

Review paper

Analysis of Special Cases of Inheritance According to Maliki Jurisprudence

Muntaka Yahaya Aminu

Department of Islamic Studies, Faculty of Arts and Islamic Studies, Usmanu Danfodiyo University, Sokoto, Nigeria.
Author E-mail: muntakayahaya1@gmail.com

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ABSTRACT: Inheritance is one of the technical sciences of Islamic Studies. The laws regulating it as estate distribution to surviving heirs of the deceased have been decreed by Allah (S.W.T) in the Glorious Qur'an and expatiated upon by the noble Prophet Muhammad (S.A W) quite a number of the cases concerning law of succession in Islam have no difference of opinion among Muslims Luminaries. However, there are special cases upon which scholars differ. This paper therefore, examines such special cases as *Al-Himariyyah* (donkey case) over which scholars share divergent views as specifically it relates to Maliki Jurisprudence, among scholars within the Maliki School of law. There are those who held similar views and align to *Imam* Maliki's positions on those special cases and as they are operational in Nigeria *Shari'ah* courts since the entire Nigerian state follow Maliki jurisprudence. Exploratory method is used to access data and from the experiences of experts in the fields of Islamic law of succession. The research discovered that several views are scattered in various books and this research attempts to condense verdicts with regard to those special cases for easy access to the teeming Muslim population at least in Nigeria. The research recommends that following the *Imam* Maliki's views and other scholars within the school in the administration of deceased estate will guarantee peaceful co-existence among heirs of the deceased person and the country at large.

Keywords: Cases, Inheritance, *Imam* Malik, Jurisprudence, Succession

INTRODUCTION

Islam as a complete way of life. It did not leave any stone unturned. It is the most peaceful path to fulfilling the will of the Creator (Allah S.W.T) to enhance peaceful coexistence and avoid disputes among people. Allah (SWT) regulates estate distribution to surviving and qualified heirs with precision and exactness of shares due to individual beneficiaries in the administration of estate of the deceased Muslim. Allah (S.W.T) explains most of heirs and their entitlements in the Glorious Qur'an in chapter four verses 11, 12, and 176. There are cases that could seem antithetical to the wisdom behind institution of law of succession in Islam referred to in this research as special cases, but that efforts exerted by scholars in this field have provided succor to impending crises arising from the estate left by the deceased Muslim. Special mention is made of Maliki jurisprudence since Nigeria as a nation follows *Imam* Maliki's school of law in the dispensation of justice as well as day-to-day interactions.

Meaning of inheritance

Inheritance means something that is inherited or, the act of inheriting (Illustrated Oxford Dictionary, 2006). According to the Encyclopedia of Social Sciences, "inheritance is the entity of living persons into the possession of dead person's property and exists in some form wherever the institution of private property is recognized as the basis of the social and economic system. But the actual forms of inheritance and laws and custom governing it differ very greatly from country to country and from time to time. Changed ways of owning and using property will always bring with them in the long run alteration in the laws and practices relating to the inheritance of wealth (Hamid, 2007).

Islamic law of inheritance in the legal terminology; is a knowledge about some rules of *Shari'ah* which guide us to who will inherit and who will not and what shares will go to the heirs from the property of the deceased (Al-

dardir, Al-Sharh, Alkabir, n.d).

Succession

The general meaning of succession is the process of following another. As a legal terminology, succession means taking the rights of another as his or her successor. It usually denotes the transmission of rights and obligations of the deceased to his legal heirs. This word succession is also used to refer to the rights, estate and charges left by a person after his or her death, irrespective of whether the value of the property is more or less than the charge. It may also signify the right of the heir to take possession of the estate of the deceased (<https://www.upcounsel.com>, 21/05/2022).

Jurisprudence

The word jurisprudence is derived from the Latin term jurisprudential, which means "the study, knowledge or science of law". In the United States, jurisprudence commonly means the philosophy of law. Legal philosophy has many aspects, but four of them are the most common:

- (i) The first and the most prevalent form of jurisprudence seeks to analyze, explain, classify and criticize entire bodies of law. Law school textbooks and legal encyclopedias represent this type of scholarship.
- (ii) The second type of jurisprudence compares and contrasts law with other fields of knowledge such as literature, economics, religion and the social sciences.
- (iii) The third type of jurisprudence seeks to reveal the historical, moral and cultural basis of a particular legal concept.
- (iv) The fourth body of jurisprudence focuses on finding the answer to such abstract questions as 'what is law?' and 'how do judges (properly) decide cases.' (<https://www.law.cornel.edu> wex 31/05/2022).

