ANALYTICAL STUDY OF SOME CASES OF INHERITANCE DISTRIBUTION IN MALIKI AND OTHER SCHOOLS OF LAW

BY

Zubairu SHEHU

P18EDAS9037

DEPARTMENT OF ARTS AND SOCIAL SCIENCE EDUCATION
FACULTY OF EDUCATION
AHMADU BELLO UNIVERSITY, ZARIA
NIGERIA.

DECEMBER, 2024

ANALYSIS OF MALIKI SCHOOL OF LAW AND OTHERS IN SOME CASES OF INHERITANCE AND ITS PRACTICES AMONG MUSLIMS

BY

Zubairu SHEHU

B.Ed (2011), M.Ed(2018)A.B.U. ZARIA

P18EDAS9037

A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF DOCTOR OF PHILOSOPHY IN ISLAMIC STUDIES

DEPARTMENT OF ARTS AND SOCIAL SCIENCE EDUCATION
ISLAMIC STUDIES SECTION
FACULTY OF EDUCATION
AHMADU BELLO UNIVERSITY, ZARIA

DECEMBER, 2024

DECLARATION

I Zubairu Shehu with registration number P18EDAS9037 declared that, the work in thisThesis entittled "Analytical Study of Some Cases of Inheritance Distribution in Maliki and Other Schools of Law"has been carried out by me in the Department of Arts and Social Science Education. The information derived from the Literatures has been duly acknowledged and list of references is provided. No part of this Thesis was previously presented for another degree of diploma at this or any other Institution; the researcher is liable for any mistake(s), in this work.

_____ _____

ZubairuShehu **Date**

P18EDAS9037

CERTIFICATION

This Thesis titled "ANALYTICAL STUDY OF SOME CASES OF INHERITANCE DISTRIBUTION IN MALIKI AND OTHER SCHOOLS OF LAW"by Shehu Zubairu, meets the regulations governing the award of Doctor of Philosophy in Islamic Studies Education of Ahmadu Bello University, Zaria, and it is approved for its contribution to knowledge and literary presentation.

_____ _____

Dr. Aubakar Sabo Yusha'u Date
Chairman, Supervisory Committee.

_____ _____

Dr. Yaaquub A. A. Wakili Date
Member, Supervisory Committee.

_____ _____

Dr. Yusuf Mu'azu Ahmad Date
Member, Supervisory Committee.

_____ _____

Prof. Abdullahi M. Aminu Date
Head of Department

_____ _____

Prof. Muhammad Nasir Shuaibu Date
Dean, School of Postgraduate Studies

DEDICATION

This Thesis is dedicatedto my father,teacher and mentor, Malam Shehu Wada (Maidori/Na'ibi- Central Mosque, Jama'a, Zaria), my mother Malama Hajara Muhammad and my step mother Malama Hafsat Haruna.

ACKNOWLEDGEMENTS

There is no doubt that, this work would not have been possible without the overwhelming assistance the researcher received from different people. Space would not allow me to mention each and every one of them.

First and foremost I am so much grateful to Almighty Allah for endowing me with enormous guidance and inspirations that enabled me to write this reseaerch. May His peace and blessings be upon the seal of the Prophets, Muhammad (S.A.W.), his family, companions and those who follow his way till the Last Day.

I extend my sincerest gratitude to my supervisors, Dr. Abubakar Sabo Yusha'u, Dr. Yaaquub A. A. Wakili and Dr. Yusuf Mu'azu Ahmad, for their support, guidance, and dedication which have been instrumental in the success of this study. Despite their demanding schedules and numerous commitments, my supervisors consistently made time to offer their expertise, provide insightful advice, and offer corrections where necessary. Throughout the duration of this research, my supervisors have served as mentors, offering valuable insights, challenging me to think critically, and providing constructive feedback to enhance the quality of my work. Their wisdom, experience, and encouragement have played a pivotal role in shaping this study. Their dedication to my success has been a source of inspiration and motivation, driving me to strive for excellence in every aspect of my research. I am immensely grateful for the opportunity to work under their guidance and mentorship.

My profound and sincere gratitude go to Prof. A.A Ladan, Prof. Abdullahi Dalhatu, Prof. Muhammad Yahya (Mujahid) Prof. Adamu Aliyu, Prof. Abubakar Isma'ila Shika, late Dr. Mustapha Isa Qasim, Dr. Usama Musa Imam, Dr.Lawal Tambaya Ahmad, Dr. Abdullahi Danyaro, Dr. Abdullahi Dalhatu, malam Mustaphy Yunus, Malama Haulatu and Malam Abdullahi Aminu Muhammad. I thank you all for the education, moral training, encouragement and motivation given to me towards the journey in order to serve as role model by others.

I would like to express my deepest gratitude to my wife, Amina Abubakar Haruna, whose constant endurance and patience have been instrumental throughout the course of this study. Her steadfast support, advice, and understanding have been invaluable pillars upon which I relied during the study. Furthermore, I am grateful for her remarkable ability to navigate the complexities of managing family responsibilities, particularly in addressing children's problems and persevering through times of financial adversity. Her strength and perseverance in the face of poverty have been a constant source of inspiration, motivating me to persist in my scholarly pursuits. I must also acknowledge her remarkable patience and understanding in handling my occasional bouts of unnecessary anger, and her belief in me and her willingness to stand by my side have been the driving force behind my achievements. In every sense, my wife has been my rock, my confidante, and my guiding light. Her presence and boundless

love have enriched not only my life but also this study endeavor in ways that words cannot fully express.

I would like to express my heartfelt gratitude to my children, Abdurrahman, Rumaisa and Abdullah (my 7days old baby), for their patience and understanding throughout the duration of this study. Despite the demands and challenges that come with balancing academic pursuits, family life, and personal commitments, Abdurrahman and Rumaisa have shown remarkable support. Their patience during times when my attention was divided and their understanding of the sacrifices required to pursue this study have been truly commendable. Their prayers, encouragement and understanding have served as a constant source of motivation and inspiration, reminding me of the importance of perseverance and dedication in the face of challenges. Their belief in me and their willingness to offer support in any way they could have been invaluable throughout this journey. I am profoundly grateful for their presence in my life and for the love and support they have shown to me during this time. This achievement is as much theirs as it is mine, and I am immensely proud to have Abdurrahman and Rumaisa includind Abdullah as my children.

I would like to express my deepest gratitude to Malam Abdullahi Jibril Palladan, my esteemed home teacher, for his invaluable guidance and support throughout my academic journey. Your teachings on Islamic law of inheritance not only equipped me with essential knowledge but also ignited in me a profound passion for writing in this important area of study.Your motivation, assistance, and the wealth of relevant information and books you provided have been instrumental in enabling me to carry out this research. I sincerely thank you for your generosity in sharing your knowledge, as well as for your unwavering encouragement.Jazakullahu khairal jaza' for everything you have done for me. Your impact on my life is immeasurable, and I am truly grateful for the role you have played in my success.

I would like to express my heartfelt gratitude to Ibrahim Ila Bappa for his generous support and contributions to my research. His willingness to provide me with complimentary space and internet facilities at Mediahooch has significantly facilitated my access to vital information relevant to my study. In a setting where others are required to pay for similar services, Ibrahim’s kindness stands out and has profoundly impacted my research journey.Jazakullah khairal al-jaza' for your assistance and encouragement. I also wish to extend my best wishes for your marriage; may Allah bless you and your spouse as you embark on this beautiful new chapter together.Thank you once again for your generosity and support. Your kindness will always be remembered. I would also like to express my appreciation to Al-Ameen Bappa for taking his time to edit and format the work deligenttly. Jazakullahu Khairal Jaza'.

I want to register my appreciation to the staff of the Departmental Library, Faculty, Kashim Ibrahim Library, particularly those in Reference and Africana Divisions of the University, Islamic Trust of Nigeria, Zaria, Centre for Islamic and Legal Studies Kongo Campus, history Departmental Library and many others which Space would not allow me to mention each of them for facilitating my access to useful materials, which made this work possible.

My appreciation also goes to my brothers, sisters and uncles like Haruna, Jafa’ar, late Tukur, CSP Khalid, Sani, Hamza, Idris, Abdul-Aziz, Nura, Jamil,Yahuza, Jibril, Mu’azu, Anas, Abdurrahman, Rabi, Maryam, Halima, Amina,Rukayyah, Fati, Sahura and Zaliha.

Finally, my acknowledgement will be inadequate without expressing my profound appreciation to my colleagues malam Abubakar Shitu (Thamaruddani),Malam Shafi'u Sani, Alhaji Hamisu Ya'u, Malam Suleiman Sokoto, Ahmad Abolare, Bibire, Abubakar Jere, malam Thamin Jigawa, and malam Abubakar Jigawa. And also to my friends: Abdulkareem Daanladi, Ibrahim Bilyamin, Musa Assalafi, Jamilu Jaafar,Yahuza Ibrahim, Dr. Isma’il Gabari, Tahir Jaafar, Tukur Suleiman, Bashir Maharazu, Basiru Abdullahi, Ismai’l, for their assistance and moral support during the research work. Once again, I thank you all for your contributions in one way or the other towards the success of the study.

ABSTRACT

This study, titled “Analytical Study of Some Cases of Inheritance Distribution in Maliki and Other Schools of Law”, explores the divergent opinions between Maliki School of law and otherSchools of law (Hanafi, Shafi'i, and Hanbali) in some casesof inheritance.The research was motivated due to the fact that Inheritance distribution among the contemporary Muslims poses significant challenges, particularly in a country like Nigeria where a specific Sunni School of law is dominant. Many Muslims struggle to understand these issues, which lead to misunderstandings and arguments about inheritance rights. These issues include a case where a grandfather inherits alongside the siblings of the deceased, Dhawil Arham in the absence of a public treasury (Bai-al-mal), the status of children born out of wedlock, and a situation where a man divorces his wife while in death sickness. Furthermore, contemporary issues such as the inheritance rights of Test-tube babies and individuals with atheistic or pantheistic beliefs create additional obstacles for the contemporary Muslims. This indicates that there is a pressing need for solutions to foster awareness, understanding, and harmony in inheritance matters within Muslim communities.The objectives of the research include: to analyse the differences between the Maliki School and others (Hanfi, Shafi'i and Hanbali Schools of law), regarding the inheritance rights of grandfather alongside siblings of the deceased, *Dhawil Arham* (distant kindred/uterine relatives), children born out of wedlock and the aforementioned contemporary cases(such as the inheritance rights of test-tube babies and Muslims with atheistic or pantheistic dotrine). The methodology employed wascomparative content analysis approach, which effectively identifies and compares common and differing themes in textual data.The major findings revealed that grandfather can inherit alongside with siblings of the deceased, *Dhawil Arham* are more entitled to inherit the estate left behind by the deceased in the absence of sharers or agnatic heirs, rather than taking it to the public treasury (Bait-al-Mal),Test-tube baby conceived within a valid marriage without the involvement of a third-party has the same inheritance rights as any other child of the parents.

The study recommended that, inheritance distributors should adhere to the views of the majority of the Schools of lawwho permitted inheritance between a grandfather and siblings ofthe deceased, there isneed to transfer the estate left behind by the deceased to *Dhawil Arham* in the absence of sharers and agnatic heirs, than taking it to *bait-al-mal* (public treasury), there is also need for the Muslims parcularly the Schoars to give awareness to those couples having infertility challenges to avoid involvement of the third party in the process of having a Test-tube baby,there is also need for the Muslims of the contemporary period to have a unified "Muslim Code of Inheritance Law" that reconciles the diverseopinions of the four most famous *Sunni* Schools of law(Hanafi, Maliki, Shafi'i, and Hanbali)to incorporate the most relevant opinions from these Schools of law to form a unified and suitableinheritance law for the Muslims of their country.By identifying the key areas of differences and commonalities to develop a comprehensive and inclusive code of inheritance law. Summary and conclusion were also made.

TABLE OF CONTENTS

Contents

TITLE PAGE **Error! Bookmark not defined.**

DECLARATION iii

CERTIFICATION iv

DEDICATION v

ACKNOWLEDGEMENTS vi

ABSTRACT ix

TABLE OF CONTENTS xi

ABBREVIATION xv

OPERATIONAL DEFINITION OF TERMS xvi

CHAPTER ONE:GENERAL INTRODUCTION 1

1.1 Background to the Study 1

1.2 Statement of the Problem 5

1.3 Objective of the Study 7

1.4 Research Questions 7

1.5 Significance of the Study 8

1.6 Scope/Delimitation of the Study 9

CHAPTER TWO: REVIEW OF RELATED LITERATURE 10

2.0 Introduction 10

2.1 Concept of *Fiqh* (Islamic Jurisprudence) 10

2.1.1. The Significance of *Fiqh* (Islamic Jurisprudence) to Muslims Acts of Ibadat 12

2.1.2 The Development of *Fiqh* (Islamic Jurisprudence) During the Period of the Prophet (S.A.W.) 17

2.1.3 The Development of *Fiqh* (Islamic Jurisprudence) During the Period of the Companions of the Prophet (S.A.W) 23

2.1.4 The Development of *Fiqh* (Islamic Jurisprudence) During the Period of the Followers of the Companions of the Prophet (S.A.W) (Tab'een) 30

2.1.5 The Development of *Fiqh* (Islamic Jurisprudence) During the Period of the Followers of the Followers of the Companions of the Prophet (S.A.W) (Tabi' al-Tab'een) 32

2.2 The Four *Sunni* Schools of Law 37

2.2.1 Hanafi School of Law (Hanafiyyah) 39

2.2.2 The Maliki School of Law (Malikiyyah) 43

2.2.3 *Shafi'i* School of Law (*Shafi'iyyah*) 55

2.2.4 Hanbali School of Law (Hanbaliyyah) 58
2.3 Causes of Differences of Opinions among Jurists on inheritance 61
2.4 Concept ofIslamic Law of Inheritance 64
2.4.3 Definition of Islamic Law of Inheritance 65
2.4.4 Significance of the Islamic Law of Inheritance 66
2.4.1. Inheritance in Arabs Civilisation before Islam 68
2.4.2. Inheritance in the Early Days of Migration 71
2.4.5 Qur'anic Verses on Inheritance 73
2.4.6.Difference Between Inheritance, Wasiyyah And Gift 76
2.5 Arithmetic formular of calculation and fraction use in the distribution of properties 82
2.6 Pillars of the Islamic Law of Inheritance 102
2.7 Conditions of Inheritance 103
2.8 Grounds of the Islamic law of Inheritance 106
2.8Blood Relationship 106
2.8.2 Marriage Ties 107
2.83 Clientage 111
2.9 Impediment to inheritance under Islamic Law 112
2.8.1Still Birth 113
2.8.2 Doubt in order of Death 114
2.8.3 Li'an (Cursing for Adultery). 115
2.8.4Difference of Religion. 117
2.8.5 Slavery 123
2.8.6Children Born Out of Wedlock 124
2.8.7 Homicide 125
2.9 Concept of Estate 132
2.9.1 Obligatory Rights Attached to Inheirtance in Islam 132
2.9.1.1 Payment of Funeral Expenses 133
2.9.1.2 Payment of Debts 134
2.9.1.3 Execution of Will 138
2.9.1.4 Distribution of the Estate Amongst the Heirs 139
2.10 Classification of heirs 140
2.10.1 Sharers 140
2.10.2 Residuaries 149

2.11 Males and Females Heirs in the Islamic law of Inheritance 154
2. 12 Exclusion in the Islamic Law of Inheritance 155
2.12.1Partial Exclusion 156
2.12.1.1 Exclusion from Agnatic heir to Sharer and from Sharer to Agnatic heir 164
2.12.2Total Exclusion 174
2.13. Empirical Study 181
CHAPTER THREE: METHODOLOGY 191
3.0Introduction 191
3.1Research Design 191
3.2 Polutation 192
3.3 Sampling Technique 192
3.4 Instrument for Dat Collection 193
3.5 Validity and Reliabilityof the Instrument 193
3.6 Method of Data Collection 193
3.8 Method of Data Analysis: 194
CHAPTER FOUR:DATA PRESENTATION, ANALYSIS AND INTERPRETATION 196
4.0 Introduction 196
4.1 Analysis of the Inheritance of Grandfather along side with the Brothers and Sisters of the Deceased 196
4.1.1 Analysis of the Inheritance of Troublesome Case 209
4.1.2 Analysis of the Inheritance of Al-Mu'ada 214
4.1.3 Analysis of the Inheritance of Al-Kharqa' 218
4.1.4 Analysis of the Inheritance of the Case of Full Brother and Uterine Brothers 223
4.1.5 Analysis of the Inheritance of One of the couples surviving with father and Mother 226
4.1.6 Summary of the Analysis of Item 4.1 of the Inheritance of Grandfather along side with the Brothers and Sisters of the Deceased 229
4.2 Analysis of the Inheritance of Inheritance of Distance Kindred 230
4.2.1 Summary of the Analysis of Item 4.2 of the inheritance of Distance Kindred 238
4.3 Analysis of the Opinions Whether or not the Children Born Out of Wedlock Could Inherit 238
4.3.1 Summary of the Analysis of Item 4.3 of the Inheritance of the Children Born Out of Wedlock 245
4.4 Analysis of the Inheritance of Inheritance of Test-Tube Baby 246
4.4.1Summary of the Analysis of Item 4.4 of the Inheritance of Test-Tube Baby 252

4.5 Analysis of the Inheritance of Inheritance of Atheist and other modern disbelieve in Islam 253

4.5.1 Summary of the Analysis of Item 4.5 of the inheritance of Atheist and other modern disbelieve in Islam 258

4.6.1 Analysis of the Inheritance of Man Divorces his Wife in Death Sickness and other Related Issues 258

4.6.1(a) Analysis of the Inheritance of Exclusion of paternal grandmother 260

4.6.1(b) Analysis of the Inheritance of Unborn Child 261

4.6.1(e) Summary of the Analysis of item 4.6.1 of the Inheritance of Man Divorces his Wife in Death Sickness and other Related Issues 266

4.7 Summary of the Research Findings 267

4.8 Discussion of the Findings 268

CHAPTER FIVE: SUMMARY, CONCLUSION AND RECOMMENDATIONS 281

5.0 Introduction 281

5.1Summary 281

5.2 Conclusion 282

5.3Recommendation 283

Suggestion for Further Studies 284

References 287

ABBREVIATION

Abbreviation	Full Meaning
C.E	Christian Era
e.t.c.	Et Cetera (and so forth)
i.e.	That is
P.B.U.H.	Peace Be Upon Him
R.A.	Radi Allahu Anhu (May Allah be pleased with him)
S.A.W.	Salla Allahu Alayhi Wa Sallam (Peace be upon Him)
S.W.T.	Subhanahu Wa Ta'ala (Glory to Him, the Exalted)

OPERATIONAL DEFINITION OF TERMS

Term	Definition
Agnate	Relatives connected through the paternal line.
Atheists	Persons who do not believe in the existence of Allahor God.
Consanguine:	A sibling who shares only fatherwith the deceased.
Deceased:	The person who has passed away and whose estate is being distributed among the heirs.
Dhawil Arham:	Relatives through maternal lineage
Estate:	The total assets, properties, and belongings of the deceased.
Full Brother/Sister:	Refers to siblings who share both the same mother and father.
Heir:	Apersons entitled to inherit the property or assets of a deceased person according to the rules of inheritance.
Pantheist:	person who believe in the Godship of everything
Paternal Uncle:	The brother to the father of the deceased.
Share:	The portion of the deceased's estate allocated to each heir according to Islamic law.
Sharers:	The heirs having specific share like $\frac{1}{2}$, $\frac{1}{3}$, $\frac{1}{4}\frac{1}{6}$, $\frac{1}{8}$and $\frac{2}{3}$.
Siblings	Brothers and sisters of the deceased
Son's daughter	The granddaughter of the deceased through his son
Test-tube Babies	Individuals conceived through assisted reproductive technologies (ART), such as in vitro fertilization (IVF)
Uterine Brother/Sister	A person who shares the same mother but has a different father with the deceased

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

In the name of Allah, the Most Beneficent the Most Merciful. All thanks be to Allah for His ultimate guidance in succession of man in peace and love. May the peace and blessings of Allah be upon the seal of the Prophets Muhammad (S.A.W.) for demonstrating to man life of cordiality and progress. Similarly, may Allah be pleased with the companions of the Prophet (S.A.W.) for their sincerity in the conveyance of the message of the religion entrusted to them.

The ultimate objective of the revelation of the religion of Islam to man is to guide man in all of his affairs, be it religious, political, economical, social and any other valuable thing. The Qur'an states:

ٱلر ۚ كِتَٰبٌ أَنزَلْنَٰهُ إِلَيْكَ لِتُخْرِجَ ٱلنَّاسَ مِنَ ٱلظُّلُمَٰتِ إِلَى ٱلنُّورِ بِإِذْنِ رَبِّهِمْ إِلَىٰ صِرَٰطِ ٱلْعَزِيزِ ٱلْحَمِيدِ ١

> This is a Book which We have revealed unto you (O Muhammad SAW) in order that you might lead mankind out of darkness (of disbelief and polytheism) into light (of belief in the Oneness of Allah and Islamic Monotheism) by their Lords Leave to the Path of the All-Mighty, the Owner of all Praise. (Ibrahim, Q14:1)

Ibn Kathir (2003) in his commentary to the verse said: " This `Book', is the Glorious Qur'an, the most honored Book, that Allah sent down from heaven to the most honored Messenger of Allah sent to all the people of the earth, Arabs and non-Arabs alike, in order that you might lead mankind out of darkness into light, We sent you, O Muhammad, with this Book in order that you might lead mankind away from misguidance and crookedness to guidance and the right way.

Islam emerged in the period when the entire world was in total darkness. In this situation inheritance was based on selection and demand, especially in the female and children, where

female were not only denied but, were considered as object to be inherited. In this regard, the Qur'an states:

لخ لم لى لي مج مح مخ مم مى مي نج نح نخ نم نى ني هج هم هى ٧

There is a share for men and a share for women from what is left by parents and those nearest related, whether, the property be small or large - a legal share. (an-Nisa', Q4:7)

Ibn Kathir (2003) in his commentary to the verse lamented that, "Sa`id bin Jubayr and Qatadah said, "The idolators used to give adult men a share of inheritance and deprive women and children of it. Then this verse was revealed "There is a share for men from what is left by parents and those nearest in relation." Therefore, everyone is equal in Allah's decision to inherit, even though their shares vary according to the degree of their relationship to the deceased, whether being a relative, spouse, etc. Ibn Marduwyah reported that Jabir said, "Umm Kujjah came to the Messenger of Allah and said to him, `O Messenger of Allah! I have two daughters whose father died, and they do not own anything.' So Allah revealed; "There is a share for men from what is left by parents and those nearest in relation."

The Prophet (S.A.W.) taught and guided the companions (*Sahabah* R.A.) on how to handle issues of inheritance base on the guidance of the *Qur'an*. In view of this, he clarified all what seem to be ambigious to Sahabah (R.A.) in matters of religion. He therefore obliged the Sahabah (R.A.) to learn the knowledge of inheritance for it's significance. For instance, he says:

تَعَلَّمُوا الْفَرَائِضَ وَعَلِّمُوه ، فَإِنَّهُ نِصْفُ الْعِلْمِ وَهُوَ يُنْسَى ، وَهُوَ أَوَّلُ شَيْءٍ يُنْزَعُ مِنْ أُمَّتِي.

Learn about inheritance and teach it, for it is half of knowledge, but it will be forgotten. This is the . first thing that will be taken from my nation.'" (Ibn Majah 2007:17-18 Vol. 2 no.2719).

Of course, the curiousity of the *Sahabah* (R.A.) understand the message of Islam, some of the *Sahabah* excelled in the knowledge of *Qur'an*, others in *Hadith*, others in Islamic jurisprudence e.t.c. the most prominent among them in the knowledge of inheritance was Zaid bin Thabit as in the following narration:

أَرْحَمُ أُمَّتِي بِأُمَّتِي أَبُو بَكْرٍ وَأَشَدُّهُمْ فِي أَمْرِ اللَّهِ عُمَرُ وَأَصْدَقُهُمْ حَيَاءً عُثْمَانُ وَأَعْلَمُهُمْ بِالْحَلاَلِ وَالْحَرَامِ مُعَاذُ بْنُ جَبَلٍ وَأَفْرَضُهُمْ زَيْدُ بْنُ ثَابِتٍ وَأَقْرَؤُهُمْ أُبَيُّ بْنُ كَعْبٍ وَلِكُلِّ أُمَّةٍ أَمِينٌ وَأَمِينُ هَذِهِ الأُمَّةِ أَبُو عُبَيْدَةَ بْنُ الْجَرَّاحِ.

> The most merciful of my nation to my nation is Abubakar, and the most severe of them concerning the order of AllAh is Umar, and the most truly modest is Uthman bin 'Affan. The most knowledgeable of them concerning the lawful and the unlawful is Mu'adh bin Jabal, the most knowledgeable of them concerning (the laws of) inheritance is Zaid bin Thabit, the best reciter (of the Qur'an) among them is Ubayy bin Ka'b, and every nation has a trustworthy one, and the trustworthy one of this nation is Abu 'Ubaidah bin Al-JarrAh." (Sahih) j (Tirmidhi, 2007:438 vol. 6, no. 3790).

There was no crisis or differences in the issue of inheritance during the life time of the Prophet (S.A.W.) because, all differences were settled by him. However, after the demise of the Prophet (S.A.W.) differences started due to some factors such as differences in the level of acquisition of knowledge, interpretation of some *Qur'anic* and *Hadith* texts because of their accommodative nature. For instance, here is Abubakar as-Siddiq (R.A.), the most closest person to the prophet (S.A.W.) but couldn't claim knowing every knowledge as stated:

جاءت الجدة أم الأم وأم الأب إلى أبي بكر فقالت إن ابن ابني أو ابن بنتي مات وقد أخبرت أن لي في كتاب الله حقا

فقال أبو بكر ما أجد لك في الكتاب من حق وما سمعت رسول الله صلى الله عليه و سلم قضى لك بشيء وسأسأل الناس قال فسأل فشهد المغيرة بن شعبة أن رسول الله صلى الله عليه و سلم أعطاه ا السدسد قال ومن سمع ذلك معك ؟ قال مُحَّد بن مسلمة قال فأعطاها السدس ثم جاءت الجدة الأخرى التي تخالفها إلى عمر قال سفيان وزادني فيه معمر عن الزهري ولم أحفظه عن الزهري ولكن حفظته من معمر أن عمر قال إن اجتمعتما فهو لكما وأيتكما انفردت به فهو لها.

A grandmother came to Abubakar to ask him about her inheritance, he said to her, 'There is nothing for you in the Book of Allah and there is nothing for you in the Sunnah of the Messenger of Allah . So, return until I ask the people. So he asked the people and A1-Mughirah bin Shu'bah said: 'I was present when the Messenger of Allah gave her (case) a sixth.' So he said: 'Was anyone else with you?' Muhammad bin Salamah stood to say the same as what Al-Mughirah bin Shu'bah said. So Abubakr implemented that for her." He said: "Then the other grandmother came to 'Umar bin Al-Khattãb to ask him about her inheritance. He said: 'There is nothing in the Book of Allah for you, but there is that sixth. So if the two of you are together then it is for both of you, and whichever one of you remains, then it is for her." (Sahih). Tirmizi 2007:165-166 no.2,101)

Differences among the circle of the *Tabiun*(followers of the Companions) after the period of the *Sahabah* (R.A.) with spread of Islam, resulted to wide spread of personal views especially with emergence of *Madhahib* (the Hanafi, Maliki, Shafi'I and Hanbali Schools of law). And each of the School has peculiarity in their approach and interpretation of some laws based on the principles they established. The predominant *Madhhab* in West Africa and Nigeria in particular

is *Madhhab* of Maliki School. The *Madhhab* continue to grow through the guidance of its principles in order to meet the dynamic nature of the world. Howevr, the contemporary world in its advancement in technology brought some challenges that has no precedenced in the history of Islam such as "Test-Tube baby" which is also refer to as "In Vitro Fertilization" (IVF). Through which a child is produced from an egg that was fertilized outside of a woman's body and then put back into the woman's body to finish developing as identified by Muhammad, (2012:18-19) who states that:

> This is a process of fertilising an egg with sperm in an artificial environment such as test-tube. A child produced using this method is popularly called "Test-Tube baby." The procedure involves stimulation of the woman with injected medications to develop multiple follicles (egg-containing structures) in the ovaries. Thereafter, a trans-vaginal ultrasound-guided procedure is performed to remove the eggs from the follicles which are fertilized in the laboratory with her partner's sperm. The embryos are finally placed in the woman's uterus where they will hopefully implant and develop to result in a live birth.

Similarly, the contemporary period is experiencing children of Muslims embracing the doctrine of atheism or pantheism together with the Islamic concept of faith. The cases of children from premarital sex becoming rampant and the total absence of public treasury (*Bait al-mal*) in the contemporary that could absorbe the reminants from what could not be inherited has posed a challenge as well as inheritance between grandfather and siblings of the deceased. The aforemention issues posed challenges tothe Muslims in the distribution of inheritance in the contemporary period.

1.2 Statement of the Problem

Inheritance distribution among the contemporary Muslims poses significant challenges, particularly in a country like Nigeria where a specific Sunni School of law is dominant. Many

Muslims struggle to understand these issues, which lead to misunderstandings and arguments about inheritance rights. This study, “Analytical Study of Some Cases of Inheritance Distribution in Maliki and Other Schools of Law,” examines the differing opinions among the Maliki, Hanafi, Shafi'i, and Hanbali Schools of law regarding the inheritance rights of grandfathers alongside the siblings of the deceased, inheritance of*Dhawil Arham* (distant relatives) when sharers or agnatic heirs are absent, and the rights of children born out of wedlock or through in vitro fertilization (IVF), known as Test-tube babies.

These differing interpretations on their rights of inheritance can lead to misunderstandings and disputes among heirs, especially in a family where heirs follow different Schools of law. Additionally, the rising influence of beliefs such as atheism and pantheism among Muslim youth raises questions about their rights of inheritance. Specific complex cases, such as divorce during death sickness and the inheritance rights of paternal grandmothers in the presence of the deceased's father, contribute additional complexity to the legal system.

In light of these challenges, there is a pressing need for clear and consistent Shari'ah guidance to help contemporary Muslims to understand their inheritance rights and responsibilities. By addressing these critical issues, this research could contribute to the larger discussion on how Islamic law can adapt to the diverse and complex challenges faced by contemporary Muslim communities, ultimately encouraging greater understanding and minimizing the chances of disputes among heirs.

1.3 Objective of the Study

The research has the following objectives:

1. To analyze the differences between Maliki and other Schools of law on the inheritance distribution of grandfather inheriting along side with the siblings of the deceased.
2. To evaluate the differences between the Maliki School of Law and others on the inheritance of *Dhawil Arham* (uterine),
3. To determine the inheritance of aTest-Tube baby based on the principles of Maliki School and others.
4. To assess the different views of Maliki School of law and other on the inheritance of children born out of wedlock,
5. To analyse the different views of Maliki School and others on the inheritance of some Muslims with atheistic doctrine.
6. To evaluate the differences between Maliki School of law and others on the inheritance of a woman divorced by her husband in death sickness.

1.4 Research Questions

1. What are the differences between Maliki and other Schools of Law on the inheritance of grandfather inheriting along side with the siblings of the deceased?
2. What are the differences between the Maliki School of Law and others on the inheritance of *Dhawil Arham* (uterine)?
3. How does the inheritance of a Test-Tube baby will be determined based on the principles of Maliki School and others?

4. What are the different views of Maliki School law and other on the inheritance of children born out of wedlock?
5. What are the different views of Maliki School of law and others on the inheritance of some Muslims with atheistic doctrine?
6. What are the differences between Maliki School of law and others on the inheritance of a woman divorced by her husband in death sickness?

1.5 Significance of the Study

Research on analysis of Maliki and other Schools of law in some cases of inheritance, particularly in the context of the inheritance of a grandfather alongside with the brothers and sisters of the deceased, *Dhawil Arham* (uterine), children born out of wedlock,children born through test tube baby or in vitro fertilization, and Muslims with atheism doctrine, holds significant implications for various stakeholders including government bodies, teachers, researchers, Muslim scholars, and the wider community.

a. **Government:** This research provides valuable insights into how laws of inheritance are practiced within the four Schools of law (Hanafi, Maliki, Shafi'I and Hanbali). This will help the governments through the efforts of the Scholars of the highest refute and judges to harmonize the opinions of the Schools of law, for the better solutions to the impending challenges.
   b. **Scholars:**the Muslim Scholars and judges may be awake in seeking and adopting suitable opinionions in attainment to solutions to the contemporary period challenges. Likewise, it may pose a challenge to the scholars to widen research and equally strive in producing new opinions base on the existing established evidences.

C. **Researchers:** Researchers gain a deeper understanding of the complexities surrounding inheritance distribution in Muslim societies, contributing to the advancement of knowledge in the field of religious studies, particular in the area of Islamic law of inheritance.

D. **Community:** the communities may be guided on presentation of their challenges in life to scholars with in-dept knowledge. This will inform them about comprehensiveness of Islam in attaining to all challenges and providing solution.

1.6 Scope/Delimitationof the Study

The scope of this study revolves around some areas of differences between Maliki School of law and others particularly the Hanafi, Shafi'i and Hanbali principles of inheritance in some cases liketheinheritance of a grandfather alongside with the brothers and sisters of the deceased, *Dhawil Arham* (distant kindred/uterine), children born through unconventional way (test tube baby) or in vitro fertilization, Muslims with atheism docterine, children born out of wedlock and so on,as well as its practices among the Muslims especially in Nigeria.

CHAPTER TWO

REVIEW OF RELATED LITERATURE

2.0 Introduction

This chapter tends to review some relevant works that are related to this study whether published or unpublished studies, books, journals, research essays, project and so onin order to acknowledge and to justify the essesnce of this research.Thus, differences in opinions of the prominent orthodox Sunni Schools of law on some selected cases of inheritance were deliberated upon. In this regard, the chapter extensively presented and discussed the following issues:

2.1 Concept of *Fiqh* (Islamic Jurisprudence)

The term "*Fiqh*" is an Arabic word which literally means Islamic Jurisprudence. It is literally known as "to understand". According to Al-Shaybani (2000:115),"*Fiqh* refers to the deep understanding of the Shari'ah and the knowledge of what is lawful and unlawful". The *Qur'an* also uses it with this meaning in some chapters like in Surah Al-Munafiqun, where Allah says:

تي **ثر ثز ثم ثن** ّالمنافقون: ٧ :

"but the hypocrites do not understand"(al-Munafiqoon,63:7)

And the Prophet (S.A.W.) was reported to have said:

مَن يُرِدِ اللهُ بِهِ خَيْرًا يُفَقِّهْهُ فِي الدِّينِ

"If Allah wants to do good to a person, He makes him comprehend the religion [the understanding of the Qur'an and As-unna (legal ways) of the Prophet (Muhammad S.A.W)] …(Bukhariand, 1997:98 vol.1 no.61).

Technically, *Fiqh* has been defined by different Scholars, but let's hear a comprehensive definition from Uthaimeen (1429AH:7) where he says: "*Fiqh* is the knowledge of the practical laws of the Shariʿah that are derived and deduced from specific and detailed evidences."

A Muslim is required to know the practical laws of the *Shariʿah*regarding his daily life, which includes *Salat*, fasting,*Zakat, Hajj* (pilgrimage), Marriage, Divorce,*Jihād*, Laws of Succession, and so on. According to Imam Al-Ghazali (2001: 47); "*Fiqh* is the knowledge of practical legal rulings derived from detailed evidences." This definition emphasizes on the nature of *Fiqh* as a science that deals with the application of Islamic principles to everyday life. While, toImam Ibn Khaldun (2005:45), "*Fiqh* is the understanding of the divine will in regards to human actions, distinguishing between obligatory and forbidden, lawful and unlawful actions." His definition highlights the comprehensive nature of *Fiqh* in guiding the moral and legal aspects of a Muslim's life.

Fiqh is theinterpretation of Islamic law, which is based on the Qur'an and Sunnah of the Prophet (S.AW.). *Fiqh* (Jurisprudence) in Islam refers to the process of deriving legal decisions from either the Qur'an or *Sunnah*texts. According to Al-Jaziri (2009:4); "*fiqh* is the science of deducing Islamic laws from evidence found in the *Qur'an* and the Sunnah." This includes being aware of how these rules can be used in real-world situations in a variety of contexts.According to Al-Shatibi (1997, p. 22);

> The main objective of *Fiqh* is to achieve the *Maqasid al-Shariah* (objectives of Islamic law), which are the preservation of religion, life, intellect, lineage, and property.

This objective ensures that *Fiqh* is not just a set of rigid rules but a dynamic system aimed at promoting human welfare.In a nutshell, *Fiqh*, or Islamic jurisprudence, is a process in which jurists derive sets of principles, laws and directives from the principles established in the

*Qur'an*and the Sunnah of the Prophet Muhammad (peace and blessings of Allah be upon him). Over the centuries, these principles have been extracted and expounded upon by successive generations of knowledgeable jurists, through interpretation, analogy, consensus and the incorporation of other sources where applicable.

2.1.1. The Significance of *Fiqh* (Islamic Jurisprudence) to Muslims Acts of Ibadat

To help Muslims better comprehend their religion, *fiqh* interprets Islamic texts, especially the *Quran* and the *Sunnah* of theProphet Muhammad (S.A.W.). The Prophet Muhammad (PBUH) also highlighted the importance of *fiqh*, saying:

مَنْ يُرِدِ اللَّهُ بِهِ خَيْرًا يُفَقِّهْهُ فِي الدِّينِ.

> When Allah intends good for a person, then He grants him the understanding of religion. (Muslim,2007:80-81 Vol.3 no.2389)

The term "yufaqihhu" in this Hadith refers to understanding matters of religion, underscoring the essential role of *fiqh* in providing guidance for both religious acts and worldly matters. *Fiqh* is essential for preserving Islam's core values and making sure the moral and ethical teachings are applied. It is based on the *Qur'an*, *Hadith*, *Ijma*, and *Qiyas*. The following are some of the significance of *Fiqh*:

1. *Fiqh* helps Muslims comprehend the messages in the *Quran* and *Hadith*, providing detailed guidance on their application. According to Imam Al-Shafi'i, (1993:30), *"Fiqh* is instrumental in preserving the core values of Islam, ensuring that the moral and ethical teachings of the Quran and Hadith are upheld". Thestatement of Al-Shafi'i above, highlights the central role of *fiqh* in maintaining and reinforcing the ethical and moral foundations of Islam. *Fiqh*, or Islamic jurisprudence, serves as the mechanism through which the teachings of the Quran and

Sunnah of the Prophet Muhammad (PBUH) are interpreted and applied in everyday life. This ensures that the core values of Islam are not only preserved but also practiced by Muslims in their daily interactions and decisions.*Fiqh* provides clear guidelines on how Muslims should conduct themselves in various aspects of life, from personal and family matters to social and economic interactions. By interpreting the Qur'an and Hadith, *fiqh* helps Muslims to understand the divine commandments and prophetic traditions. This helps to explain complex moral and ethical dilemmas, ensuring that their actions align with the principles that are either found in the *Qur'an* or *Sunnah* of the Prophet (S.A.W.). For example, issues related to honesty, justice, and compassion are thoroughly addressed in fiqh, guiding Muslims to uphold these values in their personal and professional lives.Moreover, *fiqh* plays a crucial role in the dynamic application of Islamic teachings. The world is constantly changing, and new situations and challenges arise that were not explicitly addressed in the *Qur'an* or *Hadith*. Through the principles of *fiqh*, such as *Ijma* (consensus) and *Qiyas* (analogical reasoning), scholars can derive rulings that are consistent with the spirit of Islamic teachings while addressing contemporary issues. This adaptability ensures that the moral and ethical teachings of Islam remain relevant and applicable across different contexts and eras, thereby preserving the religion's core values amidst societal changes.

2. Fiqh covers all aspects of Muslim life, including family issues, religion, business dealings, and interpersonal behavior. Imam Al-Ghazali (2013:52) emphasizes,

> *Fiqh* encompasses all aspects of Muslim life, not only the acts of worship but also the legal and ethical dimensions of Muslim life.

