consent or option of the deceased (propositus) in the estate, i.e. the property or actionable claim left behind by him, is known in legal terminology as **“inheritance”**.

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- **Conditions for Inheritance:** There are three conditions to inherit from estate of a deceased person:
- i. Certainty or a **strong belief about the death** of propositus;
  - ii. Certainty or a **strong belief about the life of the claimant-heirs** at the time of the death of the propositus; and
  - iii. **Knowledge about the dimensions of inheritance**, i.e. knowledge as to who is an heir and on what grounds.

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❑ **The Islamic scheme of inheritance discloses three peculiarities:**

- i) The Quran gives **specific shares** to certain individuals;
- ii) The **Residue** goes to Agnatic Heirs and failing them to the Uterine Heirs;
- iii) **Bequests** are limited to 1/3 of the estate.

❑ **Note: No Muhammadan is allowed to make a Will in favour of any of his heirs, and a bequest to a stranger is allowed only to the extent 1/3 of the property.**

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## 2. GENERAL RULES OF LAW OF INHERITANCE

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1. Property
2. No distinction between Ancestral and Self-acquired Property.
3. Joint Family not being recognised, the principle of survivorship is also not known.
4. No limited interest
5. No Rule of Primogeniture
6. Birth Right is not recognized
7. Vesting of Inheritance

8. No Right by Birth
9. Devolution of Separate Shares
10. Missing Propositus
11. Missing Heirs
12. Illegitimate Person
13. Illegitimacy by '*Lian*'
14. A Child in the Womb
15. Death in common calamity
16. Doctrine of Representtation



## RULES OF TOTAL AND PARTIAL EXCLUSION

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- ❑ Both under Sunni and Shia systems, every person is entitled to inherit, unless there is something to exclude him. A child in the womb is regarded as a living person **provided he is born alive.**
- ❑ Both the Shia and Sunni systems recognised **two types of exclusions:**
  - **Partial or Imperfect exclusion; and**
  - **Total or perfect exclusion**

## PARTIAL OR IMPERFECT EXCLUSION

(It may come in TWO ways)

- ❑ Exclusion from one share and admission to another.
- **For example,** daughter in the presence of son is excluded as a 'Sharer' and becomes 'Residuary'.
- ❑ Partial reduction of the specific share because of the presence of certain heirs.
- **For example,** the share of wife is either  $\frac{1}{4}^{\text{th}}$  or  $\frac{1}{8}^{\text{th}}$  according to the absence or presence of a child or child of a son, how low so ever. Similar is the case of husband, whose share is either  $\frac{1}{2}$  or  $\frac{1}{4}^{\text{th}}$ .

## TOTAL OR PERFECT EXCLUSION

- ❑ The term '**total exclusion**' applies to cases when although a person, related to the propositus and otherwise entitled to inherit, **is excluded by some 'legal cause'**.
- ❑ Both in Shia and Sunni systems this type of exclusion is based on **three principles**:

- ❖ **Principle-I:** “Nearer in degree excludes more remote.”

Grand Father



Father

- **Ex:** Father (100%) excludes **grandfather (0%)**.

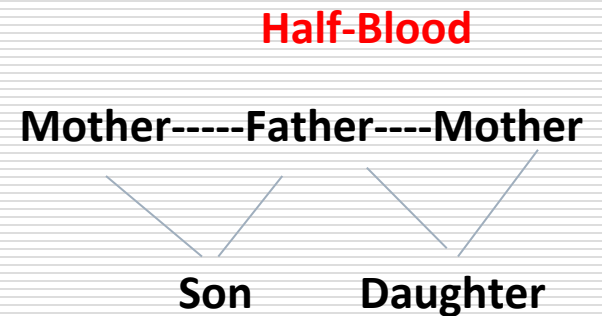
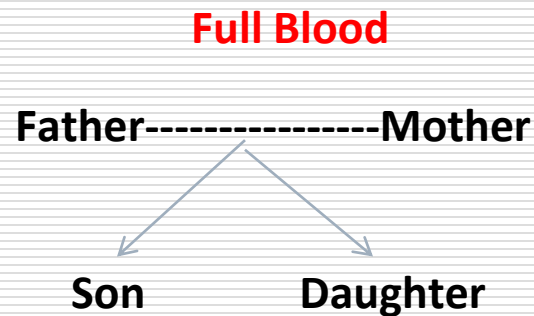
- ❖ **Principle-II:** “ A person who is related to the deceased through another is exclude by the presence of latter.”