Islamic Jurisprudence (Fiqh)

Fiqh, the term for Islamic jurisprudence, is a process by means of which jurists derive sets of guidelines, rules and regulations from the ruling led down in the Qur'an and the teachings and living examples of Prophet Muhammad (S.A.W), the *Sunnah*. *Imam al-Shafi'i* defines *fiqh* in its literal and technical sense as follows:

Literally

Fiqh implies having knowledge in depth but technically it is the knowledge of *Shar'i Ahkam* (legal rules), pertaining to conduct, that have been derived from their specific

evidences. See (Imran, n.d). This definition carries a number of meaning and concepts:

It is knowledge: The use of the term knowledge brings in to our vision the entire field of knowledge, whatever its source or origin. If the definition were restricted to this segment alone, *fiqh* would mean all and any kind of knowledge that pertain to *Ahkam* or rules.

Knowledge of the *Shar'i Ahkam*: This meaning is narrowed down further by the term *Shar'i* and the domain of *Fiqh* is confined to the knowledge of the *Shar'i Ahkam* alone, that is legal rules. Here we must distinguish between the *Shar'i Ahkam* and the *ghayr Shar'i Ahkam* (non legal rules) that is between legal rules and rules that do not pertain to the law.

Maliki School of Jurisprudence

This is one of the Islamic schools of law Named after its founder *Imam Malik bn Anas bn Amir* who was born in Madinah around 93A.H (715C.E) and died in 179A.H (795CE). He was a personal acquaintance of *Imam Abu Hanifah*. He was severely punished by the governor of *Madinah* for not issuing *Fatawa* to his liking but *Imam Malik* refused to change his decision. It is reported that *Imam Shafi'i* said "whenever the *Ulama'* are mentioned, *Maliki* out shines them all (in knowledge). No one has ever done me a greater favour than *Malik bn Anas*". *Imam Malik* wrote *Al-Muwatta'* which is the first book of authentic traditions of the Prophet Muhammad (S.A.W). Notable students of *Imam Malik* include *Abu 'Abd al-rahman bn Qasim* (745-813CE) and *Abu 'Abdullah bn Wahab* (742-819CE). Followers of the *Maliki Madhab* are found in Africa and the Middle East (Hussaini, 2005).

Special Cases in the Law of Succession

In Islamic law of inheritance special cases are those cases scholars offered *Ijtihad* on them due to some circumstances. For example, they consider father and mother on the same level as a son and daughter in inheritance. In other words, whenever a son meets with the daughter in inheritance he is entitled to double the share of the daughter. But in one of the *Umariyatain* cases where there is husband, mother and father, if the estate is divided in normal circumstance, the husband gets $\frac{1}{2}$ which is $\frac{3}{6}$, of the estate, the mother gets $\frac{1}{3}$ which is $\frac{2}{6}$ while the father is entitled to the residue which is $\frac{1}{6}$, so, in that case the mother gets double share of father which is unusual. That is why *Umar (R.A)*. offered *Ijtihad* after he consulted *Za'id (R.A)*. and other Companions who consider 6 as a base of distribution where the husband is entitled to $\frac{1}{2}$ which is $\frac{3}{6}$, the mother is entitled to $\frac{1}{3}$ of the remaining after the portion of the husband which is $\frac{1}{6}$ and father is entitled to the

remainder which is $\frac{2}{6}$.

Those special cases include but not limited to:

Al-Mushtarakah (collective sharers): This case is among the exceptional cases to the rules of Ta'sib (agnation) and 'Hajb' (deprivation). For example: a woman died and left behind a husband, a mother, uterine brothers and sisters, and full brothers and sisters. According to the above mentioned original rules, the husband gets half the inheritance, the mother a sixth ($\frac{1}{6}$) because of the variety of brothers and sisters. The uterine-brothers and sisters get a third. Thus, the *Furud'* heirs have taken up the entire inheritance, which means that the full brothers have nothing left to inherit (because they are *Asabah*) (agnate), although they are related to the deceased woman from both sides, that of the mother and that of the father. If their *Ta'sib* is with their father, they are deprived of the inheritance, but if it is with their mother, they are not deprived. Therefore, they inherit from the side of the mother and share the third with their uterine-brothers and sisters.

In this case, males and females get equal shares because they all maternal half-brothers and sisters of the deceased women. For this reason, such an inheritance case is called '*Al-mushtarakah* (collective sharers). The same rule is valid if instead of a mother, it is a grandmother, or grandmothers, if the uterine-brothers and sisters were two or more, only males or only females, or if there is only one full brother or there were males and females.