The above statement, "*Fiqh* encompasses all aspects of Muslim life, not only the acts of worship but also the legal and ethical dimensions of Muslim life," underscores the comprehensive nature of Islamic jurisprudence. *Fiqh* is not limited to guiding Muslims on how to perform religious rituals; it extends to every facet of daily life, shaping the moral, social, and legal framework

within which Muslims operate. This holistic approach ensures that a Muslim's conduct aligns with Islamic principles in all circumstances.In terms of worship, *fiqh* provides detailed instructions on how to perform the five pillars of Islam: *Shahada* (faith), *Salah* (prayer), *Zakat* (charity), *Sawm* (fasting during *Ramadan*), and *Hajj* (pilgrimage to Mecca). It defines the proper ways to carry out these rituals, ensuring that they meet the requirements set forth in the *Quran* and *Hadith*. For instance, *fiqh* details the specific times for prayers, the amount of charity to be given, and the conditions under which fasting should be observed. By so doing so, it helps Muslims fulfill their religious duties correctly and with devotion.Beyond acts of worship, *fiqh* also addresses the legal dimensions of a Muslim's life. It includes laws related to personal status, such as marriage, divorce, and inheritance. For example, fiqh outlines the rights and responsibilities of spouses, the conditions under which a marriage can be dissolved, and the distribution of a deceased person's estate among heirs. These legal rulings are derived from the *Quran* and *Hadith*, ensuring that they are in accordance with divine guidance. This legal framework helps maintain order and justice within the Muslim community, providing clear guidelines for resolving disputes and ensuring that individuals' rights are protected.The ethical dimensions of *fiqh* covers aspects of morality and social behavior. Fiqh provides guidelines on how Muslims should interact with others, emphasizing virtues like honesty, compassion, and justice. It prohibits harmful behaviors such as lying, cheating, and backbiting, promoting a culture of integrity and mutual respect. Additionally, *fiqh* encourages Muslims to engage in charitable activities and to support the less fortunate, reinforcing the importance of social responsibility and community welfare.*Fiqh* also addresses economic transactions, providing rules for conducting business in a manner that is ethical and fair. It expounds the types of nature of Riba that prohibitedexploitative practices of man. These guidelines help create a just

economic system that benefits all members of society, ensuring that wealth is distributed fairly and that business dealings are conducted with integrity.

3. *Fiqh* promotes fair resolutions to legal disputes, ensuring justice and equality. It addresses criminal justice, marriage, inheritance, and commercial transactions. Al-Mawardi (1996:92), notes that, *"Fiqh* provides the framework for resolving conflicts and maintaining social order, promoting peace and justice within the community". Al-Mawardi's emphasized on the vital role of Islamic jurisprudence in governing social interactions and ensuring harmony within the Muslim community. *Fiqh*, as the practical application of Sharia law, offers comprehensive guidelines for various aspects of life, including legal, ethical, and social domains. By establishing clear rules and principles derived from the *Quran*, *Hadith*, *Ijma*, and *Qiyas*, fiqh facilitates the resolution of disputes in a manner that aligns with Islamic values and principles.One of the primary functions of *fiqh* is to provide mechanisms for conflict resolution. When disputes arise, whether in matters of family, business, or community relations, *fiqh* offers structured approaches to address these issues. Through established procedures for arbitration and adjudication, fiqh ensures that conflicts are handled justly and equitably. This process involves the application of legal precedents, analogical reasoning, and consensus among scholars to reach fair and consistent decisions.

By relying on these well-defined legal frameworks, fiqh minimizes the potential for arbitrary or biased judgments, thus fostering a sense of trust and stability within the community.Moreover, *fiqh* plays a crucial role in maintaining social order by promoting justice and fairness. The principles of justice embedded in *fiqh* are designed to protect individual rights and uphold the collective well-being of society. For instance, in matters of criminal justice, fiqh prescribes specific penalties and procedures that aim to deter wrongdoing and rehabilitate offenders while ensuring that the rights of victims are respected. In the realm of family law, fiqh provides detailed regulations on marriage, divorce, and inheritance, ensuring that each individual's rights and responsibilities are clearly defined and upheld. This comprehensive legal framework helps prevent social discord and fosters a sense of justice and accountability.

Additionally, *fiqh* promotes peace within the community by encouraging ethical behavior and social harmony. By emphasizing the moral and ethical dimensions of Islamic teachings, fiqh guides individuals in their interactions with others, promoting values such as honesty, compassion, and mutual respect. The ethical guidelines provided by fiqh help to cultivate a sense of communal solidarity and cooperation, reducing the likelihood of conflicts and fostering a peaceful coexistence. Furthermore, the process of deriving legal rulings in *fiqh* involves rigorous scholarly debate and consensus-building, which not only enhances the credibility and legitimacy of the rulings but also promotes a culture of dialogue and intellectual engagement within the community.

4. *Fiqh* fosters scholastic endeavors and intellectual growth. The need for rigorous analytical reasoning and interpretation of sacred scriptures promotes a culture of learning and research. As Al-Khwarizmi (2005:110), states:Studying *Fiqh* helps scholars grow intellectually by honing their intellect and developing a thorough comprehension of Islamic law and theology.

The above statement of al-Khwarizmi highlights the profound impact that the study of Islamic jurisprudence has on a scholar's intellectual development. Fiqh, which encompasses the detailed interpretation and application of Islamic law, requires rigorous analytical thinking and a deep engagement with religious texts. By delving into fiqh, scholars are not merely memorizing laws and regulations; they are actively engaging in critical thinking, logical reasoning, and problem-solving. This process sharpens their intellectual faculties, making them adept at analyzing complex issues and deriving coherent and justifiable conclusions based on religious principles.Moreover, the study of fiqh fosters a comprehensive understanding of Islamic law and theology. Scholars must navigate through the *Quran, Hadith*, and other foundational texts,

comparing various interpretations and understanding the historical and cultural contexts in which these laws were developed. This extensive study provides them with a nuanced grasp of not only the legal aspects of Islam but also its ethical and theological dimensions. As a result, scholars gain a holistic view of Islamic teachings, enabling them to apply these principles in diverse and evolving societal contexts.Al-Khwarizmi's observation also emphasizes the importance of intellectual growth within the Islamic tradition. By engaging deeply with fiqh, scholars contribute to the dynamic and evolving discourse within Islamic jurisprudence. Their intellectual efforts ensure that Islamic law remains relevant and adaptable to contemporary challenges. This continuous intellectual engagement is crucial for the preservation and advancement of Islamic knowledge, as it encourages scholars to question, debate, and refine their understanding of religious laws and principles.

2.1.2 The Development of *Fiqh* (Islamic Jurisprudence) During the Period of the Prophet (S.A.W.)

This period begins when the Prophet Muħammad received revelation at the age of forty in the year 610 C.E until his demise, which extends over a period of 23 years (i.e 13 years at *Makkah* before the migration to Madinah and 10 years after migration). Most of the verses revealed prior to the Hijrah concentrated on Aqidah (theology), which is the establishment of the existence of Allah (S.W.A.) and responding to the non-Muslims and reaffirming the finality of the prophethood of the Prophet Muħammad (S.A.W.) in the hearts of the believers. There were however some *Fiqhu* Laws which were revealed that included the obligation to perform the five daily pryers. Muslim community had been established in Madinah after the Hijrah, gradually more and more of the laws were revealed in order to govern the affairs and lives of the individuals and the community. During the ten years in Madinah, there were three major sources

of Islamic law. These sources were the Qur'an, Sunnah and *Qiyas/Ijtihad* of the Prophet (S.A.W.).

The first source of Islamic law was the Qur'an, whose verses were universally acknowledged as being authentic. Some of the Qur'anic verses were revealed in response to issues that people were facing. Some of these practices were made public in an effort to ban some practices like gambling infanticide, usury and unrestricted polygamy. Others established sanctions to make the changes the Qur'an had made more enforceable.

In general, the Qur'an supported the institutions and practices that already existed in Arab society and only advocated for change when it was thought necessary. The Qur'an contains some verces on religious topics such as Prayer, Zakah (legal alms), Fasting, the Hajj pilgrimage, Jihad, charity giving, swearing, and Kaffarat (penances), while some verses include marriage, divorce, the waiting time, rij'ah (revocation), dowry and maintenance, child custody, paternity, inheritance, and bequest. And other verses are devoted to establishing the guidelines for mu'amalat (business transactions), including sale, loan, and mortgage. The crimes and punishments for things like murder, hirabah (highway robbery), adultery, and false accusation (qadhf). The remaining verses discuss justice, equality, proof, consultation, and the duties and rights of citizens. There are some verses that deal with economic issues, governing how the rich and the poor interact, workers' rights, etc. It should be emphasized, however, that the fuqaha do not unanimosely agreed on the numbers of the verses of the glorious Qur'an because, computations of the verses vary depending on how one interprets and approaches the words of the Qur'an.

The Qur'an primarily deals with establishing Aqidah (Islamic theology). The Qur'an was revealed gradually sometimes in accordance with occurances and incidents. For instance, Allah says:

ﭐنحنخ ني نى هج هم هٰ الإهيإيج ١٠٦

> And (it is) a Qur'an which We have divided (into parts) in order that you might recite it to men at intervals. And We have revealed it in stages. (Al-Isra': 106)

According to Ibm Kathir (2003:101) "The word translated here as "We have divided" may be read in two ways. If it is read as "Faraqnahu", with no Shaddah, the meaning is: `We have made it depart from Al-Lawh Al-Mahfuz to Bayt Al-`Izzah in the lowest heaven, then it was revealed in stages to the Messenger of Allah, according to the events, over a period of twenty-three years.' This was narrated by Ikrimah from Ibn Abbas. It was also narrated that Ibn Abbas read it as "Farraqnahu", with a Shaddah, meaning, `We revealed it Ayah by Ayah, and have explained it and made it clear in order to convey it to the people and recite it to Them.

So, whenever the Companions were faced with some issues, they hurried to the Prophet (S.A.W.) who provided them with the solution or else they waited for revelation from Allah after which they immediately complied. For example, a Companion asked the Prophet (S.A.W.) on the issue of fighting in the sacred months of Hajj. Allah responded with verse 217 in Surah Al-Baqarah,

ﭐئر... بخ البقرة: ٢١٧

> They ask you concerning fighting in the sacred months…" (Baqrah,2:217)

As the Qur'an was being revealed, the Prophet Muħammad read it to the Companions who in turn memorized it and some wrote it down. In this way, it was all written in the Prophet's (S.A.W.) time, but not in one single book form.

The second source of the Islamic law is the Sunnah, which is the statements, actions, acknowledgements and descriptions of the Prophet Muħammad (S.A.W.). The importance of Sunna as a source of Islamic law has been established in the Qur'an, stressed by the Prophet (S.A.W.), acknowledged by his immediate successors and other companions, and accepted by all Muslim jurists. According to a verse in the Qur'an,

ﱡ... ىٰيريزبمينيىييئجئحبهَّ الحشر: ٧

"Whatever the Prophet gives, accept it, and whatever he forbids you, refrain from it" (59.7).

In another verse, Allah says:

ﱡٱنجنحنخنمنىَّ النجم: ٣

"he does not talk from desire. (53:3)

The Prophet (S.A.W.) once told his Compnions that as long as they adhere to the Book of Allah and the Sunna of His messenger, they will not deviate. The Prophet (S.A.W.) was sent to teach the Qur'an, and his statements by Allah, and sent his Companions to different parts of the world to teach other people what they learned from him. This method of extending the Allah's message which started with prophet (S.A.W.) continued generation after generation down to the present time. For instance,the successors of the companions of the Prophet (S.A.W.) enquired about the Prophet's decisions from His companions if they were unaware of them, and if any of them provided them with a Hadith on the matter, they made their decisions in accordance with that Hadith. The validity of the Hadith as a source of Islamic law is affirmed by every Muslim jurist. The Sunna's main goals are to present and clarify the Qur'an. In other words, it serves as a key to comprehension of the teachings of the Glorious Qur'anic.

The Qur'an made mentioned of five daily prayers and the Sunnah specified the method, requirements and conditions etc. Allah says:

ﱡٱئخ ئم ئه بج بح بخ بم ...حَّهود: ١١٤

And establish As-Salat (Iqamat-as-Salat), at the two ends of the day and in some hours of the night (i.e. the five compulsory Salat (prayers) …

While in the Hadith, we find statements like,

صَلُّوا كَمَا رَأَيْتُمُونِي أُصَلِّي،

Perform your Salat in the way you see me prayingt". (Bukhari, vol.1 pg.369 no.653)

Likewise, about Zakat, regarding the sayings of Allah:

ﱡﱁﱂﱃﱄﱅﱆﱇﱈﱉﱊﱋﱌﱍﱎﱏﱐﱑﱒﱓﱔﱕﱖﱗﱘﱙﱚﱛﱜﱝﱞﱟﱠ التوبة: ١٠٣

Take Sadaqah (alms) from their wealth in order to purify them and sanctify them with it, and invoke Allah for them. Verily! Your invocations are a source of security for them, and Allah is AllHearer, All-Knower. (At-Taubah, 9:103)

However, the minimum amount on which Zakat is liable is clarified by the following Hadith:

قَالَ أَبِو سَعِيدٍ الْخُدْرِيَّ قَالَ رَسُولُ اللَّهِ – ﷺ – « لَيْسَ فِيمَا دُونَ خَمْسِ ذَوْدٍ صَدَقَةٌ مِنَ الإِبِلِ ، وَلَيْسَ فِيمَا دُونَ خَمْسِ أَوَاقٍ صَدَقَةٌ ، وَلَيْسَ فِيمَا دُونَ خَمْسَةِ أَوْسُقٍ صَدَقَةٌ »

.

Narrated Abu Sa'id Al-Khudri(R.A.) that Allah's Messenger said, "There is no Zakãt on less than five camels, and also there is no Zakat on less than five Awaq (of Silver). (5 Awaq = 22 Fransa Riyals of Yemen or 200 Dirhams i.e., approx. 640 Grams .) And there is no Zakat on less than five Awsuq (A special measure of food grains, and one Wasq equals 60 Sa'.). (Bukhari 1997:104 vol.2 no. 1447)

Likewise, the Prophet's guidance covers issues and aspects relating to fasting, Hajj, marriage, divorce, business etc. There were many additional rulings that were taught by the Prophet (S.A.W) as the messenger of Allah as we have been instructed in the Qur'an,

ﱡ...ﱟﱠ الحشر: ٧

Whatever the Messenger brings to you, then take it, and whatever he prohibits you from, then abstain from it. (Hashr 59:7)

What every individual must be aware of is that the Sunnah never contradicts the Qur'an . Instead, the Sunnah conforms the Qur'an, explains and clarifies some verses in the Qur'an or contains a ruling on which the Qur'an is silent.

Qiyas (analogical reasoning) or Ijtihad of the Prophet (S.A.W.) is the third source of Islamic law during the life time of the Prophet (S.A.W.). *Qiyas* simply means applying of ruling of a former issue to a new issue because of a common reason or factor (ʿillat). *Qiyas* was an accepted source in the time of the Prophet (S.A.W.) and his companions. The Qur'an alluded to it in Sūrah Al-Nisā, verse: 83

ٹ ٹ ٹ ... كيلملىليماممنرنزنمنن... ئمَّ الساء: ٨٣

… If only they referred it to the Messenger or to those charged with authority amongst them, the proper investigators would have understood it from them. .. (Al-NisA, 4: 83)

The verse uses the word (Istinbat) which is to extract and discover. Prophet (S.A.W.) uses*Qiyas* to explain things to different people and approved their analogy that was correct, although this is referred to by some scholars as the Ijtihad of the Prophet (S.A.W.). Example of this is the Prophet's reply to the woman who said:

عَنِ ابْنِ عَبَّاسٍ ، أَنَّ امْرَأَةً ، جَاءَتْ إِلَى النَّبِيِّ ﷺ فَقَالَتْ : إِنَّهُ كَانَ عَلَى أُمِّهَا صَوْمُ شَهْرٍ أَفَأَقْضِيهِ عَنْهَا ، فَقَالَ : لَوْ كَانَ عَلَى أُمِّكِ دَيْنٌ أَكُنْتِ قَاضِيَتَهُ ؟ قَالَتْ : نَعَمْ ، قَالَ : فَدَيْنُ اللهِ أَحَقُّ أَنْ يُقْضَى.

It was narrated from Ibn Abbas that a woman came to the Prophet (S.A.W.) and said that her mother had owed a month's fast, should I fast it on her behalf? He said: "If your mother owed a debt would you pay it off?" She said: "Yes." He said: "The debt of Allah is

more deserving of being paid off." (Sahih). (Abu Dawud 2008:44-45 vol;4 no. 3310)

By applying this kind of analogy, the Prophet (S.A.W.) taught his companions in particular and the Ummah in general how to use it, thus showing us how to deal with new issues at every time and age. Thus, he mentioned that for that person who applies ijtihad himself and makes a mistake will have one reward, while for the person that luckily applies it correctly will have two rewards. The following Hadith explains that:

عن أبي هريرة قال : قال رسول الله صلى الله عليه و سلم
إذا حكم الحاكم فاجتهد فأصاب فله أجران وإذا حكم
فأخطأ فله أجر واحد

Abu Hurairah narrated that the Messenger of Allah said: "When the judge passes a judgement in which he strived and was correct, then he receives two rewards. And when he judges and is mistaken, then he receives one reward." (Sahih). (Tirmudhi 2007:123 vol.3 no.1326)

So, as discussed above, fiqhu during the life time of the Prophet (S.A.W.) was totally depents on him (i.e. for approve or otherwise), since his decision surperceeded any othher's decision. And whosoever follows him will be safe in this world and the hereafter.

2.1.3 The Development of *Fiqh* (Islamic Jurisprudence) During the Period of the Companions of the Prophet (S.A.W)

During the lifetime of the Prophet Muhammad (S.A.W.), the companions learned Islamic jurisprudence directly from him. They observed his practices and listened to his teachings, which provided the foundation for their legal rulings. Imam al-Shafi'I (1993:73) states that; The Prophet (S.A.W.) was the source of our jurisprudence, and his words and actions provided clear guidance for the companions.The period after the Prophet (S.A.W.) started with the period of the

the rightly guided Khalifs and lasted for about thirty (30) years. It commenced with Abubakar and terminated when Hasan Ibn Ali relinquished his position to Muʿawiya. Ahmad narrated from Safinah (R.A.) (Ahmad (nd:220) Vol 5 no:21969) says:

عَنْ سَعِيدِ بْنِ جُمْهَانَ عَنْ سَفِينَةَ قَالَ قَالَ رَسُولُ اللَّهِ -ﷺ- « خِلاَفَةُ النُّبُوَّةِ ثَلاَثُونَ سَنَةً ثُمَّ يُؤْتِى اللَّهُ الْمُلْكَ - أَوْ مُلْكَهُ - مَنْ يَشَاءُ ». قَالَ سَعِيدٌ قَالَ لِى سَفِينَةُ أَمْسِكْ عَلَيْكَ أَبَا بَكْرٍ سَنَتَيْنِ وَعُمَرَ عَشْرًا وَعُثْمَانَ اثْنَتَىْ عَشْرَةَ وَعَلِىٌّ ست سنين. قَالَ سَعِيدٌ قُلْتُ لِسَفِينَةَ إِنَّ هَؤُلاَءِ يَزْعُمُونَ أَنَّ عَلِيًّا عَلَيْهِ السَّلاَمُ لَمْ يَكُنْ بِخَلِيفَةٍ. قَالَ كَذَبَتْ أَسْتَاهُ بَنِى الزَّرْقَاءِ يَعْنِى بَنِى مَرْوَانَ.

> It was narrated from Sa'eed bin Jumhãn, from Safinah, who said: "The Messenger of Allah said:'The Khilafah of Prophethood will last for thirty years, then Allah will give power - or His kingdom to whomever He wills."
>
> Sa'eed said: "Safinah said to me: Calculate Abubakr's Khilafah as
>
> two years, Umar's as ten, Uthmän's as twelve, and Ali as six years." Sa'eed said: "I said to Safinah: 'They are saying that 'Ali was not a Khalifah.' He said: 'The buttocks of Barn) Az-Zarqa' are lying," meaning Banu Marwãn. (Abu Dawud 2008:182 Vol.5 No.4646)

Suyuti (1952:16), supported the the above narration of Saeed where he says:

> Scholars opined that, 30 years after the date of the demise of the Prophet (S.A.W.) covered the period of the four rightly guided Khaliphs and some days of leadership of Hassan Ibn Aliyu (R.A.).

That is to say, Abubakar's khalifate lasted for two years and three months. He was followed by ʿUmar ibn Al-Khattab who's khalifate lasted for ten years and six months and was succeeded by

Uthman, who's khalifate lasted for twelve years. He was followed by Ali ibn Abi Talib who's khalifate lasted for four years and nine months. Ali was succeeded by his son, Hasan who's khalifate lasted for about six months until he handed over the reigns of power to Mu'awiya, thus concluding the period known as the Khilafah on the Prophetic model that lasted for thirty years as predicted by the Prophet (S.A.W.) above. The four Khalifs have surely learnt Islamic jurisprudence and other matters of Islam from the Prophet Muħammad (S.A.W.) as their best teacher. They were very capable jurists but at the same time consultation (shura) played a vital role in their decision. In addition to that, this period was one that had not yet witnessed many significant changes, because new issues that required Ijtihad were considerably few.The rightly guided Khalifs (Abubakar, Umar, Uthman, and Ali) played a crucial role in the development of Fiqh. They made legal decisions based on the Qur'an, Hadith, and consultation (*shura*). According to Al-Khattabi (1997:112); During the reign of Abubakar, the principles of Islamic jurisprudence were established, with a focus on following the Qur'an and Hadith"Umar Ibn al-Khattab is particularly noted for his legal reforms and innovations. As described by Al-BukharI (2001:243).

> Umar would often consult with the people and adapt the laws based on the prevailing needs, always in line with the Qur'an and the Prophet's teachings. Uthman and Ali continued this practice, with Ali being noted for his deep knowledge and jurisprudential decisions.

However, after the death of the Prophet (peace and blessings be upon him), the people adhered to his teachings and followed the guidance of the rightly guided Khaliphs who succeeded him. The first Khaliph was Abubakar(may Allah be pleased with him) who served as a judge and issued legal rulings (*fatwas*) based on the Quran and Hadith. When he couldn't find a specific answer, he consulted the Muslim community, asking if the Prophet (peace and blessings be upon him)

had given any judgment on the matter. At times, some would confirm to him the Prophet's previous judgment on that issue, and Abubakar would express gratitude for those who memorized the Prophet's teachings. If no *Sunnah* was found, he would gather respected leaders and make decisions based on their consensus. Umar (may Allah be pleased with him) continued with this practice after the death of Abubakar.The companions of the Prophet (may Allah be pleased with them) later spread to various regions as teachers, especially after the expansion of Islamic territory. They issued fatwas based on their knowledge of the Quran, *Sunnah*, the practices of Abubakar and Umar, and their own independent reasoning (ijtihaad).

Umar (R.A.), his son (R.A.), Aisha (R.A.) and Zayd ibn Thaabit (R.A.) were in Medina, and they trained many scholars like Saalim ibn 'Abd-Allaah ibn 'Umar and Naafi'. Their knowledge eventually reached the seven jurists of Madinah (Sa'id ibn Musayyib, Urwah ibn Az-Zubair Ibn Awwam, Salim ibn Abdullah ibn Umar, Qasim ibn Muhammad ibn Abibakar,Abu-Salama ibn Abdurrahman ibn Awf, Suleiman ibn Yassar and Zaid) and to Imam Maalik ibn Anas al-Asbahi. Ibn Mas'udd and Ali taught in Kufa, passing their knowledge to Taabi'een like Alqimah, al-Aswad, Masrooq, Shurayh al-Qaadi among others, until it reached Imam Abu Hanifah al-Nu'maan ibn Thaabit.Islamic jurisprudence (fiqh) and knowledge spread throughout the Muslim community through the companions of these respected figures. This happened in different regions: Kufa, Medina, and Makkah. According to Talib (2010:158); "The companions of the Prophet spread across the Islamic empire, establishing schools of thought in cities like Medina, Kufa, and Basra."

Through these individuals, knowledge spread widely. Hadiths were compiled into books, and more students dedicated themselves to memorizing and recording them as well as propagating the knowledge. Eventually, differences emerged among the students of those Schools which

some times originated from their teacters (*Sahabas*). For example, there were some cases of inheritance that did not happened when the Prophet (S.A.W.) was alife. This brought some differences of understsnding among the companions of the Prophet (S.A.W.) in the distribution. That is why some times differences are found in their distributions of inheritance. At times Ibn Abbas's distribution might not be the same with either Zaid ibn Thabit or Aliyu Ibn Abi Talib and the rest. One of the examples of this differences found in the Companions' distribution of inheritance is "*Al-Kharqa'*(الخرقاء)". Al-Kharqa is a type of inheritance where a man died and left behind his mother, grandfather and a sister. Al-Zuhaili (nd:458 vol.10) states that:

الخرقاء : هي أم وجد وأخت، قال زيد بن ثابت ومالك والشافعي وأحمد: للأم الثلث، وما بقي يقتسمه الجد والأخت، للذكر مثل حظ الأنثيين.

وقال علي: للأم الثلث، وللأخت النصف ، وللجد ما بقي وهو السدس.

وقال ابن عباس: لا شيء للأخت، وهو مذهب أبي حنيفة.

> Al- Kharqa' (is a case of inheritance when a deceased died and left behind) mother, grandfather and a sister. Zaid Bin Thabit, Maliki, Shafi'i and Hanbali said: the mother is entitled to one-third of the estate while the grandfather and the sister should divide it according to the male has double share of a female. But Aliyu bin Abi Talib in his opinion, mother is entitled to one-third of the estate, and sister is entitled to half of the estate and the grandfather is entitled to residue of the estate. But, to Ibn Abbas the sister has nothing. This is also the opnion of Hanafi among the four *sunni* jurist.

The following examples will give the clear picture of the above quotation:

The opinion of Zaid (R.A.) based on the above quotation of al-Zuhaili (nd:458 vol.10):

	Heirs	**Share**	**Base Nuber**	**New Base Nuber**
			3	**9**
	Mother	$\frac{1}{3}$	1	3
3	Sister	R	2	2
	Grandfather			4

The above example shows that when a deceased died and left behind mother, sister and grandfather; Zaid (R.A.) opined that the mother is entitled to one-third of the whole estate, while the remaining two-third should be shared among the grandfather and the sister, at the ratio of 2 and 1 (i.e the grandfather has double share of the sister). But, 2 and cannot be divided into 3 without having point. On this, there is need for correcting the first base number, which is 3. So, the number of heads (i.e the share of grandfather is 2 and the share of sister is 1 which is =3) would be multiplied by the first base numberwhich is 3 (3×3=9), now the new base number is 9. To get the new portion for all the heirs, multiply 3 at the left handside (which is the the number of heads of grandfather and sister) with all the portions like 3×3 = 9, 3×1 = 3, 3×2 = 6, then divide 6 by 3 = 2. Then 2×2= 4(share of grandfather), 2×1 =2 (share of the sister).

The opinion of Aliyu (R.A.) based on the above quotation of al-Zuhaili (nd:458 vol.10):

Heirs	**Share**	**Portion**
		6
Mother	$\frac{1}{3}$	2
Sister	$\frac{1}{2}$	3
Grandfather	R	1

But. Aliyu (R.A.) is of the opinion that, the estate would be divided into six, themother is entitled to one-third and the sister is entitled to half of the estate and whatever remains should be taken to grandfather, as it is in the above example.

The opinion Ibn Abbas (R.A.)based on the above quotation of al-Zuhaili (nd:458 vol.10):

Heirs	**Share**	**Portion**
		3
Mother	$\frac{1}{3}$	1
Sister	-	-
Grandfather	R	2

While to ibn Abbas (R.A.), the estate would only be shared among the mother and the grandfather nothing would be given to the sister. Mother is entitled to one-third of the estate and whatever remains should go to the grandfather.

By this view the quotation and examples above, there are three opinions from the Companions of the Prophet (S.A.W.). Zaid Bin Thabit (R. A.) is of the opnion of *muqasama* (division) between grandfather and the full sister, Aliyu (R. A.) is of the opinion of taking residue by the

grandfather which is one-sixth, and Ibn Abbas (R. A.) is of the opinion that full sister should be excluded by the grandfather.

However, the opinion of Zaid Bin Thabit (R. A.) which is also the opinion of the majority of the jurists of the four Schools of law, is more moderate than the opinion of others. This is because, *muqasama* here will be better for both of them, if not, one will have double advantage on other. For instance, if the opinion of Aliyu (R. A.) is to be considered, the portion of full sister will be 3 which is the half of 6, and the grandfather will be left with one-sixth of the estate. And if the opinion of Ibn Abbas will be considered, which is the opinion of Hanafi School of law, the grandfather would exclude the full sister, and nothing will be given to her.

So, when looking at the three opinions of the Companions regarding this case of inheritance, *muqasa* between the grandfather and the full sister is better. And it is also the opinion of the majority of the jurists of the four Schools of law (Maliki, Shafi'i and Hanbali). So, this is one of the differences found in the companion's distribution of inheritance after the death of the Prophet (S.A.W.). These differences continued amoung the jurists down to the period of the four famoust Sunni jurists among others, (i.e Imam Abu Hanafa, imam Malik, Imam Shafi'i and Imam Ahmad ibn Hanbal).

2.1.4 The Development of *Fiqh* (Islamic Jurisprudence) During the Period of the Followers of the Companions of the Prophet (S.A.W) (Tab'een)

The period following the companions of the Prophet Muhammad (S.A.W.) is known as the era of the Tabi'een, or "followers of the companions." This era was crucial in the development of Islamic jurisprudence (Fiqh) as it marked the transition from the immediate post-Prophetic period to a more structured and formalized system of legal system. During this time, scholars of the Tabi'een continued to build on the foundations laid by the companions and responded to new

challenges arising from the spread of Islam.According to Imam Dhahabi (1997:12), some Prominent Scholars of the Tabi'een were:

1. Sa'id ibn Musayyib who died 94 AH: Sa'id ibn Musayyib was a leading scholar of the Tabi'een known for his deep knowledge of Hadith and Fiqh. He was based in Medina and was highly regarded for his understanding of the Qur'an and the Sunnah. According to Imam Dhahabi (1997:12), "Sa'id ibn Musayyib was one of the most knowledgeable scholars of his time who contributed a lot to Islamic jurisprudence".

2. Urwah ibn Az-Zubair (d. 94 AH): Urwah ibn Az-Zubair, a prominent scholar and jurist, was another key figure in the development of Fiqh during this period. His work included teaching and issuing fatwas based on the practices and decisions of the companions.According to Ibn Sa'ad (1990:1990:45), "Urwah was known for his insightful juristic opinions and was influential in the development of legal thought in early Islam".

During the period of the Tabi'een, scholars began to compile and systematize legal rulings and interpretations. This period saw the emergence of the first legal schools of law, which were foundational in shaping later jurisprudential developments (al-Suyuti,1983: 25).

i. The Hanafi School Founded by Abu Hanifa (d. 150 AH), the Hanafi school is one of the earliest and most influential schools of Islamic jurisprudence. Abu Hanifa's methodology emphasized reasoning and personal judgment (*Qiyas*) in the absence of clear textual evidence. Al-Khassaf (1994:82) explains that "Abu Hanifa's approach was characterized by flexibility and an emphasis on reasoned judgment".

ii. The Maliki school Founded by Malik ibn Anas (d. 179 AH), is known for its reliance on the practices of the people of Medina (Amal Ahl al-Madina) as a primary source of jurisprudence.

Ibn al-Qasim (1996:60) notes that "Malik ibn Anas' jurisprudence was deeply rooted in the practices of the Medinan community" and greatly influenced the development of Islamic legal though.

However, as the Islamic empire expanded, the Tabi'een scholars' influence spread across various regions, leading to the establishment of different schools of law. Their contributions were critical in addressing new legal issues arising from the empire's growth and ensuring that Islamic law remained relevant and applicable. According toal-Suyuti (1983: 25), "the spread of Islamic scholarship during this period laid the groundwork for the diverse jurisprudential traditions that emerged".

The period of the Tabi'een was instrumental in shaping the development of Islamic jurisprudence. Scholars of this period built upon the teachings of the companions, addressed new legal issues, and laid the foundation for the major Sunni schools of law that would follow. Their work ensured the continuity and evolution of Fiqh in response to the changing needs of the Muslim community.

2.1.5 The Development of *Fiqh* (Islamic Jurisprudence) During the Period of the Followers of the Followers of the Companions of the Prophet (S.A.W) (Tabi' al-Tab'een)

The period of the "Tabi' al-Tabi'een" (followers of the followers of the companions) represents a crucial phase in the development of Islamic jurisprudence (Fiqh). During this time, Islamic legal thought matured and became more systematized. The major Sunni schools of law (Hanafi, Maliki, Shafi'i, and Hanbali) emerged, each with distinctive methodologies and principles shaped by their founding scholars. These schools were:

1. Hanafi School: founded by Abu Hanifa (699-767 CE), significantly influenced Islamic jurisprudence. His approach emphasized reasoning and personal judgment (*ra'y*) alongside textual sources. He developed a systematic method for deriving legal rulings, incorporating analogy (*qiyas*) and consensus (*ijma*) when direct evidence from the Qur'an or Sunnah was lacking. According to Hallaq (2009:49), "Abu Hanifa was known for his emphasis on *qiyas* (analogy) and *ra'y* (opinion) in cases where textual evidence was not explicit".
2. The Maliki School: founded by Malik ibn Anas (711-795 CE) who relied much on the practices of the people of Medina (*amal Ahl al-Madina*) as a source of legal authority, alongside the Qur'an and Hadith. Malik's methodology emphasized the consensus of the Medinese community and the principle of istiḥsan (juridical preference) for legal rulings. Kamali (2003:102) states that, "Malik ibn Anas's legal theory was heavily based on the practices of the Medinese community, which he considered a reflection of the Prophet's Sunnah".
3. The Shafi'i School: the school foubde by Muhammad ibn Idris al-Shafi'i (767-820 CE) who is known for systematizing the principles of Islamic jurisprudence. His work (al-Risala) laid down the foundations for the science of Usul al-Fiqh (principles of jurisprudence), distinguishing between sources and methods of legal reasoning. Al-Shafi'i's approach emphasized the importance of the Qur'an and Sunnah, with qiyas and ijma being secondary sources. According to El-Hibri (1999:58), "Al-Shafi'i's al-Risala is a seminal work that structured the principles of Islamic jurisprudence, defining the role of the Qur'an, Sunnah, ijma, and qiyas".
4. Hanbali School: Ahmad ibn Hanbal (780-855 CE) founded the Hanbali school, which is known for its strict adherence to Hadith and a cautious use of qiyas. Ahmad ibn Hanbal's

methodology emphasized the importance of following the prophetic traditions and maintaining a conservative approach to legal reasoning. Ibn Qudamah (2009: 85) notes that, "Ahmad ibn Hanbal's jurisprudence was marked by a rigorous adherence to Hadith and a minimal use of analogy".

These Imams became well-known, and students trouped to them for learning. Their opinions were recorded in books. The Sunni schools of law rooted in the Quran and Sunnah and rejecting religious innovations (bid'ah), and were established based on the teachings of these great scholars.

Today, the four most prominent *madhhabs* are Hanafi, Maaliki, Shaafa'i, and Hanbali, with followers largely in agreement on core religious matters. But, their disagreements primarily revolve around issues that are not on Aqeedah. And there were other jurists that were not famoust as the fourmentioned above. These jurists were mentioned by Firdaus, Meirison *et al* (2018) as quoted below:

i- Abu Sa'id which is popularly known as al-Hassan al-Basri (21-110 AH): He was one of the most well-known and significant individuals among the tabi'een (the generation that followed the Prophet's death). He was a scholar and a jurist. He was a religious man who had great faith. He was renowned for his eloquence, motivational talks, knowledge and wisdom. He is Abu Sa'eed Al-Hasan Ibn Abi Al-Hasan Ibn Yasaar Al-Basri, a famous tabi'ee and scholar of the Basra.

ii- Abu Amir: Abdurrahman Ibn Umar al-Awza'I (88-157 AH): Abu Amr al-Awza'i, Abd al-Rahman ibn Amr ibn Yahmad, was born in Babalbek in 88 A.H., lived in Beirut, and passed away there in 157 A.H. He supported the *Sunnah* and regarded as

one of the Ahl al-Hadith School's jurists. His followers helped his teaching spread in the Levant and Andalusia until, in the middle of the third century A.H., the Shafi'i School of thought overwhelmed both the Imam Malik doctrine in Andalusia and the Levant.

iii- Sufyan Ibn Sa'id al-Thawri: Sufyan bin Saeed Al-Thawri Al-Kufi Al-Mujtahid was born in the year 97 A.H., and he passed away in Basra in the year 161 A.H. He is from the School of Ahl al-Hadith, and he had adherents who issued fatwas about his *madhhab*, but they did not proliferate and his taqlid did not last, therefore it disappeared.

iv- Abu al-Harith Layth Ibn Sa'ad: Al-Layth bin Saad bin Abdul Rahman Al-Fahmi, known as Imam Al-Hafiz, is an Egyptian scholar and sheikh of Islam who was born in Samraqandha in the year 94 A.H. He passed away in 175 AH. The had disagreement with Imam Malik particularly on the exaggeration of the practice of the Medinites.

v- Sufyan Ibn Uyaynah (Died 198AH) e.t.c. Sufyan ibn Uyaynah ibn Abi 'Imran Maymun was born in 120H in the Khilafah of Hisham Ibn Abdil-Malik. He was a great Imam of his time. He searches for knowledge in many countries like Abadan, Kufa, and Baghdad. He Died in the year 198 AH.

In a nutshell, the development ofSchools of Islamic jurisprudence (Fiqh Schools) started with the companions of the Prophet (S.A.W.) where there were Aisha's School of law, Ibn Abbas, Ibn Umar, e.t.c. and likewise in the generation that follows it, there were Schools of Sa'id Ibn Mussayab, Urwatu Ibn az-Zubair, Nafi' Maula Ibn Umar e.t.c. This continued generation after

generation down to the fourth generation where we had Schools of law based on the opinions of Hanafi, Maliki, Shafi' and Hanbali among others. Wah'batu ar-Ruhaili (ND:27 vol.1) states that:

> The Schools of jurisprudence started during the period of the Companions of the prophet (S.A.W.). For instance, there were Schools that were based on the opnion of Aisha (R.A.), Abdullah ibn Umar, ibn Mas'ud and others. Then during the period of the followers of the Companions, there were seven famoust Schools of jurisprudence. These were the Schools of Saeed ibn Musayyib, Urwatu bin az-Zubair, al-Qasim ibn Muhammad, Suleiman Ibn Yasar, Abdullah ibn Abdullah ibn Utbatu ibn Mas'ud and Nafi' the freed slave of ibn Umar. Among the Schools of jurisprudence of Kufa, there were Schools of Alqamah ibn Mas'ud, Ibrahim an-Nakha'I (the teacher of Hammad ibn Suleiman the teacher of Abu Hanifah). Among the Basran Schools of jurisprudence, there were School of al-Hassan al-Basri.
>
> More so, there were other jurists amoung the followers of the Companions that were not as famoust as the ones mentioned above, which include Ikrimah the freed slave of ibn Abbas, Ata' ibn Abi Rabaha, Tawus ibn Kaisan, Muhammad ibn Sireen, Aswad ibn Yazid, Masrouq ibn A'raj, Alqmah an-Nakha'I, ash-Sha'bi, Shuraih, Saeed ibn Jubair, Mak'hul al-Damashqy and Abu Idris al-Kaulani.
>
> In addition to that, from the second century up to the middle of the fourth century after hijrah, it was the golden age for sholarship. The world filled up with the light of thirteen Scholars which their Schools of law and their opinions were documented. These Scholars were Sufyan bin Uyainah at Makkah, Malik bin Anas at Madinah, Hassan al-Basri at Basrah, Abu Hanifa and Sufyan al-Thauri at Kufa, al-Auza'I at Sham, al-Shafi and Laith ibn Sa'ad at Misrah, Is'haq ibn Rahawaih at an-Naisabur, Abu thaur, Ahmad, Dawud al-Dhahiri and Ibn Jarir at-Tabri at Bagdad. But, must of these Schools only remain in books (they are no longer in existence) due to the fewer number of their follower, while others are still famoust uptill now. (Wah'batu ar-Ruhaili, ND:27 vol.1)

The above quotation made mention of some jurists and Schools that were not popular as the four sunni Schools known by the majority of the Muslims today, which are Hanafi, Maliki, Shafi'I and Hanbali Schools of law. However, a brief discussion will only be made on these four the most famoust Schools of law among others.

2.2 The Four *Sunni*Schools of Law

There are four main *Sunni* Schools of jurisprudence (Fiqh) according to *Wahbatu ar-Ruhaili* (nd:63 vol. 1). These four Schools are named after their founders. These are Imam Abu Hanifa (died 150A.H), Imam Malik (died 179A.H), Imam ash-Shafi'I (died 204A.H) and Imam Ahmad Ibn Hanba (died 241A.H)l. The School of law (*Madhhab*) means the total sum of the legal religious opinions of its original founder, his students and other scholars of the same School. But, according to Husain (2005:31), "the personal view of the founder has in certain cases been superceeded by the consensus of later jurists of the same *madhhab*". Occasionally, there may be difference in the opinions on a particular matter within the *madhab*. The founders of the Schools were recognized as the Imams of such Schools. All the four *Sunni*Schools of law agreed on the fundamental principles of Islam, they differ only on certain details. All the Imams considered the Qur'an and *Sunnah* as the Primary sources of Islamic law. According to Kamali (2003:10);

> It is very important to note that, the four *Sunni*Schools of law are opinions of the great scholars of Islam regarding the jurisprudential rulings where such rulings could not be found directly from either the Qur'an or the *Sunnah* of the Prophet (S.A.W.).