Father —————> Brother

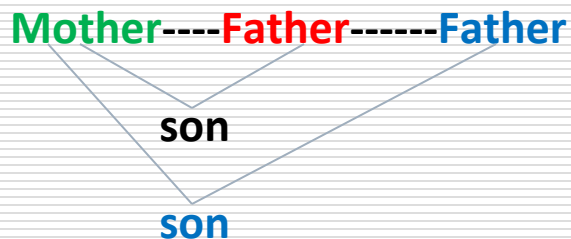
- **Ex:** Father (gets 100%) excludes **brother (0%)**.
- **Exception:** Mother does not exclude brother or sister.

<u>Brother</u>	<u>Mother</u>	<u>Sister</u>	
5/9	1/6	5/18	= $\frac{10+3+5}{18} = \frac{18}{18}$
			= 1

- **Principle-III:** “Full blood excludes half blood”.



- **Exception:** Uterine relations (ie. Same mother but different fathers) are not excluded on this ground.



**MOST IMPORTANT OF TOTAL EXCLUSIONS UNDER MUSLIM LAW ARE ON THE FOLLOWING GROUNDS:**

- ☐ Religion
- ☐ Homicide
- ☐ Illegitimacy
- ☐ Relinquishment of Inheritance Rights

# HANAFI (SUNNI) LAW OF INHERITANCE

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- Hanafi jurists divide heirs into **seven classes**, the three principal and the four subsidiary classes:

- ❖ **Principal Classes:**

- i. Quranic Heirs (**Sharers**);
- ii. Agnatic Heirs (**Residuaries**);
- iii. Uterine Heirs (**Distant Kindred**)



❖ **Subsidiary Classes:**

- iv. The successor by Contract;
- v. The Acknowledged kinsman;
- vi. The Sole Legatee;
- vii. The State, by Escheat

## NOTE: (PRINCIPAL CLASSES)

- ❑ **The first step** in the distribution of the estate of a deceased Muslim, **after payment of his funeral expenses, debts and legacies, is to allot their respective shares to the Quranic Heirs.**
- ❑ **If any residue is left,** it is to be divided among Agnatic heirs (Residuaries).
- ❑ **If there be neither Sharers nor Residuaries,** the estate will be distributed among **Distant Kindred**. The distant kindred are not entitled to succeed so long as there is any heir belonging to the class of Sharers or Residuaries. **But there is one case in which the Distant Kindred will inherit with a Sharer, and that is when the Sharer is the wife (widow) or husband of the deceased.**

## NOTE: (SUBSIDIARY CLASSES)

❑ In the **absence of** a member of the three principal classes (ie. **Quranic, Agnatic and Uterine heirs**) the right of inheritance devolves upon subsidiary heirs, among whom each class excludes the next.

### ❖ **Subsidiary Classes:**

- i. The successor by Contract;
- ii. The Acknowledged kinsman;
- iii. The Sole Legatee;
- iv. The State, by Escheat

### (i) Quranic Heirs (Sharers)

- Sharers are those heirs who are entitled to get a **prescribed share from the heritable property**. The Sharers and their **respective shares** in the property of a deceased **are given in Quran**. The Sharers are, **therefore, also called as Quranic heirs**.
- In the distribution of property, **the Sharers get preference over the other class of heirs**, therefore, first of all the respective share is allotted to each Sharer. It may be noted that Sharers are those heirs whose respective shares are given in Quran; therefore, **their shares cannot be altered by any human effort**.

## **(ii) Residuaries or Agnatic Heirs**

(**Note:** Agnatic Heirs means a person related to wholly through males either by blood or by adoption (No adoption under Muslim Law)).

- Residuaries are those heirs **who inherit only the residue of the property after allotment of respective shares to the Sharers**. Obviously, the **Residuaries have no specific share of their own**. After giving the property to the Sharers in their fixed shares, **if there remains** some property that 'remaining property' (residue) is available to the Residuaries.
- The residue may differ from case to case. If there are no Sharers, the whole is inherited by the Residuaries. Residuary heirs are also termed as Agnatic heirs because **they inherit through male relations**.

### (iii) Distant Kindred or Uterine Heirs

- All those persons who are related to propositus through blood **but could not be included as heirs in the class of Sharers or of Residuaries**, are called distant kindred. If a propositus has neither Sharers nor Residuaries, the properties are inherited by his Distant Kindred. Distant Kindreds cannot inherit in presence of any Sharer or Residuary. The heirs included in this class are **also termed as uterine heirs**.

