Inheritance

Rules Concerning the Inheritance

The Heritage

The heritage (al-tarikah) comprises the following:

1. That which the deceased owned before his death in the form of:

    a. Tangible property

    b. Debts

    c. Any pecuniary right, e.g. the right consequent to ta<jir (demarcation of Non-ownership vacant land with an intention of cultivating it) where he intends to cultivate Non-ownership vacant land and demarcates it by constructing a wall or something of the kind, thus acquiring a right to cultivate it in preference to others; or an option (haqq al-khayár) in a contract of sale; or the right of pre-emption; or the right of retaliation (Qisás) for murder or injury, where he is a guardian of the victim (e.g. if ~a person kills his son and then dies before retaliation, causing the right of Qisás to change into a pecuniary right payable from the murderer's estate, exactly lie a debt).

2. That which the decedent comes to own at his death, e.g. compensation for unintentional homicide (al-qatl al-khata'), where the heirs opt for compensation instead of Qisás. The rule applicable to this compensation is the one applicable to all other properties, and all those entitled to inherit, including husband and wife, will inherit from it.

3. That which the decedent comes to own after his death, e.g. an animal caught in a net that he had placed in his life, and similarly where he is a debtor and his creditor relinquishes the debt after his death or someone volunteers to pay it for him. Also, if an offender mutilates his body after his death and amputates his hand or leg, compensation

will be taken from him. All these will be included in the heritage.

Deductions from the Heritage

Different types of deductions are made from the heritage. Some of them are deducted from only a third of the heritage, and discussion regarding them has proceeded in the chapter on wills. Some deductions are made from the whole heritage, and they too are of different types. Hence, if the heritage suffices, they will be completely met, and what remains of it after these deductions and the execution of the will, will be for the heirs. All the schools concur on this. If the tarikah falls short of meeting these deductions, the more important among them will be given precedence over those of lesser importance. If anything remains after the preferred deductions are made, the next in order will follow; otherwise only the deductions of higher preference will be covered. The schools differ regarding the order of preference of these deductions.

The Imámís state: The first deduction, before any other thing, is to meet the wájib funeral expenses, such as expenses of ablution (al-ghusl), shrouding, carrying the body and digging the grave, if required, irrespective of whether the decedent has made a will to this effect or not. Therefore, funeral expenses, according to them, are prior to debts, irrespective of the debts being related to the fulfillment of religious duties (haqq Allah) or to creditors (haqq al-nás). They bring proof from the tradition narrated by al-Sakuni on Imám Ja`far al-@ádiq:

The first thing, which is deducted from the decedent's estate, is the shroud (funeral expenses), then debt, then the will, and then the inheritance.

The Imámís jurists differ among themselves regarding the case where a creditor has a right over the estate itself, such as where the decedent dies after mortgaging his property, the property being all that he owned. Here, a group of jurists give the funeral expenses preference over the right of the mortgager, because of the general nature of the traditions, which include the above-mentioned tradition of al-Sakúni in which no difference has been made between pledged and non-pledged properties. Other jurists give precedence to the right of the mortgager, because the owner of the pledged property is forbidden by law[1] to exercise his rights of ownership, and that which is forbidden by the Sharî`ah is like that which is forbidden by reason.[2]

After meeting the funeral expenses, the repayment of debts will start, irrespective of their being Haqq Allah or Haqq al-Nás, such as unpaid khums and Zakát, pecuniary atonement or expiation (kaffárah), the returning of the ma~álim[3], the unperformed obligatory Hajj, and other similar religious and non-religious liabilities. All these debts are in a single category. Therefore, if all of them cannot be completely met from the estate, they will be covered pro rata like the liabilities of an insolvent person[4], allowing no exception to this except khums and Zakát,

provided these relate to the actual items of their incidence present, in which case the two will be preferred over other debts. But if these two are due (without the items of incidence being present), they will be treated as all other debts.

The four Sunni schools, along with the Imámís, concur that funeral expenses are preferred over the debts payable from the estate before death. The four schools then differ among themselves in giving precedence to funeral expenses over debts relating to the heritage, such as an article, which the owner pledged before his death. The \anafí, the Sháfi`í and the Málikí schools say: Those claims which are related to specific parts of the heritage will be given precedence over funeral expenses."[5]

The \anbalís observe: Funeral expenses will be preferred over all other claims and debts including a pledge, penal damages, etc.[6]

In short, according to all the schools the funeral expenses have precedence over debts unrelated to specific items of the heritage, and the \anafí, the Sháfi`í and the Málikí schools give priority to debts related to specific items of the heritage over funeral expenses, while the \anbalí school gives priority to funeral expenses in this case. Some Imámí jurists favor the view of the three schools, and others concur with the \anbalís.