In a situation like this, Islam accepts analogy where it does not contradict either the Qur'an or the *Sunnah* of the Prophet (S.A.W) (Hallaq, 2009:65). Despite the fact that the *Sharia* of Islam is complete which needs no addition or subtraction, as Allah says:

ٱلۡيَوۡمَ أَكۡمَلۡتُ لَكُمۡ دِينَكُمۡ وَأَتۡمَمۡتُ عَلَيۡكُمۡ نِعۡمَتِي وَرَضِيتُ لَكُمُ ٱلۡإِسۡلَٰمَ دِينٗاۚ المائدة: ٣

…This day, I have perfected your religion for you, completed My Favour upon you, and have chosen for you Islam as your religion ... (Maidah,5:3)

According to Ibn Kathir (2003:30) This, indeed, is the biggest favor from Allah to this *Ummah*, for He has completed their religion for them, and they, thus, do not need any other religion or any other Prophet except Muhammad. Thas is why Allah made Muhammad the Final Prophet

and sent him to all humans and Jinn. Therefore, the permissible is what he allows, the impermissible is what he prohibits, the Law is what he legislates and everything that he conveys is true and authentic and does not contain lies or contradictions.

Islam has also given room for *Ijtihad* (analogy) for those whom are qualified to do so as a source of *Shariah*. This is due to a new case or cases that might araise in the daily activities of the Muslims which was not in existence during the life time of the Prophet (S.A.W.), and became necessity for the Muslims to use it. In a situation like this, guidance from the Islamic point of view is needed; that is where the *Ijtihad* of the Scholars came up. *Ijtihad* is not a new thing in Islam, for been that since during the life time of the Prophet (S.A.W.) the *Sahabahs* (companions of the Prophet S.A.W.) use to make *Ijtihad* in some situations in the absence of either the Prophet (S.A.W.) or solution to their problem from the Qur'an or *Sunnah* of the Prophet (S.A.W.), it is later that they met the Prophet (S.A.W.) for clarification. A good example could be seen in the *Hadith* of Ammar where he says:

فَقَالَ عَمَّارٌ : بَعَثَنِى رَسُولُ اللَّهِ –ﷺ– فِى حَاجَةٍ فَأَجْنَبْتُ فَلَمْ أَجِدِ الْمَاءَ فَتَمَرَّغْتُ فِى الصَّعِيدِ كَمَا تَمَرَّغُ الدَّابَّةُ ثُمَّ أَتَيْتُ النَّبِىَّ –ﷺ– فَذَكَرْتُ ذَلِكَ لَهُ فَقَالَ « إِنَّمَا كَانَ يَكْفِيكَ أَنْ تَقُولَ بِيَدَيْكَ هَكَذَا ». ثُمَّ ضَرَبَ بِيَدَيْهِ الأَرْضَ ضَرْبَةً وَاحِدَةً ثُمَّ مَسَحَ الشِّمَالَ عَلَى الْيَمِينِ وَظَاهِرَ كَفَّيْهِ وَوَجْهَهُ.

… Ammâr said: "The Messenger of Allah sent me on an errand and I became sexually impure. I could not find any water, so I rolled in the dust like an animal, then I came to the Messenger of Allah and told him about that. He said: 'It would have been

> sufficient for you to do like this with your hands' – then he struck the ground with his hands once, then wiped the left hand over the right, and the back of his hands and his face." (Mulim,2007 Vol;1 H818 p:475)

It is very important to note that, the Schools are in good agreement with all the essential aspects of the religion of Islam. They all acknowledge the authority of the Glorious Qur'an and the Traditions of the Prophet (S.A.W.) as the ultimate sources of the Islamic law(Kamali, 2008:23). Only in areas and situations where these two sources are silent, then the four Schools use their independent reasoning in which sometimes differ with one another based on their understanding to phinomenon. (Kamali, 2008:45).

Every recognized School of law that has existed throughout history underwent a number of stages of development, often over the course of centuries, before reaching the point where its guiding principles of derivation were established and and its legal judgments started to be rendered in accordance with them(Hallaq, 2009: 67). It was the scholars' duty to devote themselves to teaching and writing the *fiqh* of their School until it is well known, at a point all serious students of knowledge who desired to comprehend the school and its guiding principles pay more attention to these written works. (Hallaq, 2009:134).

2.2.1 Hanafi School of Law (Hanafiyyah)

This School of law was founded by Imam Abu Hanifa. Imam Abu Hanifah was one of the greatest legal scholars (*Mujtahidun*) and the first to define the processes that govern the principles of *Fiqh*. He was born in the city of Kufa, Iraq in 699 CA and lived in the city of Baghdad. His real name was Nu'man bin Thabit bin Zuta Al-Kufi. According to al-Halabi (nd:5); the most correct opinion is that he was born in the year 80 A.H. in the city of Kufa during the Khaliphate of Abdul Malik b. Marwan and died in Baghdad in 150A.H. (767C.E). He

became the most outstanding Scholar of Kufah and he was a great jurist. Husain (2005:32) narrates that;

> Imam Shafi'i's most frequently quoted comment on Abu Hanifah regarding jurisprudence. He further said; people are like depending children before Abu Hanifah. Abu Hanifa's view generally reflects the views of the jurists of Iraq. Abu Hanifa did not compose or write any book on law himself, but his numerous discussions and opinions as recorded by his disciples, form the basis of this School.

Abu Hanifa had two renowned students who also became great scholars themselves, Imam Muhammad bin al-Hassan Al-Shaybani (Died 189AH) and Imam Abu Yusuf Ya'qub bin Ibrahim (die 183AH) who were the main personalities to expound the Hanafi Fiqh. In some cases the opinion of the great Imam Abu Hanifah has been superseded by the views of his students.

This School of law was founded on the ideas of Abu Hanifa, who lived in Kufa and taught there. The teachings of Abu Hanifa were collected and structured by two of his students, Abu Yusuf (d. 219AH) and Muhammad bin al-Hassan al-Shaybani (d. 226AH). Abu Hanifa heavily favored *ra'y* (opinion), the Hanafi *madhab*, along with other *Sunni*Schools, employs *qiyas* (analogical reasoning) as a technique of legal reasoning (personal opinion).Hanafi jurisprudence is practiced in Jordan, Lebanon, Pakistan, Syria, Turkey, and the United Arab Emirates, and is still among the important Schools of law in the world today. The U*thmaniyyah* empire adopted Hanafi *Fiqh* to codify Islamic law and hence the Hanafi *Madhhab* became widespread in places like Asia and Middle East. Ahmed (2005:63) laments that:

> Abu Yusuf Ya'qub bin Ibrahim (113-183) was a chief judge and a renowned scholar of Hadith and jurisprudence who was the first to write a book in the Hanafi School of jurisprudence. Imam Muhammad bin al-Hassan Al-Shaybani (132-189) he commenced his studies under Abu Hanifa …

More so, Imam Abu Hanifah (may Allah have mercy upon him) did not leave behind the precise details of the methodology he employed in his School, nor the guidelines of how he performed

his research and juristic rulings, we do find several narrations that clarify the general guidelines that he depended upon in drawing up the founding principles of his School. Some of these narrations are provided below:

> Narrated al-Saymari and al-Khateeb al-Baghdadi on the authority of Yahya b. Durays: "I was with Sufyan when a man came to him and said: What do you hold against Abu Hanifah? He responded: 'And what is with him?' He said: "I heard him (Abu Hanifah) saying: 'I resort to the Book of Allah (for legal verdicts) and if I cannot find therein, I resort to the *Sunnah* of Allah's Messenger (peace and blessings be upon him). If I do not find it in the Book of Allah, nor the *Sunnah* of Allah's Messenger, I resort to the statements of the *sahabah*; choosing as I prefer and leaving as I prefer, but I do not leave their statements for those of others. However, if nothing is to be found from their statements and the (legal) matter comes to Ibrahim, al-Sha'bi, Ibn Sireen, al-Hasan, 'A'ta, Sa'eed b. al-Musayyab and others, then they are the people who exercised ijtihad, and I exert myself as they did.' Saymary (1995:24)

By this viewof the above quotation, Abu Hanifa and the early jurists of the School, deduced Islamic laws of Hanafi Schoolof law from the following sources, which are listed in the order of their hierarchy as in the quotation of al-Suyuti (1983: 25):

1. The Qur'an:They considered the Qur'an to be the primary source of Islamic law. In fact it was used to determine the accuracy of the other sources. Accordingly any other source that contradicted the Qur'an was considered inaccurate.
2. The Sunnah: The *Sunnah* was consulted as the second most important source of Islamic law, but with some qualification as to its use. They stipulated that it was not suffcient that a Hadith be accurate (Saheeh), but it had to be also widely known (Mash-hoor), if it was to be used as a legal proof. This condition was laid down as a safeguard against false Hadiths which were cropping up frequently in that region where only a few noexampleSahabah had settled. These were Ali and Ibn Mas'ud (may Allah be pleased with them all).

3. Ijmaa' of the Sahabah: Third in importance as a source of Islamic law was the unanimous opinion of the Sahabah on any point of law not specified in the Qur'an or the Sunnah. That is, Ijmaa' of the Sahabah on any point of law not specified in the Qur'an or the Sunnah. That is, Ijmaa' of the Sahabah was given precedence over the personal opinions of Abu Hanifa and his students in their deduction of Islamic law. The HanafiSchool of law also recognized the Ijmaa' of Muslim scholars in any age as valid and binding on Muslims.
4. Individual opinion of the Sahabah: If there were different opinions among the Sahabah on a particular point of law and no Ijmaa' was subsequently formed, Abu Hanifa would choose the opinion which appeared most appropriate to an issue.According to Moosaa (1955:62 vol.3),

> In establishing the principle of his School of law, Abu Hanifagave more weight to the opinions of the Sahabah than to his own. However, he did apply his own reasoning in a limited sense by choosing one of their various opinions.

5. Qiyaas (Analogical deduction): Abu Hanifa make his own Ijtihaad based on the principles of Qiyaas which he and his students established.
6. Istihsan (Preference): Istihsan is the preference of one proof over another proof because it appears more suiexample, even though the preferred proof may be technically weaker than the one it is preferred to. This may involve the preference of a Hadith which is specific over a general one, or it may even involve the preference of a more suiexample law over the one deduced by Qiyaas.
7. 'Urf (Locar Custom): Local customs were given legal weight in areas where there were no binding Islamic customs available. It was through the application of this principle that

various customs found in the multiplicity of cultures within the Islamic world entered the legal system and became mistakenly classified as Islamic.

2.2.2The Maliki School of Law (Malikiyyah)

Maliki School of law or Malikiyyah is founded by *Imam* Malik bin Anas (d. 795 C.E.) of Madinah. One of the most famoust scholars of *fiqh*known as *ImamDarulHijrah*. He was born 93years after *hijrah,* in a village not far away from Madinah. According to Abdurrahman (2014:26-27)

> His full name is Malik ibn Anas ibn Malik ibn Abi ‘Amir al-Aṣbaḥi. His father’s grandfather, Abu ‘Amir, is considered by some to have been one of the Companions and it is mentioned that he went on all the raids with the Messenger of Allah (S.A.W.) except Badr. As for Malik ibn Abi ‘Amir, the grandfather of the Imam, he was one of the great scholars of the Tabi‘un. He was one of those who assisted in the writing out of the noble Muṣḥaf at the time of the *Amir al-Mu’minin,* ‘Uthmān ibn ‘Affan.

Malik received his Schooling in Madinah and got in touch with many scholars to gather Hadiths. He learned a lot from the followers of the Prophet's (S.A.W.) companions (may Allah be pleased with them). During that time, the city was the main reference of scholars especially in the science of Hadith. Madina was the home of many Companions (*sahabah*) and Successors (*tabi*‘un). Malik narrated Hadith from the Successors such as Nafi‘(d.117), the freed slave of Abd Allah bin Umar, Ibn Shihab al-Zuhri (d.124) and Rabi‘ah ibn Abi Abd al-Rahman (d.136).At the age of 17, he attained *Hadith* mastery, and after receiving approval from 70 scholars, he started issuing *Fatwas*.

Imam Malik compiled the book of Al-Muwatta, a reliable collection of Hadith. There were 1,720 Ahadith in it. After getting the endorsement of 70 academics (that authorized), the work was given the name Muwatta. There have been numerous analyses of the work written. According toal-Zzahby (1985: 57 Vol.8), "Imam Shafii, Malik's nine-year-old student, described him as a

star among intellectuals." Imam Malik received his education from illustrious scholars like Hisham ibn Urwah, Ibn Shihab Al-Zuhri, and Imam Jafar Al-Sadiq, the Prophet's (peace be upon him) descendant.

Imam Bukhari asserts that there is a chain of narrators in Al-Muwattathat has just three links in the chain. And 80 narrations of the Ahadith in Al-Muwattafollow that chain. It is called the goden chain. After the Glorious Qur'an, Imam Shafi'I considered Al-Muwatta to be the most authentic literature on earth. According to*Imam*al-Zzahby (1985: 130 Vol.8) "*Imam* Malik fell ill and died on 14th of Rabiul Awwal 179 AH. Abdul Aziz Ibn Muhammad Ibn Ibraheem (Emir of Madinah) led his funeral prayers. He was buried in al- Baqee".

The Maliki School of law was founded by Imam Malik bin Anas. According to Qureshi (2020:1)

> Maliki School is one of the four Schools of fiqh or religious law within *Sunni* Islam. It is the second largest of the four Schools, followed by about 25% Muslims, mostly in North Africa and West Africa'.

ImamMalik's method of teaching was based on the narration of Hadiths and the discussion of their meanings in the context of problems of that time. He would either narrate to his students Hadiths and *Athars* (statements of the *Sahabah*) on various topics of Islamic law then discuss their implications, or he would inquire about problems which had arisen in the areas from where his students came, then narrate appropriate *Hadiths* or *Athars* which could be used to solve them.

Imam Malik preferred to depend more on the Traditions associated with the Companions of the Prophet (S.A.W.).He wrote al-*Muwatta'* which is the first book of traditions of the Prophet Muhammad (S.A.W.).After Malik completed al-Muwatta', he used to narrate it to his students as the sum total of his School of law, but would add or subtract from it slightly, whenever new

information reached him. He used to strictly avoid speculation and thus his school and its followers were also people of *Hadith (Ahl al-Hadith).*

The reputation of Malik as the leading jurists in Madina attracted many scholars from various parts of Muslim world to be his students. Through his students like Uthman bin Kinanah (d.185), Ibn Nafi‘(d.186), Abdul Malik bin al-Majishun (d.214) and Mutarraf bin Abdullah (d.220)maintained the survival of Malik’s School of law in Madina. However,Uthman and Ibn Nafi‘ succeeded as leaders within Malik’s circle after his death. Ibn Qasimwas the teacher of Sahnun (d.240), the compiler of al-Mudawwanah al-Kubra. An Andalusian jurist, Abd al-Malik Ibn habib (d. 238) learned the jurisprudence from al-Majishun and Matraf and spread the Maliki’s jurisprudence in Andalusia.

ImamMalik deduced Islamic law from the following sources which are listed in the order of their hierarchy. According to Qureshi (2020:5):

> Maliki School's sources for Sharia are hierarchically prioritized as follows: Qur'an and then trustworthy Ahadith (sayings, customs and actions of Muhammad); if these sources were ambiguous on an issue, then *`Amal Ahlul Madin*a (customs and practices of the people of Madina), followed by consensus of the *Sahabah* (the companions of Muhammad), then individual's opinion from the *Sahabah, Qiyas* (analogy), *Istislah* (interest and welfare of Islam and Muslims), and finally *Urf* (custom of people throughout the Muslim world if it did not contradict the hierarchically higher sources of Sharia).

From the above quotation of Qureshi (2020:5), the sources for law (*Sharia*) in Maliki School are as follow:

1. The Qur’an:Like all the other *Iamams*, Malik considered the Qur’an to be the primary source of Islamic law and utlized it without laying any pre-conditions for its applications.

2. The Sunnah: The Sunnah was used by *Imam*Malik as the second most important source of Islamic law, but, like Abu Hanifa, he put some restrictions on its use. If a Hadith were contradicted by the customary practice of the Madenites, he rejected it. He did not, however, insist that a Hadith be Mash-hoor (well-known) before it could be applied as Abu Hanifa did. Instead he used any Hadith that was narrated to him as long as none of the narrators were known liars or extremely weak memorizers.

3. Amal (practices) of the Madeenites:ImamMalik reasoned that since many of the Madenites were direct descendants of the *Sahabah* and Madena was where the Prophet (s.w.) spent the last ten years of his life, practices common to all Madenites must have been allowed, if not encouraged by the Prophet (s.w.) himself. Thus, ImamMalik regarded common Madenite practices as a form of highly authentic Sunnah narrated in deeds rather than words.

4. Ijma' of the Sahabah:Malik like Abu Hanifa considered the Ijmaa' of the Sahabah, as well as that of later scholars, as the third most important source of Islamic law.

5. Individual Opinion of the Sahabah:ImamMalik gave full weight to the opinions of the Sahaabha, whether they were conflicting or in agreement, and included them in his book of Hadith, al-Muwatta'. However, the consensus of the Sahabah was given precedence over individual opinions of the Sahabah. Where there was no consensus, their individual opinions were given precedence over his own opinion.

6. Qiyaas:Malik used to apply his own deductive reasoning on matters not covered by the previously mentioned sources. However, he was very cautious about doing so because of the subjectivity of such forms of reasoning.

7. Istislah (Welfare): The principle of Istihsan developed by Abu Hanifa was also applied by Malik and his students except that they called it by the name Istislah which means seeking that which is more suiexample. It deals with things which are for human welfare but have not been specifically considered by the Shari'ah. An example of Istislah is found in Khaliph Ali's Khaliphat that a whole group of people who took part in a murder were guilty even though only one of the group had actually committed the act of murder. ImamMalik also applied the principle of Istislah to deduce laws more in keeping with needs which arose from current situations than those deduced by Qiyaas.

8. Urf (Custom): Like Abu Hanifa, Malik considered the various customs of people throughout the Muslim world as possible sources of secondary laws as long as they did not contradict the Shari'ah.

9. *Sadd al-Dhariyyah* (blocking of the means):In the Maliki tradition, this principle plays a crucial role in legal reasoning and ethical decision-making. It aims to protect individuals and society from potential harm by establishing barriers against actions that, while permissible, might lead to illicit practices or undesirable results.For example, if a certain action could potentially lead to gossip or slander, the Maliki scholars might advise against that action based on the principle of Sadduzzariyyah, prioritizing the prevention of harm over the mere permissibility of the action itself.Overall, Sadduzzariyyah in the Maliki school emphasizes the importance of foresight and responsible behavior in adherence to Islamic principles, ensuring that community welfare and ethical standards are upheld.

These are the methods or sources of derivation of rules in Maliki School of law. And they are followed in hierarchical order, from the first which is the Qur'an to the last which is *Sadd al-Dhariyyah* (blocking of the means).

The spreadof Maliki School of law beyond Madina to various parts of the world was the efforts of his students who became scholars and authors in the School. These students carried out the teachings of Imam Malik and contributed to the expansion of the Maliki School to various regions. The Schools were found mostly in Arebian penusular, Egypt before the advench of Shifi'i School of law, Spain, Iraq, North and West Africa.But, unfortunately, the Maliki's school did not sustain in Madina where it's stared. According to Ibn Khaldun (1967:16 vol.3),

> The Schools were actively cultivated in Spain and North-Western Africa until the dynasties of Cordova and Qayrawan were destroyed. This includes the city of Andalusia, Qayrawan and a large part of Tunisia.

This situation is explained by the fact that most of the scholars from these areas travelled to Hijaz (Madina) to learn the Islamic knowledge, since it was the centre of religious scholarship. The school's emphasis on community practices and its practical approach to jurisprudence contributed to its popularity. Brief explanation on those branches of Maliki School of law that are found in the different parts of the World would be made.

a. Maliki School of Law ln Iraq

Thespread of Maliki School of lawin Iraq was carried out by different students of Malik ibn Anas. But, the most prominent among them were seven. These include Suleiman Ibn Bilal, Abdurrahman Ibn Mahadi, Abdullah ibn Maslamah ibn Qa'nab al-Taimi, Muhammad ibn Umar al-Waqidi, Yahya ibn Yahya ibn Bakeer an-Naisabur, Qutaibah Ibn Sa'id and Harun Ibn Abdullah az-Zuhri. According to Aliyu (2000:65):

> This School was emerged as a result of the contribution of some students of Imam Malik such as Abdurrahman bn Mahdi and others. The School popularly known as Madrasatu Ahl al-Ra'ay. The School is more of rational reasoning in *usul* and *furu'*. Among the most popular graduates of such School were al-Qadi Abul-Hassan bn al-Qassar (d.397AH) Ibn Jilaib (d.378AH) and Qadi Abdulwahab (d.422AH).

This School of Maliki's jurisprudence was highly spread in Iraq through these personalities, for been vast in both the knowledge of Hadith and that of Fiqh. So, even the prominent scholars of Maliki School of law in Iraq and Bagdad learnt from such individuals (the seven scholars mentioned above). Another reason why Maliki School was rapidely spread in Iraq was the collaborative efforts of the family of Hammad (family of wealth and knowledge) and Khaliph Ma'mun. The family of Hammad used their wealth and knowledge and Khaliph uses his affluence to spread the teachings of Maliki's jurisprudence. Qadi Isma'is Ibn Hammad was among the pionieers of Maliki School in Iraq.According to al-Tha'labi (2004:15); "he collaborative efforts of both the scholars and the Khaliph Ma'mun contributed a lot to the spread of Maliki School of law in Iraq".

Maliki's jurisprudence became dominant in Iraq as well as Bagdad due to this collaborative efforts of both the Khaliph and the family of Hammad. The distinctive feature of Malik's jurisprudence in Iraq is dependence on rational reasoning and Qiyas, as further stated by Tha'labi (2004:16); "The major difference between the Maliki School of Iraq and other Schools of Maliki is their dependence on rational reasoning and Qiyas."

b. Maliki School of Law ln Maghreb (North and West Africa)

The Maliki School of law disseminated to Magreb (North and West Africa)through some prominent students of Malik ibn Anas, such as Abd al-Rahman Ibn al-Qasim (d.191), Ashhab (d.203) and Ibn ‘Abd al-Hakam (d.214). According to Abu Zahra (2001:50)

> Ibn al-Qasim’s transmission of al-Muwatta’ was considered the soundest and his replies to Sahnun’s inquiries in al-Mudawwanah were considered the most comprehensive collection of Malik’s rulings.

In general, the works of Magreb jurists significantly influenced the dissemination of Maliki’s school since they studied in Baghdad, Qayrawan and Andalusia.In addition to that, the narration of the Egyptian jurists pertaining to Malik’s legal opinions was considered the most reliable source within the school. According to Shaharuddin (2010:55),

> The later Maliki’s jurists used to come to Egypt to hear Malik’s rulings from Ibn al-Qasim and his contemporaries. The Egyptian school was perceived as the closest to the Medinan Maliki in following Malik’s principles.

As indicated earlier, the Maliki School of law was disseminated widely and maintained for a considerable amount of time in Spain and North-western Africa. Among the earliest jurists in North-western Africa who studied under Malik was Ibn al-Qasim. He was the teacher of the two Maliki’s jurists namely Asad bin al-Furat (d.213) and Sahnun (d.240). who played vital role in developing the school’s earliest texts. As is generally known, al-Muwatta was the main reference of scholars in understanding Malik’s legal opinions. So, Asad bin al-Furat learnt al-Muwatta’ ofImam Malik, and after learning al-Muwatta; he travelled to Iraq to study with al-Shaybani of the Hanafi School of law. Then he appeared trying to produce a new doctrine for the Maliki school which followed the same style of the Hanafi’ School. He compiled issues discussed by the Hanafi School and brought them to Ibn al-Qasim. According toal-Ashqar (2007:155);

> Ibn al-Qasim responded to the issues and his answers were compiled in a text named as al-Asadiyyah. The Asadiyyah received

> mixed feedback amongst the Maliki School in Qairawan. They found that some of the answers contradicted to the well-known fatwa within the school. Sahnun brought the Asadiyyah to Ibn al-Qasim and requested him to revise the text. Ibn al-Qasim made substantial revisions while Sahnun compiled the amendments in al-Mudawwanah al-Kubra.

Since then al-Mudawwanah was widely accepted by the Maliki Schools in North-western Africa and many jurists regarded it as the second version of al-Muwatta'. Among the earliest jurists who spread Maliki's doctrine in Andalusia was Yahya bin Yahya (d.234). He narrated al-Muwatta' from Malik and after that went to Egypt to study under Ibn al-Qasim.

The dissemination of the Maliki's in Andalusia was supported by Yahya bin Yahya's influence in the government. When he died, the leadership of the school was led by Abd al-Malik Ibn Habib. He was the author of an important Maliki's jurisprudence text namely al-Wadihah in which he tried to adopt the method of Malik in al-Muwatta'. After that, al-'Utbi (d.254) who was one of Ibn Habib's students; produced arevised version of his teacher's text called as al-'Utbiyyah. According to Ibn Khaldun (1967:16),

> The people of Andalusia had concentrated on studying al-'Utbiyyah and abandoned other texts. After that, the line of succession went to Ibn Lubabah (d.314) and Ibn 'Umar al-Makwi (d.401).

Other leading figures amongst the Andalusian jurists were Ibn Abd al-Barr (d.463) and al-Baji (d.474). Ibn Abd al-Barr wrote al-Kafi fi Fiqh Ahl al-Madinah while al-Baji produced al-Muntaqa, a commentary of al-Muwatta. In the sixth century, the Malikis in Andalusia were led by Ibn Rushd al-Hafid (d.595). His work on Islamic Law namely Bidayah al-Mujtahid was recognized as one of the most important manuals in the fiqh of disagreement. This is because in his work, Ibn Rushd did not only record the opinions of jurists but also explained the reasons to their disagreement. According to al-Mami (2002:104),

> During the sixth century of the Hijri, the Maliki's school in Egypt re-emerged. It was developed by Abubakaral-Turtushi (d.520), one of al-Baji's students. The school produced a number of great Maliki jurists such as Ibn al-Hajib (d.646), al-Qarafi (d.684) and Khaleel bin Ishaq (d.768). The jurists of this school were very loyal to the legal opinions founded by the previous Maliki's.

Based on the preceding discussion, perhaps we could conclude that the main texts of the Maliki's in the second and third centuries of Hijri were al-Muwatta', al-Mudawwanah, al-Wadihah and al-'Utbiyyah. Later in the fourth century, Ibn Abi Zaid (d.310) from Qairawan produced an important book namely Nawadhir wal al-Ziyadat. The book is significant as it gathered the principles (al-usul) and the positive legal rulings (al-furu') of the previous Maliki's masters. The book became the main reference of the Maliki's until Ibn al-Hajib produced its commentary (Jami'al-Ummahat) and al-Qarafi who wrote al-Dhakhirah in the middle of the seventh century of Hijri. Ibn al-Hajib also wrote al-Mukhtasar of the book al-Tahdhib by al-Barada'i (a student of Ibn Abi Zaid). Al-Tahdhib was an abridgment of Ibn Abi Zaid's Mukhtasar li al-Mudawwanah. The work of Ibn Hajib was widely accepted by the majority of the Maliki's. In the following century (eighth), Khaleel ibn Ishaq wrote a Mukhtasar of Ibn Hajib's work. Since then, the Mukhatasar of al-Khaleel became, par excellence, the principal teaching book within the school.

The Spread of Maliki School in Nigeria

Nigeria as one of the West African countries, Maliki Schhool of law spread to West Africaas a result of different channels and factors. These include propagation activities and initiative made by Muslim rulers in bringing the Scholars close to them and making the Maliki School of law the State School of law. One of the channels that Maliki School of law spread in West Africa was set of influences of Muslim missionaries from Maroco, Egypt and Tripoli made through trade and returning pilgrims from Makkah. According to Ahmad (nd.) "Islam spread from Magreb into

sub-Saharan Africa through trade routes, the Maliki School also sread to Murtania, chad, Nigeria and other Countries of West Africa." Before the advent of the Colonial Rule to Nigeria in the 19th century, Islamic law of Maliki school was the only applicable law in the territories now the States of Northern Nigeriaand some other places in the neighboring countries. The law was applied to both private and state affairs. According to Gwandu (1988: 24):

> The Sokoto Jihad leaders were all very aware of course, that all the four Sunni Schools of law are equally accepexample and stand on equal footing. However the confusion that could arise if qadis would be allowed to base their decisions on more than one School of law would be obvious. The possibility of some qadis using that to give incompatible verdicts on identical cases brought before them is strong. In order to forestall this; Shaykh Abdullah ibn Fodio in particular insisted that all decisions of a qadi must be based not only on the Maliki School of law, but, only on the mash-hur al-madh-hab or most widely known view of the school in cases where there is more than one view.

The adoption of a School of law in Shari'ah implementation is a common historical feature across the Muslim Khaliphates, States, Emirates and Sultanates. It was not only specific to Sokoto Khaliphate. In contemporary times of today, Saudi-Arabia is a good example where Shari'ah is fully practiced on the basis of Hambali School of law. In fact, this kind of promotion or adoption of a School of law by a particular Islamic State is one of the historical factors responsible for the spread or popularity of a particular School of law in a particular place in a particular time.

Since the period of Sokoto Khaliphate and until the present day, courts rely on Maliki books on law and procedure after the Qur'an and Sunnah. According to Gwandu (1988: 24) "the books that have been in use include the following":

1. *Risalah*:by Ibn Abi Zaid Al-Qairawani and its commentaries
2. *Tuhfah al-Hukkam*:by Al-Qadi Abubakar Muhammad ibn Muhammad ibn Asim al-Andulusi al-Gharnadhi and its commentaries,

3. *Mukhtasar Khalil*:by Khalil ibn Ishaq ibn Musa ibn Shu'aib al-Jundi (d. 767 A.H),
4. *Irshad al-Salik (Askari)*:by Shihab al-Deen, Abdu al-Rahman ibn Muhammad ibn Askar al-Bagdadi,
5. *Fathu al-Ali al-Maliki*: by Shaykh Muhammad Ahmad Alish (d. 1299 A.H),
6. *Tabsirah ibn Farhun*: by ibn Farhun al- Maliki and,
7. *Al-Qawanin al-Fiqhiyyah*: by ibn Juzai (d. 741 A.H). (Gwandu; 1988: 23-24).

In addition to the above mentioned books, *Makarntun Zaure (Ilmi Schools)* in North-West Nigeria teach other books of Maliki School, such as:

i- *Al-Aka'id Al-Tauhidiyyah (Kawa'idi)*: by unknown scholar,

ii- *Mukhtasar Al-Akhdari (Ahlari)*: by Abdu al-Rahman Al-Akhdari,

iii- *Matnu al-Ashmawiyyah (Ashmawi)*: by Shaykh Abd al-Bari al-Ashmawi al-Rufa'i,

iv- *Al-Muqaddimah al-Iziyyah (Iziyya)*: by Abu al-Hassan Ali al-Maliki al-Shazali,

v- *Manzumah al-Qurtubi Fi al-Ibadat (Kurdubi)*: by Al-Shaykh Yahya Al-Qurtubi,

vi- *Nazmu Muqaddimah ibn Rushd (Ibni Rushud)*: by Abdur-Rahman Rufai,

vii- *Matn ibn Ashir (ibni Ashir):* by ibn Ashir (d. 1040 A.H):

viii- *Misbahu al-Salik*: by Shaykh Abdu al-Wasif Muhammad, and

ix- *Aqrab al-Masalik*: by Ahmad ibn Muhammad al-Dardiri (d. 1201 A.H). (Gwandu 1988: 25)

The method of teaching is an old one; a student always reads before the scholar just like children read to the teacher, and if he makes a mistake, he corrects them. The teacher or shaykh without looking at the text interprets and explains, most of the time sitting on his *buzu* (animal skin). The

order that is followed in teaching the series of books of *fiqh* differs from place to place and from school to another. The most common order is as follows:

A student is taught *"Kawa'idi"* (prose) first, followed by *"Ahlari*" (prose), then *"Ashmawi*" (prose) with *"Kurtubi"* (poem), then *"Iziyyah"* (prose) with *"Ibni Rushud*" (poem), then *"Risalah"* (prose) with *"Ibni Ashir"* (poem), then *"Misbahu al-Salik"* (prose) with *"Askari"* (prose) then *"Aqrab al-Masalik"* (prose), then at the end *"Mukhtasar Khalil"* (prose) *(Lauwali and Sani).*

This kind of syllabus and method of teaching are obtainable in most of the West African countries and Nigeria in particular. However, in the North and some part of the South, there are formal Islamic schools which are either sponsored by the government, or individuals or organizations, they are generally called *Islamiyya Schools, Arabic Schools or Islamic Schools* in the South. The syllabi of these schools on Islamic studies are based on Maliki law. Until very recently when private or community Islamic schools started to design their own curriculum of education or syllabi for pupils, or women, or men in the mosques, or *majalisai* (Centres of Learning), books on Maliki law were the only recognized materials of learning. But, now the books used in such institutions are not only based on Maliki law; they are combination of all existing and even non- existing schools, which most at times brings confusion in decision taking and rejection of Schools of law completely. (Gwandu (1988: 25)

2.2.3 *Shafi'i*School of Law (*Shafi'iyyah*)

Imam Muhammad Ibn Idris al-Shafi'i (R.A.) was a student of Imam Malik and was born in 150 A.H. (820 C.E.). At the ages of seven and ten, he memorizes the Qur'an and al-Muwatta'. The traditions of the Prophet Muhammad (peace and blessings of Allah be upon him) were highly

valued by Imam Shafi. He made the journey to Makkah to study under Imam Malik (R.A.). According to Mohammed (2017:111-112),

> Imam al-Shafi'i, born in 150 AH, is believed to have been born in Yemen or Asqalaan. He was raised in Makkah, the Holy City, by his mother, who moved there after Imam Abu Hanifah Nu'man b. Thabit's death. Imam al-Shafi'i was endowed with the language and memorized the Holy Qur'an and Muwatta of Imam Malik b. Anas. He traveled extensively, served in public office, and established his own circle of knowledge, becoming known as an independent *Mujtahid*.

As a representative of Malik (R.A.), he also traveled to Baghdad to study under Imam Muhammad Bin Hassan al-Shaybani. He learned more about the discipline of Islamic law. He later traveled to Egypt, where he passed away. The followers of Shafi'I *Madhhab* are found in Egypt, indonesia, Malaysia, Syria and so on.The residency of Imam al-Shafi'I in Iraq between the years of 195 and 199 AH enables him to lay down his *Madhab* al-*Qadeem* (the Old Juristic School), which was entirely independent of the *ijtihad* that *Imam* Malik used in his principle and substantive laws.

According to Bilal (nd:89);

> Imam Shafi'i combined the Fiqh of Hijaaz (Maliki School) with that of Iraq, (Hanafi School) and created a new School of law which he dictated to his students in the form of a book called al-*Hujjah* (The Evidence). This dictation took place in Iraq and a number of his students memorised his book and narrated it to others. This book and period of his scholarship are usually referred to as the School of law *al-Qadeem* (the old school of thought) to differentiate it from the second period to his scholarship which occurred after he reached Egypt.

In Egypt he absorbed the Fiqh of Imam al-Layth ibn Sa'd and dictated the School of law *al-Jadeed* (the new school of thought) to his students in the form of another book which he named *al-Umm* (the Essence). Because of his exposure to a completely new set of Hadiths and legal reasoning, in the School of law *al-Jadeed*, he reversed many of the legal positions which he had

held while in Iraq. Imam ash-Shafi'i holds the distinction of being the first Imam to systematize the fundamental principles of Fiqh which he recorded in his book called ar-Risaalah.

Imam al-Shafi'i was a former student of Imam Malik ibn Anas, the founder of the Malikiyyah, and he originally belonged to the MadinaSchool. The Shafi'i yyah's main centers were in Baghdad and Cairo. According to Mohammad (2017:119-119),

> Shafi'iSchool of law expanded from these two cities to diverse Islamic regions. Mecca and Madina were eventually seen as the main centers of the School outside of Egypt in the eleventh century. Jordan, Palestine, Syria, Lebanon, and Yemen are among the nations where it is practiced by a small number of people. Egypt, Indonesia, the Philippines, Brunei, Singapore, Thailand, Sri Lanka, the Maldives, and Kurds.

The Fundamental Principles of derivation in the School are also known as the Legal Theory of the Shafi'i School. According to al- Zarkashy (2000:1:7),

> Imam al-Shafi'i' (may Allah have mercy upon him) is widely regarded as the first scholar to write on the subject of *usool al-fiqh*, and his treatise on the subject is the first surviving work that has reached us.

Imam al-Shafi'i ' (may Allah have mercy upon him) therefore occupies a unique place in this area and was the only founder from among the four Schools to codify the *usool al-fiqh* of their respective School. According to Mohammad(2017:127 - 134),

> There are five principal sources of derivation of rules in Shafi'i ' School law. These are: Qur'an,Sunnah,Consensuswith regards to matters that are not found in the Qur'an or Sunnah,opinion of the Companions of the Prophet (S.A.W.) upon which there is no disagreement between them, andQiyas (Juristic Analogy).

Imam al-Shafi'i states the levels of the sources of derivation of rules in the Islamic law chronologically as:

1. The Qur'an:Shafi'i did not differ from the previously mentione Imams, in their uncompromising stand in relation to the Qur'an as the primary sources of Islamic law.

2. The Sunnah:ImamShafi'i laid down only one condition for the acceptance of Hadiths, namely that the *Hadith*should be authentic (*Saheeh*). He rejected all the other conditions set by *Imams* Abu Hanifa and Malik. He was also noted for his great contributions to the science of Hadith criticism.

3. Ijmaa': Although Imam Shafi'i had serious doubts about the possibility of the Ijmaa' in a number of cases, but, it should be regarded as the third most important source of Islamic law.

4. Individual Opinions of the Sahabah:ImamShafi'i accept the individual opinions of the Sahabah on condition that they were not at variace with each other. If there were conflicting opinions among the Sahabah on a legal point, he like Abu Hanifa, would choose whichever opinion was the closest to the source and leave the rest.

5. Qiyaas: Qiyaas was, in the Imam's opinion, a valid method for deducing further laws from the previous sources. However, he placed it last in order of importance, considering his personal opinions inferior to proofs based on the opinions of the companions.

2.2.4 HanbaliSchool of Law (Hanbaliyyah)

This School of law was founded by Imam Abu Abdullah, Ahmad ibn Hanbal al-Shaybani who was born in Baghdad in 164 A.H (780C.E.) and died in 241 A.H (855 C.E). According to Ahmad (1404:30), "Saleh (dd 265) heared his father Ahmad Ibn Hanba saying that he was born in the beging of the year 164 A.H.but hedied in the year 241 A.H." He was a great traditionalist. He studied under Imam Shafi'i. Imam Shafi'i had such a high regard for Ahmad ibn Hanbal. Abu Zahra (nd:192-195) stated that, Imam Shafi'I referred to him as "the reliable and trustworthy one" amongst his colleagues. Imam Ahmad ibn Hanbal's book the Mus'nad contains over 29,000 traditions. He had several eminent pupils including Imam Isma'il al-Bukhari and Imam Muslim.

The School was named after him. Ahmad ibn Hanbal is the inspiration behind the name of the Hanbali School of Law. Imam Ahmad bin Hanbal did not establish a separate School himself; this was rather done by his disciples and followers.The principles of Hanbali School and Shafi'i School are very similar. The majority of the followers of Hanbali *Madhhab* are found in Saudi Arabia. The followers of Hanbali School of jurisprudence insist on the literal injunctions of the Glorious Qur'an and the Hadith and are very strict in the observance of religious duties.

Although the Muslims generally apply the Islamic law according to the principles and details laid down by the four prominent illustrious jurists (Hanafi, Malik, Shafi'i and Hanbali), legal situations keep arising from time to time for which there are no clear answers to them. To cope with this changing aspect of Islamic society, particularly in the light of new facts, specialists in the field of Islamic law are asked to give their decisions using the traditional tools of legal science. Such a decision is called a *fatwa* and the religious scholar who gives this decision is called a *mufti*.Mohammad (2017:161-167)

The principles of derivation set by Imam Ahmed as explained by the jurists of the School is that, Imam Ahmad Ibn Hambal based his rulings on five sources of the Shariah. According to According to Abu Zahrah (nd:356-358) these are as follow:

> Nass (divine texts): whenever there is divine text on a rule, he would never consider anything that contradict it, *Fatawa* of the *sahabah* for which no known contrary opinion exists, If a ruling of a companion contradict another companion. Imam Ahmad would go along with the opinion that is closer to a devine text, usage of mursal and weak narrations when there is nothing on the matter that contradicts it, Qiyas (Juristic Analogy): Imam Ahmad uses analogical reasoning on necessity on a ruling when there is no either adevine text or clear explanation from his predecessors. These are the fundamental principles upon which HanbaliyyahSchool was founded.

That is to say, the sources of derivation of law in Hanbali School of law are as follow:

1. The Qur'an: There was no difference between the way Ahmad ibn Hambal approached Qur'an and that of those who preceded him. In other words, the Qur'an was given precedence over any other source under every circumstances.