### Explanation

- i. **'Father'** means only the real father of the deceased **and not a step father.**
- ii. **'Grandfather'** includes great-grandfather on the **paternal side**, how high so ever (hhs);
- iv. **'Husband' and 'Wife'** mean those men and women between whom there was a **valid marriage**; if there was no valid marriage the parties will not be each other's heir;
- vi. **'Daughter'** includes son's daughter, son's son's daughter, and son's son's daughter, how low so ever (hls);

- vi. **‘Full Sister’** means a daughter of the same parents;
- vii. **‘Consanguine Sisters’** are those having a common father **but different mothers’**
- iv. **‘Uterine Brothers’/Sisters’** are those who have a common mother **but different fathers;**
- vi. **‘Mother’** means the woman who gave birth to the deceased and does not include a step-mother;
- vii. **‘Maternal Grandmother’** includes mother’s mother and her mother and grandmother how high so ever.



# 1. QURANIC HEIRS (SHARERS)

**(i) Quranic Heirs (SHARERS) (4 Men and 8 Women)**

- These are the heirs whose share are fixe by the Holy Qur'an, Traditions of the Prophet or consensus of the community, and are to be paid their shares first out of the deceased person's estate.
- **(Refer: Table of Sharers & Residuaries)**

## Table of Sharers

Sl..No.	Men	Sl. No.	Women
1.	Father <b>(SRA)</b>	1.	Mother
2.	True Grandfather (h.h.s.)( <b>SRA</b> )	2.	Paternal or Maternal Grandmother
3.	Husband	3.	Wife
4.	Uterine Brother	4.	Uterine Sister
		5.	Daughter <b>(SRA)</b>
		6.	Full Sister <b>(SRA)</b>
		7.	Son's Daughter (h.l.s.) <b>(SRA)</b>
<b>(SRA)</b>	<b>Sometimes Residuary Also)</b>	8.	Consanguine Sister <b>(SRA)</b>

**TABLE OF RESIDUARIES**  
**(Note: Please Refer the Table)**

- I. Descendants:**
  - 1. Son
  - 2. Son's Son
  
- II. Ascendants:**
  - 3. Father
  - 4) True Grandfather (h.h.s.)

**III. Descendants of Father:**

5. Full Brother

6. Full Sister

7. Consanguine Brothers

8. Consanguine Sister

9. Full Brother's Son

10. Consanguine Brother's Son

11. Full Brother's Son's Son

12. Consanguine Brother's Son's Son

**IV. Descendants of True Grandfather (h.h.s.):**

- 13. Full Paternal Uncle
- 14. Consanguine Paternal Uncle
- 15. Full Paternal Uncle's Son
- 16. Consanguine Paternal Uncle's Son
- 17. Full Paternal Uncle's Son's Son
- 18. Consanguine Paternal Uncle's Son' Son
- 19. Male Descendants of more remote True Grandfathers

# PRACTICAL SESSIONS

## Problem-1

### Father; True Grandfather

- **Property is = 1**
- Go To: Table of Shares – Sunni Law
- Select Father and check the share: **Father gets 1/6 Share**
- Balance:  $1 - 1/6 = 5/6$
- Check: True Grandfather under Column-4: **“provided there is no father”**
- Because “Father” is there “True Grandfather” will not get anything.
- Hence Father gets: His actual share  $1/6$  + Under Residuary (II. Ascendants; **3. Father**)
- Finally Father gets:  $1/6 + 5/6 = 6/6 = 1$



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## **ANSWER**

Sl. No.	Heirs	Status	Rule		Share
			Sharers	Residuaries	
1.	Father	Yes	1/6	Sl. No.3 (5/6)	1
2.	True Grand Father	No	--	--	--

**Note: If you are not giving calculations and table,  
your answer will not be evaluated**

## Problem-2

### Father; Mother

- **Property = 1**
- Go To: Table of Shares – Sunni Law
- Select “Father” and check the share: Father gets  $1/6$
- Select “Mother” and check the share: Mother gets =  $1/3$
- Hence, Father gets =  $1/6$  share; and Mother gets =  $1/3$  share
- Total Shares of Father + Mother =  $1/6 + 1/3 = \frac{3 + 6}{18} = \frac{9}{18} = \frac{1}{2}$
- $1 - \frac{1}{2} =$  Residue is  $\frac{1}{2}$ ;
- Hence, Father gets  $(1/6 + 1/2 = \mathbf{2/3})$  and Mother gets  $\mathbf{1/3} = \frac{2 + 1}{3} = \frac{3}{3} = \mathbf{1}$