Heirs and the Decedent's Heritage

The schools concur that the heritage devolves on the heirs immediately after the death if there is no debt or will involved. They also con cur that the remainder of the heritage exceeding debts and bequests stands transferred to the heirs. The schools differ whether that part of the heritage covered by debts and bequests will be considered transferred to the heirs or not.

The \anafís state: The part which equals the value of debt will not be included in the property of the heirs. Consequently, if the complete estate is covered by debt, the heirs will not own anything from it. But they have a right to free the estate from the creditors by paying them their claim on the estate. If the estate is not totally covered by debt, the heirs will own the remainder.

The Sháfi`ís and the majority of \anbalí Jurists say: The heirs will come to own the indebted part of the estate, irrespective of whether the debt covers the whole estate or only a part of it. However, the debt will relate to the whole estate and the estate will be liable for it. (Abu Zuhrah, al-Math 'inda al-Ja'fariyyah)

The Imámís differ among themselves on the issue; the majority of them hold the opinion that the estate will be transferred to the heirs whether totally covered by debts or not. The debts will be linked to it in one of the various ways, like a claim of pledge, or like the claim of damages

resulting from the crime of a da~e, or linked directly in a way not resembling any of these two ways.. In any case, a debt will not hinder the actual act of inheritance, although it hinders. the right of disposal in regard to that which i6 covered by the debt. This. opinion is close to the Shaafi'ee view. (a-Jawaahir and a-'-Masaalik, baab al-Meeraath)

The result of the difference of opinion appears. in the increase in the estate which takes place between the time of death and the time of repayment of the debt. According to the opinion of the Sháfi`ís , the \anbalís. and most of the Imámi legists, the increase belongs to the heirs and they will dispose it without any hindrance from the creditors and others. But according to the Hanafi view, the increase will be subject to the estate, being linked to the debts. payable from it.

Causes and Impediments of Inheritance

Causes of Inheritance

There are three causes of inheritance:

a. Blood relationship (al-Qarábah),

b. Marriage concluded by a valid contract, and

c. Al-wilá'

d. We can bring these three causes under two heads: consanguinity (nasab) and affinity (sabab). By nasab I mean blood relationship, and sabab includes both marriage and al-wilá' is a bond existing between two persons which creates between them a relationship similar to nasab. Hence a person manumitting a slave becomes his mawlá and inherits from the latter if he has no other heir. We will not discuss here al-wilá' with its different meanings and forms because it has no practical application today, and will discuss only the two other causes. Blood relationship (al-qarábah) is established between two persons through legitimate birth when one of them is a direct descendant of the other (such as fathers how high so ever, and sons how low so ever), or when both of them are descendants of a third person (such as brothers and maternal and paternal, uncles). Legitimate birth materializes through a valid marriage as well as through 'intercourse by mistake.' But the marital bond will not materialize except through a valid marriage between man and woman. There is no difference of opinion regarding mutual inheritance between husband and wife. The schools, however, differ concerning the right of inheritance of certain relatives; the Sháfi`í and the Málikí schools deny them such a right and consider them exactly like strangers. These relative share: daughter's children, sister's children, daughters of brothers, children of uterine brothers, all kinds of paternal aunts, uterine paternal uncle, maternal uncles and aunts,

daughters of paternal uncles and the maternal grandfather. There fore, if a person dies and has no relative3 except one of those mentioned the heritage escheats to the public treasury (bayt al-mal) and they will not receive anything, according to the Shaafi'ee and Maaliki schools, because they are neither among the sharers (dhawu al-furud) nor among the residuaries ('a~ab~t).(al-Mughni, 3rd ed. vol. 6, p.229)

The Hanafi and the \anbalí schools consider them capable of inheriting in the particular situation where there are no sharers and residuaries.

The Imámís consider them capable of inheriting without this condition. Details will follow.

Impediments to Inheritance

The schools concur that there are three obstacles to inheritance:

a. Difference of religion,

b. Murder, and

c. Slavery. Ignoring slavery, we will discuss the other two causes.

Difference of Religion

There is consensus that a non-Muslim will not inherit from a Muslim[7]. 6 The schools differ regarding a Muslim inheriting from a non-Muslim. 'He inherits,' say the Imámís; 'He does not,' say the other four schools.

If one of the decedent's sons or relatives who is a non-Muslim becomes a Muslim after his death and after the distribution of the heritage between the heirs, he is not entitled to inherit by consensus. The schools differ as to whether he inherits if he becomes a Muslim after death but before the distribution of the heritage. He inherits according to the Imámís and the \anbalís, and not, according to the Sháfi`í' the Málikí and the Hanafi schools.