2. The Sunnah: Likewise, the *Sunnah* of the Prophet (S.A.W.) occupied the number two position among the fundamental principles used by the foiunder of this school in the deduction of laws. His only stipulation was that it be Marfoo', i.e. attributed directly to the Prophet (S.A.W.).

3. Ijma' of the Sahabah: Imam Ahmad recognized the consensus of opinion of the Sahabah, and placed it in the third position among the fundamental principles. However, he disproved the claims of Ijmaa' out side the era of the Sahabah as being inaccurate, due to the vast number of scholars and their wide diffusion throughout the Muslim state. In his opinion Ijmaa' after the era of the Sahabah was impossible.

4. Individual Opinions of the Sahabah:If a problem arose in an area where the Shaabah had expressed conflicting opinions, Ahmad, like Malik, would accept all the various individual opinions. Because of that, there developed within the School of law many instances of multiple rulings for individual issues.

5. Hadith Da'eef (Weak Hadith): For a ruling on a case where none of the previous four principes offered a ready solution, the Imam used to prefer to use a weak Hadith rather than applying his own deductive reasoning (Qiyaas). However, this was on condition that the weakness of the Hadith was not due to the fact that one of its narrators was classified as a Faasiq (degenerate), as a Kadh-dhaab (liar).

6. Qiyaas: As a last resort, that is when no other major principle could be directly applied, Ahmad would reluctantly apply the principle of Qiyaas and deduce a solution based on one or more of the previous principles.

2.3 Causes of Differences of Opinions amongJurists on inheritance

Differences among Islamic jurists is common, due to either interpretation of a text or differences in the sources of law derivation. Scolars at times use to differ from one another due to individual differences in thinking, comprehension, assimilation capacity, intellect, authenticity or otherwise of a text etc. Sha'ban (2013:ii) states that,

فمن جُمْلَةِ أَسْبَابِ الْخِلَافِ بَيْنَ الْعُلَمَاءِ، الْخِلَافُ فِي صِحَّةِ الْأَخْبَارِ، فَقَدْ يَبْلُغُ الْمُجْتَهِدَ الْحَدِيثُ مِنْ طَرِيقٍ ضَعِيفٍ فَلَا يَقُولُ بِهِ، بَيْنَمَا يَكُونُ لَهُ طُرُقٌ أُخْرَى صَحِيحَةٌ فَيَعْمَلُ بِهَا غَيْرُه.

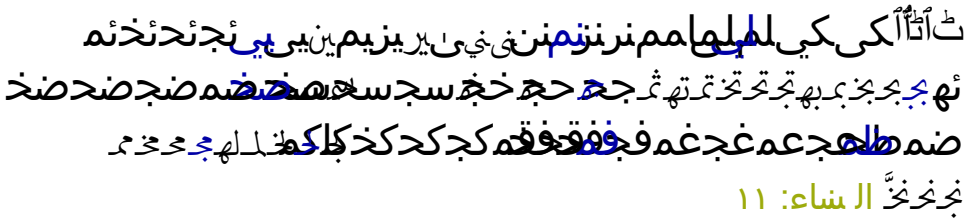
> The major cause of differences among the scholars is the authenticity of the source (hadith). For instance, a hadith that has a weak chain of narration could reach a scholar and the scholar will not work with it (due to its weakness). But, another scholar could get the hadith through a sound chain of narration and work with it.

As a result of the above, differences among the jurists in their rulings on a case maight occurr. These differences could be either due to individual differences on the level of understanding of the textual nature of either the Glorious Qur'an, the *Sunnah*, and places where the text is silent about such case. The current rise of modern hadith advocacy has presented a derogatory picture of the classical jurists and reduced their contributions to nothing more than intellectual exercises. This idea needs to be disproved. If so, the *Shari'ah* would not be appropriate or applicable to

contemporary issues for which the Glorious Qur'an and the *Sunnah* do not provide a clear resolution.

In a nutshet, the differences in the opinions of jurists regarding Islamic law of inheritance can be attributed to various factors such as differences in the understanding and interpretation of textual sources, methodologies in deriving legal rulings, and contextual considerations. Below is a detailed account of some causes of these differences between Maliki and other Schools of law like Hanafi, Shafi'I and Hanbali:

1. Interpretation of Textual Sources: The primary sources of Islamic law, the Quran and Sunnah, sometimes require interpretation of a particular case of inheritance. On this, Maliki and others (Hanafi, Shafi'I and Hanbali) Schools of law may differ in their understanding on specific terms or phrases, leading to varying legal conclusions. For instance, the Quran states that,



نجنخنخ الا نساء: ١١

> Allah commands you as regards your childrens (inheritance); to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixed shares) are ordained by Allah. And Allah is Ever AllKnower, AllWise. (an-Nisa'I, 4:11)

On this Al-Mawardi (1996:73) states that "In certain verses, the inheritance shares are explicitly mentioned, but the application to real-life scenarios requires interpretative effort. For instance, the understanding of the verse on the inheritance share of children has led to different rulings among jurists"

2. Methodologies in Deriving Legal Rulings: Jurists follow different methodologies (usul al-fiqh) in deriving legal rulings. According to Al-Sarakhsi, (1989:52):

> The differences in methodological approaches, such as the reliance on *qiyas* by the Hanafis and the use of 'amal (practice) of the people of Medina by the Malikis, have led to varying interpretations in inheritance laws as in the case of grandfather inheriting with the siblings of the deceased.

These methodologies influence how they prioritize sources and interpret evidence. For example, Hanafi School often relies on qiyas (analogical reasoning) when clear texts are not available, whereas the Maliki school places significant weight on the practice of the people of Medina as a source of law. Hanafi's opinion on the inheritance of grandfather with the siblings of the deceased personis that, grandfather should exclude them from inheritance. He is just like a father to the deceased person as well as his siblings in the absence of their father, as father excludes siblings from inheritance, grandfather do the same since he is in the position of the father based on the analogical reasoning. Maliki School of law on the other hand, followed the opinion of Zaid bin Thabit who was one of the jurists of Madinah among the companions of the Prophet (S.A.W.) on the case of inheritance of grandfather alongside siblings of the deceased. The school is of the opinion of sharing the estate with the siblings of the deceased.

3. Contextual Considerations: Jurists consider the context of the revelation and the prevailing social conditions when deriving rulings. This can lead to differences based on regional practices and the needs of the community. For example, in some regions,

customary practices might influence the interpretation and application of inheritance laws, leading to variations between different schools of law. According to Ibn Rushd (1996:68).

> The contextual background of the revelation and the prevailing customs significantly influence the juristic interpretations, leading to regional variations in inheritance laws**.**

2.4 Concept ofIslamic Law of Inheritance

Islamic law has a concept known as *faraid* or *mirath*, which governs how much of a deceased person's property is distributed to heirs in accordance with the *Sharia* (Islamic law). Muslims need to learn the knowledge of *faraid* or *mirath* if they are to comprehend their share of the legal heirs, hence learning about Faraid is essential. *Mirath* is the Islamic law of inheritance that regulates the transfer of ownership rights from the deceased to his/her entitled heirs that are alive and the portion to be inherited by each heir. According to Anbo (1992:35),

> *Mirath* is an Arabic word which is derived from waritha-yarithu-irthan and mirathan, which means, transfer of something from one person to another or from people to the other.

M*irath* (inheritance) is also means the transfer of ownership rights from the deceased to his or her heirs whom are alive, either in the form of estate (money), land or other properties which are legal according to the *Sharia*. The words *Mirath* and *Fara'idh* are sometimes used interchangeably to mean the same thing. al-Halawi (nd:75-76) explains that,

> The law of inheritance in Islam is known as fara'iḍ which describes the procedure of sharing the estate left behind by a deceased person to the heirs entitled to receive it.

The word inheritance itself can mean either the one who receives the inheritance or the transfer of estate from the deceased to the living. According to Siddiqui (2005), the study of *Mirath* in

Shariah gives rules as to who inherits and who is to be inherited and the shares to be inherited by the heirs.

This shows that when a person died, all his rights and obligations would be transfered to persons who survive him and are called *Wuratha* (heirs). That is to say, the law of inheritance includes all properties related to the assets and rights that depend on it, such as debits and credits, and compensation rights.

2.4.3 Definition of Islamic Law of Inheritance

Islamic law of inheritance is refers to al-faraid in Arabic. It concerns the distribution of a deceased person's assets (the estate) to his heirs in accordance with Allah's command in the Glorious Qur'an and in line with the hadith or tradition of Allah's Messenger. Al-Faraid, which literally translates to "fixed portions". Technically speaking, the phrase refers to the amount of shares allotted to the legitimate heirs as directed by the *Shari'ah*. According to Lahham (1421:1),

> The word Fara'id is a plural of Faridah, which means either obligatory or fixed portions, while in the technical sense means, the knowledge of shares distribution among the legitmate heirs.

That is to say, Islamic law of inheritance also known as the "Islamic law of succession" is a set of rules and guidelines, put in place by Islam to regulate how a deceased person's properties are distributed among their heirs in accordance with the teachings of the Quran and the hadith.

The major objective of Islamic inheritance law is to ensure a fair and just distribution of wealth among family members while taking into consideration, the Islamic ethical principles and social justice. The law establishes the precise shares and ratios that must be allocated to various categories of heirs, depending on their level of relationship to the deceased.Islamic law of inheritance serves as a framework for the equiexample distribution of wealth and assets after

death, and it as a crucial component of personal and financial planning. Its objectives are to protect family bonds, foster social cohesion, and assure the financial security of all family members, especially those who could be financially vulnerable.

2.4.4 Significance of the Islamic Law of Inheritance

The Islamic law of inheritance is very important in Islamic law. It shows God's commands and the detailed social values of the Muslim community. Some of the significance of Islamic law of inheritance are as follow:

i- Islamic Law of Inheritance is a Divine Order from Allah: Islamic law of inheritance is a direct command from Allah (S.W.A) as in Sura an-Nisa'I (Q4 verse 11-12).According to al-Qurtubi (2003:205) "The laws of inheritance are detailed prescriptions from Allah, and following them is a manifestation of faith and submission to His will. al". Following these laws is considered an act of worship and shows submission to Allah's will. This is important because it reflects a Muslim's faith and obedience.

ii- Social Justice and Fair Distribution: Islamic law of inheritance aim at fairly wealth distribution among heirs. Al-Mawardi (1996:145) states that, "Islamic law of inheritance ensures a fair and equitable distribution of wealth among heirs. This reflects the Islamic principles of justice and balance". This prevents a few people from becoming too rich while others get nothing. The law ensure that everyone who is eligible gets his entitled share. And this promots justice and balance in the society.

iii- Protection of Family Rights: Islamic law of inheritance protects the rights of various family members, especially those who might be vulnerable, such as orphans and women. By clearly outlining their shares of inheritance. This law ensures that everyone including those who might be overlooked, receives their rightful share. According to Al-Sarakhsi

(1989:287),"Islamic law of inheritance safeguard the rights of all family members, particularly the weaker segments like women and orphans".

iv- Promotion of Unity in the Family: By clearly defining the share of each heir in inheritance distribution, it helps in preventing disputes among family members. Ibn Rushd (1996:312) states that,"the clear guidelines provided by Islamic law of inheritance helps in minimizing disputes and promoting family cohesion". This is because, when everyone knows what he/she entitled to, it reduces the chances of having conflict in the family. And this will also promote harmony within the family.

v- Economic Stability: Islamic inheritance laws ensure the systematic transfer of wealth from one generation to the next. This contributes to the economic stability of the Muslim community by making sure that wealth is not lost but continues to support the family and the community. According to al-Shafi'I (1993:198), "The inheritance system in Islam ensures economic continuity and stability within the Muslim society".

Islam places a lot of importance on inheritance. It is regarded as a crucial component of Islamic law.The Prophet (S.A.W.) predicted the disappearance of this knowledge as reported in the hadith of Abu Huraira where he reported to have said:

عَنْ أَبِي هُرَيْرَةَ قَالَ : قَالَ رَسُولُ اللهِ صَلَّى الله عَلَيْهِ وسَلَّمَ :
يَا أَبَا هُرَيْرَةَ تَعَلَّمُوا الْفَرَائِضَ وَعَلِّمُوه ، فَإِنَّهُ نِصْفُ الْعِلْمِ وَهُوَ
يُنْسَى ، وَهُوَ أَوَّلُ شَيْءٍ يُنْزَعُ مِنْ أُمَّتِي.

It was narrated from Abu Hurairah that the Messenger ofAllah said: "0 Abu Hurairah Learn about inheritance and teach it, for it is half of knowledge, but it will be forgotten. This ist . first thing that will betaken from my nation.'" (Ibn Majah 2007:17-18 Vol. 2 no.2719).

Qur'an included women to be among the recipients of an inheritance when a Muslim dies to be amongst the specified heirs to enjoy what the deceased left behind. The following are listed in the Gloriuos Quran as being the heirs of the deceased: mother, father, husband, wife, daughter, uterine brothers, full sister, uterine sister, and consanguine sisters. (Nisa'I, 4:11-12).

Prophet Muhammad (PBUH) encouraged Muslim to learn about the knowledge of Islam law of inheritance and teach it, where he says:

أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ تَعَلَّمُوا الْقُرْآنَ وَالْفَرَائِضَ وَعَلِّمُوا النَّاسَ فَإِنِّي مَقْبُوضٌ.

> Abü Hurairah narrated that the Messenger of Allah said: "Learn the laws of inheritance and the Qur'an, and teach the people, for I am a mortal. (Tirmizi 2007:157 vol.4 no. 2091).

The Islamic law of inheritance is important because it represents obedience to Allah, ensures fair distribution of wealth, protects family rights, promotes family unity, and maintains economic stability. Each of these aspects plays a crucial role in the social and economic structure of the Muslim community.

2.4.1. Inheritance in Arabs Civilisation before Islam

In the *Jahiliyyah* period, the Arabian settlement was based on clans, that is to say each tribe had its own settlement. This made it difficult to do away with raid and fight in taking advantage on one clan or the other. This could be the reason why inheritance in those days was only been given to those who can fight to defend the clan from external attacks, or rear animals to provide food or any financial support to the family. According to Uthaimin in Tibyan (2008:47) Arabs in the ignorance period (*Jahiliyyah*) denied females and children from inheritance. They said ‘inheritance is only for those who can fight to defend the clan or rear animals’. To them, females

were not entitled for inheritance rather; they were also included in the estate to be inherited by the adult men in the family. Allah (S.W.T.) explaines this by saying:

ٹ ٹ ٹ ٹ ئم ئه بج بح بخ بم به تج تح تخ تم . . . فحال سناء: ١٩

…O you who believe! You are forbidden to inherit women against their will, and you should not treat them with harshness… (al-Nisa', Q4:19).

According to Imam al- Bukhari, this verse was revealed do to the old tradition of Arabs, when someone dies in a family, the family of the deceased have right on her more than her family, as in the following Hadith of Ibn Abbas:

حَدَّثَنَا مُحَمَّدُ بْنُ مُقَاتِلٍ ، حَدَّثَنَا أَسْبَاطُ بْنُ مُحَمَّدٍ ، حَدَّثَنَا الشَّيْبَانِيُّ ، عَنْ عِكْرِمَةَ ، عَنِ ابْنِ عَبَّاسٍ قَالَ الشَّيْبَانِيُّ وَذَكَرَهُ أَبُو الْحَسَنِ السُّوَائِيُّ ، وَلاَ أَظُنُّهُ ذَكَرَهُ إِلاَّ ، عَنِ ابْنِ عَبَّاسٍ {يَا أَيُّهَا الَّذِينَ آمَنُوا لاَ يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرْهًا ، وَلاَ تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ} قَالَ كَانُوا إِذَا مَاتَ الرَّجُلُ كَانَ أَوْلِيَاؤُهُ أَحَقَّ بِامْرَأَتِهِ إِنْ شَاءَ بَعْضُهُمْ تَزَوَّجَهَا وَإِنْ شَاؤُوا زَوَّجُوهَا وَإِنْ شَاؤُوا لَمْ يُزَوِّجُوهَا فَهُمْ أَحَقُّ بِهَا مِنْ أَهْلِهَا فَنَزَلَتْ هَذِهِ الآيَةُ فِي ذَلِكَ.

Narrated Ibn 'Abbas regarding the Qur'anic Verse:

"0 you who believe! You are forbidden to inherit women against their will.....(V.4:19) The custom (in the Pre-Islãmic Period of Ignorance) was that if a man died, his relatives used to have the right to inherit his wife; and if one of them wished, he could marry her, or they could marry her to somebody else, or prevent her from marrying if they wished, for they had more right to dispose of her than her own relatives. Therefore this (above mentioned) Verse

> was revealed concerning this matter. (Bukhari 1997:63 Vol.9 no. 6948)

Likewise, children that cannot rear animals or fight even if they are males due to either under aged, old age or deformity will be denied from inheritance. That was the reason why Sathi and Salman (nd:15) said:

> Arabs at the time of Jahiliyyah set some conditions before one would be regarded as eligible inheritor of a deceased. These are either a biological child to the deceased and can take weapon to defend the family or rear animals, or an adopted child to the deceased (i.e to make someone's child your child, like in the case of Zaid bn Thabit and Muhammad S.A.W. before the coming of Islam), or by making a covenant between two people (an oath will be taking by them on inheriting whoever dies first before the other. So, as he dies, all his estate will be moved instantly to that person who is alive).

So, when look at the conditions of inheritance in Arabs before the coming of Islam, we realize that theirs was full of injustice for been that females were denied from inheritance after the death of their fathers, husbands or brothers, in fact the worst part of it was to even be included in the estate to be inherited by others. More so, children that need support from their elderly ones after the death of their father will also be denied by their elders from the inheritance, while adopted child and a man whose oath was taken between him and the deceased person, will be included among the beneficiaries of the inheritance. This is really an injustice because, how can a legitimate heir be denied and illegitimate person be benefited from the inheritance.

However, this method of inheritance where two people would make an agreement that, whoever died first will be inherited by the other who is alive was reformed by Islam in the verse where Allah (S.W.T.) says:

ٹ ٱ ٲ ٱ سخ صح صخ صم ضج ضح ضخ ضم طح ظم عج عم عّجَ غم فج فح فخ فم قح قم كج

ال نساء: ٣٣

> …To those also with whom you have made a pledge (brotherhood), give them their due portion (by Wasiya wills, etc.). Truly, Allah is Ever a Witness over all things. (Nisa' 4:33)

Accoding to Qurtubi (1964:166) 'Arabs before the coming of Islam used to take a pledge between themselves by saying; my blood is you blood, my wealth is your wealth, my war is your war, my peace is your peace, I will inherit you, you will inherit me, etc. in this regard, whoever dies first

$\frac{1}{6}$of his wealth would be taken by the other who is alife. But, this ruling was also been abrogated by the above mentioned verse.

2.4.2. Inheritance in the Early Days of Migration

When the atrocities of Arabs reached its peak, such as burying their biological female children alive, taking intoxicant substances, free access to adultery and fornication, homosexual, raid by the stronger clan, denial of inheritance to the weak heirs (female and children) by their siblings etc; Allah (S.W.T.) sent his Messenger to his servants in order to guide them to His right way. It is obvious that, Allah (S.W.T.) takes gradual processes in establishing his laws, which Islamic law of inheritance was not left out. Before the migration (hijrah) of the Prophet (S.A.W.) to Madinah, the Muslims were still practicing their olden method of inheritance until after the migration when this verse was revealed:

ﭧ ﭐ ﭨ ﭐﲁ ﲂ ﲃ ﲄ ﲅ ﲆ ﲇ ﲈ ﲉ ﲊ ﲋ ﲌ ﲍ ﲎ ﲏ ﲐ ﲑ ﲒ ﲓ ﲔ ﲕ ﲖ ﲗ ﲘ ﲙ ﲚ ﲛ ﲜ ﲝ
ﲞ ﲟ ﲠ ﲡ ﲢ ﲣ ﲤ ﲥ ﲦ ﲧ ﲨ ﲩ ﲪ ﲫ ﲬ ﲭ ﲮ ﲯ ﲰ ﲱ ﲲ ﲳ ﲴ ﲵ ﲶ
الأنفال: ٧٢

> Verily, those who believed, and emigrated and strove hard and fought with their estate and their lives in the Cause of Allah as well as those who gave (them) asylum and help, - these are (all) allies to one another. And as to those who believed but did not emigrate (to you O Muhammad SAW), you owe no duty of protection to them

until they emigrate, but if they seek your help in religion, it is your duty to help them except against a people with whom you have a treaty of mutual alliance, and Allah is the AllSeer of what you do. (Anfal 8:72)

With regard to the above verse, Ibn Kathir (2003:362) says: "the Prophet (S.A.W.) established brotherhood amongst his companions, which made them to inherit one another." That is to say, the companions took their brothers in Islam more than their blood relatives even if they too accepted the religion of Islam. But, this was later abrogated by the following verse:

ﭑﭒﭓﭔﭕﭖﭗﭘﭙﭚﭛﭜﭝﭞﭟﭠﭡﭢﭣﭤﭥﭦﭧﭨﭩﭪﭫﭬﭭﭮﭯﭰﭱ

النساء: ٣٣

And to everyone, We have appointed heirs of that (estate) left by parents and relatives. To those also with whom you have made a pledge (brotherhood), give them their due portion (by Wasiya wills, etc.). Truly, Allah is Ever a Witness over all things. (An-Nisa'4:33)

Narrated Ibn 'Abbas regarding the Glorius Verse:

عَنْ ابْنِ عَبَّاسٍ: قَالَ كَانَ الْمُهَاجِرُونَ حِينَ قَدِمُوا الْمَدِينَةَ يَرِثُ الْأَنْصَارِيُّ الْمُهَاجِرِيَّ دُونَ ذَوِي رَحِمِهِ لِلْأُخُوَّةِ الَّتِي آخَى النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بَيْنَهُمْ فَلَمَّا نَزَلَتْ (وَلِكُلٍّ جَعَلْنَا مَوَالِيَ) قَالَ نَسَخَتْهَا (وَالَّذِينَ عَاقَدَتْ أَيْمَانُكُمْ).

When the emigrants came to Al-MadIna, the Ansãr used to be the heir of the emigrants (and vice versa) instead of their own kindred by blood (*Dhawil-Arham*), and that was because of the bond of brotherhood which the Prophet (S.A.W.) had established between them, i.e., the Ansãr and the emigrants. But when the above verse was revealed, the order was cancelled, i.e.: "...To those also with whom you have made a pledge (brotherhood), give them their due portion (by Wasiya - wills). [Khan M. M. (1997). Bukhari vol.8 :392-393; 6747]

Allah (S.W.T.) has abrogated the rulings of inheritance between the *Ansar* and the emigrants (and vice versa), even though it was in operation at the initial stage. This was before the conquest of Makkah. But, after the conquest; the following verse was revealed:

ﭑﭒﭓ جحجخجسجسحسخصحصخصمضجضحضخضمطحظمعجعمغجغمفج
فحفخفمقحقمكجكحكخكل: ٦

> … And blood relations among each other have closer personal ties in the Decree of Allah (regarding inheritance) than (the brotherhood of) the believers and the Muhajiroon (emigrants from Makkah, etc.), except that you do kindness to those brothers (when the Prophet SAW joined them in brotherhood ties). This has been written in the (Allah's Book of Divine) Decrees (AlLauh AlMahfooz). (Ahzab 33:6)

Inheritance as a result of emigration was abrogated amongst the companions of the prophet (S.A.W.). The brotherhood ties established by the prophet (S.A.W.) between *Ansar* and *Muhajirun* made the *Ansar* to share their farms, houses, shops and even wives after they were divorced for the *muhajirun* to marry. But, subsequently the above verse was revealed to show that the ruling has been abrogated. The blood relatives are closer in regard to the inheritance than the brotherhood of the believers, as explained in the above verse.

2.4.5 Qur'anic Verses on Inheritance

There following are some of the qur'nic verses showing how inheritance should be distributed.

These verses are as follow:

ﭑﭒﭓ كىكيلملىليمامم نرنزنمنن ىٰير يزيم ين يى يي ئج ئح ئخ ئم
ئه بج بح بخ به تج تح تخ تم ته ثم جح جم حج حم خج سج سح سخ صح صخ صم ضج ضح ضخ
ضم طح ظم عج عم غج غم فج فح فخ فم قح قم كج كح كخ كل كم
لج لح لخ لم له مج مح مخ مم مى مي نج نح نخ نم نى ني هج هم هى هي يج يح يخ
يم يى ذٰ رٰ ىٰ ٌّ ٍّ َّ ُّ ِّ ّٰ ئر ئز ئم ئن ئى ئي بر بز بم بن بى بي تر تز تم تن تى تي ثر ثز ثم ثن
ثى ثي فى في قى قي كا كل كم كى كي لم لى لي ما مم نر نز نم نن
ىٰ ير يز يم ين يى يي ئج ئح ئخ ئم ئه بج بح بخ به تج تح تخ تم ته الـنساء: ١١ - ١٢

> Allah commands you as regards your childrens (inheritance); to the male, a portion equal to that of two females; if(there are) only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixedshares) are ordained by Allah. And Allah is Ever AllKnower, AllWise.
>
> 12. In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is afourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets asixth; but if more than two, they share in a third; after payment of lagacies he (or she) may have bequeathed or debts, so that no loss is caused(to anyone). This is aCommandmentfrom Allah; and Allah is Ever AllKnowing, MostForbearing. (an-Nasa'I, 4:11 – 12)

According to Ibn Kathir (2003), the verses were revealed as a result of the visit paid to Jabir Ibn Abdullah by the Prophet (S.a.w.) when he failed sick. According to Jabir 'Allah's Messenger came visiting me on foot with Abubakr at Banu Salamah's (dwellings), and the Prophet found me unconscious. He asked for some water, performed ablution with it, then poured it on me, and I regained consciousness. I said, `What do you command me to do with my money, O Allah's Messenger?' the the verse (4:11) later revealed. This is the narration of

Bukhari. But, in the narration of Ahmad, the reason for the revelation of the verse was as a result os the wife of Sa`d bin Ar-Rabi that came to Allah's Messenger and said to him, these are the two daughters of Sa`d bin Ar-Rabi, who was killed as a martyr at Uhud. Their uncle took their money and did not leave anything for them. They will not be married unless they have money.' The Messenger said, `Allah will decide on this matter.' The Ayah about the inheritance was later revealed and the Messenger of Allah sent word to their uncle commanding him, to give two-thirds (of Sa`d's money) to Sa`d's two daughters and one eighth for their mother, and whatever

is left is yours."

The verse went further to discuss the portions of the heirs in inheritance. The verse says: Allah commands you for your children's (inheritance): to the male, a portion equal to that of two females;

Allah commands: observe justice with your children. The people of Jahiliyyah used to give the only males children, but nothing for the females children, as far regard to the share of inheritance. Therefore, Allah commands that both males and females take a share in the inheritance, although the portion of the males is twice as much as that of the females. There is a distinction because men need money to spend on their dependants, commercial transactions, work and fulfilling their obligations. Consequently, men get twice the portion of the inheritance that females get.

Another verse says:

ٹ ٹ ٹ ٹ ڤ ڤ ڤ ڤ ڦ ڦ ڦ ڦ ڄ ڄ ڄ ڄ ڃ ڃ ڃ ڃ چ چ چ چ ڇ ڇ ڇ ڇ ڍ ڍ ڌ ڌ ڎ ڎ ڈ ڈ ژ ژ ڑ ڑ ک ک ک ک گ گ گ گ ڳ ڳ ڳ ڳ ڱ ڱ ڱ ڱ ں ں ڻ ڻ ۀ ۀ ہ ہ ھ ھ ھ ھ ے ے ۓ ۓ ﮀ ﮀ ﮁ ﮁ ﮂ ﮂ ﮃ ﮃ ﮄ ﮄ ﮅ ﮅ ﮆ ﮆ ﮇ ﮇ ﮈ ﮈ ﮉ ﮉ ﮊ ﮊ ﮋ ﮋ ﮌ ﮌ ﮍ ﮍ ﮎ ﮎ ﮏ ﮏ ﮐ ﮐ ﮑ ﮑ ﮒ ﮒ ﮓ ﮓ ﮔ ﮔ ﮕ ﮕ ﮖ ﮖ ﮗ ﮗ ﮘ ﮘ ﮙ ﮙ ﮚ ﮚ ﮛ ﮛ ﮜ ﮜ ﮝ ﮝ ﮞ ﮞ ﮟ ﮟ ﮠ ﮠ ﮡ ﮡ ﮢ ﮢ ﮣ ﮣ ﮤ ﮤ ﮥ ﮥ ﮦ ﮦ ﮧ ﮧ ﮨ ﮨ ﮩ ﮩ ﮪ ﮪ ﮫ ﮫ ﮬ ﮬ ﮭ ﮭ ﮮ ﮮ ﮯ ﮯ ﮰ ﮰ ﮱ ﮱ ﯓ ﯓ ﯔ ﯔ ﯕ ﯕ ﯖ ﯖ ﯗ ﯗ ﯘ ﯘ ﯙ ﯙ ﯚ ﯚ ﯛ ﯛ ﯜ ﯜ ﯝ ﯝ ﯞ ﯞ ﯟ ﯟ ﯠ ﯠ ﯡ ﯡ ﯢ ﯢ ﯣ ﯣ ﯤ ﯤ ﯥ ﯥ ﯦ ﯦ ﯧ ﯧ ﯨ ﯨ ﯩ ﯩ

ال نساء: ١٧٦

> They ask you for a legal verdict. Say:"Allah directs(thus) about AlKalalah (those who leave neither descendants nor ascendants as heirs). If it is a man that dies, leaving a sister, but no child, she shall have half the inheritance. If (such a deceased was) a woman, who left no child, her brother takes her inheritance. If there are two sisters, they shall have two- thirds of the inheritance; if there are brothers and sisters, the male will have twice the share of thefemale.(Thus) does Allah makes clear to you (His Law) lest you go astray. And Allah is the All-Knower of everything. (an-Nisa'I, 4:176)

According to Ibn Kathir (2003) this verse is referring to the man who dies leaving behind neither descendants nor ascendants, as is apparent for those who contemplate its meaning. This is because when there is a surviving parent, the sister does not inherit anything, let alone half of the inheritance. These are the verses that explain the distribution of Islamic law of inheritance.

2.4.6.Difference Between Inheritance, Wasiyyah And Gift

Inheritance is the estate left behind by a deceased which is to be inherited by his/her eligible heirs. And the sharing formular to be used is prescribe by the Almighty Allah. So, the owner of the wealth has no right to make any change or share the property before his/her death. There are also some rights to be considered before sharing the estate. These rights include *'Wassiyyah*" (Will), which is to be deducted before inheritance is shared amongthe heirs. Allah says:

ٹ ٹ ٹ...

عج عم غج غم فج فح فخ فم قح قم كج كح كخ كل كم لج لح لخ نخ نم نه

الشاء: ١١

> (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixedshares) are ordained by Allah. And Allah is Ever AllKnower, AllWise.

In this verse, Allaah lays down the legislation for how inheritance is to be distributed. Then, He legislates that the inheritance is to be distributed after any *wasiyyahs* (Willsl) or debts. In the next verse as well, Allaah repeats this same distinction three more times.

The tradition of Arabs before coming of Islam was that, only the children of the deceased are entitled for inheritance. But, parents have nothing to inherit from the property left by their child. They only inherit if their child made a will for them before his death. The following Hadith elaborates on that:

حَدَّثَنَا مُحَمَّدُ بْنُ يُوسُفَ عَنْ وَرْقَاءَ ، عَنِ ابْنِ أَبِي نَجِيحٍ ، عَنْ عَطَاءٍ ، عَنِ ابْنِ عَبَّاسٍ ، رَضِيَ اللَّهُ عَنْهُمَا ، قَالَ : كَان الْمَالُ لِلْوَلَدِ وَكَانَتِ الْوَصِيَّةُ لِلْوَالِدَيْنِ فَنَسَخَ اللَّهُ مِنْ ذَلِكَ مَا أَحَبَّ فَجَعَلَ لِلذَّكَرِ مِثْلَ حَظِّ الأُنْثَيَيْنِ وَجَعَلَ لِلأَبَوَيْنِ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسَ وَجَعَلَ لِلْمَرْأَةِ الثُّمُنَ وَالرُّبْعَ وَلِلزَّوْجِ الشَّطْرَ وَالرُّبُعَ.

> Narrated Ibn 'Abbas(R.A) The custom (in olden days) was that the property of the deceased would be inherited by his offspring; as for the parents (of the deceased), they would inherit by will of the deceased. Then Allah cancelled from that custom whatever He wished and fixed for the male double the amount inherited by the female, and for each parent a sixth (of the whole legacy) and for the wife an eighth or a fourth and for the husband a half or a fourth. (Bukhari, 1997:19 vol.4 no, 2747)

Wasiyyah (Will) according to Samraqandy (1984:206), "is a man giving a gift from his wealth to another after his death, while gift is given before the deceased's death." But, this Will is only be entitled to someone who is not among the heirs of the deceacsed. This is because, the Prophet

(S.A.W.) forbids Muslims from making a Will to their inheritors, and if such is made would not be approved. The Prophet (S.A.W.) was reported to have said:

حَدَّثَنَا عَبْدُ اللَّهِ حَدَّثَنِي أَبِي ثَنَا أَبُو الْمُغِيرَةِ ثَنَا إِسْمَاعِيلُ بْنُ عَيَّاشٍ حَدَّثَنَا شُرَحْبِيلُ بْنُ مُسْلِمٍ الْخَوْلَانِيُّ قَالَ سَمِعْتُ أَبَا أُمَامَةَ الْبَاهِلِيَّ يَقُولُ سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فِي خُطْبَتِهِ عَامَ حَجَّةِ الْوَدَاعِ: إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لِوَارِثٍ وَالْوَلَدُ لِلْفِرَاشِ وَلِلْعَاهِرِ.

> It was reported from AbU Umãmah, that he said: "I heard the Messenger of Allah saying: Verily Allaah has given every person his true rights, so there can be no wasiyyah (bequethal) for a waarith (one who receives irth), and the child is for the (owner of the) bed, and the fornicator gets the stone (ie. Nothing. (Abu Dawud 2008:417 vol.3 no.2870)

Here the Messenger (S.A.W) forbids the one who receives inheritance from also receiving a wasiyyah. So, *wasiyyah* is that which is given to someone according to the wishes of the deceased. It could be expressed verbally or in writing, and then it is witnessed. But, the maximum percentage permitted is 1/3 of the total estate, with the remaining 2/3 of the assets to be shared according to the Shariah. The following hadith will buttress on that:

عَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ ، رَضِيَ اللَّهُ عَنْهُ، قَالَ جَاءَ النَّبِيُّ ﷺ يَعُودُنِي وَأَنَا بِمَكَّةَ وَهْوَ يَكْرَهُ أَنْ يَمُوتَ بِالأَرْضِ الَّتِي هَاجَرَ مِنْهَا قَالَ يَرْحَمُ اللَّهُ ابْنَ عَفْرَاءَ قُلْتُ يَا رَسُولَ اللهِ أُوصِي بِمَالِي كُلِّهِ قَالَ : لاَ قُلْتُ فَالشَّطْرُ قَالَ : لاَ قُلْتُ الثُّلُثُ قَالَ فَالثُّلُثُ وَالثُّلُثُ كَثِيرٌ إِنَّكَ أَنْ تَدَعَ وَرَثَتَكَ أَغْنِيَاءَ

خَيْرٌ مِنْ أَنْ تَدَعَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ فِي أَيْدِيهِمْ وَإِنَّكَ مَهْمَا أَنْفَقْتَ مِنْ نَفَقَةٍ فَإِنَّهَا صَدَقَةٌ حَتَّى اللُّقْمَةُ الَّتِي تَرْفَعُهَا إِلَى فِي امْرَأَتِكَ وَعَسَى اللَّهُ أَنْ يَرْفَعَكَ فَيَنْتَفِعَ بِكَ نَاسٌ وَيُضَرَّ بِكَ آخَرُونَ وَلَمْ يَكُنْ لَهُ يَوْمَئِذٍ إِلاَّ ابْنَةٌ.

Narrated Sa'd bin Abi Waqqa The ProphetJ, came visiting me while I was (sick) in Makkah, ('Amir the subnarrator said, and he disliked to die in the land whence he had already migrated). He (i.e., the Prophet) said, "May Allah bestow His Mercy on Ibn 'Afrã' (Sa'd bin Khaula) ." I said, "0 Allah's Messenger! May I will all my property (in charity)?" He said, "No." I said, "Then may! will half of it?" He said, "No." I said, "One-third?" He said, "Yes, one-third, yet even one-third is too much. It is better for you to leave your inheritors wealthy than to leave them (poor) begging others, and whatever you spend for Allah's sake will be considered as a chariexample deed, even the handful of food you put in your wife's mouth. Allah may lengthen your age so that some people may benefit by you, and some others be harmed by you At that time Sa'd had only one daughter. (Bukhari, 1997:16-17 Vol.4 no.2742)

With regards to a Muslim who makes a *wasiyyah* for the benefit of a non-Muslim, the jurists have different opinions on its permissibility or otherwise. According to Sahnun (d 854AH) in his popular book called al-Mudawwanatu al-Kubra:

قُلتُ: أَرَأَيْتَ مُسْلِمًا أَوْصَى إِلَى ذِمِّيٍّ، أَيَجُوزُ ذَلِكَ أَمْ لَا؟
قَالَ: قَالَ مَالِكٌ: لَا تَجُوزُ الْوَصِيَّةُ إِلَيْهِ.

I asked (abu Zaid al-Qirawani) on the permissibility of a Muslim making a Will to a non Muslim. He says Malik said "it is not permmisable for him (a Muslim).

Zaila'iy (743d) (one of the jurists of Hanafi School of law who died 743 A.H.) was asked about the permissibility of making a Will to non Muslim:

أَيَجُوزُ أَنْ يُوصِيَ الْمُسْلِمُ لِلْكَافِرِ؟ لَا يَنْبَغِي أَنْ يُوصِيَ لَهُمْ وَإِنْ فَعَلَ ثَبَتَ الْمِلْكُ لَهُمْ.

> Is it permissible to a Muslim to make a Will to a non Muslim? He replyed that is not allowed to make it for them. But, would be approved if it is already been made. Zaila'iy (743d:140 vol.18).

On the contrary, imam Annawawi as one of the jurists of Shafi'i School of law has an opinion which is contrary to the previous jurists. In his opinion says:

فَأَمَّا الْوَصِيَّةُ لِلْكَافِرِ فَجَائِزَةٌ ذِمِّيًّا كَانَ أَوْ حَرْبِيًّا.

According to Nawawi (476:415 vol.15), making Will to a non-Muslim is allowed.
According to Ibn Qudamah (2009) who was among the prominants jurists in Hanbali School of law says:

وَتَصِحُّ الْوَصِيَّةُ لِلذِّمِّيِّ لِمَا رُوِيَ أَنَّ صَفِيَّةَ زَوْجَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَوْصَتْ لِأَخِيهَا بِثَلَاثِمِائَةِ أَلْفٍ وَكَانَ يَهُودِيًّا وَلِأَنَّهُ يَجُوزُ التَّصَدِيقُ عَلَيْهِ فِي الْحَيَاةِ فَجَازَ بَعْدَ الْمَمَاتِ.

> Will is permitted to be made to a non-Muslim because, Safiyyah (the wife of the Prophet S.A.W.) made a Will of 300,000 to her brother who was a Jew (non musLims). This is beacue, Islam has permitted to give him (non Muslims) a gift when you are a live, that is why is also permitted after death. (ibn Qudamah (2009:267 vol,2)

Baihaqy (1344AH:281 vol.6 no. 13027) reports the full Hadith of Safiyyah on the permissibility of a Muslim making a Will to non Muslim.

This hadith clearly stated the permissibility of a Muslim making a Will to a non Muslim, since he/she has no right to inherit the property of a Muslim no matter how close they were. Like wise a Muslim takes a Will from a non Muslim so long as the *wasiyyah* is not on something haraam in itself (for example, to be given a Muslim alchohol, pig etc after his death).