However, there would be no collective sharing if, instead of the husband, there was a wife, or if the uterine-brother was only one, or if there were only full sisters (i.e. not from among the '*Asabah*').

Al-Gharrawani (the two deceivers) or 'Umariyatan (two decisions of Umar)

This is a situation where mother is inheriting along with the father of the deceased and one of the spouses, in the absence of the children, or more than one brother and sister. According to the view of majority of Scholars the mother is entitled to one-third ($\frac{1}{3}$) of the remaining after the position of husband or wife. But according to ibn Abbas, in both cases, the mother is entitled to $\frac{1}{3}$ of the estate. However, ibn Sirin align to the majority in the case of Husband but in the case of wife he subscribed to the view of ibn Abbas. (A. Hussain, 205).

Al-Hamziyyah: is a situation where a person dies leaving behind three true grandmothers a paternal grandfather (F/F), a full sister (F/S), a consanguine sister (C/S) and a uterine sister (U/S), as the only claimants. This case has been named *Al-Hamziyya* because Hamza *Al-Zayyat* was asked about this and he cited the views of *Sayyidina* Abubakar, Aliyu, Ibn Abbas, Ibn Mas'ud and

Zaidbn Thabit (R.A). (Hussain, 205).

Akdariyyah case: This is a situation whereby the deceased is survived by her husband, mother, father of father and full sister or half-sister. According to one report, the case is known as *Akdariyyah* because the deceased (wife) belong to an Arab tribe known as Bani Akdar, or it was the name of the town of the deceased. And according to another report this case had trouble Zaidbn Thabit (R.A) to the extent that he had to deviate from his principle which are:

- a. That the share of father of father should never be less than $\frac{1}{6}$ of the net estate
- b. And full sister should never be excluded by father of father
- c. She should not be given Qur'anic share in the presence of father of father
- d. And also, there never be any *awl* in case involving father of father and collateral. (Alakhi, n.d).

Al-Mas'alah al-Kharqa'a (Tatter case): This is a situation whereby the deceased is survived by his mother, father of father and full sister. When the case was presented to caliph Abubakar (R.A) for his decision, he contacted the *Sahabah* and they forwarded seven different solutions.

Their views are as follows:

- i. According to *Sayyidina* Abubakar (R.A): mother will get $\frac{1}{3}$, F/S is excluded and the residue is the same of F/F.
- ii. Ali bn AbiTalib (R.A): was of the view that mother will get $\frac{1}{3}$, F/S $\frac{1}{2}$ and $\frac{1}{6}$ is F/F.
- iii. Zaid bn Thabit (R.A) was of the view that mother will get $\frac{1}{3}$, and the remaining is between F/F and F/S, the F/F will get double share of F/S.
- iv. Abdullahi bn Mas'ud (R.A), submitted that the F/S will get $\frac{1}{2}$ R, and the residue is for F/F.
- v. Usman bn Affan (R.A), mentioned that the mother, F/S and F/F will share equally.
- vi. Ibn Abbas (R.A): mother will get $\frac{1}{3}$, the residue is for F/F while F/S is excluded by F/F. (Ibn Qudamah, *Al-Mughni* vol. 6 page 226).

The Views of Maliki Jurisprudence on Cited Special Cases

Al-Mushtarakah (collective shares): *Imam* Abu Hanifa and Ahmad and one view of *Imam* al-Shafi'i follow the first view of Umar (R.A) which says F/B or brothers are excluded because the Qur'anic heirs exhausted the hall estate nothing remain for agnates (*Al-Azb-Al-Fa'id*, nd). On the other hand, *Imam* Malik and the powerful views of *Imam* al-Shafi'i sub tainted the last view of Umar (R.A) which calls attention to consider full brother and others in

the same category as uterine-brother or brothers and merge him or them with uterine brothers to share $\frac{1}{3}$ together. (Al-Quadi, n.d).

The most preponderant view as noted by this to the researcher is the view of *Imam* Malik and al-Shafi'i due to the fact that the full brothers are more powerful than uterine brother. Reducing their shares from agnation to sharing of $\frac{1}{3}$ together with uterine brothers is better and is more sympathetic for full brother.

Al-Garrawani (the two deceivers): the scholars generally have three views with regard to this cases (Umaryatan cases) as follows:

- i. The mother will share ($\frac{1}{3}$) of the remaining in both cases. This is the view of majority of Scholars which include the *Imams* of four schools of jurisprudence (Irshad –Alfa'rid) & (Al-Dasuki, n.d).
- ii. The mother takes full $\frac{1}{3}$ in both cases: this is the view of Abdullah ibn Abbas (Ibn Al-Qayyum, n.d).
- iii. The mother share ($\frac{1}{3}$) of the remaining in the case of husband and full $\frac{1}{3}$ in the case of wife. This is the view of Muhammad ibn -sirina (Ibn-Taymiyah, Majmu'u Al-Fatawa, 35/343).