The Imámís state: If there is a single Muslim heir, he will take the whole heritage and the conversion of another to Islam will not entitle him to inheritance.

A murtadd from Islam does not inherit in the opinion of the four Sunni schools, irrespective of his apostasy being 'an fitrah or 'an millah, 7 except if he returns and repents before the distribution of the heritage. (al-Mughni, vol. 6)

The Imámís observe: A murtadd 'an fitrah, if a male, will be sentenced to death without being asked to repent, and his wife will observe the 'iddah of death from the time of his apostasy, and his estate will be distributed even if he is not executed. His repentance will also not be accepted concerning the dissolution of his marriage, or the distribution of his estate, or the Wujub of his execution though it will be accepted in fact and by God, as well as in regard to other issues such as the ritual cleanliness of his body and the validity of his acts of worship (ibadat). Similarly, he may own after his repentance new properties acquired through work, trade, or inheritance.

A murtadd 'an millah will be asked to repent. If he does so, he will have all the rights and obligations of Muslims. If he does not repent, he will be executed and his wife will observe the 'iddah of divorce from the time of his apostasy. Then if he repents while she is undergoing 'iddah, she will return to him and his property will not be distributed unless he dies or is killed. A woman will not be sentenced to death irrespective of her apostasy being 'an fitrah or 'an malah. But she will be imprisoned and beaten at the times of azl until she repents or dies. Her heritage will be distributed only after her death. (al-Sayyid Abu al-Hasan's Wasilat alnajat and Sheikh Ahmad Kaashif al-Ghi~a"s Safeenat al-najat, baab al-'irth)

Inheritance of Followers of Other Religions

The Maaliki and the \anbalí schools say: Followers of different religions will not inherit from each other. Hence a Jew will not inherit a Christian and vice versa, and similarly the followers of other religions.

The Imámi the Hanafi and the Shaafi'ee schools state: They will inherit from one another because they are a single religious group, considering that all of them are non-Muslims. But the Imámís lay down a condition in the case of a non-Muslim inheriting from another of his kind, that there be no existing Muslim heir. Therefore, if such an heir is present, even though distant, his presence will prevent a non-Muslim heir, even if he is closely related, from inheriting. This condition is not relevant to the other four schools, because according to them, as mentioned earlier, a Muslim does not inherit from a non-Muslim. (Ghayat al-muntaha, vol. 2, al-Shi'rani's Mizan, a-Jawaahir and al-Masalik)

Extremists

(al-Ghulát)

Muslims are unanimous in holding that the Ghulat are polytheists (mushrikun) and do not belong to Islam and Muslims in any manner. The Imámís have been specially severe concerning the issue of the Ghulat because a large number of their Sunni brothers have unjustly attributed to them the deviations of the Ghulat. The Imámi `ulama' have unequivocally mentioned in their books on doctrine and law that the Ghulat are kafir. Accordingly, al-Sheikh al-Mufid in Sharh 'Aqa'id al-Saaduq (p.63, 1371 H.) says:

> The (}hulat feign to follow Islam. They are those who attribute divinity and prophethood to Amir al-Mu'mim'n 'Ali and the Imáms of his descent, and exceed all limits and deviate from the mean concerning their excellence in the religion and the world. They are misguided, unbelievers, whom Amir al Mu'minin ordered to be killed and burnt, and the Imáms judged them as un believers and apostates from Islam.

The Imámi 'ulama' mention them in their legal works in the chapter on Tahaarah (purification), and consider them ritually unclean. Their mention also occurs in the chapter on marriage, where it is observed that the marriage of Muslim women with them, as well as marrying their women, is haram, although the 'ulama' permit marriage with women of Ahl al-Kitab. The mention of Ghulat is also made in the chapter on jihad, where they are considered polytheists in a state of war. In the chapter on inheritance, the 'ulama' prohibit their inheriting from Muslims.

One Who Denies an Essential of the Faith

There is consensus among the schools that a person who denies any of the established and known doctrines of the faith and consides a haram as halal or vice vesa, making that his creed, goes out of the pale of Islam and becomes an infidel. To this category also belongs one who attributeskufr to a Muslim.

It is worthwhile here to point out two issues that have been dealt in detail by the highly learned and leading Imámi scholar Aqa Ri~a al Hamadani in Misbah al-faqih, vol. i

1. If a person appears to follow Islam and pronounces the Shahadatan, though we do not know whether he does so hypocritically, with out having faith in it, or pronounces them with veritable faith, there is no difference of opinion in judging him a Muslim. But if we have knowledge of his falsity and know that he has no faith in God and the Prophet (S) but only presents himself as a Muslim hypocritically with a certain purpose in view, will we consider him a Muslim?