When looking at the three opinions above, on the permissibility or otherwise of a Muslim making *Wasiyyah* (Wills) to a non Muslim, those who permitted it have some Hath backing their opinion. Under Islamic law, gift are done by persons with legal capacity. And also, gift takes place when one is alife and under normal condition and not sick, with a sickness during which it is feared that hemight die. In such case, it is permissible for you to gift your property to your son, daughter, and wife. But, despite the fact that Islam allows you to give a gift even to your children and wives, you are obliged to be just between your son and your daughter because the Prophet (S.A.W.) asks us to be just among our children when gifting them. Imam Bukhari narrated a Hadith in his book saying:

عَنْ عَامِرٍ قَالَ : سَمِعْتُ النُّعْمَانَ بْنَ بَشِيرٍ، رَضِيَ اللَّهُ عَنْهُمَا وَهُوَ عَلَى الْمِنْبَرِ يَقُولُ أَعْطَانِي أَبِي عَطِيَّةً فَقَالَتْ عَمْرَةُ بِنْتُ رَوَاحَةَ لاَ أَرْضَى حَتَّى تُشْهِدَ رَسُولَ اللهِ ﷺ فَأَتَى رَسُولَ اللهِ ﷺ فَقَالَ إِنِّي أَعْطَيْتُ ابْنِي مِنْ عَمْرَةَ بِنْتِ رَوَاحَةَ عَطِيَّةً فَأَمَرَتْنِي أَنْ أُشْهِدَكَ يَا رَسُولَ اللهِ قَالَ أَعْطَيْتَ سَائِرَ وَلَدِكَ مِثْلَ هَذَا قَالَ : لاَ قَالَ فَاتَّقُوا اللَّهَ وَاعْدِلُوا بَيْنَ أَوْلاَدِكُمْ قَالَ فَرَجَعَ فَرَدَّ عَطِيَّتَهُ

Narrated 'Amir: I heard An- Nu'mãn bin Bashir (R.A.) on the pulpit saying, "My father gave me a gift but 'Amra bint Rawaha (my mother) said that she would not agree to it unless he made Allah's Messenger as a witness to it. So, my father went to Allah's Messenger; and said, 'I have given a gift to my son, but my wife 'Amra bint Rawaha she ordered me to make you as a witness to it, 0 Allah's Messenger!' Allah's Messenger asked, 'Have you given (the

> like of it) to everyone of your sons?' He replied in the negative. Allah's Messenger said, 'Be afraid of Allah, and be just to your children.' My father then returned and took back his gift."(Bukhaari, 1997:438-439 vol.3 no.2587)

Justice is achieved by gifting your daughter as much as you give to your son (equally between them). This is because in gift, there is no need of using ratio between the sons and the daughters, unlike in the case of inheritance where a male child get double portion of a female child. But, the only thing required if justice in gift. It could be different in the gift in terms of quantity and quality, but, there is need for justification.

In a nutshell, inheritance is the property that is shared among the eligible heirs of a deceased according to the Islamic law of inheritance. Jurists unananimousely agreed that whoever is not among the heirs is not entitled to it. *Wasiyyah* (Will) on the other hand, is a proterty of the deceased to be given to some people he mentioned either written or verbally after his death. The jurists (Hanafi, Maliki, Shafi'i and Hanbali) also have no differences in their opnions on disapproving of making a 'Will' to an heir. This is because, of the Hadith of the Prophet (S.A.W.) mentioned above that says 'there is no *Wasiyyah* to an heir'. But, on gifting children and wives justice needs to be observed.

2.5 Arithmetic formular of calculation and fraction use in the distribution of properties

The interesting aspect of inheritance is the arithmetic component. We say arithmetic not mathematics because the operations involved are addition, subtraction, multiplication and division only.So even those who dislike mathematics I believe do not find these four basic operations tasking.

In any inheritance problem, the aim is to determine the minimum base number that will enable the estate to be distributed among the heirs such that each will get his/her portion, without a

remainder or decimal. To start with, let's define some terms commonly used in any calculation of inheritance. These are:

i. Share**:** the fraction of the estate an heir is entitled to inherit such as $\frac{1}{2}, \frac{1}{4}, \frac{1}{8}, \frac{2}{3}, \frac{1}{3}$ and $\frac{1}{6}$.

ii. Portion: this is the number of segments of an estate an heir will receive. This must necessarily be a whole number, not a fraction or number with decimal.

iii. Base Number (Aslul Mas-ala): this is a Whole Number that facilitates the distribution of the estate in accordance with the shares of all the heirs and also generates the portion of each.

Let's take an example on this. A woman died and left behind her husband and a full sister and left behind ₦100,000

Heirs	**Share**	**2**	**Base Number (Aslul Mas-ala)**	**₦100,000 ÷2 = 50,000**
Husband	$\frac{1}{2}$	1		50,000
Full sister	$\frac{1}{2}$	1		50,000
				Portion

Here our base number in this case is 2. What this means is that, the estate should be divided into 2 portions. Husband takes 1 ($\frac{1}{2}$of 2) and full sister takes 1 ($\frac{1}{2}$of 2). So, the difference between "share" and "portion" is that, the shares of Husband $\frac{1}{2}$and full sister$\frac{1}{2}$respectively; while their portions are 1 and 1 respectively. In a nutshell, portion is the number of segments of an estate an heir will receive.

iv. Number of heads (Ru'us): this is the number of heirs if they are of the same gender. Hence, the number of heads of 2 sons is 2; the number of heads of 5 granddaugters is 5. But if the

heirs are of mixed gender, a male has “2 heads” while a female has 1. This is because, a male takes double the share of a female. So, the number of heads of 3 full brothers and 4 full sisters are 10; likewise the number of heads of 3 sons and 4 daughters are 10.

For example, a man died and left behind a wife, son and 3 daughters with ₦200, 000

Number of heads	**Heirs**	**Share**	**8**	**Base Number (Aslul Mas-ala) 5 × 8 = 40**	**₦200,000÷40 =5000**
	Wife	$\frac{1}{8}$	1	5	25,000
	Son			14	70,000
	Daughter			7	35,000
5	Daughter	R	7	7	35,000
	Daughter			7	35,000

In the example above, 3 daughters and one son are to share the remaining 7, after the wife has taken her share of one over eight of the whole estate. The son is entitle for double shre ` of a daughter (two heads) while eacher daughter is entitle for a share (one head). So, 3 heads of the daughters plus 2 heads of the son = 5. But, 7 cannot be divided by5, and likewise no number will divide 5 and 7 without remainder. In this case, 5 would now be multiplied by the first base number and the portion of each to get the right number for the distribution with remainder. That is, 5×8= 40, 5×1= 5, 5×7= 35, then 35÷5=7. Now each daughter gets 7, while son gets double, which is 14.

Another example is: a man died and left behind 3wives, 2 daughters 3 full sisters and 1 full brother.

Number of heads	**Heirs**	**share**	**Base Number (Aslul Mas-ala) 24**	**₦240,000÷24=10,000**
3	Wife	$\frac{1}{8}$	1	10,000
	Wife		1	10,000
	Wife		1	10,000
2	Daughter	$\frac{2}{3}$	8	80,000
	Daughter		8	80,000
5	Fullsister	R	1	10,000
	Fullsister		1	10,000
	Fullsister		1	10,000
	Full brother		2	20,000

The above example shows that, there are different categories of heirs with different heads like wives have 3 heads, daugters have 2 heads and full brother and sisters have 5 heads. And the estate divided by 24 considering the denominator 8 and 3 (which is $8 \times 3 = 24$).

v. Category: a single heir makes a category if he/she inherits a share of the estate alone while 2 or more heirs make a category if they are to distribute a share of the estate among

themselves. For instance, if the surviving heirs of a deceased are wife, sons and daughters, then the categories of the heirs are two, since the wife has a share ($\frac{1}{8}$) and the sons and daugters share the residue. But, if the heirs are wife, father and 2 daughters; these are 3 categories, the wife takes the share of ($\frac{1}{8}$), 2 daughters' share is ($\frac{2}{3}$) of the estate and the fathe takes ($\frac{1}{6}$ +). Another example is, a woman died and left behind mother, daughter and full brother. And the estate left worth 1I0,000

Category	**Heirs**	**Share**	**Base Number (Aslul Mas-ala) 6**	**Corrected Base Number (al-masahh al-Mas'ala) N120,000 ÷ 6 = N20,000**
1	Mother	$\frac{1}{6}$	2	40,000
2	Daughter	$\frac{1}{2}$	3	60,000
3	Full brother	R	1	20,000

To determine the new base number, the number of heads in each category has to be considered based on the rule of al-Anzaru al-Ar'ba'ah (that is to find out whether is Tamathul, Tadakhul, Tawafuq or Tabayun).

These are some of the explanations with examples given for more clarification on the terminologies of the arithmetic calculation for the distribution of the Islamic law of inheritance. But, apart from the terminologies, there is an important aspect of this calculation which is necessary for any one who distribute inheritance to know before the distribution, which is the method of getting the base number *(Aslul Mas'ala*). So, many scholars have discussed on the ways of getting the base number, but, briefly summarize these methods discussed by Bashir (2016:69) and others.

There are three most popular methods of finding out the base number for inheritance distribution. These are;

(a) The orthodox method

(b) Al-anzur al-rba'ah

(c) L.C.M methods

The following are the explanation of the above mentioned methodologies of finding out the Base number for inheritance distribution:

(a) The orthodox jurists layed some guidline for finding out the base number for the distribution of inheritan. They classified the shares (the fractions) into two groups. As

Group A: $\frac{1}{2}$ $\frac{1}{4}$ $\frac{1}{8}$

Group B: $\frac{2}{3}$ $\frac{1}{3}$ $\frac{1}{6}$

Based on the above groups, if the heirs are agnatic heirs, then the estate should be shared among themselves, except if they are combined (males and female). Then the male get double share of female. For example, a man died and left behind 2 Sons.

Heirs	**Share**	**2**	**portion**
Son			1
Son			1

(A)

(B)

Here the inheritance would be divided equally between the two sons. But, if combined with male and female, the male takes double share of the female as in the following example:

A man died and left behind 2 sons and a daughter

	Share	**5**	**portion**
Heirs			
Son			2
Son			2
Daughter			1

But, if there is a sharer among the heirs (i.e the Qur'anic sharer), then his share will be used as the based number for the distribution. For, example, a woman died and left behind her husband and 5 full brothers.

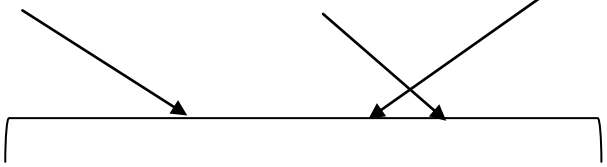
Number of heads	**Heirs**	**Share**	**Base Number (Aslul Mas-ala)**	**Corrected Base Number (musahhu al- Mas'ala)**
			2	**10**
	Husband	$\frac{1}{2}$	1	5
	Full brother			1
	Full brother			1
5	Full brother	R	1	1
	Full brother			1
	Full brother			1

In this case the denominator of the share of the husband used as base number (i.e 2). Then the husband takes 1 and the remaing 1 shared among the full brothers. But, the full brothers are 5 (which is 5 heads). But, 1 cannot be divided into 5 without having point. In this case, 5 was now multiplied by the first base number (which is 2) and the portion of each heir. That is, 5×2= 10, 5×1= 5, 5×1= 5, then 5÷5=1. Now each full brother gets 1 out of 10.

But, if the sharers are from the same group (either group A or B) the fraction with the greater denominator will be used to determin the base number. A man died and left behind his wife daughter and son's son.

Heirs	Share	Base Number 8
Wife	1/8	1
Daughter	1/2	4
Son's Son	R	3

Group A: $\frac{1}{2}$ $\frac{1}{4}$ $\frac{1}{8}$



Group B: $\frac{2}{3}$ $\frac{1}{3}$ $\frac{1}{6}$

And if an heir whose share is $\frac{1}{2}$is inheriting with another heir whose share is with fraction in group "B" above, the base number to be used for sharing that inheritanceis6. For example, a woman died and left behind her husband, mother and 2 full sisters.

Category	**Number of heads**	**Heirs**	**Share**	**Base number 12 = 16 Awl**	**Corrected Base number 2 ×16 = 32**
1		Husband	$\frac{1}{2}$	6	12
2		Mother	$\frac{1}{6}$	2	4
3	2	Full sister	$\frac{2}{3}$	8	8
		Full sister			8

But, when an heir whose share is$\frac{1}{4}$that is in group 'A' inherting with any heir whosefraction is in group 'B', the base number to be use for the distribution is 12. For example, a man died and left behind his wife, 2full sisters and consanguine brother. The distribution will be as follows:

Category	Number of heads	Heir	Share	Base Number 12
1		Wife	$\frac{1}{4}$	3
2	2	Full sisters	$\frac{2}{3}$	4
		Full sisters		4
3		Consanguine brother	R	1

In the example above, there are three catecories of heirs. The first catecory is wife, second category are full sisters and the third category is consanguine brother. And the sisters have two heads (each of them is a head) since both of them are females. And based on the distribution here, the full sisters got 8 and it is divided by 2, that is how each of them got 4 out of 12. But in a situation whereby, a deceased left one female one male, they would be counted as three heads (that is, one head for the female and two heads for the male).

However, to determine the base number when $\frac{1}{8}$ of group 'A' is inheriting with another heir whosefraction is in group 'B'. in this case the base number to be used in the distribution is 24. For example, a man died and left behind his wife, son's daughter, mother and a full brother. The distribution will be as follows:

Heirs	Shares	Base Number 24
Wife	$\frac{1}{8}$	3
Son's daughter	$\frac{1}{2}$	12
Mother	$\frac{1}{6}$	4
Full brother		5

These are the examples, of the methodology used by the orthodox scholars in getting the base number for the distribution of inheritance.

(b) The second method of getting the base number for the distribution of Islamic law of inheritance is *al-Anzaru al-Arba'ah* (the four considerations). In this method therefore, to determine a number which can be divided by each of the "Denominators" of the shares under consideration. As we know, fraction has a numerator (number on top of a fraction) and a denominator (number at the bottom of a fraction). For example, when looking at the six shares we have in the Islamic law of inheritance ($\frac{1}{2}$, $\frac{1}{4}$, $\frac{1}{8}$, $\frac{2}{3}$, $\frac{1}{3}$ and $\frac{1}{6}$.), the numerators are 1 and 2; while the denominators are 2, 4, 3, 6 and 8. Now, we look at the number that each denominator will be divided without a remainder or decimal. So, in this method, the denominators are divided into four groups as stated by al-Jaza'iry (2001:420 vol.2):

> If the matter of shares is regarding one or more persons who get a designated share of inheritance, then a distinct consideration is made between the two positions or more (if there are more involve). This is done by the four considerations, which are at-*Tamathul*, at-*Tadakhul*, at-*Tawafuq* and at-*Takhaluf*.

The explanation of these four considerations of observations as in the above quotation of al-Jaza'iry (2001:420 vol.2) are as follow:

At- Tamathul		**At-Tadakhul**		**At-Tawafuq**		**At-Tabayun**	
2	2	2	4	4	6	2	3
3	3	3	6	6	8	3	4
6	6	8	2	9	6	8	3

i- *At-Tamathul:* that is to say, all the denominators of the fractions are the same with another, that is they look alike. So, here each of the denominator could be used as the base number for the distribution.These are 2 and 2, 3 and 3, 6 and 6. For example, a woman died and left behind her husband and a full sister. The estate will be divided as:

Heirs	**Share**	**Base number 2**
Husband	$\frac{1}{2}$	1 portion
Full sister	$\frac{1}{2}$	1 portion

In the example above, the estated was divid into 2 by considering the number of the denominator which is 2, then the husband gets 1 and the full sister too gets 1, and this one that is taken by each of them is equivalent to half of the entire estate.

Anotherexample is 3 and 3, when a man died and left behind his 2 full sisters and 2 uterine brother. The distribution will be:

Heirs	**Share**	**Base number 3**
2 full sisters	$\frac{2}{3}$	2
2 Uterine brother	$\frac{1}{3}$	1

The example above, shows that the estate was divided into three, 2 full sisters gets 2 out of 3 and then one was taken by the uterine brothers. Another example is for 6 and 6. Eample, when a woman died and left behind her father, mother and a son. Here the base number is 6.

Heirs	Share	Base number 6
Mother	$\frac{1}{6}$	1
Father	$\frac{1}{6}$	1
Son	R	4

ii- *Al-Tadakhul:* that is the denominators are not the same, but one of them could divide the other without a remainder. In this case the greater denominator will be used as the base number.These denominators are 2 and 4, 3 and 6, 8 and 2. For example, 2 and 4. A woman died and left behind her husband, daughter and a full brother. The distribution will be as follows:

Heirs	Share	Base number 4
Husband	$\frac{1}{4}$	1
Daughter	$\frac{1}{2}$	2
Full brother	R	1

The estate was divided into four, the husband gets 1, two full sisters gets 2, and the remaining 1 was taken by the full brother. Another example is 2 and 6, when a woman died and left behind her daughter, mother and a consanguine brother.

Heirs	**Share**	**Base number 6**
Daughter	$\frac{1}{2}$	3
Mother	$\frac{1}{6}$	1
Consanguine brother	R	2

The above example shows that, the estated was divided into six, half which is 3 was given to the daughter, and 1 out ouf 6 was given to the mother, and the remaining 2 was given to the consanguine brother.

But, for the example of 2 and 6 is, when a man died and left behind his wife, daughter and a full brother.

Heirs	**Share**	**Base number 8**
Wife	$\frac{1}{8}$	1
Daughter	$\frac{1}{2}$	4
Full brother	R	3

The estate was divided into 8, by considering the denominators of the fractions above that, 2 can divide 8, so 8 was used as the base number for been that is greater than 2. So, the wife was given one over eigth and the daughter was given four over eight and the remaining three was taken by full brother.

And these are some of the examples of at-*Tadadakhul* as one of the four things to consider in determining the base number of inheritance distribution.

iii- *At-Tawafuq:* this is a situation whereby, the denominators are not the same, and none of the two numbers could divide another (the denominators) without having any remainder. But, there is a number that could be used to divide each of the denominators without any remainder which is called a factor. In this case, that factor will now be used to divide one of the denominators and the answer will also be multiplied by the other denominator to get the base number for the distribution. These denominators are 6 and 4, and then 8 and 6.

For example 6 and 4, they are not the same and they cannot be divided by either 4 or 6. But, there is a number that could be used to divide both the two denominators (4 and 6) which is 2. So, in this case, 2 is the factor that could be used to divide 6 and also divide 4. Now 6 ÷2 =3, then 3 × 4 (the other denominator) = 12. So, 12 will now be used as the base number. For example, a man died and left behind mother, wife, 3 full brothers and 1 full sister. The distribution is;

Heirs	**Share**	**Base number** **12**
Mother	$\frac{1}{6}$	2
Wife	$\frac{1}{4}$	3
Full brother		2
Full brother		2
Full brother	R	2
Full sister		1

6 ÷ 2 = 3 × 4 = **12** or 4 ÷ 2 =2 × 6 =**12**

In the above example, the designated share for the heirs were two ($\frac{1}{4}$ and $\frac{1}{6}$) and the denominators were 4 and 6. To find a base number in a situation like this, the first thing to do is to look for a number that can divide the two denominators without remainder. And then divide one of the denominators with that number and multiply whatever you get to other denominator to get you base number (for example, 6 ÷ 2 = 3 × 4 = **12** or 4 ÷ 2 =2 × 6 =**12)**.

Another example is 8 and 6 is when a man died and left behind his wife, mother and a son. Here is the distribution;

Heirs	**Share**	**Base number 24**
Wife	$\frac{1}{8}$	3
Mother	$\frac{1}{6}$	4
Son	R	17

8 ÷ 2 = 4 × 6 = **24** or 6 ÷ 2 =3 × 8 =**24**

The base number for the distribution above was 24, considering the denominators of the two fractions (8 and 6). To determine the base number, one of the two denominators (either 6 or 8) will be divided by their factor (2) and then multiply it with the other denominator to get the base number for the distribution (8 ÷ 2 = 4 × 6 = **24**or 6 ÷ 2 =3 × 8 =**24)**

iv- At-*Tabayun* or at-*Takhaluf*: this is a situation whereby, the denominators are not the same, none of the denominators could be used to divide the other and no any number that can be used to divide the two or more denominators at the same time. In this case, any one of the denominators could be used to multiplyone another. These denominators are; 2 and 3, 3 and 4, 8 and 3. The following are some of the examples of this case:

For 2 and 3. A woman died and left behind her husband, mother and a consanguine brother. The distribution is;

Heirs	**Share**	**Base number 6**
Husband	$\frac{1}{2}$	3
Mother	$\frac{1}{3}$	2
Consanguine brother	R	1

$2 \times 3 = 6$ or $3 \times 2 = 6$

In the example above, the base number was determined by multiplying the denominators by one another ($2 \times 3 = 6$ or $3 \times 2 = 6$). This is because, the denominators are not the same, none of the denominators can divid one another, and there is no any other number that can be used to divid each of them. So, the numbers was multiplied by each other to get the base number used in the example, which is 6. So, the estate left by the deceased was divided by 6. Husband gets 3 (half) out of 6, mother get 2 out of 6 and the remaining 1 was given to the consanguine brother.

Another example is for 3 and 4 is that, a man died and left behind his wife, 2 uterine brother and a partenal uncle. The distribution would be;

Heirs	**Share**	**Base number 12**
wife	$\frac{1}{4}$	3
Uterine brother	$\frac{1}{3}$	2
Uterine brother		2
Parternal uncle	R	5

$4 \times 3 = 12$ or $3 \times 4 = 12$

The base number was determined by multiplying the denominators by one another (that is, 4 and 3), which is 12. Then 12 divided by each of the denorminator to get the portion of each heir. For example, 12÷4=3 (portion of the husband), 12÷3=4 (portion of the two uterine brothers), then 4÷2=2 (portion of each one of them). After the sharers have taken their share, then the remaining 5 out of 12 will now go to the parternal uncle.

Another example where at-Tabayun is been used to determine the base number in the Islamic law of inheritance is when 8 and 3 denomiminators come together in case. For example, a man died and left behind his wife, 2 daughters and a full brother. Here is the distribution.

Heirs	**Share**	**Base number 24**
Wife	$\frac{1}{8}$	3
Daughter	$\frac{2}{3}$	8
Daughter		8
Full brother	R	5

To determine the base number for the above example, the two denominators (8 and 3) will be multiply by one another (8 ×3=24). Now 24 is the base number (that is the whole estate will now be divided by 24). Then 24 will now be divided by each denominators of the fractions, which is 24÷8=3 (for the portion of the wife), 24÷3=8, then 8×2=16(for the portion of two daughters), then to get their portion separate 16÷2=8 (that is the portion for each daughter). Then the remaining 5 will now be taken to full brother. This is how to determine the base number as the princples of al-*Andhar al-Arba'ah* (the four considerations) as quoted in the above quotation of Al-Jaza'iry indicated.

(b) The third method of the distribution is L.C.M. method. This is where the distributor will work out to get the L.C.M. of the denoninators from the shares of the heirs to get the base number for the distribution of the inheritance.

For example 1: A man died and left behind a mother, daughter and full brother. The distribution will be as follows:

Heirs	**Share**	**Base number 6**
Mother	$\frac{1}{6}$	3
Daughter	$\frac{1}{2}$	2
Full brother	R	1

To find out the base number for the distribution, there is need to get the L.C.M. of 6 and 2

2	6	2
3	3	1
	1	1

The L.C.M. of 6 and 2 is = 2 ×3 = 6

So, 6 will be the base number for the distribution.

Example 2: a man died and left behind a wife, 2 daughters, his mother and a full brother. Now the distribution goes like this:

Heirs	Share	Base number 24
Wife	$\frac{1}{8}$	3
Mother	$\frac{1}{6}$	4
Daughter	$\frac{2}{3}$	8
Daughter		8
Full brother	R	1

To find out the base number for the distribution, we need to get the L.C.M. of 8, 6 and 3

2	8	6	3
2	4	3	3
2	2	3	3
3	1	3	3
	1	1	1

The L.C.M. of 8, 6 and 3 is = 2 × 2 ×2×3 = 24

Therefore, 24 will be the base number for the distribution of this inheritance.

Example 3:A woman died and left behind her husband, 2 daughters and a full brother. Now the distribution goes like this:

Heirs	Share	Base number 12
Husband	$\frac{1}{4}$	3
Daughter		4
Daughter	$\frac{2}{3}$	4
Full brother	R	1

To get the base number for the distribution, we need to get the L.C.M. of 4 and 3

2	4	3
2	2	3
3	1	3
	1	1

The L.C.M. of 4 and 3 is = 2 × 2 × 3 = 12

Therefore, 12 will be the base number for the distribution of this inheritance.

These are some of the methods of finding out the base number for the distribution of Islmic law of inheritance known to the researcher. Identifying different ways of finding out the base number in which the inheritance could be distributed is very important for the distributor. Knowing at least the three methods explained above, will help the distributor to use which ever one is easy for him. But, the L.C.M. and the orthodox method have some limitations, unlike *al-Anzarul al-Arba'ah* especially in *Tashihu al-Mas'alah* (correction of the base number).

2.6Pillars of the Islamic Law of Inheritance (أركان الإرث في الأسلام)

Islamic law of inheritance has a firm upright support which is based on, and it is known as pillars of inheritance. Pillars or essentials of inheritance are those important elements which if one is missing in a given case, there will be no inheritance according sharia (Islam). These pillars of inheritance in Islam are three which are unanimously agreed by the Islamic scholars, according to Mukhlis (2009:6). These are;

i- Death person (Al-Muwarrith المورث). This refers to the person that died. Inheritance could only come up in Islam in the absence of life of a person. That is why the person to

be inherited has to die first before his estate could be distributed among his heirs as inheritance.

ii- Heir (Al-Warith الوارث)**.** This refers to the heir who is entitled to inherit from the estate left by the deceased and also survived his death.

iii- Estate (At-Tarikah التركة)this could be movable or immovable properties. Example of movable properties are cars, motorcycles, horses, camels, aeroplane and so on, while immovable properties are houses, land and so on. In short, any property that be moved from one place to another is called movable property, while any property that cannot be moved from one place to another is immovable**.** The property must be left by the deceased before talking about those that are entitled for the inheritance or not, as well as the share of each heir. The estste must be available left by the deceased.

2.7 Conditions of Inheritance (شروط الإرث)

There are some prerequisite that must be accomplished or acquired before an heir is qualified for inheritance in Islam. These prerequisites that need to be fulfilled are called conditions of Islamic law of inheritance. Islamic law of Inheritance has conditions that makes an heir eligible to have a share in inheritance. In those conditions there is no mentioning of gender or sex as a condition for qualification. This is because male and female, even though, they are not the same biologically and physiologically, but, they are the same as far as humanity is concerned (they all qualified to inherit their deceased). So before any distribution of any estate can take place, the following conditions have to be met, and they are:

i- The death of a person must be determined whether in actual death or by judicial declaration (presumption of death). That is to say, the death of a person must be proven (actual death) or by decree of a court of law. In case of a missing person, only the Court that has the right to make conclusion on his death according to Ataya (2018:312).

ii- Survival of the legal heir: The heir must be alife at the time of the deceased's death even for a blink of an eye, but, in a case where two people that are entitled to inherit one another died simultaneously, and became difficult to know who died first. In this regards, the jurists of three Schools of law (Maliki, Shafi'i and Hanafi) unanimously agreed except the Hanbali School, that they should not inherit one another according to Anbo (:239-240). He further said: "this is the view of Abubakar As-Siddeeq, Umar Ibn Khattab, Zaid Ibn Thabit, Ibn Abbas, Mu'az Ibn Jabal and Hassan Ibn Aliy among the Sahabah".

More so, in a case where the deceased left behind a pregnancy which is entitled to inherit him, whether the pregnancy is for him or for another person (i.e the pregnangy could be his son/daughter or full/consanguine brother/sister after delievery), that pregnancy will come and inherit him if delivered alive. For example, a man died having no wife, no child, but only his mother who is pregnant for his late father, if the pregnancy is delivered alive, the baby will now be either full brother/sister to the deceased and they are among the people that are entitled to inherit him in the Islamic law of inheritance. The only thing that is needed here is to ascertain the pregnancy by all means at the time of the deceased death.

iii- Having the knowledge of inheritance. That is, before one claims to be an heir of a deceased, he must know and explain how he relates to the decease. This is for those that claim to be heirs in inheritance. Lakhyi (2003:20) explains that;

> before a person can claim a share from the estate of the deceased, he must show that he falls under one of the grounds of inheritance. That is, he is related to the deceased either through relation, marriage or emancipation.

The knowledge of inheritance here is compulsory to some Muslims because, without it how will it be possible to know the heirs that are entitled to inherit the deceased among his people and their shares, knowledge of impediment, exclusion and so on. So, this last condition is only for the Judge or any other person who is qualified to distribute the estate according to the Islamic law of inheritance.

The conditions are unanimously agreed by the jurists (especially Hanafi, Maliki, Shafi'i and Hanbali) to be considered first before the distribution of inheritance. The jurists have all agreed that the death of the deceased must be ascertain, either by witnessing the death body of the deceased (confirmed dead by those who know death) or by the witness of some people whom where all agreed to be trustworthy, or by the decree of a court law (court to assume his/her death). The jurists also agreed that, the heir must be alife when the deceased die even with a blink of an eye before would be considered as heir, which will be entitled for inheritance. In a case where two or more heirs died (e.g father and a child or some of his children), but, couldn't identify who died first, in a situation like this none of them could inherit each other. Lastly, the condition highlighted that whosoever claims to be an heir of deceased should explain his/her relationship with the deceased, or else his claim would not be considered.

However, all the estate left by the deceased should be shared amongst his heirs. The estate could be ancestral or self-acquired, movable or immovable. Jurists differ as what constitute estate. According to (Husain 2005:43),

> the School of Abu Hanifa is of the opinion that, the concept of estate excludes rights such as contracts and this lapse with the

death of the individual. The other fiqhu are of the opinion that these rights are inheritable.

That is to say, when a contract is awarded to a person before his/her death, for example, his heirs are more entitled to carry out the contract than any other person according to the jurists except Abu Hanifah. Inheritance in Islamic law has conditions that qualify heirs to be eligible to have a share in inheritance. In those conditions there is no gender or sex variation as a condition for qualification is concern. This is because male and female, even though, are not the same biologically and physiologically, they are the same as far as humanity is concerned. So before any distribution of any estate can take place, the three conditions have to be met.

2.8 Grounds of the Islamic law of Inheritance (أسباب الإرث)

Grounds are the basis or reasons for the entiltlement of something. In Islam, there are some causes or reasons that quallifies someone to be an heir in a particular case ofinheritance. Theyare called grounds of Islamic law of inheritance. These are as follow:

a. Blood relationship(النسب)
b. Marriage Ties(النكاح)
c. Clientage (الولاء). i.e the master of manumitted slave or a person who freed a slave whether man or woman.

2.8 Blood Relationship (النسب)

Kinship is one of the causes of inheritance. Kinship is a connection between two or more people due to a birth or blood relationship. It can be either near or far. Every man or woman who has a birth connection with the deceased no matter how close or far away with him, whether from the father's side or from the mother's side, will always be a relative. This is the main cause of

inheritance. there are many authors whom classified blood relatives into three classes. Some of those scholars include Bin Baz in Ambo (183:2007) where he sai: the blood relatives are classified into three classes as follow:

i) The ascendants (جهة الأصول)

This includes the father of the deceased, the grandfather, and all the living superiors from the father's side and the deceased's mother, grandparents, and all surviving superiors from the mother's side could inherit the deceased how high soever.

ii) The descendants (جهة الفروع)

This includes the deceased's sons and grandsons how low soever, and also his son's daughter and granddaughter of her father how low soever.

iii) Non-ascendant or non-descendant relations (جهة الحواشي)

These are the siblings of the deceased or their children how low soever, as well as the paternal uncles of the deceased and their children.

In a nutshell, kinship are the relatives from either the parents (father and mother) upward or from the children downward or from the siblings of the deceased or uncles, how far away they are from the deceased in the absence of those that are close. In Islamic law of inheritance, those that are close to the deceased considered first before those that are far away from the deceased.

2.8.2Marriage Ties (النكاح)

Marriage is one of the causes that links two different families together and legalizes inheritance between them in Islam. According to Abdul-Jawad (nd:11):

> A wife is entitled for inheritance only if the marriage is valid (i.e. which fulfills all the necessary conditions of marriage. Like

> waliyy, dowry and witness), even if the husband does not gets a chance to meet with his wife in private or there is no sexual intercourse between them. He further said; Maliki School of law is of the opinion that, any marriage which is contracted during the death sickness of the deceased should be considered null and void. This is in contrary with the opinions of the other jurists like Hanfi, Shafi'i and Hanbali.

This shows that only a valid marriage that qualifies a wife to inherit her husband when he dies. And likewise even if the conditions for the validity of marriage if fulfilled, but occurred during the death sickness of the husband could prevent the wife from inheritance in the Maliki School of law. More so, any marriage which is contracted without the consent of the *Waliyy* (custodian), that marriage should be considered invalid. The Prophet (S.A.W.) was reported to have said:

عَائِشَةَ أَنَّ رَسُولَ اللَّهِ –ﷺ– قَالَ « أَيُّمَا امْرَأَةٍ نُكِحَتْ بِغَيْرِ
إِذْنِ وَلِيِّهَا فَنِكَاحُهَا بَاطِلٌ فَنِكَاحُهَا بَاطِلٌ فَنِكَاحُهَا بَاطِلٌ
فَإِنْ دَخَلَ بِهَا فَلَهَا الْمَهْرُ بِمَا اسْتَحَلَّ مِنْ فَرْجِهَا فَإِنِ
اشْتَجَرُوا فَالسُّلْطَانُ وَلِيُّ مَنْ لاَ وَلِيَّ لَهُ ».

> 'Aishah narrated that the Messenger of Allah said: "Whichever woman marries without the permission' of her *Wali* her marriage is invalid, her marriage is invalid, her marriage is invalid. If he consumed into her, then the *Mahr* is for her in lieu of what he enjoyed from her private part. If they disagree, then the Sultan is the *Wali* for one who has no *Wali*." (Tirmidhi vol.2 1102: 468)

But, when the marriage is valid (which fulfills all the conditions for the acceptance of marriage), the couples have the right to inherit each other. As Allah says in the Glorious Qur'an:

ٱٻٱٱٱ لم لى لي مج مح مخ مم مى مي نج نح نخ نم نى ني هج هم هى هي يج يح يخ
يي ذٰ رٰ ىٰ ٌّ ٍّ َّ ُّ ِّ ّٰ ئر ئز ئم ئن ئى ئي بر بز بم بن بى بي . . تر تمّ النساء: ١٢

> In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they

> leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave. . . (Nisa'I,4:12).

According to Sayyid Qutb (nd:47 vol.3), "The share given to a wife remains indifference whether the deceased leaves behind one wife or two, three or four wives. All of them share equally in that portion of one quarter or one-eighth, as the case may be." This shows that, wedding alone qualifies the wife to have entitlement for the inheritance, even without having sexual intercourse. And the wife is entitled for her dowry if the dowry was not given to her, as well as inheritance. The following Hadith will shade more light on this:

عَنِ الشَّعْبِيِّ عَنْ مَسْرُوقٍ عَنْ عَبْدِ اللَّهِ فِى رَجُلٍ تَزَوَّجَ امْرَأَةً فَمَاتَ عَنْهَا وَلَمْ يَدْخُلْ بِهَا وَلَمْ يَفْرِضْ لَهَا الصَّدَاقَ فَقَالَ لَهَا الصَّدَاقُ كَامِلاً وَعَلَيْهَا الْعِدَّةُ وَلَهَا الْمِيرَاثُ. فَقَالَ مَعْقِلُ بْنُ سِنَانٍ سَمِعْتُ رَسُولَ اللَّهِ -ﷺ- قَضَى بِهِ فِى بِرْوَعَ بِنْتِ وَاشِقٍ.

> It was reported by Ash-Sha'bi, from Mas'ruq, from 'Abdullãh (Ibn Mas'ud) regarding a man who married a woman, then he died, and he had not consummated it with her, nor specified a dowry: "She has a full dowry, and she must observe the waiting period, and she will get her inheritance then he said: "I heard the Messenger of Allah give this same verdict in the case of Barwa' bint Washiq."(Abu Dawud 2008, vol.2 pg;536 No.2116)

After marriage, the husband and wife inherit each other's estate, as long as the marital agreement is valid between them. But, when the marriage is not valid, there will be no inheritance among them. For example, a man got married to a fifth wife; the fifth wife will get nothing after his death, since the marriage is not valid in the eyes of *shariah* (Islamic law). On this, the Jurists unanimously agreed that any marriage that did not fulfill all the conditions for the validity of

marriage in Islam, should have no reason for inheritance under the Islamic law of inheritance, except where there is disagreement amongst the jurist on its validity. For example, a man got married while in his Ihram performing Hajj. The marriage is not valid according to most of the Jurists like Hanfi, Shafi'i and Hanbali , only the Maliki School of law who validated it, as in Sat'h and Salman (nd:38).

However, divorce is one of the reasons to be considered before making any conclusion on whether the divorcee is eligible for the inheritance or not, before sharing the estates among the heirs. A divorcee could also have right for inheritance to some extent. This is because, Islam classifies divorce into two classes; which is revocable and irrevocable divorces. The four Schools of law unanimously agreed that if the divorce is revocable, and the divorcee is in her *iddah* (waiting) period, she has the right for inheritance, but she has no right for inheritance after the completion of her *iddah'* (waiting time after marriage) period. But, for the irrevocable divorce, the jurists have different opinions on that, especially Hanfi, Maliki, Shafi'i and Hanbali . The jurists differed in this situation. According to al- Halawi (nd:186-188);

> The Maliki School of law are of the opinion that, if a husband divorces his wife during his fatal sickness and is accused of having done that with the intention of preventing her from inheritance, in this case, she inherits his estate even after the completion of her *'Iddah (waiting period),* and even if she gets married to another person. But, according to Hanafi's opinion, she only has the right to inherit him before the expiration of her *iddah* (waiting period), while according to Shafi'i as reported by al-Jabwiy and Ahmad (2018:38-39) she has no right to inherit him after divorce. Hanbali School of law are of the opinion that, she is only entitled to inherit him after her *iddah,* if she did not get married to another husband or does not commit apostacy.

From the above quotation, it could be understood that, the four renowned *sunni* Schools of law differ with one another regarding the irrevocable divorce. Hanafi School of law is of the opinion

that, the divorcee is entitle for the inheritance if she is in her *'iddah'* (waiting time after marriage) period. While Malikiyyah opined that, she is entitled for the inheritance even if she got married to another husband, so far as the intention is to deny her right for the inheritance (An-Nagrawi 1126:88) vol.1). But, to Shafi'i yyah a divorcee has no right for the inheritance after that final divorce (irrevocable), whether the divorce occurred during the husband death sickness or not, and likewise whether she is in her *iddah* period or after the *iddah*, and also whether the intention of the divorce was to deny her from benefiting from the inheritance or not. Hanbali are of the opinion that she has right for the inheritance if her *iddah* period is not cut off or ended.

2.83Clientage (الولاء)

The third cause of inheritance in Islam is *Wala* (emancipation/ clientage). If a master frees his slave and the freed slave remains with him, a kind of relationship called Wala (emancipation) begins between them. It is the master's grace that he frees the slave. But the slave stays with him in the master's generosity. On this condition, if the freed slave dies with any heir that could inherit him, all his property left behind will be inherited be his master.

وَحَدَّثَنَا يَحْيَى بْنُ يَحْيَى قَالَ قَرَأْتُ عَلَى مَالِكٍ عَنْ نَافِعٍ عَنِ ابْنِ عُمَرَ عَنْ عَائِشَةَ أَنَّهَا أَرَادَتْ أَنْ تَشْتَرِىَ جَارِيَةً تُعْتِقُهَا فَقَالَ أَهْلُهَا نَبِيعُكِهَا عَلَى أَنَّ وَلاَءَهَا لَنَا. فَذَكَرَتْ ذَلِكَ لِرَسُولِ اللَّهِ -ﷺ- فَقَالَ « لاَ يَمْنَعُكِ ذَلِكَ فَإِنَّمَا الْوَلاَءُ لِمَنْ أَعْتَقَ ».

It was narrated from 'Aishah that she wanted to buy a slave woman and manumit her, and her masters said: "We will sell her on condition that the right of clientage (al-Wal') remains ours." She

> mentioned that to the Messenger of Allah and he said: "Do not let that stop you, for the right of clientage belongs to the one who manumits (the slave)." (Muslim,1997:201, no1504)

The four Sunni Schools of law unanimously agreed that any Muslim who emancipates a slave and the slave died before him (the master), his master will automatically inherit the whole estate left by that freed slave. The Scholars also agreed that in the absence of his master, his children are next to be the inheritor of the freed slave whether male or female. This is the opinion of the Schools of law except Hanafi, where they said if the master left only a daughter, she cannot inherit the estate of the freed slave for being not among the agnatic heirs that can inherit the whole estate when they are left alone. Instead, if the master left behind a grandson or a full brother, they can come and inherit the whole estate left by the freed slave even if the master's daughter is alive. And also in their absence, the estate should be taken to the Muslim public treasury. This is the view of Hanafi as in Sat'h and Salman (nd:41)

These are the three main reasons for inheritance in Islamic law. If a person dies, all the remaining estate should be distributed among these relatives at a fixed rate after settling his debt, Will and so on.