The most preponderant view according to the researcher is the view of majority which says the mother is entitled to ($\frac{1}{3}$) of the remaining in both cases to enabled father to get double of her share, because this is in line with the rule of law which says if male and female of the same class, level and power entitle to inheritance, a male have double share of female. This is also the view of *Sheikh* Usman bn Ishaq of Maliki school of law (Ibn Ishaql'n.d).

Al-Hamziyah: There is difference of opinion amongst the four *Sunni Madhahib* as to which true paternal grandmothers are entitle to inherit as sharers.

- i. The Hanafi and Shafi'i *Fiqh* allow all the true grandmothers to inherit as sharers.
- ii. The Hambali *fiqh* allows all the true grandmothers under Maliki law as well as mother of F/F and mother's mother no matter how high of F/F.
- iii. The Maliki *fiqh* only allows the line of mother's how high so ever and the line of succession of the mother of father and mother's mother no matter how high of father of the propositus (Hussaini, page 211-212).

The most preponderant view according to the research is the view of Hambali *fiqh* because it is the view of *Imam* Zaid R.A. whose position of Zaid R.A. in the field of inheritance, the Prophet S.A.W. had elevated.

Akdariyyah case: The scholars held two views with regards to the case of *Akhdariyyah* where a person dies and left behind her husband, mother, grandfather, full sister on half-sister. The first view is the view of Zaid R.A.

held by *Imam* Malik, Shafi'i and Ahmad. According to this view the husband would take $\frac{1}{2}$ of the estate mother $\frac{1}{3}$ and grandfather would take $\frac{1}{6}$, sister is entitled to her Qur'anic share i.e. $\frac{1}{2}$. By this there would be Awl and base (6) increased up to (9) then both shares of father of father and full sister would be added together and their total would be divided between father of father and sister according to the principle that "male has double share of the female" (Al-AZb Alfa'd (1/163).

The second perspective is the view of *Sayyidinah* Abubakar and Abdullahi ibn Abbas (R.A) held by *Imam* Abu Hanifah. According to this view husband is entitled to $\frac{1}{2}$, mother $\frac{1}{3}$, grandmother $\frac{1}{6}$ and full sister or half-sister will be excluded.

The most preponderant of all views going by this research is the first view which stipulates that says the shares of sister would be added together and their total would be divided between sister and father of father according to the principle that "male has double share of female". The study prefers this view due to the following reasons:

- i. It is the view of *Imam* Zaid and three founders among the four schools of Islamic law;
- ii. This view allows sister to inherit half share of the father of father whereas the second view excludes sister totally from inheritance. So, half is better than none.

Al-Mas'alahal-Kharqa'a (tatter case): This is a situation whereby the deceased is survived by his mother, father of father and full sister. The scholars share two views with regard to this case. According to Zaid bin Thabit (R.A) and his followers, *Imam* Malik, *Imam* Shafi'i and *Imam* Ahmad, the mother is entitled to $\frac{1}{3}$, father of father will agnates the full sister as her brother and will take double share of sister. The base is a whereby the mother gets 3, father of father 4 and full sister 2.

According to *Imam* Abu Hanifah the mother is entitled to $\frac{1}{3}$ and father of father is entitled to the residue, full sister cannot inherit in the present of grandfather (Alakhir, n. d).

The most preponderant view from this research is the first view which give full sister half of the entitlement of father of father. The reason for considering this view is powerfulness because it is the view of majority of scholars. Also, in this view the sister will get $\frac{1}{2}$ instead of zero in the second view and half is better than none.

Conclusion

The following points, are highlighted in the paper based on the preceding debate. The definitions of inheritance and succession, jurisprudence, and Islamic Jurisprudence. The report provided information on the Maliki school of thought. The meaning of special cases in inheritance.

The paper noted that there are special cases in inheritance which include: an *Al-Musharakah* (collective shares) b. *Al-Gharrawani* the two deceivers c. *Al-Hamziyah* d. *Akdariyah* case e. *Al-Kharqa'a* case. The paper cited the views of Maliki School in the cases. The paper noted that according to *Imam* Abu Hanifah collaterals cannot inherit in the presence of father of father. The difference between *Akdariyah* and *Al-Kharqa'a* is the absence of Husband in *Al-kharqa'a* case. Half-sister can stand in the position of full sister in her absence in the cases of *Akdariyah* and *Al-Kharqa'a*.

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