The gist of the Shaykh's opinion is that this hypocrite has a reality and an appearance. As to the reality he is a non-Muslim, though his appearance presents him as a Muslim. It is our duty to

leave his reality to God Almighty's judgment, and there is no doubt that God will deal with him as a non-Muslim, because it is presumed that he is such in reality. But we, Muslims, will accept his appearance and associate with him as a Muslim regarding marriage and inheritance, because we have been ordered to do so. It is stated in a tradition:

He who says 'la ilaha illa Allah, ' his life and property are secure.

This implies that he will be treated as a Muslim, irrespective of any doubt on our part and our knowledge of his verity or falsity. This is also confirmed by the Prophet's treatment of the hypocrites, whom he treated in the same manner in which he treated other Muslims, though he knew of their hypocrisy (nifaq).

2. The secret behind the consensus of Muslims regarding the kufr of a person denying an established rule is that this denial as such necessitates the denial of the Prophet's prophet hood. It follows from this that a person making such a denial, on becoming aware that his rejection amounts to rejecting the prophet hood and the messenger hood of the Prophet (S), will be considered a non-Muslim. But if he is not aware of it—either because of ignorance, or his belief that his denial does not necessitate the denial of prophet hood—will he be considered a non-Muslim?

The summary of the Shaykh's reply is that an ignorant person can be viewed in different situations. At times his ignorance is the result of his absorption in sin and absence of attention to what is haram (like a person who has indulged constantly in fornication from the first day to his present old age, and this continuity has developed in him the belief that his act is halal, not haram); such a person is definitely a kafir.

At times his ignorance is due to his following a person whom it is not valid to follow. Such a person is also a non-Muslim even if he believes that his denial does not lead to denying the Prophet's messenger hood.

3. It may be that none of the two above-mentioned causes are the result of his ignorance; rather, his ignorance may be the result of his lack of attention to the station of prophet hood, so that U he is informed about it he would desist from his denial. Such a person is doubtlessly a Muslim because he resembles one who disputes regarding a certain thing with the Prophet ~S) while not recognizing him, but when he comes to recognize that he is the Prophet (S), he refrains and is penitent.

There are other cases mentioned by the author of Mi~bah al-faq'~h which we leave for reasons of space. Those seeking details should refer to the first volume of the book.

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[1] Shari`ah

[2] This is the proof (dalíl) mentioned by al-@yyid al-Hakím in al-Mustamsak, báb kafn al-mayyit Al-Shaykh Muhammad Abu Zuhrah, in al-Míráth `inda al-Ja`far iyyah, writes: It is obvious in this situation that the right of the creditors relates to the property itself and have precedence over all other rights to that property. Through this observation, the Shaykh attributes to the Imámiyyah a consensus concerning the preference of the right of the mortgager over funeral expenses.

[3] There is a difference between the ma~álim and usurped (magh#úb) proper ties. The ma~álim are those in which <arám and <alál wealth has been mixed and the owner is unable to discern due to his ignorance, while the magh#úb properties have a known owner. The ma~álim also differ from those properties whose owners are not known (majhúl al-málik), because in the latter the ignorance is concerning the property itself and its being mixed with other property is not necessary. The rule for the ma~álim is to give them away as charity (#adaqah) on behalf of its (real) owner when there is no hope of finding him.

[4] Al-Sayyid al-Hakím in Mustamsak al-`Urwah, vol VII, mas'alah 83, says This—i e pro rata distribution—is customary among us, and this is what is required by the principle of not preferring something without a cause for which preference (tarjí< bilá muraji<) as well as the tradition of the Prophet "The debt due to God is better entitled to repayment," is understood not to imply a difference (between the debts due to God and the debts due to people); rather it solely explains that it is wájib to fulfill haqq Allah and that neglecting it is not permissible."

[5] Ibn Qayyim, vol. 1, fasl al-mayyit, and Abu Zuhrah's al-Míráth `inda al-Ja`fariyyah, p. 40, 1955).

[6] al Tanqíb fí Fiqh al-\anábilah, p.71

[7] The word 'Muslim' includes all those who pray facing towards the Ka`bah (ahl al-qiblah). Hence a Sunni inherits from a Shi'; and vice versa, in accordance with Qur'án, the Sunnah. Rather, this rule is among the essentials of the faith, exactly like the wujúb of salát and fasting.

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