2.9 Impediment to inheritance under Islamic Law

Impediment to Islamic law of inheritance means barring an heir from getting his/her share from the estate left by the deceased due to certain circumstances. It could also be referred as those factors that could prevent an entitled heir from inheriting his deceased relation. The law stipulates that the heir must be free from all stains of impediments to succession. The Islamic jurists have different opinions regarding the causes of impediment to Islamic law of inheritance. Most of the jurists classified the causes of impediments into three (which are murder, differences of religion and slavery), while others like Maliki School of law mentioned more than those three

impediments mentined. But Sat'h and Salman (n.d:44-92) bridged the gap by mentioning seven impediments to cover most of them. These include:

1. Still-birth (عدم الاستهلال)
2. Simultaneous death (شك في سبق الموت)
3. Li'an (Cursing for adultery) (ابن اللعان)
4. Difference of religion (اختلاف الدينين)
5. Slavery (الرق)
6. Children Born Out of Wedlock (ولد الزنا)
7. Homicide (قتل)
8. Difference of domicile (إختلاف الدرين)

2.8.1 Still Birth (عدم الاستهلال)

When a mother delivered her newborn baby, and the baby does not cry after delivery, that child considered as a still birth and he/she cannot inherit from the parents. The Prophet (S.A.W.) says:

عن أبي هريرة ﷺ : عن النبي صلى الله عليه و سلم قال "
إذ استهل المولود ورث " .
قال الشيخ الألباني : صحيح

> It was reported from Abu Hurairah (may Allah be pleased with him), that the Prophet said: "If a newborn raises its voice, and then dies, it will be treated as an heir." (Abu Dawud 2008:447 Vol.3 no.2920)

That shows that if a newborn baby does not cry after birth, will have no right to inheritance. But, if it cries after the birth and then dies, it will inherit and will be inherited by his/her heirs. With regard to this, the Sunni jurists have no contrary opinions on that. Even though they differed in

some of the causes of impediment in the Islamic law of inheritance, but, none of the jurists have mentioned a still birth has right heir for inheritance.

In a nutshell, the causes of impediment vary from one School of law to another, but the most commonly agreed upon by the Jurists are three. These are homicide, religious differences among the deceased and the heir, and then slavery. These three causes of impediments are in all the Schools of law, while other causes might be present in one School and absent in another. But, the researcher followed the idea of some authors like Ambo, in the arrangement of the causes of impediment from 1-7 which are in line with Maliki School of law.

2.8.2Doubtin order of Death (الشك في سبق الموت)

When two or more individuals who are legally entitled to inherit from one anoth other, such as a father and son, husband and wife, or mother and daughter, pass away simultaneously, perhaps due to an event like a building collapse or a similar situation, and the order of their deaths cannot be determined, neither of them will inherit from the other. However, if it can be established that, for example, the husband died before the wife, she will be included among the surviving heirs of the husband, and she will receive her share from his estate. Thereafter, her heirs will inherit her estate plus her share of the husband's estate. This is the view of Hanafi, Maliki and Shafi'i , only Hanbali among the four Sunni Scholars is of the opinion that they should inherit each other and then their heirs inherit them. Salman and Sat'hi (nd:73). According to Sahnun in Mudawwanah al-Kubra,

ولا يورث الموتى بعضهم من بعض إذا لم يعرف من مات
منهم أولا. وقال مالك: لا يرث أحد أحدا إلا بيقين.

> Mutual heirs who happened to die simultaneously could not inherit one another if the one who died first could not be ascertained. On this, Malik says, no one should inherit one another except with certainty (of who died first).

More so, Husain (2005:345) affirms the above quotation of Salman and Sat'hi (nd:73) with some back up from the companions of the Prophet (S.A.W.) where he says;

> If two or more individuals who are mutual heirs die together at the same time or it cannot be ascertained who died first, then according to Hanafi, Maliki and Shafi'i fiqh, death is presumed to be simultaneous, and neither of the deceased can inherit from each other. This was the practice of Abubkr and Umar bin al-Khattab. According to the Hanafi fiqh, mutual heirs who die together or the sequence of death cannot be ascertained are entitled to inherit from each other. This was the view of Aliy bin Abi Talib and Abdullahi bin Mas'ud.

However, in line with the general principles of *mirath* (Islamic law of inheritance), only heirs alife at the time of death of the deceased can inherit from him. It therefore follows that individuals dyeing simultaneously cannot inherit from each other.

2.8.3 Li'an (Cursing for Adultery إبن اللعان).

Li'an finds its roots from the Arabic term 'la'ana,' signifying 'to curse' or 'to denounce.' It represents a reciprocal denial. In cases where a husband accuses his wife of committing adultery (zina) without presenting four credible witnesses, as specified in Surah An-Nur, verses 6-7, the wife has the opportunity to counter the allegation by similarly denial. The act of invoking a curse (la'nat) occurs during the fifth oath, with the implication that Allah's wrath will be upon them if they are being untruthful.Li'an is one of the causes that prevent an heir from inheritance. This happens when a man denies the paternity of his wife's pregnancy and they end up swearing and cursing themselves as prescribed by Allah in the Qur'an (24: 6 – 9).

ٹ ٹ ٹ ٹ ڤ ڤ ڤ ڤ ڦ ڦ ڦ ڦ ڄ ڄ ڄ ڄ ڄ ڄ ڃ ڃ ڃ ڃ چ چ چ چ ڇ ڇ ڇ ڇ ڍ ڍ ڌ ڌ ڎ ڎ ڈ ڈ ژ ژ ڑ ڑ ک ک ک ک گ گ گ گ ڳ ڳ ڳ ڳ ڱ ڱ ڱ ڱ ں ں ڻ ڻ ۀ ۀ ہ ہ ھ ھ ے ے ۓ ۓ ﭐ ﭑ ﭒ ﭓ ﭔ ﭕ ﭖ ﭗ ﭘ ﭙ ﭚ ﭛ ﭜ ﭝ ﭞ ﭟ ﭠ ﭡ ﭢ ﭣ ﭤ ﭥ ﭦ ﭧ ﭨ ﭩ ﭪ ﭫ ﭬ ﭭ ﭮ ﭯ ﭰ ﭱ ﭲ ﭳ ﭴ ﭵ ﭶ ﭷ ﭸ ﭹ ﭺ ﭻ ﭼ ﭽ ﭾ ﭿ ﮀ ﮁ ﮂ ﮃ ﮄ ﮅ ﮆ ﮇ ﮈ ﮉ ﮊ ﮋ ﮌ ﮍ ﮎ ﮏ ﮐ ﮑ ﮒ ﮓ ﮔ ﮕ ﮖ ﮗ ﮘ ﮙ ﮚ ﮛ ﮜ ﮝ ﮞ ﮟ ﮠ ﮡ ﮢ ﮣ ﮤ ﮥ ﮦ ﮧ ﮨ ﮩ ﮪ ﮫ ﮬ ﮭ ﮮ ﮯ ﮰ ﮱ ﯓ ﯔ ﯕ ﯖ ﯗ ﯘ ﯙ ﯚ ﯛ ﯜ ﯝ ﯞ ﯟ ﯠ ﯡ ﯢ ﯣ ﯤ ﯥ ﯦ ﯧ ﯨ ﯩ ﯪ ﯫ ﯬ ﯭ ﯮ ﯯ ﯰ ﯱ ﯲ ﯳ ﯴ ﯵ ﯶ ﯷ ﯸ ﯹ ﯺ ﯻ ﯼ ﯽ ﯾ ﯿ ﰀ ﰁ ﰂ ﰃ ﰄ ﰅ ﰆ ﰇ ﰈ ﰉ ﰊ ﰋ ﰌ ﰍ ﰎ ﰏ ﰐ ﰑ ﰒ ﰓ ﰔ ﰕ ﰖ ﰗ ﰘ ﰙ ﰚ ﰛ ﰜ ﰝ ﰞ ﰟ ﰠ ﰡ ﰢ ﰣ ﰤ ﰥ ﰦ ﰧ ﰨ ﰩ ﰪ ﰫ ﰬ ﰭ ﰮ ﰯ ﰰ ﰱ ﰲ ﰳ ﰴ ﰵ ﰶ ﰷ ﰸ ﰹ ﰺ ﰻ ﰼ ﰽ ﰾ ﰿ ﱀ ﱁ ﱂ ﱃ ﱄ ﱅ ﱆ ﱇ ﱈ ﱉ ﱊ ﱋ ﱌ ﱍ ﱎ ﱏ ﱐ ﱑ ﱒ ﱓ ﱔ ﱕ ﱖ ﱗ ﱘ ﱙ ﱚ ﱛ ﱜ ﱝ ﱞ ﱟ ﱠ ﱡ ﱢ ﱣ ﱤ ﱥ ﱦ ﱧ ﱨ ﱩ ﱪ ﱫ ﱬ ﱭ ﱮ ﱯ ﱰ ﱱ ﱲ ﱳ ﱴ ﱵ ﱶ ﱷ ﱸ ﱹ ﱺ ﱻ ﱼ ﱽ ﱾ ﱿ ﲀ ﲁ ﲂ ﲃ ﲄ ﲅ ﲆ ﲇ ﲈ ﲉ ﲊ ﲋ ﲌ ﲍ ﲎ ﲏ ﲐ ﲑ ﲒ ﲓ ﲔ ﲕ ﲖ ﲗ ﲘ ﲙ ﲚ ﲛ ﲜ ﲝ ﲞ ﲟ ﲠ ﲡ ﲢ ﲣ ﲤ ﲥ ﲦ ﲧ ﲨ ﲩ ﲪ ﲫ ﲬ ﲭ ﲮ ﲯ ﲰ ﲱ ﲲ ﲳ ﲴ ﲵ ﲶ ﲷ ﲸ ﲹ ﲺ ﲻ ﲼ ﲽ ﲾ ﲿ ﳀ ﳁ ﳂ ﳃ ﳄ ﳅ ﳆ ﳇ ﳈ ﳉ ﳊ ﳋ ﳌ ﳍ ﳎ ﳏ ﳐ ﳑ ﳒ ﳓ ﳔ ﳕ ﳖ ﳗ ﳘ ﳙ ﳚ ﳛ ﳜ ﳝ ﳞ ﳟ ﳠ ﳡ ﳢ ﳣ ﳤ ﳥ ﳦ ﳧ ﳨ ﳩ ﳪ ﳫ ﳬ ﳭ ﳮ ﳯ ﳰ ﳱ ﳲ ﳳ ﳴ ﳵ ﳶ ﳷ ﳸ ﳹ ﳺ ﳻ ﳼ ﳽ ﳾ ﳿ ﴀ ﴁ ﴂ ﴃ ﴄ ﴅ ﴆ ﴇ ﴈ ﴉ ﴊ ﴋ ﴌ ﴍ ﴎ ﴏ ﴐ ﴑ ﴒ ﴓ ﴔ ﴕ ﴖ ﴗ ﴘ ﴙ ﴚ ﴛ ﴜ ﴝ ﴞ ﴟ ﴠ ﴡ ﴢ ﴣ ﴤ ﴥ ﴦ ﴧ ﴨ ﴩ ﴪ ﴫ ﴬ ﴭ ﴮ ﴯ ﴰ ﴱ ﴲ ﴳ ﴴ ﴵ ﴶ ﴷ ﴸ ﴹ ﴺ ﴻ ﴼ ﴽ ﴾ ﴿ ﵀ ﵁ ﵂ ﵃ ﵄ ﵅ ﵆ ﵇ ﵈ ﵉ ﵊ ﵋ ﵌ ﵍ ﵎ ﵏ ﵐ ﵑ ﵒ ﵓ ﵔ ﵕ ﵖ ﵗ ﵘ ﵙ ﵚ ﵛ ﵜ ﵝ ﵞ ﵟ ﵠ ﵡ ﵢ ﵣ ﵤ ﵥ ﵦ ﵧ ﵨ ﵩ ﵪ ﵫ ﵬ ﵭ ﵮ ﵯ ﵰ ﵱ ﵲ ﵳ ﵴ ﵵ ﵶ ﵷ ﵸ ﵹ ﵺ ﵻ ﵼ ﵽ ﵾ ﵿ ﶀ ﶁ ﶂ ﶃ ﶄ ﶅ ﶆ ﶇ ﶈ ﶉ ﶊ ﶋ ﶌ ﶍ ﶎ ﶏ ﶐ ﶑ ﶒ ﶓ ﶔ ﶕ ﶖ ﶗ ﶘ ﶙ ﶚ ﶛ ﶜ ﶝ ﶞ ﶟ ﶠ ﶡ ﶢ ﶣ ﶤ ﶥ ﶦ ﶧ ﶨ ﶩ ﶪ ﶫ ﶬ ﶭ ﶮ ﶯ ﶰ ﶱ ﶲ ﶳ ﶴ ﶵ ﶶ ﶷ ﶸ ﶹ ﶺ ﶻ ﶼ ﶽ ﶾ ﶿ ﷀ ﷁ ﷂ ﷃ ﷄ ﷅ ﷆ ﷇ ﷈ ﷉ ﷊ ﷋ ﷌ ﷍ ﷎ ﷏ ﷐ ﷑ ﷒ ﷓ ﷔ ﷕ ﷖ ﷗ ﷘ ﷙ ﷚ ﷛ ﷜ ﷝ ﷞ ﷟ ﷠ ﷡ ﷢ ﷣ ﷤ ﷥ ﷦ ﷧ ﷨ ﷩ ﷪ ﷫ ﷬ ﷭ ﷮ ﷯ ﷰ ﷱ ﷲ ﷳ ﷴ ﷵ ﷶ ﷷ ﷸ ﷹ ﷺ ﷻ ﷼ ﷽

٦ - ٩

And for those who accuse their wives, but have no witnesses except themselves, let the testimony of one of them be four testimonies (i.e. testifies four times) by Allah that he is one of those who speak the truth. And the fifth (testimony) (should be) the invoking of the Curse of Allah on him if he be of those who tell a lie (against her). But it shall avert the punishment (of stoning to death) from her, if she bears witness four times by Allah, that he (her husband) is telling a lie. And the fifth (testimony) should be that the Wrath of Allah be upon her if he (her husband) speaks the truth. (an-Nuur, 24:6-9)

The child will inherit from his mother and her children if she has other children only, but, he cannot inherit from his father or his relatives as in the following Hadith:

حدثنا القعنبي عن مالك عن نافع عن ابن عمر : أن رجلا لاعن امرأته في زمان رسول الله صلى الله عليه و سلم وانتفى من ولدها ففرق رسول الله صلى الله عليه و سلم بينهما وألحق الولد بالمرأة

قال أبو داود الذي تفرد به مالك قوله " وألحق الولد بالمرأة "

وقال يونس عن الزهري عن سهل بن سعد في حديث اللعان وأنكر حملها فكان ابنها يدعى إليها .

It was reported from Mãlik, from Näfi' from Ibn 'Umar, that a person pronounced Li'an against his wife during the time of the Messenger of Allah , and negated her child (being his). So the Messenger of Allah separated between them and he gave the right of the child to the mother. (Sahih).

Abü Dãwud said: Malik is alone with saying: "And he gave the right of the child to the mother." Yunus reported from Az-Zuhri,

> from Sahi bin Sa'd, in the Hadith about Li'an: "He rejected her pregnancy, so her son was named after her." (Abu Dauda Vol.3 No.259)

A child who was the cause of the mother's having been divorced by li'an shall have mutual rights of succession only with the mother and her relatives not the father. Illegitimate child doesn't inherit from the father and the father does not inherit from the illegitimate child. So, in this case, the child will be like distant kindred to his siblings even if they are twines. According to al-Sarkhasi (1989:483), this is the view of Hanafi and other four Sunni jurists with the exception of the Malikiyyah School, whose view is of the opinion that, if the result of the pregnancy comes out as twines; any one of them could be an agnatic heir to the one that died first. Salman and Sat'hi (nd: 67-68)

The researcher is with the opinion of Maliki School of law, which says if the result of the Li'an pregnancy is twines, then they could be agnatic heir to any one of them who died first. This is because, if it is twines, they have similar issue, so they should consider themselves as agnatic heirs not distant kindred.

2.8.4 Difference of Religion. (إختلاف ا لدين)

Difference in religion is one of the causes of impediments to inheritance. A Muslim does not inherit from a non-Muslim relative no-matter how close he/she is with the deceased, and the other way round. For example, a Muslim child who has a non-Muslim father will not inherit from him and vice-versa. The Prophet (S.A.W.) was reported to have said:

عَنْ أُسَامَةَ بْنِ زَيْدٍ رَضِيَ اللَّهُ عَنْهُمَاأَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ

> Narrated Usama bin Zaid (R.A) The Prophet said, "A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim." (Bukhari, 1997:400 Vol.8 no. 6764)

ThisHadithindicate that, differences of religion alone could prevented an heir from inheritance of the deceased's estate. That is the opinion of majority of the companions of the Prophet (S.A.W.). But,there is a weak hadith according to Albany narrated by Abdullah bin Buraydah related to Mu'az Bin Jabal saying a Muslim could be a heir to a non-Muslim, but not vice vasa.

حدثناعبد الله بن بريدة أن أخوين اختصما إلى يحيى بن يعمر يهودي ومسلم فورث المسلم منهما وقال حدثني أبو الأسود أن رجلا حدثه أن معاذا قال: سمعت رسول الله صلى الله عليه و سلم يقول " الإسلام يزيد ولا ينقص " فورث المسلم . قال الشيخ الألباني : ضعيف

> 1t was reported from 'Abdullah bin Buraidah, that two brothers (brought their) dispute to Yahya bin Ya'mar; a Jew and a Muslim. He made the Muslim heir among them. He (Yahya) said: "AbU Al-Aswad narrated to me, that a man narrated to him that Mu'ãdh said: 'I heard the Messenger of Allah ; saying: Islam increases (one) and does not decrease (one)." So he made the Muslim the heir. (Da'if) (Abu Dawud: 443 Vol:3 no. 2912)

Perhaps the above *Hadith* is the proof for those with the opinion that inheritance of Muslim from a non-Muslim is allowed. But, the Hadith is weak according to Albani. So if that is the case, their opinion by relying on this weak hadith is also weake. Based on that, we can now say; inheritance could only be entitled to those that are from the same religion as the Hadith says:

حدثنا مسدد ثنا سفيان عن الزهري عن علي بن حسين عن عمرو بن عثمان عن أسامة بن زيد: عن النبي صلى

الله عليه و سلم قال " لايرث المسلم الكافر ولا الكافر المسلم " .قال الشيخ الألباني : صحيح

> It was narrated from Usãmah bin Zaid, from the Prophet (S.A.W.), said: "A Muslim does not inherit from anon-Muslim, and a non-Muslim does not inherit from a Muslim." (Sahih) (Abu Dawud 2008:441 Vol.3 no.2909)

With regards to the inheritance between Muslim and non-Muslim, all the jurists are of the opinion that Muslim shall not inherit from non-Muslim, likewise a non-Muslim shall not inherit a Muslim. But, jurists differed on the inheritance of an heir who accepted Islam after the death of the deceased which before the distribution of the inheritance. According to this, Sahnun (179dd:599 vol.2)quoted Malik in Mudawwanah al-Kubra saying:

إنما يجب الميراث لمن كان مسلما يوم مات، ومن أسلم بعد موته فلا حق له في الميراث

> Inheritance will only be given to the heirs that are Muslims on the day the deceased died. But, for those that comverted to Islam after his death have no right for inheritance.

According to the Sat'h and Salman (nd:75), Hanafi, Maliki and Shafi'i are of the opinion that any heir whose relative died while he was a non-Muslim, and later converted to Islam after the death of the deceased should not inherit, whether the conversion takes place before the distribution of the estate or after. This is because, the Hadith did not specify on whether before or after the distribution of the inheritance as in the Hadith of Tirmudhi where the Prophet (S.A.W.) reported to have said:

حدثنا عبد الله بن عمرو قال : قال رسول الله صلى الله عليه و سلم " لايتوارث أهل ملتين شتى " .قال الشيخ الألباني : حسن صحيح

It was reported from 'Abdullãh bin 'Amr who said: "The Messenger of Allah said: 'The people of two religions do not inherit (each other) at all." (Hasan)

According to Ibn Taymiyah (1984:413), "Hanbali School of law are of the opinion that, if a non-Muslim becomes a Muslim after the death of a Muslim (deceased) but before the actual distribution of the estate he/she is entitled to inherit."According to al- Halawi (nd:256 Vol.1), Salman and Sat'h (nd :75), "this is also the view of some of the companions of the Prophet (S.A.W.) like Umar, Uthman, Aliyu Hassan and Ibn Masud (R.A.), and this is also the opinion of some of the Scholars in the generation that follows the generation of the companions of the Prophet (S.A.W.)." Their reason for the preventment was the differences in their religion, butwith their conversion to Islam, the differences are no longer in existence. And this qualifies them to be entitled for the inheritance. According to Mansur (227:76 no.186), Hassan Ibn Aliyu (R.A.) was reported to have said:

حَدَّثَنَا هُشَيْمٌ ، قَالَ : حَدَّثَنَا يُونُسُ ، عَنِ الْحَسَنِ ، أَنَّهُ كَانَ يَقُولُ : مَنْ أَسْلَمَ عَلَى مِيرَاثٍ قَبْلَ أَنْ يُقْسَمَ فَلَهُ نَصِيبُهُ ، وَمَنْ أَعْتَقَ عَلَى مِيرَاثٍ قَبْلَ أَنْ يُقْسَمَ فَلَهُ نَصِيبُهُ.

Whoever convert to Islam before the distribution (of the deceased estate) will be entitled to his/her share. Likewise, who was given a freedom before the distribution of the inheritance is entitled for his/her share.

With regard to the above quotation, Ibn Qudamah (2009:68) states that; "Hanbali School of law is of the opinion that any heir converted to Islam before the distribution of the estate is eligible for the inheritance."

However, the researcher is with the opinion of the Maliki School of law and other jurists whom are of the opinion of preventment of any heir who has different religion with the deceased at the time of death. In order to avoid chaos amongst the heirs. Yusup (2017:388) reports that;

> According to the majority of Muslim jurists, the measure to determine the religious difference is the time of testator's death. When a Muslim dies, his or her sons of different religion are hindered from inheritance even if he or she converts to Islam before the division of inheritance takes place. This means, the territory of inheritance law does not apply to non-Muslims.

This is because, some of the heirs might accuse the other heirs who converted to the religion of the deceased after his death and before the actual distribution of the inheritance, as well as deceiving other heirs with their Islam to have their shares and denounce the Islam after collecting their shares.

Apostasy on the other hand is one of the factors that prevent an heir from inheritance. If a Muslim Heir becomes a non-Muslim after the death of a relative from whom he is entitled to inherit, he is still eligible because, when the deceased died, he was a Muslim then. And this is the opinion of Maliki, Shafi'i and Hanbali Schools of law as mentioned above in al-Mudawwanh. But, if he apostatized and died or killed later, the estate left would not be inherited by his Muslims heir. This is in line with the Hadith of the Prophet (S.A.W.) says "a Muslim would not be a heir to a non-Muslim or vise vasa. But, under the Hanafi School, the relatives can inherit from an apostate.According to Sarkhas(1989:26);

> Imam Abu Hanifa differentiate between a male and a female apostate. He says; in the case of apostate, the estate that he acquired while he was a Muslim is inherited by his Muslims relatives, and the estate which he acquired after apostatizing goes to the Baytul Mal (public treasury).

al-Halwiyy (nd:271) reports that, Imam Abu Hanifa is of the opinion that if a female apostate, the whole of her estate is inherited by her Muslims heirs. But, if the husband apostatizes, the wife inherit base on the assumption that he is dead. The basis for this is that the apostate was under Shariah law until he became an apostate; at that point he became death in the eyes of the law. (Salman and Sat'h (nd:90). According to Musa (2011:98-99):

> As far as the inheritance of an apostate is concerned, whether he is executed by Hadd punishment or dies a normal death. Imam Malik and Shafi'i say that his estate will go to the Baital-mal (Public treasury). However, the Hannafis, sufyan at-Thauri, Ibn Mas'ud and Imam Ali (Khaliph R.A) say that his relatives can inherit from him. They arrived at the logical conclusion that since the public treasury can inherit by virtue of the Islamic connection, his relatives have a stronger claim than the public treasury because there is double relationship between him and his relatives, i.e. he is connected to his relation as a Muslim and as a blood-relation while Islamic treasury has Islam as the connecting factor.

However, other Hanafi jurists including Imam Abu Yusuf and Imam Muhammad do not make a distinction between a male and a female apostate, they hold that the whole of the estate of an apostate (man or woman) is inheriexample by his/her Muslims heirs. This is also the view of Aliyu bin Abi Talib (R.A.). Under Hanafi fiqh a Muslim widow inherit from her apostate husband. If a man becomes an apostate his marriage to a Muslim woman is automatically terminates. (Husain 2005:60).

In a nutshell, apostasy could be a factor that can prevent an heir from inheritance. But, we should note that, when a person apostatizes and left his/her heirs in Islam, what would happen to his estate? On this, we heard different views of the Scholars, Maliki, Shafi'i and Hanbali are of the

opinion that all his estate should be taken to Muslims' treasury (Bait al-Mal), while according to Hanafi; all the estate he acquired while he was a Muslim, should be distributed among his heirs and the estate he acquired after apostasy should be taken to Bait al-Mal. He further said: if a female apostatizes, her estate would be shared among her heirs. However, regarding the couples who got married and one of them apostatizes before the consummation; the Marriage will be separated among them like an irrevocable divorce.

2.8.5Slavery (الرق)

A slave is a person who is directly under the control of another. Due to this, he lacks the free will to act as he wishes, which made him to be legally ineligible to inheritance. A slave and everything he owns belongs to his master. As far as he remains a slave, he will not inherit from his relatives and they will not inherit from him. The logic is that if he inherits, whatever he gets belongs to his master and if his relatives are to inherit from him, they will actually be inheriting part of the master's estate.

However, Muslims jurists unanimously agreed that slavery is a bar to inheritance. A slave will not inherit and not to be inherited. And for those that got married to a slave girl, her children can only inherit their father not the mother. Musa (2011:100 – 101) reports that;

> All Muslim jurists agreed that slavery is a bar to inheritance. Slaves do not inherit and not to be inherited. If a slave dies his relatives will not inherit him because he owns nothing, because whatever he possesses belongs to his master he himself is treated as an estate capable of being inherited by his master's heirs. But the offspring's of a slave-girl inherits their father.

2.8.6 Children Born Out of Wedlock (ولد الزنا)

Under the Islamic law of inheritance, any child who is born out of wedlock has no right to inherit from the father and the father cannot inherit from the child too.

عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ – ﷺ – قَالَ « أَيُّمَا رَجُلٍ عَاهَرَ بِحُرَّةٍ أَوْ أَمَةٍ فَالْوَلَدُ وَلَدُ زِنَا لاَ يَرِثُ وَلاَ يُورَثُ ». قَالَ أَبُو عِيسَى وَقَدْ رَوَى غَيْرُ ابْنِ لَهِيعَةَ هَذَا الْحَدِيثَ عَنْ عَمْرِو بْنِ شُعَيْبٍ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ أَنَّ وَلَدَ الزِّنَا لاَ يَرِثُ مِنْ أَبِيهِ.

2113. 'Amr bin Shu'aib narrated from his father, from his grandfather, that the Messenger of Allah said: "Any man who fornicates with a free woman, or a slave woman, then the child born from Zinã does not inherit nor is it inherited from." (Hasan)
Abu Isa said: This Hadith has been reported from others besides Ibn Lahi'ah, from Amr bin Shu'aib, and this is acted upon according to the people of knowledge; the child of Zinã does - not inherit from his father. (Tirmidhi, :176-177 Vol.4 no. 2113)

In Islam, inheritance between the father and his children is established through lineage. No such relationship is established or recognized between the fornicator and his illegitimate child. As such, neither of them can inherit from the other. If a man and woman fornicate, and a child is born as a result, whether or not they get married afterwards, the man is the biological father but not the legal father of the child but the woman is both the biological and legal mother. Hence such a child will inherit from his mother only and vice-versa. The Prophet (S.A.W.) was reported

to have said:". . . الولد للفراش وللعاهر الحجر ". . . the child is ascribed to the bed, and the

Hajar (stone) is for the fornicator". (Abu Dawud, 2008:78 Vol.3 no.2274).

So, on this; none of the jurists has any contrary opinion on the preventment of illegitimate child from the inheritance. His/her inheritance limited to the mother alone not to the biological father for being that is not the legitimate father.

2.8.7 Homicide(قتل)

Homicide in Islam is classified into three, depending on the way and manner it takes place. These include the following:

(a) Intentionalkillind (قتل العمد),

(b) Quasi-Intentionalkillind (شبه العمد), and

(c) unintentionalkillind (قتل الخطا)

a. **Intentional killing (قتل العمد):** When an heir kills his victim intentionally, he would be deprived from inheriting him.Narrated Abu Hurairah that the Prophet (S.A.W.) said: The Prophet (S.A.W.) says:

عن أبي هريرة عن رسول الله صلى الله عليه و سلم أنه
قال:(القاتل لا يرث) .

> It was narrated from Abu Hurairah that the Messenger of Allah (S.A.W.) said: "The killer does not inherit." (Sunan Ibni Maja, 2007:29 vol.3 No. 2735)

In this case, the jurists unanimously have the opinion that the killer will be prevented from inheriting the deceased. It might be possible for the killer to die before the victim despite his

action to kill him if Allah delays the death of the victim for some minutes or days after, so if the killer dies before the victim, the victim can inherit the killer while the killer cannot inherit the victim. According to Assalum (1998:24):

فلو مات القاتل قبل المقتول و في المقتول حيات مستقرة ورثه.

If the killer dies before the deceased, that is if the deceased's death was delayed, then the deceased could inherit him.

(d) **Quasi-intentional (شبهالعمد):**

This is when an heir uses something that is not likely to kill and hit or punish or correct someone. For instance, when a teacher uses cane to correct a pupil and he died as result. The teacher intentionally caned the deceased with the cane, but he does not intend to kill. This is why it is said to be quasi- intentional killing. It was narrated Abdullahi Bn Amr (may Allah be pleased with him) who said: the Prophet (S.A.W.) was reported to have said:

عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو أَنَّ رَسُولَ اللَّهِ -ﷺ- خَطَبَ يَوْمَ الْفَتْحِ بِمَكَّةَ فَكَبَّرَ ثَلاَثًا ثُمَّ قَالَ « لاَ إِلَهَ إِلاَّ اللَّهُ وَحْدَهُ صَدَقَ وَعْدَهُ وَنَصَرَ عَبْدَهُ وَهَزَمَ الأَحْزَابَ وَحْدَهُ ». إِلَى هَا هُنَا حَفِظْتُهُ عَنْ مُسَدَّدٍ ثُمَّ اتَّفَقَا « أَلاَ إِنَّ كُلَّ مَأْثُرَةٍ كَانَتْ فِى الْجَاهِلِيَّةِ تُذْكَرُ وَتُدْعَى مِنْ دَمٍ أَوْ مَالٍ تَحْتَ قَدَمَىَّ إِلاَّ مَا كَانَ مِنْ سِقَايَةِ الْحَاجِّ وَسِدَانَةِ الْبَيْتِ ». ثُمَّ قَالَ « أَلاَ إِنَّ

دِيَةَ الْخَطَإِ شِبْهِ الْعَمْدِ مَا كَانَ بِالسَّوْطِ وَالْعَصَا مِائَةٌ مِنَ
الإِبِلِ مِنْهَا أَرْبَعُونَ فِى بُطُونِهَا أَوْلاَدُهَا ».

From 'Abdullãh bin 'Amr, that the Messenger of Allah - Musaddad said - delivered a speech on the day of the Conquest of Makkah. He said the Takbir three times, then he said: "There is none worthy of worship but Allah alone. He has fulfilled His promise, granted victory to His slave, and defeated the confederates alone." - Up to here I memorized it from Musaddad. 1' - Then the two reports concur: "All the customs of the Jahiliyyah and claims for blood or estate are beneath my feet, except the provision of water for those performing Hajj, and the custodial duties of the Ka'bah." Then he said: "**Except the Diyah for a mistaken killing that appears purposeful - that which is done with a whip or a stick - one hundred camels, of which forty should have their young in their bellies."**Abu Dawud 2008:130 no; 4547 vol.5)

Regarding the inheritance of the accused where applicable, the four sunni jurists opined that he/she should be prevented from inheriting. But, he/she will not be killed because he did not make any intention of killing. (Anbo 1992:62)

(e) **Unintentional killing(قتل الخطا):** This is the type of killing that happens unplanned or undecided. This is where the accuse did not intend to kill nor did he intend to act. This could happened in many ways. For example, when an heir kills someone while hunting and it happens to be someone that he will inherit. In this case, the killing here is unintentional as Allah says:

ٹ ٱ ٱ ٱ ٱ ﱡ لم لى لي مج مح مخ مم مكَّ ا نساء: ٩٢

It is not for a believer to kill a believer except (that it be) by mistake . . . (Nisa'4:92)

Killing in this form is unintentional and there are many examples with regards to it. However, with regard to this particular type of killing (unintentional killing), the Sunni jurists especially Hanafi, Maliki, Shafi'i and Hanbali Schools of law have different opinions regarding the

inheritance of unintentional killing. That shows that all the Sunni jurists have agreed that a murderer or killer shall not inherit. But they vary slightly on detail on other forms of killing. These are as follows:

Hanafi School of Law: According to Hanafi School any killing by whatever form or type prevent a lawful heir from inheritance. These killing could be through:

i- Justifiable killing according to sharia

ii- Killing as a result of self-defence

iii- Lawful killing

iv- Act of a minor or lunatic

v- Causasive factor of killing (qatl bi al-Tasabbub)

The School is of the opinion that all the three forms of killing intentional, Quasi-intentional and unintentional killing prevented an heir from inheritance. This is because, all forms of killing mentioned above attract penalty either by Qisas or Diyyah.

Accoding to al- Shaybani (2002) who said;

قال ابو حنيفة ﵁ من قتل رجلا خطأ أو عمدا فانه لا يرثمن الدية ولا من القود ولا من غيره شيئا و ورث ذلك اقرب الناس من المقتول بعد القاتل الا ان يكون القاتل مجنونا او صبيا فانه لا يحرم

> Abu Hanifa (may Allah have mercy on him) says, whoever kills a man intentionally or unintentional, will not inherit neither from the blood money or the estate left behind by the deceased. Except where heirs or if the culprit are either insane or minor. In this case, they will be given their shares.

This shows that any other forms of killing that attract no Qisas or Diyyah like killing in self-defense, killing by the order of the court, killing by a minor or lunatic, could not prevented a heir from inheritance.

Maliki School of Law: This School of law is of the opinion that the intentional and Quasi-intentional killings prevented a heir from inheritance, while the unintentional killing could only prevented the heir from inheriting the*Diyyah* (blood money) the killer paid. According to Qirawani (nd:143);

ولا يرث قاتل الخطإ من الدية ويرث من المال

> The unintentional killer could not inherit from the *Diyyah* (blood money), but, could inheritthe estate left by the deceased.

According to this School of law killing prevents one from inheriting with the following exceptions:

a- Justifiable killing according to sharia

b- Killing as a result of self-defence

c- Unintentional killing

According to Husain (2005:57) Minors and lunatics are also barred from inheritance under Maliki School if the killing is deliberate, although they are not liable for the penalty retaliation.

Shafi'i School of Law: this School of law is of the opinion that all forms of killing prevented an heir from inheritance, no matter how the killing occurred. That is to say, whether the killing is intentional, Quasi-intentional, and unintentional. All prevented the heir from inheritance. So, to Shafi'i School of law; all forms of killing including even the act of self-defense by an heir which cause the life of the victim is an impediment to inheritance. al-Ramly (d.1004:107)

Hanbali School of Law: this School of law opined that any form of killingprevented an heir from inheritance, be it intentional, Quasi-intentional and unintentional killing by a minor or lunatic, killing in the form of self-defense and so on prevented an heir from inheritance. According to al-Kharqy (d. 334:93)

والقاتل لا يرث المقتول عمدا كان القتل أو خطأ.

> The killer does'nt inherit from the victim, whether the killing is intentional, unintentional and quasi intentional.

However, by this view, the opinions of the four Sunni jurists above show that, the majority of them are of the opinion that, any killing prevents an heir from inheritance. But, Maliki School of law is of the opinion that anybody who kills someone whom could be inherited by him unintentionally, could only inherit from the estate left by the deceased not from the *Diyyah* (blood money) he paid. This opinion is contradicting the opinions of the majority of the jurists whom categorically said 'any form of killing prevents the heir from the inheritance', Tirmidhi has reported a Hadith but supported the view of Maliki, where he says:

حَدَّثَنَا قُتَيْبَةُ حَدَّثَنَا اللَّيْثُ عَنْ إِسْحَاقَ بْنِ عَبْدِ اللَّهِ عَنِ الزُّهْرِيِّ عَنْ حُمَيْدِ بْنِ عَبْدِ الرَّحْمَنِ عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ – ﷺ – قَالَ « الْقَاتِلُ لاَ يَرِثُ ». قَالَ أَبُو عِيسَى هَذَا حَدِيثٌ لاَ يَصِحُّ وَلاَ يُعْرَفُ إِلاَّ مِنْ هَذَا الْوَجْهِ. وَإِسْحَاقُ بْنُ عَبْدِ اللَّهِ بْنِ أَبِي فَرْوَةَ قَدْ تَرَكَهُ بَعْضُ أَهْلِ الْحَدِيثِ مِنْهُمْ أَحْمَدُ بْنُ حَنْبَلٍ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ أَنَّ الْقَاتِلَ

لاَ يَرِثُ كَانَ الْقَتْلُ عَمْدًا أَوْ خَطَأً. وَقَالَ بَعْضُهُمْ إِذَا كَانَ الْقَتْلُ خَطَأً فَإِنَّهُ يَرِثُ وَهُوَ قَوْلُ مَالِكٍ.

> AbU Hurairah narrated that the Prophet said: "The murderer will not inherit." (Hasan)
>
> [AbU Isa said:] This Hadith is not correct. This is not known except through this route. Islaq bin 'Abdullãh bin AbI Farwah was abandoned by some of the people of knowledge, among them Ahmad bin Hanbal. This is acted upon according to the people of knowledge, the murderer will not inherit whether the murder was a mistake or on purpose. Some of them said that if the murder was a mistake, then he inherits, and this is the view of Malik. (Tirmidhi,2007:172 vol.4, 2109)

Based on the above, the researcher is with the opinion of the Maliki School of law, even though is contradicting the opinions of the majority of the other three Sunni jurists. This is because, of the Hadith that the Prophet (S.A.W.) reported to have said:

عَنْ أَبِي ذَرٍّ الْغِفَارِيِّ ، قَالَ : قَالَ رَسُولُ اللهِ صَلَّى الله عَلَيْهِ وسَلَّمَ : إِنَّ اللَّهَ قَدْ تَجَاوَزَ عَنْ أُمَّتِي الْخَطَأَ ، وَالنِّسْيَانَ ، وَمَا اسْتُكْرِهُوا عَلَيْهِ.

> It was narrated from Abu Dharr Al-Ghifiri that the Messenger of Allah said: Allah has forgiven for me my nation their mistakes and forgetfulness, and what they are forced to do." (Sahih) (Ibn Majah 2007:169, vol.3 no. 2043)

So, because of the above Hadith, Maliki School of law could be right by granting inheritance to he who mistakenly killed a person that can be inherited by him, but he could only be prevented from inheriting the right of *Diyyah* (blood money)

2.9Concept of Estate (التركة)

This refers to the estate left by the deceased whether money, estate or right of either rights of fellow human beings (e.g debt, mortgage e.t.c.) or rights of Allah the Creator (e.g. payment of zakah, when it is due, expiation (kaffarh) and vow (Nadhir). e.t.c). According to al-Zuhaili (nd:396 vol.10)

> Estate according to the opnion of the majority (Sunni jurists like Maliki, Shafi'i and Hanbali) with the exception of Hanafi School of law is comprises of whatever left by the deceased which covers rights and wealth of all kinds including moveable and immoveableproperties. But, to Hanafi School is the wealth or rights attached to the wealth of the deceased. This include moveable and immoveable estate, debt and other rights like mortgage e.t.c.

In a nutshell, the estates to be inherited by the heirs from the deceased person include:

a. All estate whether movable or immovable
b. Self-acquired or ancestral
c. Debts, any peculiar right (contracts, opinions, conpensation)
d. The animal or money acquired after his death, like when he set a trap before his death and the trap caught an animal after his death.
e. Blood money

2.9.1 Obligatory Rights Attached to Inheirtance in Islam(الحقوق المتعلقة بالتركة)

According to Lahham (1421:5)and Khalil (2005:260), when a Muslim dies there are four rights to be considere before the distribution of the deceased's estate. These are:

a. payment of funeral expenses
b. payment of his/ her debts

c. execution of his/ her Will. These rights must be considered and settled before the actual distribution.

d. distribution of the remaining estate amongst the heirs of the deceased according to the Islamic law of inheritance.

But, al-Taraabilisy(2003:580 vol.8) added that:

> If the deceased committed any crime before his/her death, the money has to be used to settle the crime he/she commited during her life time from the estate before distribution.