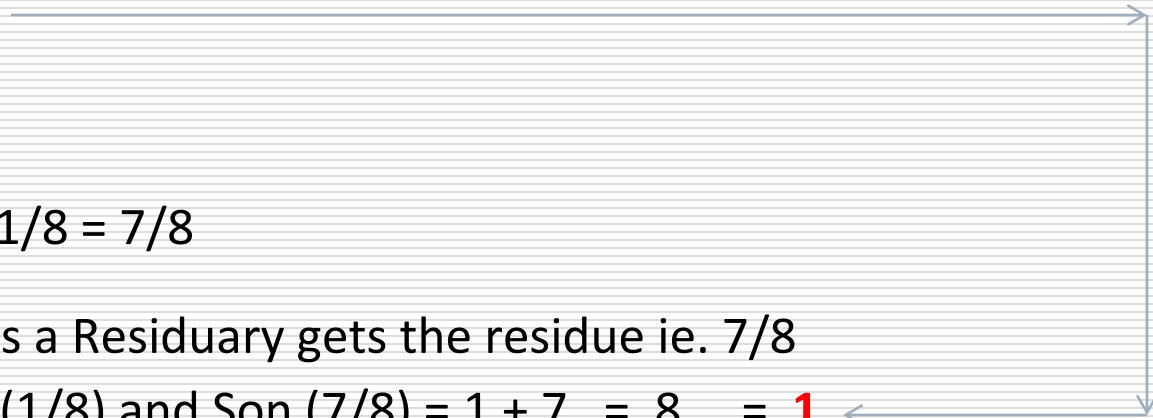
## Problem-3

### Father; Mother; Son; Daughter

- Father =  $1/6$
- Mother =  $1/6$
- Son = Not shown in Sharers, but shown in Residuary (Under Descendants)
- Daughter = Go to Sharers (Sl. No. 7) and Column 4
- Go to Residuary (1. Descendants 1. Son; Daughter takes as a Residuary)
- **Property = 1**
- Father: Mother =  $1/6 : 1/6 = 2/6 = 1/3$
- **Balance  $1 - 1/3 = 2/3$**
- Balance of  $2/3$  to be shared between Son: Daughter ie.  $2:1 = 2/3$  and  $1/3$
- Balance of  $2/3$  shared by Son in the ratio of  $2/3 = 2/3 \times 2/3 = 4/9$
- Balance of  $2/3$  shared by Daughter in the ratio of  $1/3 = 2/3 \times 1/3 = 2/9$
- Father: Mother: Son: Daughter =  $1/6 : 1/6 : 4/9 : 2/9$
- Add Total shares:  $\frac{1}{6} : \frac{1}{6} : \frac{4}{9} : \frac{2}{9} = \frac{3}{18} + \frac{3}{18} + \frac{8}{18} + \frac{4}{18} = \frac{18}{18} = 1$

## Problem-4

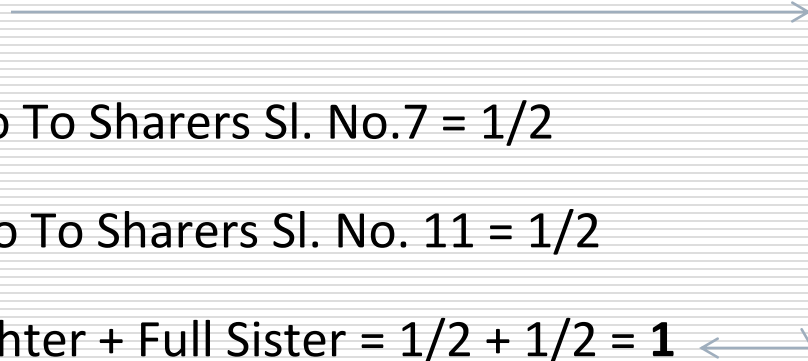
### Wife and Son

- **Wife:** Go To Sharers Sl. No. 4 – she gets =  $1/8$
- **Son:** He is not in Sharer's List, hence go to Residuaries (I. Descendants:  
1. Son)
- **Property = 1** 
- Wife =  $1/8$
- Balance:  $1 - 1/8 = 7/8$
- Hence, Son as a Residuary gets the residue ie.  $7/8$
- Finally, Wife ( $1/8$ ) and Son ( $7/8$ ) =  $\frac{1}{8} + \frac{7}{8} = \frac{8}{8} = 1$

## Problem-5

### Daughter; Full Sister

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- **Property = 1**
  - Daughter: Go To Sharers Sl. No.7 =  $1/2$
  - Full Sister: Go To Sharers Sl. No. 11 =  $1/2$
  - Hence: Daughter + Full Sister =  $1/2 + 1/2 = 1$
- 
- The diagram consists of a horizontal blue arrow pointing from 'Property = 1' to a vertical blue line. From the top of this vertical line, a horizontal blue arrow points right to 'Daughter: Go To Sharers Sl. No.7 = 1/2'. From the bottom of the vertical line, a horizontal blue arrow points left to 'Full Sister: Go To Sharers Sl. No. 11 = 1/2'. From the bottom of the vertical line, a horizontal blue arrow points right to 'Hence: Daughter + Full Sister = 1/2 + 1/2 = 1'.