When a Muslim dies leaving some properties, the first thing to consider is the funeral expenses, settlement of his/her debt, mortgage or Will (*Wasiyysh*) before his/her death. This is because, Muslims are encouraged to write Will before their death. But, when writing any Will; a Muslim should not make Will with more than one-third of his estate. Settlement of debts and mortgages should be considered first before looking at the deceased's Wills. And also a joint acquired estate is to be settled prior to any distribution of the estate

2.9.1.1 Payment of Funeral Expenses (مؤنة التجهيز)

This marks the initial claim on the estate of a deceased individual. Right after a person's demise, certain responsibilities regarding their funeral arise, and these expenses are typically covered by the deceased's estate unless someone else has assumed the responsibility. These responsibilities encompass the ritual washing of the deceased's body, providing a burial shroud, arranging transportation to the cemetery, purchasing the burial plot or compensating for grave-digging labor, and any other reasonable expenses related to the burial process. All of these costs should be covered from the estate left behind by the deceased, in accordance with legal requirements.In cases where the deceased left no estate or assets, the responsibility for covering the burial

expenses falls upon their closest relatives or heirs. However, there is a difference of opinion among legal scholars regarding whether a husband is obligated to cover the burial expenses of his wife.According to al- Halawi (nd:126-128),

> It is not the responsibility of the husband to pay for the burial expenses of the wife whether he is rich or not, and whether the wife is rich or poor. This is the view of Malik, Shafi'i and Hanbali Schools of law. But, Maliki suggested that payment for her burial expenses will be better for the husband, since the Shariah permit him to bath and inherit her after her death. While Shafi'i suggested that the husband should pay for his wife's burial expenses if he is rich. But, if the wife was rich, the burial expenses should be paid out of her estate. Hanifi School of law is of the opinion that, the husband is always bound to bear the cost regardless of his wife's financial status, since the maintenance of the wife is on him. This is also the view of Abu Yusuf who is among the disciples of Abu Hanifa . But Muhammad bin Hassan (one of the Scholars of Hanafi School of law) opines that the wife's burial expenses should be from her estate and in the absence of any, the burden shifts to her relations who should have maintained her had she been unmarried. Death, according to him, is an automatic natural divorce which absolves the husband from any further responsibility on his deceased wife.

The view of the researcher on the above quotation is the view of Hanafi School that says wife burial expenses should be from the wealth of her husband no matter how rich she was, except if the husband cannot afford it, then it should be from her left estate as Maliki School suggested. This is because, it would be more respectful to both of them (wife and the husband) in the Nigerian context if he pays fore her funeral expenses**.**

2.9.1.2 Payment of Debts(قضاءالديونالمتعلقةبالذمة)

When a Muslim died, all his/her debt need to be settled before burial if it is possible to do that. This is because of the tornment he/she might face in the grave as a result of failure to settle. During the advent of Islam, the Prophet (S.A.W.) stopped leading funeral prayers for those that are in debted except if someone agree to pay for the debt. Narrated Salamah bin A1-Akwa' that:

عَنْ سَلَمَةَ بْنِ الأَكْوَعِ – رضى الله عنه – قَالَ كُنَّا جُلُوسًا عِنْدَ النَّبِيِّ – ﷺ – إِذْ أُتِىَ بِجَنَازَةٍ ، فَقَالُوا صَلِّ عَلَيْهَا . فَقَالَ « هَلْ عَلَيْهِ دَيْنٌ » . قَالُوا لاَ . قَالَ « فَهَلْ تَرَكَ شَيْئًا » . قَالُوا لاَ . فَصَلَّى عَلَيْهِ ثُمَّ أُتِىَ بِجَنَازَةٍ أُخْرَى ، فَقَالُوا يَا رَسُولَ اللَّهِ ، صَلِّ عَلَيْهَا . قَالَ « هَلْ عَلَيْهِ دَيْنٌ » . قِيلَ نَعَمْ . قَالَ « فَهَلْ تَرَكَ شَيْئًا » . قَالُوا ثَلاَثَةَ دَنَانِيرَ . فَصَلَّى عَلَيْهَا ، ثُمَّ أُتِىَ بِالثَّالِثَةِ ، فَقَالُوا صَلِّ عَلَيْهَا . قَالَ « هَلْ تَرَكَ شَيْئًا » . قَالُوا لاَ . قَالَ « فَهَلْ عَلَيْهِ دَيْنٌ » . قَالُوا ثَلاَثَةُ دَنَانِيرَ . قَالَ « صَلُّوا عَلَى صَاحِبِكُمْ » . قَالَ أَبُو قَتَادَةَ صَلِّ عَلَيْهِ يَا رَسُولَ اللَّهِ ، وَعَلَىَّ دَيْنُهُ . فَصَلَّى عَلَيْهِ .

Once, while we were sitting in the company of Prophet, a dead body was brought. The Prophet (S.A.W.) was requested to lead the funeral Salat (prayer) for the deceased. He said, "Is he in debt?" The people replied in the negative. He said, "Has he left any wealth?" They said, "No." So, he led his funeral prayer. Another dead person was brought and the people said,"O Allah's Messenger! Lead his funeral Salat (prayer). The Prophet (S.A.W.) said, "Is he in debt?" They said, "Yes." He said, "Has he left any wealth?" They said, "Three Dinãr." So, he led the funeral prayer. Then a third dead person was brought and the people said (to the Prophet S.A.W.;), "Please lead his funeral Salãt (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 Dinãr." He [refused to offer funeral Salät (prayer) and said, "Then offer Salat (prayer) for your (dead) companion." AbU Oat ada said, "0 Allah's Messenger! Lead his funeral prayer, and I will pay his debt." So, he led the Salat (prayer). (Bukhari 1997:270 no. 2289)

So, debt should be settled first before the burial if it is possible, or immediately after the funeral.

This debt could be classified into two:

(i)- Rights of fellow human being

(ii)- Rights of Allah

i- Rights of Fellow Human Being: this could be mortgage, payment for the labour given to some people before his death if he has not settled them, and money he lends from others e.t.c. which need to be paid before burial. Mortgage (الرهن) means lending or borrowing money from someone and give him/her your property to keep until you bring back the money you collected from him, before he/she gives you your property back. If this happens and the person that collected the money die while his/her estate is with the person that lended him the money, then the heirs will now source for the money and pay for the mortgage in order to have the estate back for distribution. According to Samraqanda (1984:38 vol.3) 'jurists have unanimously agreed that mortgage is allowed in Islam whether on a journey or at home. And this is the view of the four Sunni scholars'. Allah says:

ٱلخ لم لى لي مج مح مخ مم مى مي نج ئم البقرة: ٢٨٣

> And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging)…

Not only in the Qur'an that permissibility of mortgage is stated clearly, but the Prophet (S.A.W.) has ever invoved in mortgage as stated by Anas Bin Malik in the following narration:

عَنْ أَنَسٍ رَضِيَ اللَّهُ عَنْهُ قَالَ وَلَقَدْ رَهَنَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ دِرْعَهُ بِشَعِيرٍ وَمَشَيْتُ إِلَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ بِخُبْزِ شَعِيرٍ وَإِهَالَةٍ سَنِخَةٍ وَلَقَدْ سَمِعْتُهُ يَقُولُ مَا أَصْبَحَ لِآلِ مُحَمَّدٍ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ إِلَّا صَاعٌ وَلَا أَمْسَى وَإِنَّهُمْ لَتِسْعَةُ أَبْيَاتٍ

> Narrated Anas (May Allah be pleased with him) says; Nodoubt, the Prophet (S.A.W.) mortgaged hisarmour for barley grains. Once, I tookbarley bread with some dissolved fat on it tothe Prophet and I heard him saying, "Thehousehold of Muhammad (S.A.W.) did notpossess except a Sã' (of food grain, barley ,etc.) for both the morning and the eveningmeals, although they were nine houses. (Bukhari 1997:398 no 2508)

So, whenever a deceased engages himself in either mortgage or any debt before his death, heirs should settle that before the distribution of the estate. Because, debt has to be paid in preference. According to Salman and Sat'h (nd:30) "Hanafi, Maliki and Shafi'i are of the opinion that labourer's debt has to be considered especially if it has to do with funeral expences. But, Hanbali says; debt of other people should be considered first before the funeral expences."

(ii)-Rights of Allah: this includes payment of poor due (Zakkah) expiation (kaffarah) and vow (Nadhir). Where the problem is, when the estate left by the deceased will not be enough to settle his debt. In this situation, the Scholars have different opinions on that. On whether to settle the debt of other people first before that of Allah, or Allah's debt before that of other people.

> According to the School of Hanafi, debts to Allah are extinguished by death, unless mentioned in the will in which case these debts will be taken from the bequeathable one third of the estate. This means debts of Allah must be mentioned in the will for them to be paid. More so, accordind to Maliki debts of Allah are paid after debts of individuals. But, accodind to Shafi'i debts of Allah must be fulfilled first from the whole estate whether mentioned in the will or not. According the Shafi'i School debts of Allah take precendence over other debts owed by individuals. But Hanbali School makes no such distinction. (Husain, 2005:49)

The researcher is with the opinion of the Malik, where he says "debt of people should be paid first before debt of Allah". This is because, Allah in His infinit mercy can easily forgive the deceased, while human being might decide not to forgive. This is the most dangerous because, Allah will not forgive someone's right except if that person forgives on his own. Settling the debt of others might bring happiness to the person more especially if they are in need of that money.

But, paying the debt of Allah will not make Him happy since He lacks nothing. So, with this; payment of debt of other people should be given preference than that of Allah. For example, if the deceased unable to pay for his wife's dowry when he was alife, this could also be considered as a debt which must be paid unless she voluntarily forgives him.

2.9.1.3 Execution of Will(إنفاذ الوصية)

Will or Wasiyyah is the transfer of an estate from one individual to another, but making it effective after death. The Islamic law stipulates that it cannot be more than one-third of the whole estate after deduction of debts owed and the funeral expenses. Allah (S.W.T.) says:

ٹ ٹ ٹ ٹ . . . عجعمغجغمفجفغفخ النساء: ١١

. . . after the payment of legacies he may have bequeathed or debts. . .

عَامِرِ بْنِ سَعْدٍ عَنْ أَبِيهِ – رضى الله عنه – قَالَ مَرِضْتُ فَعَادَنِى النَّبِىُّ – ﷺ – فَقُلْتُ يَا رَسُولَ اللَّهِ ادْعُ اللَّهَ أَنْ لاَ يَرُدَّنِى عَلَى عَقِبِى . قَالَ « لَعَلَّ اللَّهَ يَرْفَعُكَ وَيَنْفَعُ بِكَ نَاسًا » . قُلْتُ أُرِيدُ أَنْ أُوصِىَ ، وَإِنَّمَا لِى ابْنَةٌ – قُلْتُ – أُوصِى بِالنِّصْفِ قَالَ « النِّصْفُ كَثِيرٌ » . قُلْتُ فَالثُّلُثِ . قَالَ « الثُّلُثُ ، وَالثُّلُثُ كَثِيرٌ أَوْ كَبِيرٌ » . قَالَ فَأَوْصَى النَّاسُ بِالثُّلُثِ ، وَجَازَ ذَلِكَ لَهُمْ .

Narrated Sa'd: "I fell sick and the Prophet (S.A.W.) paid me a visit. I said to him, "O Allah's Messenger! I invoke Allah that He may not let me expire in the land whence I migrated (i.e., Makkah) ." He said, "May Allah give you health and let the people benefit by

> you." I said, "I want to will my estate, and I have only one daughter and I want to will half of my estate (to be given in charity)." He said, "Half is too much." I said, "Then I will one-third." He said, "One-third, yet even one-third is too much." (The narrator added, "So the people started to will one-third of their estate and that was permitted for them.") (Bukhari 1997:104 vol.10 no. 2744)

According to al-Halawi (nd:143 vol.1), "the Sunni Schools unanimously agreed that atmost a bequest of one-third is allowed, based on the above Hadith." This shows that, Will (Wasiyyah) will only be considered if what the deceased bequest is not more than one-third of the estate, when the person to receive it is not among his heirs. If the person to receive the Will is among his heirs, then, his Wasiyyah will not be considered. This is because, the law stipulates that, those who can benefit from such Will should not be among the heirs of the deceased. The prophet (s.a.w) said:

عَنْ عَمْرِو بْنِ خَارِجَةَ قَالَ خَطَبَ رَسُولُ اللَّهِ –صلى الله عليه وسلم– فَقَالَ « إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِى حَقٍّ حَقَّهُ وَلاَ وَصِيَّةَ لِوَارِثٍ ».

> It was narrated by 'Amrbin Kwarijah said: "The Messenger of Allah delivered a Khut'bahand said: 'Allah has given everyperson who has rights his due, andthere is no Will to an heir.'" (an-Nasa'I 2007:366 no.3671 vol.4)

2.9.1.4Distribution of the Estate Amongst the Heirs(قسمةالرتكةبينالورثة)

After deductions of thepayment of funeral expenses, debts and execution of will, whatever remains should be distributed to the heirs. In the distribution, the sharers should be considered first before the agnatic heirs. But, in the absence of sharers and agnatic heirs, distant kindred, the public treasury (*Bait-al-Mal*) should be considered.

The aforementioned rights of inheritance should be considered before the distribution of the estates left by the deceased. For example, some people use to give *wasiyyah* to some of their heirs, but such a *wasiyyah* need to be explainedbefore the actual distribution. Likewise if the deceased left debt and at the same time makes wasiyyah to someone who is not his heir, but the estate left will not be enough to even settle his debt, talkless of giving out something from the wealth as wasiyyah,that Wasiyyah should not be con sidered.

2.10 Classification of heirs (اقسام الورثة)

Generally, the heirs are classified into three as forllows:

i- Sharers (ا صحاب الفروض)

ii- Residuary (العصبة)

iii- Distant Kindred (ذو الارحام)

2.10.1 Sharers (اصحاب الفروض)

The *Arabic* word *Ashabul-furud* literary means “possessors of obligatory share.” The sharers are also referred to as Qur’anic heirs. According to Husain (2005:63) "Only nine sharer were mentioned in the Qur’an, but in addition, the granddaughter, true grandfather and true grandmother have been added by the Muslim Jurists using Qiyas (analogy). Thus, placing these three Qur’anic heirs in a position of their respective primary heirs (daughter, father and mother) when they replace them in the latter’s absence."

There are now a total number of twelve Qur’anic heirs. These heirs are entitled to receive a fixed share of inheritance. The actual share that the Qur’anic heir (sharer) inherits is dependent on the presence of other heirs. The following are both the male and the female sharers. They include:

The male sharers are:

i. Father: A father shall inherit from his son or daughter.
ii. Paternal grandfather or his ascendant: A paternal grandfather will inherit from his grandson or granddaughter in the absence of his son (the father).
iii. Uterine brother: He has the same mother but different father with the deceased.
iv. Husband: A husband will inherit from his wife if she dies before him. Likewise, if a man divorces his wife with one or two pronouncements i.e. revocable divorce and she dies while in his Iddah i.e. waiting period, he will inherit from her because religously, she remains his wife. However, if the divorce is irrevocable divorce, he will not inherit from her whether the Iddah has expired or not.

The female sharers are:

1. Daughter: A daughter will inherit from her father and mother. This provision does not extend to her children. That is to say, her children cannot replace or represent her to inherit from their (maternal) grandfather or (maternal) grandmother in her absence.
2. Son's daughter: If a son has a daughter, she will inherit from the son's father or mother (her paternal grandparents) in the absence of the son. The rule also applies to son's son's daughter, son's son's son's daughter, and so on.
3. Mother. When a son or daughter passes away, his/her mother is entitled to a part of his/her estate. She cannot be excluded no-matter what happens.

4&5. Either grandmother. In the absence of mother, both grandmothers i.e. maternal and paternal will inherit from a deceased. In the absence of one or both grandmothers, the great-grandmothers will take their place(s) and inherit from the deceased.

1. Full sister: she who has the same father and the same mother with the deceased.

2. Consanguine sister: she who has only share the same father with the deceased.
3. Uterine sister: she who has only share the same mother with the deceased.
4. Wife. A wife will inherit from her late husband andshe cannot be excluded. She will also inherit from him if he dies after divorcing her with one or two pronouncements (revocable divorce) provided her*(Iddah*) waiting period has not elapsed. But if the divorce is irrevocable (three pronouncements), she will not inherit from him whether her *Iddah* has elapsed or not. However, if the husband divorces his wife irrevocably during his illness in which he dies, the four Schools of Islamic jurisprudence have divergent opinions as discussed by the researcher under the grouds or causes of inheritance. But, the summary of the detailed discussion is as follow:
    i. Abu-Hanifa: If the Iddah has not expired, she will inherit from him, otherwise, she will become a non-heir.
    ii. Malik: She will inherit from him even if the Iddah has expired or she has married another person.
    iii. As-Shafi'i : She will not inherit from him whether or not the Iddah has expired.
    iv. Ahmad ibn Hanbal: She has the right to inherit from him whether the Iddah has expired or not provided she has not married another person.

10.Female emancipator (who free her slave)

These are the ten heirs that were mentioned in the Holy Qur'an. They are called sharers because, the different shares and the condition that might warrant them to have that share were all stated clearly in the Glorious Qur'an. So, these shares were allocated by Allah the Almighty. However, there are six shares in the Glorious Qur'an. These shares are as follow;

(i) $\frac{1}{2}$is the share of Daughter, Son's Daughter, Full Sister, Consanguine Sister and Husband

(ii) $\frac{1}{4}$is the share of Husband and wife

(iii) $\frac{1}{8}$is the share of a wife or wives

(iv) $\frac{2}{3}$is the share of 2Daughters and above, 2 Son's Daughters and above, 2 Full Sisters and above, 2 Consanguine Sisters and above

(v) $\frac{1}{3}$is the share of Mother and 2 and above Uterine Brother or Sisters

(vi) $\frac{1}{6}$is the share of the Father, Paternal grandfather, Mother, maternal and paternal grandmother, Son's Daughter, Consanguine Sister, 1 uterine brother of sister.

With regard to the above sharers and shares, Abdullah (2019 youtube) has a formula that simplifies the memorization of the shares and the sharers all together. This formula derived from the orthodox method of countion numbers with alphabet known as الأبجدية الحروف (orthodox method of counting). This formula is a replica to the explanation given by Uthaimeen (2007:364)on the orthodox method of counting. Where he said:

ضبط ذوي الفروض من هذا الرجز مرتبا خذه وقل هبا دبز

Memorize the sharers from this formula in sequential order and say "هبا دبز". he went further to say, this is the أبجدية method of counting, the الأبجدية الحروف are as follows:

ابجد هوز حطي كلمن سعفص قرشت ثخذ ضظغ

In this case, letters were used to represent numbers as follow

Letter	Equvelent	Letter	Equvelent	Letter	Equvelent
ا	1	ي	10	ق	100
ب	2	ك	20	ر	200
ج	3	ل	30	ش	300
د	4	م	40	ت	400
هـ	5	ن	50	ث	500
و	6	س	60	خ	600
ز	7	ع	70	ذ	700
ح	8	ف	80	ض	800
ط	9	ص	90	ظ	900
				غ	1000

Abdullah (2019 youtube) summarizes the shares of the sharers in the following formula for easy memorization as its follows:

Qur'anic Shares and the Sharers

Father					
1.Paternal grandfather					
2.Mother					
3.Maternal Gandmother					
4.Paternal Grandmother		1.Daughters			1.Daughter 2.Son's Daughter
5.Son's Daughter		2.Son's Daughters			3.Full Sister
6.Consanguine Sister	1.Mother	3.Full Sisters		1.Husband	4.Consanguine Sister
7.Uterine Brother/Sister	2.Uterine Brothers/ Sisters	4.Consanguine Sisters	Wife	2.Wife	5.Husband

هـــ

The explanation to this is, $\frac{1}{2}$is the share of 5 heirs (daughter, Son's daughter, full sister, consanguine sister and husband) as in the above example, $\frac{1}{4}$is the share of 2 heirs (i.e. husband and wife) as in the example above,$\frac{1}{8}$is the share of only the wife, $\frac{2}{3}$is the share of 4 heirs (i.e. 2daughters, 2Son's dauhgters, 2full sisters and 2consanguine sisters), $\frac{1}{3}$is the share of 2 heirs (i.e. mother and uterine brothers/sisters) and $\frac{1}{6}$is the share of 7 heirs (i.e.

father, father's father, mother, mother's mother, son's daughter, consanguine sister, uterine brother/sister) all as in the above example**.**

However, this looks confusing without expatiating on the circumstances on how heirs like Son's daughter, consanguine sister e.t.c gets different shares like $\frac{1}{2}$, $\frac{2}{3}$,$\frac{1}{6}$and so on. So for proper clarification, let's pick each and every heir to explain on the circumstances that makes him/her gets a particular share. For example;

a. Daughter ($\frac{1}{2}$,$\frac{2}{3}$, R.)

In Islamic law of inheritance, a daughter has three shares depending on the circumstance she find herself. For example, she gets half ($\frac{1}{2}$) when her father/mother died and left her alone without a sister or brother. For example, a woman died and left behind her husband, daughter and a full brother. The distribution goes as follows:

Heirs	**Share**	**4 (base number)**	
Husband	$\frac{1}{4}$	1	
Daughter	$\frac{1}{2}$	2	Portion
Full Brother	R	1	

In this case, the base number is 4, based on the different ways of determining the base number discussed above (orthodox method, al-andhar al-Arba'ah and the L.C.M). The estate will be divided into 4, husband takes 1, daught take 2 out of 4, and the full brother take the residue which is 1.

Another example is $\frac{2}{3}$ when the daughters are two and above. For example; a woman died and left behind her husband, 2daughters and a full brother.

Heirs	Portion	12 (base number)	
Wife	$\frac{1}{4}$	3	
2 Daughter	$\frac{2}{3}$	4	Portion
Daughter		4	
Full Brother	R	1	

The example above shows that the estate was divided into 12, by considering the denominators of the two fractions (4 and 3), and when these number are multiply by each other, the answer will be 12. So, the husband takes 3 out of 12, each daughter takes 4(8) out of 12 and the remaining 1 will be taken by brother as residuary.

She also be converted to residue when she has a brother with her. For example; a woman died and left behind her husband, daughters and a son.

Heirs	share	4 base number	4 (corrected base number)	
Wife	$\frac{1}{4}$	1	1	
Daughter		3	1	Portion
Son	R		2	

These are the circumstances that makes the daughter to have different shares in the Islamic law of inheritance.

b. Son's daughter ($\frac{1}{2}$, $\frac{2}{3}$, $\frac{1}{6}$ and R.)

Son's daughter has different shares of inheritance depending on the circumstances she fines herself. She gets half ($\frac{1}{2}$) when her grandfather/mother died and left her alone without a child of the of the deceased (the grandfather/grandmother), and has no any other son's daughter or son's son. For example, a woman died and left behind her husband, son's daughter and a full brother. The distribution goes as follows:

Heirs	**Share**	**4 (base number)**	
Husband	$\frac{1}{4}$	1	
Son's Daughter	$\frac{1}{2}$	2	Portion
Full Brother	R	1	

She also gets 2/3 when they are two and above. For example; a woman died and left behind her husband, 2 son's daughters and a full brother.

Heirs	**Portion**	**12 (base number)**	
Wife	$\frac{1}{4}$	3	
Son's Daughter	$\frac{2}{3}$	4	Portion
Son's Daughter		4	
Full Brother	R	1	

She also be converted to residue when she has a brother with her. For example; a woman died and left behind her husband, son's daughters and a son's son.

Heirs	share	4 base number	4 (corrected base number)	
Wife	$\frac{1}{4}$	1	1	
Son's Daughter	R	3	1	Portion
Son's Son			2	

She also gets 1/6 if the the grandfather/grandmother left only a daughter with her. For example; a woman died and left behind her husband, daughter, son's daughters and a consanguine brother.

Heirs	Share	12 (base number)	
Husband	$\frac{1}{4}$	3	
Daughter	$\frac{1}{2}$	6	Portion
Son's Daughter	$\frac{1}{6}$	2	
Full Brother	R	1	

These are the circumstances that makes the Son's daughter to have different shares in the Islamic law of inheritance.

2.10.2 Residuaries (العصبة)

Residuary are classified into three classes. These are residuaryin their own right (العصبة بالنفست), residuary by another (العصبة بالغير), and residuary with another (العصبة مع الغير). This refers to the near male agnates. This consist of all male agnates and four specified female agnates. Agnates relatives of the deceased are those between whom and the deceased no female intervenes. Hence all residuaries are related to the deceased through a

male. The four female agnates are daughter, son's daughter h.l.s.(how high soever), full sister and consanguine sister. Some heirs who normally inherit as sharers can be converted to residuary under certain circumstances. (Husain 2005:67).

Asaba is divided into three types:

i- **Residuaryin their own Right(العصبة بنفست):** this is an heir who is a residuary in his own right. This might be through blood relation (Nasabiyyah) or through special cause (i.e emancipator). The Prophet (S.A.W.) was reported to have said:

حَدَّثَنَا عَبْدُ اللَّهِ بْنُ عَبْدِ الرَّحْمَنِ أَخْبَرَنَا مُسْلِمُ بْنُ إِبْرَاهِيمَ حَدَّثَنَا وُهَيْبٌ حَدَّثَنَا ابْنُ طَاوُسٍ عَنْ أَبِيهِ عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ -ﷺ- قَالَ « أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِىَ فَهُوَ لأَوْلَى رَجُلٍ ذَكَرٍ ».

> Ibn 'Abbas narrated that the Prophet said: "Give the shares of inheritance to those who are entitled to them. As for what remains, then it is for the closest male relative." (Sahih) (Tirmidhi 2007:163 Vol:4 no 2098)

The following are the Residuaries in their own Rightlike son, son's son h.l.s., father, paternal grandfather h.h.s., full brother, consanguine brother, son of full brother, son of consanguine brother, full paternal Uncle, half paternal uncle, son of full paternal uncle, son of half paternal uncle, Maula-al-Itq (male emancipator) and Maulatu-al-Itq (female emancipator). Residuary is only the entitlement of the male heirs except in the case of a female emancipator. That shows that all the agnatic heirs are male except her. Labeeb (1995:16) explains that:

> The residuaries or agnatic heirs are entitled to the whole estate when they are alone and get whatever remains

after the sharers collect their shares as well as get nothing if nothing remains.

Regarding the residuary by special reason (Asaba Sababiyyah), he/she is the master/mistress of an emancipating slave (Mawla-al-Itq). If emancipated slave dies without leaving any residuary heir by blood relationship, the emancipator is entitled to the residuary. The following are some of the examples of these hairs:

(a) a man died and left behind mother, wife and a Son.

Heirs	**Share**	**24 (base number)**	
Mother	$\frac{1}{6}$	4	
Wife	$\mathbf{\frac{1}{8}}$	3	Portion
Son	R	17	

(b) A man died and left behind full sister, mother's mother and son's son

Heirs	**Share**	**6 (base number)**	
Full sister	$\frac{1}{2}$	3	
Mother's mother	$\frac{1}{6}$	1	Portion
Son's Son	R	2	

ii. Residuary by another (العصبة بالغير): this is a female heir who gets half ($\frac{1}{2}$) when she is alone or two-third ($\frac{2}{3}$) when they are more than one and also becomes a residuary in the right of another heir, e.g daughter with son, son's daughter h.l.s. with son's son of equal

or lower degree, full sister with full brother, consanguine sister with consanguine brother. These are female agnates, where they get half of the share of their male counter partners; as Allah says:

ٹ ٱ ٹ ٱ ٱ ک ک ک ک ل ل ل ل ى ى ى ى ا ا ا ا م م م م ن ن ن ن ز ز ز ز خ خ خ خ ال سناء: ١١

Allah commands you as regards your childrens (inheritance); to the male, a portion equal to that of two females . . . (Nisa'I 4:11)

ٹ ٱ ٹ ٱ . . . ئ ئ ئ ئ ن ن ن ن ى ى ى ى ي ي ي ي م م م م ب ب ب ب ى ى ى ى . . . ث ث ث ث ن ن ن ن ال سناء: ١٧٦

. . . if there are brothers and sisters, the male will have twice the share of the female. . . . (Nisa'I 4:176)

Any male heir converting his sister to residuary should be among the residuaries in their own right(العصبة بنفسه) if not he has no right to convert her to residuary. For example, a uterine brother cannot convert his sister to residuary because, he is not among the resuduaries in their own right العصبة بنفست). Likewise paternal uncle cannot convert paternal Aunt to residuary even though paternal uncle is part of the self-residuary. So, only the heirs mentioned above are the agnatic heirs in this category.

The following are some of the examples of this category of residues:

(a) A woman died and left behind her husband, daughter and a son.

Heirs	**Share**	**4 (base number)**	
Husband	$\frac{\mathbf{1}}{\mathbf{4}}$	1	Portion
Daughter		1	
Son	R	2	

(b) A man died and left behind mother and 3full sisters

Heirs	**Share**	**6**

Mother	$\frac{1}{6}$	1
Full sister		1
Full sister		1
Full sister	R	1
Full brother		2

ii. Residuary with another (العصبة مع الغير): these are the female heirs who becomes agnates when inheriting with other heirs. The two examples are full sister and consanguine sister inheriting with either daughter or son's daughter h.l.s. According to Murtadh (2016: 23-24):

> Residuary with another is any female heir who has a specific share and has another female heir who cannot share that same share with her. And the only people that are qualified for that are either full sister or consanguine sister inheriting with the deceased's daughters or son's daughters if there is no son with them (daughters or son's daughters).

The following are some of the examples on this regard:

(a) A man died and left behind his wife, daughter, full sister

Heirs	**Share**	**8**
Wife	$\frac{1}{8}$	1
Daughter	$\frac{1}{2}$	4
Full sister	R	3

(b) A woman died and left behind mother, Son's daughter and a consanguin sister.

Heirs	Share	6
Mother	$\frac{1}{6}$	1
Son's Daugher	$\frac{1}{2}$	3
Consanguine sister	R	2

2.11Males and Females Heirs in the Islamic law of Inheritance(الوارثون من الرجال و الوارثات من النساء)

According to Abdul-Jawad (nd:13), the jurists unanimously agreed that the total number of heirs in the Islamic law of inheritance are twenty five (25) comprising fifteen male and ten female.

The male heirs are:

1. Son
2. Son of son (how low so ever)
3. Father
4. Grandfather (father of father how high so ever)
5. Full brother (germane brother)
6. Half brother (consanguine brother)
7. Uterine brother
8. Son of half brother (how low so ever)
9. Son of full brother (how low so ever)
10. Full paternal uncle
11. Half paternal uncle

12. Son of full paternal uncle (how low so ever)
13. Son of half paternal uncle (how low so ever)
14. Husband and
15. Male emancipator (who free his slave)

The female heirs on the other hand include:-

1. Daughter
2. Daughter of son (how low so ever)
3. Mother
4. Grandmother (mother of father)
5. Grandmother (mother of mother)
6. Full sister (germane sister)
7. Half sister (consanguine sister)
8. Uterine sister
9. Wife
10. Female emancipator (who free her slave)

2. 12 Exclusion in the Islamic Law of Inheritance (حجب)

This is one of the important topic in Islamic law of inheritance. When we fail to understand this topic, division of inheritance will not be perfect. Exclusion in the area of inheritance refers to deprivation of a rightful heir from getting any share of inherentance, from the estate left behind by a deceased due to the presence of another heir which is more closer to the deceased. Exclusion has its own rules and regulations to be followed. The rules of exclusion is that, the closer relatives to the deceased shall exclude those who are remote. Exclusion according to al-Halawi (nd:538) has two types as follow:

a. Exclusion by characterization (حجب وصفف) these are the impediments discussed previousely like religious differences, homicide e.t.c.

b. Exclusion by person (حجب شخص): this type of exclusion classified into two. These are;

i- Partial exclusion (حجب ننقل/نقصان)

ii- Total exclusion (حجب حرمان/اسقط)

2.12.1 Partial Exclusion (حجب ننقل/نقصان)

Partial exclusion means reduction of the share an heir suppose to get from the estate if not due to the existence of another heir. For instance, a husband is entitled for the half ($\frac{1}{2}$) of his wife's estate if she has no child, but if she has a child whether for him or for her previous husband, he gets onequarter ($\frac{1}{4}$) of her estate. Likewise, if a wife is entitle for $\frac{1}{4}$of the estate of her husband when he dies and has not left behind a child. But if he has, a child or children her share will now shift from$\frac{1}{4}$ to $\frac{1}{8}$of the estate. Allah says:

~مى مي نج نح نخ نم نى ني هج هم هى هي يج يح يخ يم يى يي ذٰ رٰ ىٰ ئر ئز ئم ئن ئى ئي بر بز بم بن بى بي تر . . . تمَّ ال سناء: ١٢

> In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is afourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. . . (an-Nisa'I 4:12)

This reduction from $\frac{1}{2}$to $\frac{1}{4}$ and from $\frac{1}{4}$to $\frac{1}{8}$is called partial exclusion. The heirs that are affected by partial exlusion are only five. These are:

				1. Child (Son/daughter/both)
Full sister	Daughter	Child	Child	
		Grandchild	Grandchild	2.Grandchild
				3.Congestion of siblings



Consanguine sister	Son's Daughter	Wife	Husband	Mother
$\frac{1}{2}$ – $\frac{1}{6}$	$\frac{1}{2}$ – $\frac{1}{6}$	$\frac{\mathbf{1}}{\mathbf{4}}$ – $\frac{\mathbf{1}}{\mathbf{8}}$	$\frac{1}{2}$ – $\frac{\mathbf{1}}{\mathbf{4}}$	$\frac{\mathbf{1}}{\mathbf{3}}$ – $\frac{1}{6}$

i- Mother $\frac{\mathbf{1}}{\mathbf{3}}$ – $\frac{1}{6}$: the share of mother shift from $\frac{1}{3}$to $\frac{1}{6}$when there is child or children of the desceased(males or females) or grand children of the deceased (male or female) or where there are two or more siblings of the deceased (full, uterine or consanguine). Apart from the presence of these three categories of heirs mentioned, there will be no reason why the share of the mother will shift to $\frac{1}{6}$instead of $\frac{1}{3}$.For instance, if a man died and left behind a father and mother. The share of the mother remains 1/3 as follow:

Heirs	**Share 3**	**3**
Mother	$\frac{1}{3}$	1
Father	R	2

Here, the estate will divided ito three, the portion of one-third ($\frac{\mathbf{1}}{\mathbf{3}}$) of the estate will go to the mother, while two-third ($\frac{2}{3}$) will be taken by father. Another example is when a man died and left his mother and a full brother. The distribution will be as follow:

Heirs	**Share 3**	**3**
Mother	$\frac{1}{3}$	1

Full brother	R	2

Likewise if a woman died and left behind haer mother, consanguine sister and pertanal Uncle. The distribution will be as follows:

Heirs	**Share 3**	**6**
Mother	$\frac{1}{3}$	2
Consanguine sister	$\frac{1}{2}$	3
Pertanal Uncle	R	1

It is very important to know that in a situatin like this, the brothers and sisters could be either full or consanguine. That is, where full brother is, could be replace with consanguine brother, and where consanguine sister is, could be replaced with full sister. And when these brothers or sister are upto two or more thantwo, the share of the mother will shift from $\frac{1}{3}$to $\frac{1}{6}$. Likewise, presence of children or grand children of the deceased, whether one or more than one, male or female shift her share to $\frac{1}{6}$. Example of this is where a man died and left behind his father, mother and Son.

Heirs	**Share**	**6 (Base Number)**
Father	$\frac{1}{6}$	1
Mother	$\frac{1}{6}$	1
Son	R	4

In this example, the son shifted mother to $\frac{1}{6}$instead of $\frac{1}{3}$. And also restricted the father to take only one over six $\frac{1}{6}$.Another example where children of the deceased shift the share of the mother from $\frac{1}{3}$to $\frac{1}{6}$is when a man died and left behind his mother, father and a daughter. The distribution is as follows:

Heirs	**Share**	**6 (Base Number)**
Mother	$\frac{1}{6}$	1
Father	$\frac{1}{6}$	1 + 1=2
Daughter	$\frac{1}{2}$	3

Grand children can also shift mother from $\frac{1}{3}$to $\frac{1}{6}$ the same way as the children do in the absence of the children of the deceased. A good example is when a man died and left behind his mother and a Son's Son. The distribution is as follows:

Heirs	**Share**	**6 (Base Number)**
Mother	$\frac{1}{6}$	1
Son' Son	R	5

Another example is, when a woman died and left his mother Son's daughter and a full brother. The distribution is as follows:

Heirs	**Share**	**6 (Base Number)**
Mother	$\frac{1}{6}$	1
Son's daughter	$\frac{1}{2}$	3
Full brother	R	2

These are some of the examples where mother's share of $\frac{1}{3}$is shifted to $\frac{1}{6}$as a result of children or grand children of the deceased.

However, mother's share can also shift from $\frac{1}{2}$to $\frac{\mathbf{1}}{\mathbf{3}}$as a result of the congestion os siblings of the deceased. Example of thisis when a man died and left behind his mother, full brother and 3 full sisters:

Heirs		**Share**	**6(Base Number)**
Mother	$\frac{1}{6}$	$\frac{1}{6}$	1
Full Brother			2

Full Sister		1
Full Sister		1
	R	
Full Sister		1

ii. Husband ($\frac{1}{2}$– $\frac{1}{4}$): the share of a husband could be affected from $\frac{1}{2}$to $\frac{1}{4}$as a result of the presence os children of his wife or her grand children for him or for another man. Example of this is, when a woman died and left behind her husbsn, son and daughter. The distribution is as follows:

Heirs	**Share**	**4(Base Number)**
Husband	$\frac{1}{4}$	1
Daughter	R	1
Son		2

Grand children of his wife also shift the husband from $\frac{1}{2}$to $\frac{1}{4}$ Example of this is when a woman died and left behind her husband and a son. The distribution is as follows:

Heirs	Share	4 base number
Husband	$\frac{1}{4}$	1

Son	R	5

iii. Wife ($\frac{1}{4}$– $\frac{1}{8}$): the shre of a wife shift from $\frac{1}{4}$to $\frac{1}{8}$due to the presence of either children or grand chidren of the deceased. For example, a man died and left behind his wife, 3Sons and a daughter. The distribution is as follows:

Heirs	**Share**	**8 (Base Number)**
wife	$\frac{1}{8}$	1
Son		2
Son		2
Son	R	2
Daughter		1

Likewise, grand children of the deceased can shift her share up from $\frac{1}{4}$to $\frac{1}{8}$as follws:

Heirs	**Share**	**8 (Base Number)**
wife	$\frac{1}{8}$	1
Son		2
Son's Daughter		1
Son's Daughter	R	1
Son's Daughter		1
Son's Daughter		1
Son's Daughter		1

iv.Son's daughter $\frac{1}{2}$ $\frac{1}{6}$: a son's daughter can be affected with partial exclusion in the presence of a daughter. The daughter will have $\frac{1}{2}$while the son's daughter will have $\frac{1}{6}$in order to complete the two –third of the share of daughters. For instance, a man died and left behind a daughtrt, son's daughter and a father. The distribution is as follows:

Heirs	**Share**	**6**
Daughter	$\frac{1}{2}$	3
Son's Dauhgter	$\frac{1}{6}$	1
Father	$\frac{1}{6}+$	1 + 1 = 2

Example: 1

Example: 2

A man died and left behid his father, mother, daughter and son's daughter. The distribution will be as follows:

Heirs	**Shre**	**6**
Father	$\frac{1}{6}+$	1 +0=1
Mother	$\frac{1}{6}$	1
Daughter	$\frac{1}{2}$	3
Son's Daughter	$\frac{1}{6}$	1

iii. Consanguine Sister $\frac{1}{2}-\frac{1}{6}$: the share of a consangine sister will be shifted from $\frac{1}{2}$to $\frac{1}{6}$in the presence of a full sister inheriting with her.

Example: 1

A man died and left behind a consanguine sister and son's of full brother

Heirs	**Share**	**6**

Full sister	$\frac{1}{2}$	3
Consangine sister	$\frac{1}{6}$	1
Son's of full brother	R	2

Example: 2

A man died and left behind his daughter, consanguine sister and son's of a full brother:

Heirs	**Share**	**6**
Daughter	$\frac{1}{2}$	3
Consanguine sister	$\frac{1}{6}$	1
Son's of a full brother	R.	2

2.12.1.1 Exclusion from Agnatic heir to Sharer and from Sharer to Agnatic heir

(حجب نقل من تعصيب الى فرض ومن فرض الى تعصب)

This is another form of exclution where an heir is rectricted to a lesser share due to either children or other siblings of the deceased. For example, a father or grandfather shifts from agnatic heir to a sharer when the deceased has child or grand child, while daughter, son's daughter, full sister and consanguine sister shift from either $\frac{1}{2}$ or $\frac{2}{3}$to residusry by her brother. Then they now share it based on 1:2 (a male heir has double share of a female), and this is a share that is lesser than if she happens to be a sharer.