## Problem-6

### Mother, Father, Son

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- ❑ **Total Property = 1**
- ❑ Mother =  $1/6$  (M) i.e.  $1 - 1/6 = 5/6$  .....(Balance of Property left after giving to Mother)
- ❑ Father = Balance  $5/6 - 1/6$  (F) =  $4/6$ ....(Balance of Property left after giving to Father)
- ❑ Son: Balance is  $4/6$  i.e.,  $2/3$
- ❑ Add: Father+Mother+Son's Property:  $1/6 + 1/6 + 2/3 = \frac{1+1+4}{6} = \frac{6}{6} = 1$
- ❑ **Hence, Total Property is: 1**
- ❑ **ANSWER: Mother:  $1/6$ ; Father:  $1/6$ ; Son:  $2/3$**

**Refer Next Slide for Table:**

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## 2. Table

Sl. No.	Heirs	Status	Rule		Share
			Sharers	Residuaries	
1.	Mother	Yes	State the Rule	-	1/6
2.	Father	Yes	State the Rule	-	1/6
3.	Son	Yes	-	State the Rule	2/3

**Note: If you are not giving calculations and table,  
your answer will not be evaluated**

## Doctrine of Aul (Increase)

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- ❑ If it is found on assigning their respective shares to the Sharers that the total of the shares exceeds unity the share of each Sharer is proportionately diminished by reducing the fractional share to a common denominator, and ***increasing*** the denominator so as to make it equal to the sum of the numerators.
- ❑ **Example:** *Refer Next Slide*



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❑ **Example:** (i) Husband and (ii) Two Full Sisters

❑ As per the Rule of Husband: He gets:  $1/2$  share

❑ As per the Rule of Full Sister's: They get:  $2/3$  share

❑ 
$$H + FS = 1/2 + 2/3 = \frac{3 + 4}{6} = \frac{7}{6}$$

❑ **Note:** The sum total of  $1/2$  and  $2/3$  exceeds unity. The fractions are therefore reduced to a common denominator, which, in this case, is 6. The sum of numerators is 7, and the process consists in substituting 7 for 6 as the denominator of the fractions  $3/6$  and  $4/6$ . By doing so the total of the shares equals unity. The doctrine of 'Increase' is so called because it is by *increasing the denominator from 6 to 7 that the sum of the shares is made equal to unity.*

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- ❑ **Example:** A Mahomedan dies leaving a widow as his sole heir. The widow will take  $\frac{1}{4}$  as Sharer, and the remaining  $\frac{3}{4}$  by ***Return***. *The surplus  $\frac{3}{4}$  does not escheat to the Government*

## Doctrine of *Radd (Return)*

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- ❑ If there is a residue left after satisfying the claims of Sharers, but there is no Residuary, the residue reverts to the Sharers in proportion to their shares. This right of reverter is technically called “Return” or “Radd”.
- ❑ **Exception:** Neither the husband nor the wife is entitle to the ***Return*** so long as there is any other heir, whether he be a Sharer of a Distant Kinsman. But if there be no other heir, the residue will go the hubsand or the wife, as the case may be.

***ALL THE BEST***

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***END SLIDE***

# IMPORTANT TO NOTE

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- ☐ In End-Semester Examination you will be supplied with a copy of Table of Sharers and Residuaries.
- ☐ While giving your answer relating to Muslim Law of Inheritance, you should give CALCULATIONS and also a TABLE (Refer: Slides Nos. 23 & 24).
- ☐ You start from ONE PROPERTY and finally if you add all shares you should get ONE PROPERTY i.e.  $2 \times 2 = 4$  but not less than four nor more than four.
- ☐ No assumptions/presumptions while calculating shares.
- ☐ Just giving direct answers will not fetch MARKS.

## **IN END-SEMESTER**

**YOUR ANSWER MUST REFLECT CALCULATIONS & TABLE**

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- 1. Give Calculations**
- 2. Give a Table**

***ALL THE BEST***

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***END SLIDE***