The following formular shows that, the heirs are classified into two (below and above). Those below causes the partial eclution to those on above, as follow:

1.Daughter	1.Daughter				
2.Son's daughter	2.Son's daughter			1.Child	1. Child (Son/daughter/both)
3.Consanguine brother	3.Full brother	1.Son's Son	1.Son	2.Grandchild	2.Grandchild
		جـــــج	أَ	بَـــــــبَـــــــا	
Consanguine sister	Full sister	Son's Daughter	Daughter	Grandfather	Father

This is another form of partial exclusion where an heir will take a portion less than what he/she suppose to get. That is to say, if for example taking residue will be better for an heir, he will be restricted to only his share not residue, while atimes taking a share will be better for the heir than taking residue, but will be converted to residuary by her male counter part. The following are the examples of such cases:

(a) Exclusion from residuary to sharer

(b) Exclusion from sharer to residusry

(a) From the formula above, the first two heirs (father and grandfather) are the ones affected by this form of exclusion (from residuary to sharer). And the heirs that cause this exclusion to them (father and grandfather) are either children or grandchildren of the deceased for example, a man die and left behind a mother and a father. The distribution will be as follows:

(A)

Heirs	**Share**	**3**
Mother	$\frac{1}{3}$	1
Father	R	2

(B)

Heirs	**Share**	**6**
Mother	$\frac{1}{6}$	1
Father	$\frac{1}{6}$	1
Son	R	4

When we look at the example under "A", father takestwo-third of the whole estate, while in the second example, father was forced by the son to take $\frac{1}{6}$ of the whole estate. In this example, been a residuary is better than having a share in this case.

Another example where grand children forcefully restrict father to only take his share is when a woman died and left behind her husband and father. The distribution is as follows:

(A)

Heirs	**Share**	**2**
Husband	$\frac{1}{2}$	1
Father	R	1

(B)

Heirs	**Share**	**12**
Husband	$\frac{1}{4}$	3
Father	$\frac{1}{6}$	2
Son's Son	R	7

In the first example, father as a residuary takes half of the whole estate as his share,but in the second example was shifted to$\frac{1}{6}$of the estate as a result of son's son. The samething applied to grandfather in the absence of a father. For example, a man died leaving behind his mother and father. The distribution will be as follows:

(A)

Heirs	**Share**	**Base number 3**
Mother	$\frac{1}{3}$	1

Grandfathe	R	2

(B)

Heirs	**Share**	**Base number 6**
Mother	$\frac{1}{6}$	1
Father	$\frac{1}{6}$	1
Son's Son	R	4

By looking at the two examples above, we realized that presence of son's son restricted the Father to take only his share, even though his prescribed share is not upto what he will get if taking the residuary. But, because of the presence of son's son, he has no any other option than taking his prescribed share of $\frac{1}{6}$.

(b). another form of partial exclution is from sharer to residuary. This form of exclusion happens when a female heir inheriting with her male brother, or a full sister inheriting with either daughter, son's daughter or full brother. And consanguine sister inheriting with either daughter, son's daughter or consanguine brother.

Examples of such cases are as follow:

Daughter: daughter will be converted to residuary whenever she is inheriting with a son. But, most a times taking her share is more advantageous for her than to be converted to

residuaryby her brother (son). For example, a woman died and left be hind her husband, daughter and a full brother. The distribution will be as follows:

(A)

Heirs	**Share**	**4**
Husband	$\frac{1}{4}$	1
Daughter	$\frac{1}{2}$	2
Full brother	R	1

(B)

Heirs	**Share**	**4**	**4**
Husband	$\frac{1}{4}$	1	1
Daughter			1
Son	R	3	2
Full brother	Ex (excluded)	Ex	Ex

The above two examples show that, the portion of the daughter when taking her share was more than the portion she gots after her conversion to residuary by her brothe. In this case, taking her share is more advantageous for her than converting her to residuary by her brother.

Son's Daughter: son's son's always convert son's daughter to residuary when inhering with him. But she has the same challenge with a daughter in terms of decrease of her portion when there is no son's son who will convert her to residuary.

For example,

(A)

Heirs	**Share**	**4**
Husband	$\frac{1}{4}$	1
Son's Daughter	$\frac{1}{2}$	2
consanguine brother	R	1

(B)

Heirs	**Share**	**8**	**24**
Wife	$\frac{\mathbf{1}}{\mathbf{8}}$	1	3
Son's Daughter			7
Son's son	R	7	14

The above two examples shows that, the portion of the son's daughter when taking her share was more than the portion share got after her conversion to residuary by son's son.

In this case, taking her share is more advantageous for her than converting her to residuary by her brother.

Full sister: full sister is converted to residuary when inheriting with either daughter, son's daughter or full brother. Full sister always serve as residuary like her brother (full brother) when inheriting with either daughter of son's daughter. For example. A man died and left behind a daughter, full sister and a consanguine brother. Here is the distribution:

Heirs	**Share**	**2**
Daughter	$\frac{1}{2}$	1
Full sister	R	1
Consanguine brother	Exc	exc

In the example above, daughter converted full sister to residuary, and the full sister in this case, has right to exclude whoever will be excluded by full brother. Here, full sister is not a sharer but a residuary by another.

Another example where full sister is residuary by another is, when inheriting with a Son's daughter as follows:

Heirs	**Share**	**2**
Son' Daughter	$\frac{1}{2}$	1
Full sister	R	1

Full sister is alo converted to residuary when inherithin with her full brother. In this case, whatever remans after sharers have taking away their shares will now be shared between the full brothers and sister according to two ratio one (2:1). The males having double share of a female. For example:

Heirs	**Share**	**2**	**6**
Daughter	$\frac{1}{2}$	1	3
Full sister	R	1	1
full brother			2

These are some of the examples where Full sister is converted to residuary by her brother instead of taking her share. But, most a times for her to take her share is better than taking the residue that is the reason why this topic is included under partial exclution.

The last examples of partial exclution is the convertion of consanguine sister to residuary by either daughter, son's daughter, or cansanguine. Here are some of the examples:

Consanguine sister: consanguine sister is converted to residuary when inheriting with either daughter, son's daughter or consanguine brother. Consanguine sister always serve as residuary like her brother (consanguine brother) when inheriting with either daughter of son's daughter. For example. A man died and left behind a daughter and a consanguine brother. Here is the distribution:

Heirs	**Share**	**2**

Daughter	$\frac{1}{2}$	1
Consanguine sister	R	1

In the example above, daughter converted conanguine sister to residuary, and the conanguine sister in this case, has right to exclude whoever will be excluded by conanguine brother. Here, conanguine sister is not a sharer but a residuary by another.

Another example where conanguine sister is residuary by another is, when inheriting with a Son's daughter as follows:

Heirs	**Share**	**2**
Son' Daughter	$\frac{1}{2}$	1
conanguine sister	R	1

Conanguine sister is alo converted to residuary when inherithin with her conanguine brother. In this case, whatever remans after sharers have taking away their shares will now be shared between the conanguine brothers and sister according to two ratio one (2:1). The males having double share of a female. For example:

Heirs	**Share**	**2**	**6**
Daughter	$\frac{1}{2}$	1	3
conanguine sister	R	1	1
conanguine brother			2

These are some of the examples where conanguine sister is converted to residuary by her brother instead of taking her share. But, most a times for her to take her share is better than taking the residue that is the reason why this topic is included under partial exclution.

2.12.2 Total Exclusion (حجب حرمان/اسقط)

There are some heirs that deserve to inherit from the estate, but they will be exempted due to the presence of some heirs who are closer to the deceased than them. Now, among the heirs (males and females), there are six of them that cannot be excluded irrespective of who is present. They are: son, daughter, father, mother, husband and wife. The worst that can happen to them is to be partially excluded.

For easy memorization of 'who' exclude 'who', let's look at Abdullah's (youtube:2019) formula on exclusion:

i-(a). Male exlusion (حجب اسقاط للرجال)

Here we are going see how the closer males to the deceased exclude the ones that are remote. The following example of Palladan's formula of exclusion will help you memorize the heirs that could be excluded by so and so heirs:

Example of Exclusion (Those on Top Exclude Those Below)

1.Son						
2.Son's Son	1.Son		1.Son			
3.Father	2.Son's Son	1.Son	2.Son's Son			
4.Grandfather	3.Father	2.Son's Son	3.Father			
5.Siblings	4.Grandfather	3.Father	4.Grandfather	1.Son		
6.Children of siblings	5.Siblings	4.Grandfather	5.Daughter	2.Son's son		
7.Parternal uncle	6.Children of Siblings	5.Siblings	6.Son's Daughter	3.Father	Father	Son

اَ ا جَـــــــــــوَ هَـــــــــــوَ ـــــــــــزَ

Son's of parternal Uncle	**parternal Uncle**	**Chidren of siblings**	**Uterine Sister**	**Siblings (full and consanguine brothers)**	**Grandfather**	**Son's Son**

Note: when we carefully look at the example above, we will see that the Arabic letters representing numbers, and this is the orthodox method of counting as we can see in the last page of Qa'idatu al-Bagdayyah (juz'u Amma and Huruf book). That is to say,ا =1, ب=2,ج =3, د = 4, ه =5, و = 6, ز =7, ح=8, ط =9, ي=10 e.t.c. the people that are below the Arabic letters are excluded by the ones above. For instance, son's son will be excluded by Son. Grandfather will be excluded by father, and siblings of the deceased will be excluded by Son, Son's Son and father.

Likewise, within the siblings, full brothers exclude consanguine brothers and sisters.but uterines brothers or sisters cannot be excluded by a full or consanguine brother. More so, children of full brother exclude children of consanguine brothers. Children of

cconsanguine brothers exclude parternal uncles, and partenal uncles exclude their children.

Examples of this exclusion are as follows:

(a) Aman died and left behind his mother, son ans son's son

Heirs	**Share**	**6**
Mother	$\frac{1}{6}$	1
Son	R	5
Son's Son	Excluded	Excluded

In this example abobe, Son's is excluded by the Son, he gets nothing in the presence of a Son. That was the reason why he took what the mother remains after taking her share of $\frac{1}{6}$.

(b) A woman died and left behind mother, father and father's father

Heirs	**Share**	**6**
Mother	$\frac{1}{6}$	1
father	R	5
Father's father	Excluded	

Father's father gets nothing in the presence of father, they cannot inherit toether, father's father is always excluded by father.

(c) A woman died and left behind her mother, Son and a full brother

Heirs	**Share**	**6**
Mother	$\frac{1}{6}$	1
Son	R	5
Full brother	Excluded	excluded

This is one of the examples where Son excludes full brother from inheritance. Full/consanguinebrother cannon inherit in the presence of Son of the deceased.

(d) A man died and left behind wife, father and a full brother

Heirs	**Share**	**4**
Wife	$\mathbf{\frac{1}{4}}$	1
Father	R	3
Full brother	Excluded	excluded

(e) A man died and left behind his mother, full brother and a Son's Son

Heirs	**Share**	**3**
Mother	$\frac{1}{3}$	1
Son's Son	R	2
Full brother	Excluded	excluded

(f) A woman died and left behind her mother, full brother and consanguine brother

Heirs	**Share**	**3**
Mother	$\frac{1}{3}$	1
Full brother	R	2
consanguine brother	Excluded	Excluded

This is an example of a situation where full brother exclude consanguine brother. This is because, the full brother is stronger than a consanguine brother in terms of inheritance because of hus closeness to the deceased.These are some of the examples of this type of exclusion.

Male Female (حجب حرمان\اسقاط لنساء)

These are the females heirs that presence of other heirs automatically exclude them from inheritance. These are shown in the example below:

		Son			
		Son's Son	Son		
		Father	Son's Son		
		Grandfather	Father	Son	
Mother		Daughter	Full brother	Son's Son	Son
Father	Mother	Son's Daughter	2 Full Sisters	father	2 Daughters

بَـــــــــــــــجَـــــــــهَـــــــــــــوَ ا بَ

Father's Mother	Mother's Mother	Uterine Sister	Consanguine Sister	Full Sister	Son's Daughter

Note: the example above shows that only two heirs can exclude Son's daughter from inhering her grandfather, these people are son or two daughters of the deceased. But, if it is only one daoughter without a son, she will get 1/6 of the estate. The presence of either son, son's son or father in the inheritance, will deprive a full sister from inheritance. While, for the consanguine sister, the existence of either son, son's son, father, full brother and 2 full sister exclude her from inheritance. But, in the case of mother's mother, only mother exclude her from inheritance, while, father's mother will be excluded by mother and father. In the case of uterine sister, six heirs exclude her from inheritance. These are either, son, son's son, father, grandfather, daughter, and son's daughter. So, in the presence of any one of the six mentioned, a uterine sister inherit nothing from the estates left by the deceased.

Examples of these occasion are as follow:

(a) A man died and left behind his 2daughters, son's daughter, son of a full brother

Heirs	**Share**	**3**
2daughter	2/3	2
Son's daughter	Excluded	Excluded
Son's of full brother	R	1

(b) A man died and left behind his mother, mother's mother and consanguine brother

Heirs	**Share**	**3**
Mother	$\frac{1}{3}$	1

Mother’s mother	Excluded	Excuded
Consanguine brother	R	2

(c) A woman died and left behind daughter, father, full brother, consanguine sister and uterine brother.

Heirs	**Share**	**4**
Wife	$\frac{1}{4}$	1
Father	R	3
Full brother	Excluded	Excluded
Consangued sister	Excluded	Excluded
Uterine brother	Excluded	Excluded

These are some of the examples of this kind of exclusion.

2.13. Empirical Study

The orthodox Sunni jurists (especially the Hanafi, Maliki, Shafi'i and Hanbali) have taken teaching of Islamic law of inheritance to a very high level, which made them to give their great contributions in that field by including topics of inheritance in most of their books of jurisprudence. This paves way for the later generations to write more books or to conduct researches that will help in tackling some issues on the Islamic law of inheritance. Many researchers have conducted different researches on the Islamic law of inheritance, but to the best of my knowledge, none of the researchers conduct a research on this topic "analysis of Maliki School of law and others in some cases of inheritance and its practices among Muslims". Some of the researchers whom conducted researches or wrote books on related topic include:

Keffi (1990) wrote a book titled "some aspects of Islamic law of succession". The author made his book into chapters, starting from chapter one to chapter ten; were discussions on some aspects of inheritance were made. Some of the aspects of inheritance discussed in the book were estate, heirs, grounds of succession, disqualification from succession,

distribution of estate, father's father and mother's mother, special heirs, problems of Radd and Awl and members of the outer family. These are some of the aspects discussed in the book. But, the author was silent about the discussion on the comparative study between the Islamic Schools of law, which is the main concern of this research.

Bukhari (2004) wrote a treatise titled "Inheritance in Islam". The author discusses aspects of inheritance like categories of heirs (Qur'anic sharers, agnatic and blood relatives), exclusion in succession, Awl and Radd, collective share (al-Mushtarika), inheritance of hermaphrodite, missing person and foetus were all discussed in the treatise. But discussion on juristic views were not made. That's what differentiate this treatise with this study.

Khan (2004) wrote a book titled "How to Calculate Inheritance: A simple Approach". The author made his effort in simplifying the method of the distribution of inheritance. This is a great effort to bring Muslims closer to the learning of the distribution of inheritance in Islamic law. But, the book can only help the researcher in calculating the shares to be distributed to the heirs, and this is the only way relevance to this work. If not, the book has no any relationship with this study. For being that the study is talking about comparing the views of Maliki School of law with other Schools in some cases of the Islamic law of inheritance.

Lakhyi (2003) has written a book on inheritance titled "Almirath: justice of Islam in the rules of inheritance". The author's approach in discussing the aspects of inheritance was very amazing. This is because, the author took his time in discussing each aspect of inheritance in details with examples where necessary, before moving to the next aspect.

The author made discussion on different aspects of inheritance ranging from definition of inheritance, pillars, reasons for inheritance, impediments, classification of heirs,, doctorine of Awl and Radd, exceptional cases, exclusion and its kinds and so on. And the author cited some examples where the four Sunni Scholars have divergent opinions on some cases where necessary, but not in details. But, the difference between this book and the topic under study is that, the main aim of the book is to discuss some aspect of inheritance without given much concern on the differences of the scholars' opinions on such aspects. The discussion only came in a form of giving a highlight on some aspect of inheritance. But, this research is aimed at finding the areas where Maliki School has diffent opinion with other Sunni jurists, especially the Hanafi, Shafi'i and Hanbali School of law.

Al-Katrawy (nd) wrote a book titled "*al Ra'id fi Ilmu al Fara'id".* This is a book written in Arabic language which the author gave a detailed discussion on some aspects of Islamic law of inheritance, like pillars of inheritance, conditions, reasons, and impedements to inheritance, shares of the heirs etc. the auther went further to discuss on some special cases like the case of unborn child, missing person, hermorprodite, inheritance of distsant kindret etc. but the author discussed nothing on comparatives analysis between the Schools of law, eccept where he made a shallow discussion on the views of the jurists regarding the inheritance of grandfather inheriting with the siblings of the deceased. What differentiate my work with this one is that, the author of this book has not taken comparative studies between the Schools of law as his priority, that was the reason why he ignors it. But, in this study, discussion on comparative study on the views of the jurists is the central objective of the research. That was the reason why the

researcher made conclusion on the book by saying nothing was discussed on comparative analysis on the views of the jurists.

Ibrahim (1999) wrote a book titled "*Tayseer al-Mawaarith*". This is a book written in Arbic language where the author made his efforts in discussing with examples on some aspects of the Islamic law of inheritance. So many topics were discussed in the book as in most of the books of inheritance with some little discussions on the views of the jurists, even though is not the priority of the author. Unlike this research where discussion on the opinions of the jurists on Islamic law of inheritance is the central objective of the research.

Uthaimeen (2010) wrote a book titled "*Tasheel al-Faraidh*". The author used a simple approach in extending his message to the learners of the Islamic law of inheritance by discussing the aspects of inheritance averagely.These aspects discussed in the book including the case of Awl and Radd, exclussion, sharers, agnatic heirs, distant kindret, unborn child, *akdariyyah, munasikha, mu'ada* and many more topics. He further gave a brief discussion on the views of jurists in the book, even though was not the main objective of the book, the main objective of the book was to simplify the method of learning Islamic law of inheriyance to the learners, while this study aimed at discussing the areas of differences between Maliki and other jurists.

Al-Mutlaq (1993) wrote a book titled "*Tafdheel al-Rajl ala al-Mar'ah fi al-Mirath:* Ahwalihi wa Asbabihi" the author of the book made a very good effort in discussing the reason why a male child has a double share of a female child. According to the author, Islam as a religion of justice, looked at the responsibility of a male and female children

and made the share of a male child double the share of a female child in the Islamic law of inheritance. This is because, when looking at the responsibility of a male child in Islam, he is inchage of his family in terms of feeding, shelter and everything they might need, while female child is under someone's elses responsibility including his brothether when their father if dead. A male child is responsible to pay for dowry when getting marriage, while a female child receive dowry in getting marriage. These are some of the reasons why the male share double the share of female in the Islamic law of inheritance. But, the most important to Muslims is the compliance to the commandements of the Almigty Allah, whether we understand the wisdom or not. Allah (S.W.T) says male children should be given double share of the female as in Nisa'I verse 11. The book is relevant to my study for being that, it talks about inheritance and some aspects of inheritance are discussed in the book, but no discussion was made on the comparative study between the Schools of law, which is the main objective of the study.

Apart from the books written on this subject matter, some researchers also conducted different researches on this field. Some of the reseachers who have conducted researches on this subject matter includes:

Khalid (1996) conducted a research on "the Impact of juristic differences in the formation of sources of Islamic law". The main objective of the research is to styudy the differences of juristic opinions in Islamic legal system, which covers the areas of the nature, origin and causes of the differences. Effort was made by the researcher in bringing the main reason why jurists differ in some issues, where he related it to their sources of law derivation. But, among all the issues discussed by the researcher, there was nothing like

juristic differences on the area of inheritance. That is the difference between his work and mine.

Musa (1999) conducted a research on the "historical development of Islamic law (Fiqh) from the revelation to 7thcentury after hijra". What motivated the researcher to carry out research on this topic was his observation to the Scholars who wrote books on Islamic law of jurisprudence. To him, most of the books related to the history of Islamic law seems to be disconnected and lack sufficient of the manner and circumstances in which jurists treated various issues of Islamic law as well as how the law actually relate to the life of man at various level of human relation. The researcher did a wonderful work where he made effort in tracing the development of Fiqh from the time of the Prophet (peace and blessings of Allah be upon him) down to fall of Baghdad in the seventh century after hijrah. The researcher also, discussed the sources of Islamic law both for the Sunni and Shi'ite sects. The relationship between his research and mine is that, both the researches are concern with the sources of Sunni sources of law as well as *fiqh* in general. But, the researches differe in their objectives, where his research concerns with the historical development of *fiqh*, while mine concern with the differences in the area of inheritance.

Suleiman (2021) conducted a research on "Assessment of the perception of some contemporary Muslim Scholars to the Development of Maliki School of law in North-Western Nigeria." What really motivated the researcher to conduct a research on the topic is the the wide spread of misconception and disregard of for Maliki School of law among contemporary Muslim scholars in North-West Nigeria. This is because, some scholar were thinking Imam Malik was only a jurist not a scholar of Hadith. But, the researcher

made his effort to prove to those scholars that, Malik was both a jurist and a scholar of Hadith, in order to clear their misconception.

Musa (2011) who conducted a research on "appraisal of the impediments to inheritance under Islamic law" has really made justice to the topic by explaining almost all the causes of impediments to Islamic law of inheritance. The researcher discusses some aspects of the Islamic law of inheritance like grounds of inheritance in the Islamic law, essentials to Islamic law of inheritance, inheritance in other beliefs which is in contrary to Islam before he finally discussed on the impediment to Islamic law of inheritance. The impediments mentioned by the researcher include Homicide (Qatl), Difference of religion, Apostasy (Riddah), Slavery, Difference of Domicile, Marriage by a Dying Person, Illegitimacy and Li'an Couples, but, nothing was discussed on comparative analysis on the views of orthodox Sunni Scholars, which is the topic of discussion on my research.

Umar (2018) conducted a research on the "Analysis of the views and Practices of Maliki School of Law on the Principles of Female Inheritance in Kaduna State – Nigeria". What really made the researcher to conduct a research on this topic was to evaluate the problems and challenges of female heirs in the course of the estate distribution in Kaduna State, such as restraining females heirs from having access to some properties of their deceased relatives especially land properties like houses and farmlands. On the other hand, the campaign of the feminists on the gender equality has made Islam to be seen as unjust religion to the female heirs, for allocating male heir double share of female heir. This made the researcher to review some related literature on the concept of gender

equality and equity in Islam, the influence of cultural practices on female right to inheritance, the concept of inheritance under Islamic law of Maliki School of law e.t.c.

However, the researcher also reviewed the historical background of the establishment of the Maliki School of law, concept of inheritance under Islamic law of inheritance of Maliki School, the influence of cultural practices of female right to inheritance, concept of equity and equality, concept of Ta'asib (residue and radd), inheritance of Dhaw al-arham and the view of Maliki School on public treasury. All these were discussed to justify the entitlement of female heirs to the access of inheriting estate like houses and farmlands when their relatives passed away. But the difference between this research and mine is that, the rearch of Umar discussed nothing on the differences of the views of the orthodox Sunni scholars of jurisprudence wich is the central aim of my research.

Yusha'u (2010) conducted his research on the "Textual provisions and implementation of female inheritance in Islam in Kano State." The study was carried out to determine the compliance or otherwise in the distribution of inheritance to female heirs in Kano State by Courts and learned Muslims Scholars, in order to determine the differences between the distribution of inheritance in court and home. The researcher made a brief and clearer discussion on the female inheritance on other societies like Ebira, Yoruba, Hausa, Igbo, and pre-Islamic Arebian system of inheritance. He went further to discuss on the reforms brought by the Islam which include the right of female in Islam, wisdom of giving male heir double share of female heir, blood heirs, adaptation, e.t.c. all from the Islamic law of inheritance. But, what differentiates between my research and this one is that, my research focuses on the areas of differences between the orthodox Sunni jusits on the Islamic law of inheritance, while this is on the Textual provisions and implementation of

female inheritance in Islam in Kano State. So, focuss was made on determining the compliance or otherwise in the distribution of inheritance to female heirs in Kano State by Courts and learned Muslims Scholars.

Maibushira (1998) also conducted his research on the "Distribution of Inheritance in Islam and its Application in Kano State". The author has made a tremendous effort in discussing so many cases of the Islamic law of inheritance like Dhawil Arham, Ashabul Furud (sharers), the Agnatic heirs, Impediments, but he mainly based his explanation on the views of Maliki School. While this study focusses mainly on the differences of opinions between Maliki School and others (Hanafi, Shafi'i and Hanbali) in some cases of Islamic law of inheritance.

Ohunene (2020) conducted a research on the "Analysis on the Implication of Culture and Traditions of Ebira People on the Practices of Islamic System of Inheritance among Muslims in Ebira Land". The researcher mad meaningful discussion on the concept of inheritance in Islam and how laxity and the ignorance of some Ebira Muslims on the Islamic law of inheritance contributed to the denial of female's right of inheritance in the Ebira land. The researcher also based her discussion on how the Ebira culture influences the Muslims on the Islamic law of inheritance. More so, the researcher called on the Islamic Scholars to put more efforts in teaching and guiding people on matters of religion and also Muslims especially families should be made to understand the Islamic faith which requires total submission to the injunctions of Shariah. This research of Ohenene cited here because, it shows how some people's culture influences their religion on inheriatance, directly or indirectly when comparing it with others whosetheir culture mad no any impact on the religion. So, the research has a little connection with mine because,

my research is on comparison between the orthodox Sunni jurists on some aspects of the Islamic law of Inheritance.

Barkindo (2012) made a research on "Blood Relationship as a Basis of Inheritance under Islamic Law: A Case Study of the Inner and Outer Circles of Family". In order to provide a solid foundation of his research topic, the researcher traced the historical development of succession from the period before Islam to the time when the verses of inheritance were revealed. He had also discussed on the inheritance of Jewish and Christians law of inheritance. The researcher has classified the heirs into four categories of blood relationship (Ascendants, Descendants, Collateral and Uncles). Under these categories each legal heir inherits, how he is excluded and excluded others have been discussed. The succession right of the heirs of inner and outer circles of family has also been discussed. But, there was no any discussion on the comparison between the jurists on some aspects of Islamic law of inheritance which is the concern of my research.

These are some of the books and researches conducted on the Islamic law of inheritance that are known to the researcher.

CHAPTER THREE

METHODOLOGY

3.0 Introduction

The purpose to this chapter is to describe in detail the research method and the techniques used for data collection. The research is qualitative in nature, which analyses the differences of the opinions between Maliki School of law and other sunni jurists (Hanafi, Shafi'I and Hanbali Schools of law) in some cases of inheritance distribution and its practices among Muslims.The chapter was carried out under the research design, population, Sampling Technique, instrument for data collection, validityand realiability of the instrument, data collection process, and data analysis technique. The goal of this chapter is to provide a detailed account of the steps taken to ensure the validity and reliability of the research findings.

3.1 Research Design

The research design adopted forthis study was comparative content analysis. According to Creswell (2018:253);"Content analysis is a research method used to systematically analyze the content of various forms of communication, such as text, audio, video, or images, with the aim of identifying patterns, themes, or trends within the data. It involves systematically categorizing and quantifying aspects of the content to draw meaningful insights or conclusions." In this rearch, a content analysis approach was deemed suitable for this study due to its effectiveness in systematically analyzing textual data to uncover somethemes related to differences of opinions in some cases of inheritance practices between Maliki and other Schools of law within the Muslim community.

This method allows for a comprehensive exploration of a diverse range of textual sources to uncover some common concepts and cases of inheritance and the jurists' views on them; which enables to gather in-depth insights on the cases.The under listed procedure was used to clarify the planned structure used for the research:

a. Study the cases of inheritance whereMaliki School of law differ with others (Hanafi, Shafi'I and Hanbali) in their distributions.
b. Identify the cases of inheritance where the opinions of Maliki School of law differ with others (Hanafi, Shafi'I and Hanbali) in their distribution.
c. Analyse the cases of inheritance where Maliki School of law differ with others (Hanafi, Shafi'I and Hanbali) in their distribution.
d. Discuss on the cases of inheritance where Maliki School of law differ with others (Hanafi, Shafi'I and Hanbali) in their distribution by the researcher.

3.2 Polutation

According to Krippendorff (2018:8)"population in content analysis research encompasses all the possible content that could be relevant to the research questions." The population of this research were over 100 available books and materials written on either the inheritance of Maliki, Hanafi, Shafi'I and Hanbali Schools of law.

3.3 Sampling Technique

A purposive sampling technique was employed to select somecases of inheritancewhere Maliki School of law differ with Hanafi, Shafi'I and Hanbali Schools of law in their books of jurisprudence.According to Patton (2014:24): "Purposive sampling is used to select texts that are most relevant to the research questions".

3.4 Instrument for Dat Collection

The instruments used for the data collection were both primary and secondary sources. The Qur'an, Hadith and the works authored by the four Schools of law (Hanafi, Maliki, Shafi'i and Hanbali) were considered primary data sources. Secondary sources on the other hand, include books authored by other people, journals, unpublished Dissertations, Thesis, conferences, paper presentations, and other documents that were acquired through web databases. These sources were used to bring out the cases of inheritance where Maliki School differ with either Hanafi, Shafi'i and Hanbali Schools of law.

3.5Validityand Reliabilityof the Instrument

According to Lincoln and Guba (1985:15), "Validity refers to the accuracy and truthfulness of the findings,while reliability refers to the consistency of the research process.".Toascertain the reliability of the instrument used in analysingthe practices of Muslims in such cases of inheritance, the researcher solemly relied on the opinions of the four Schools of Law (Hanafi, Maliki, Shafi'i and Hanbali) regarding such cases of inheritance mentioned in their books above and validated by the supervisors and other expert in the field of analysis.

3.6Method of Data Collection

According Silverman(2016), "data for content analysis can be sourced from a variety of texts, including newspapers, social media platforms, TV channels, online archives, and databases. The selection of these sources is based on their accessibility, comprehensiveness, and relevance to the study’s objectives. Using multiple sources helps ensure a comprehensive dataset."

For the current research, relevant textual sources were selected based on their relevance to the research topic. These sources includes variety of materials such as Islamic jurisprudential texts, fatwas (religious rulings), legal treatises, academic articles, online resources and other sources discussing on the inheritance practices of Muslims. Therefore, the researcher study and selected some cases of inheritance from theaforementioned sources to provide a comprehensive understanding of the opinions of the Maliki and other Schools of law regarding such cases of inheritance. This enables establishment of generalization of facts about the topic.The researcher consider the following in data collection:

a- Identify the cases of inheritance where Maliki School of law differ with others (hanafi, Shafi'I and Hanbali) Schools of law.
b- Study the cases of inheritance where Maliki School of law differ with others (hanafi, Shafi'I and Hanbali) Schools of law.
c- Selection of the cases of inheritance where Maliki School of law differ with others (hanafi, Shafi'I and Hanbali) Schools of law.

3.8 Method of Data Analysis:

The method of data analysis was all the content of the data collected reflecting an aspect of the research problems. Content analysis was employed to analyse the data. The data such as textbooks, academic journals, articles, Paper presntations and other sources were analized to make inferences from the texts and context of the document used. The process involved a systematic review and synthesis collected of textual data, the focus was on identifying different themes, trends, and perspectives emerging from the textual sources

in relation to Islamic law of inheritance between Maliki School and others in some cases of inheritance and its practices among Muslims.

CHAPTER FOUR:

DATAPRESENTATION, ANALYSIS AND INTERPRETATION

4.0 Introduction.

This chapter explains and analyses the Maliki School of law and others in some cases of inheritance and its practices among Muslims. The chapter discusses and analyses the following; the differences of opinions between Maliki and other (Hanafi, Shafi'I and Hanbali) Schools of law on the inheritance of grandfather with brothers and sisters of the deceased,inheritance of uterines/distant kinred (*DhawilArham*), inheritance of the children born out of wedlock,inheritance of aTest-Tube baby and the inheritance of some Muslims with atheistic doctrine. Other areas of difference of their opinions include inheritance a case of a divorcee woman and inherence of grandmother when the father of the deceased is alive, all these were also analysed.Major findings and discussions of the major findings were all provided in the chapter.

4.1 Analysis of the Inheritance of Grandfather along side with the Brothers and Sisters of the Deceased (الجد مع الإخوة)

This is a grandfather whose relation to the deceased is not interrupted by a woman, like father's father how high so ever (h.h.s) as stated by Ibn-Najeem (nd:559), that shows that, if his relation to the deceased is interrupted by a woman, he is not a true grandfather, like the mother's father. He could only be considered among the dhawul- arham (distant kindred). However, Jurists have different opinions regarding the inheritance of grandfather surviving with full and consanguine brothers and sisters of the deceased. According to as-Shaukaniy (nd:24):

> It is not and it has not been easy even during the time of the companions (Sahabah) to decide on the case of true grandfather surviving with full and consanguine brothers and sisters because there is no verse in the glorious Qur'an or prophetic traditions explicitly applicable to it.

Based on that, there are two major opinions regarding the inheritance of grandfather with full or consanguine brothers and sisters of the deceased. These opinions are whether a grandfather inherits with them or exclude them in inheritance. On this, there are some companions of the Prophet (S.A.W.) who were on the opinion that grandfather excludes full and consanguine brothers and sisters from inheritance. These companions according to Suleimiy (1998:21) are "Abubakar as-Siddeeq, Ibn Abbas, Aisha (R.A), Ibn Az-Zubair, Mu'az Bin Jabal and Jabir Bin Abdullah. And those companions with the opinion that grandfather cannot exclude the full and consanguine brothers and sisters from inheritance were Zaid ibn Thabit, Uthman, Aliy and Ibn Mas'ud." In view of the differences in the opinions of the companions of the Prophet (S.A.W.) on this, the orthodox Muslim Sunni Schools of law were consequently divided into two groups as follows:

The first group which is the School of Abu Hanifa**.** This School of law maintained the views of the companions like Abu Bakr, Ibn Abbas, Ibn Umar and others that full, and consanguine brothers and Sisters cannot inherit with a true grandfather. According to al-Shaybani (1403:205) Abu Hanifa said:

> Grandfather is in the position of father, full or consanguine brothers and sisters cannot inherit with him, even though people of Madinah were with the opinion of Zaid. al-Shaybani went further to say, the view of Abu Hanifa is the view of Abubakr, Ibn Abbas, Ibn Zubair, mother of the believers Aisha (R.A.), Abdullah bn Utbah and also the view of al-Hassanul Basri

According to Ibn-Najeem (nd:559) "this argument is anchored on the assumption that a true grandfather takes the place of Father in his absence." As it is in the Glorious Qur'an:

أَخ لم لى لي مج مح مخ يوسف: ٣٨

And I have followed the religion of my fathers, - Ibraheem (Abraham), Ishaque (Isaac) and Yaqoob(Jacob) . . . (Yusuf,10:38)

In another Surah (chapter) Allah says:

ٹٱٹٱ . . . تختمتهثم . . . كجّ الحج: ٧٨

it is the religion of your father Ibrahim (Abraham) (Islamic Monotheism).

Qurtubi (1964:101 vol.12) in his commentary to this verse says; "the position of Ibrahim to Muslims is like position of father to his son." So, those with this view opined that, since Allah (S.W.T.) Has called grandfather "father" here. The grandfather has right to exclude the full and consanguine brothers and sisters from inheritance as the real father does. They went further to say, if son's son can exclude full and consanguine brothers and sisters from inheritance as son does, father's father too should also exclude them from inheritance as father do. More so, in a case of inheritance where the heirs exsusted the estate and nothing remains for the siblings to inherit, the full or consanguine brothers and sisters would get nothing. Since their inheritance is based on whatever remains. But, grandfather has his share and cannot be excluded nomatter how by any one except father. Based on this, grandfather deserved the inheritance more than the siblings of the deceased, and exclude them the way father excludes them from inheritance.

The second group which is the group of the Majority of the orthodox Sunni School of law known as the opinion of the majority, especially the Maliki, Shafi'i and Hanbali Schools of law. Accoding to Ibn- Qudamah ((1405AH:74 vol.8): this is the View of Malik, Awza'I as-Shafi'I, Ahmad Ibn Hanbal and Abu Yusuf." This group maintained that full

and consanguine brothers and sisters can inherit side by side with the grandfather and he cannot exclude them. This is because, the grandfather and the Brothers are of the same degree of relationship with the deceased. They are all related to the deceased through father. The grandfather is the origin of the father and the brothers are the branches of the father. Therefore, there is no reason why one of them should be allowed to inherit and the right of other to be denied from inheriting the deceased. Allah knows the best, but this opinion of the majority of the Sunni Scholars is the bet opinion to the researcher. This is because, it will make the wealth to be circulated among the relatives of the deceased rather than making it concentrated on an individual, which is not the wisdom of the shariah behind the distribution of the inheritance. So, this is also the opion of Zaid Bn Thabit whoseknowledge of inheritance was confirmed by the Prophet (peace and blessings of Allah be upon him) as the most knowledgeble companion in inheritance as he said:

أَرْحَمُ أُمَّتِي بِأُمَّتِي أَبُو بَكْرٍ وَأَشَدُّهُمْ فِي أَمْرِ اللَّهِ عُمَرُ وَأَصْدَقُهُمْ حَيَاءً عُثْمَانُ وَأَعْلَمُهُمْ بِالْحَلاَلِ وَالْحَرَامِ مُعَاذُ بْنُ جَبَلٍ **وَأَفْرَضُهُمْ زَيْدُ بْنُ ثَابِتٍ** وَأَقْرَؤُهُمْ أُبَيُّ بْنُ كَعْبٍ وَلِكُلِّ أُمَّةٍ أَمِينٌ وَأَمِينُ هَذِهِ الأُمَّةِ أَبُو عُبَيْدَةَ بْنُ الْجَرَّاحِ.

"The most merciful of my nation to my nation is Abubakar, and the most severe of them concerning the order of AllAh is Umar, and the most truly modest is Uthman bin 'Affan. The most knowledgeable of them concerning the lawful and the unlawful is Mu'Adh bin Jabal**, the most knowledgeable of them concerning (the laws of) inheritance is Zaid bin Thabit,** the best reciter (of the Qur'an) among them is Ubayy bin Ka'b, and

> every nation has a trustworthy one, and the trustworthy one of this nation is Abu 'Ubaidah bin Al-JarrAh." (Sahih) j (Tirmidhi, 2007:438 vol. 6, no. 3790).

The above Hadith explains the areas where the companions of the Prophet (S.A.W.) had preferences on one another, but Zaid's preference was in the field of Islamic law of inheritance. Therefore, the Maliki School of law always follow the footsteps of Zaid bn Thabit (R.A.) on inheritance law. So, even on this case of grandfather's inheritance with the siblings of the deceased, they (Malik and Zaid) share the same opinion of sharing the estate among them (grandfather and the full and consanguine brothers and sisters of the deceased).

However, the grandfather has options when inheriting with the siblings of the deceased (brothers and sisters of the deceased, whether full or consanguine). These options depend on whether there is another heir or not. According to Qirawan (nd:144),

1. If the grandfather is inheriting along with full or consanguine brothers/sisters only, the grandfather has two options. He is to take whichever is best for him, either:

a. Muqasamah (sharing).

b. $\frac{1}{3}$of the whole estate.

a. Muqasamah (sharing): This means that he shares the estate together with full or consanguine brothers/sisters as if he is one of them. He will also be considered as a full brother in the presence of full brothers, full sisters or a combination of full brothers and sisters. Likewise, he will be counted as a consanguine brother if inheriting with consanguine brothers, consanguine sisters or a combination of consanguine brothers and consanguine sisters, then he acts as a consanguine brother. But, he will only accept

Muqasamah (sharing) with them if the siblings are not upto his double (like full brother and sister or 3full sisters or less than that). However, if the brothers/sisters or their combination is upto his double or even more than that, taking $\frac{1}{3}$of the whole estate will be best for him than the muqasamah (sharing) with the siblings of the deceased. Also, the grandfather has the free will to choose between these two options. And naturally, he is expected to pick the one that gives him a larger share of the estate depending on the circumstance. For instance;

Example 1:

A man died and left behind his grandfather and a full brother

Heirs	**2**	
Grandfather	1	Portion
Full brother	1	

The above example shows that, both the grandfather and the full brother got the same portion because, grandfather agreed to be considered as brother; which is better for him than taking $\frac{1}{3}$of the whole estate.

Example 2: a woman died and left behind only her sister and a grandfather. The distribution will be as follows:

Heirs	**3**	
Grandfather	2	Portion
Full sister	1	

Another example where muqasama is better than taking $\frac{1}{3}$of the whole estate for the grandfather is as follow:

Example 3: a man died and left behind his grandfather and 2 full sisters. The distribution goes like this:

Heirs	**4**	
Grandfather	2	
Full sister	1	Portion
Full sister	1	

In this example, grandfather takes double portion of each full sister, the same as when they are with full brother.

Example 4, is when a deceased died and left behind his grandfather, full brother and a full sister. The distribution would be as this:

Heirs	**5**	
Grandfather	2	
Full brother	2	Portion
Full sister	1	

In this example, the grandfather takes the same portion with full brother, while the full sister's portion is half of the portions of the grandfather and that of full brother.

Example 5, another example is when a deceased died and left behind 3 full sisters with grandfather:

Heirs	**5**	
Grandfather	2	
Full sister	1	portion
Full sister	1	
Full sister	1	

The example above shows that, the portion of grandfather is double to the portion of each full sister. All the examples above, are also applicable to consanguine sisters and brothers in the absence of full brothers/sisters. And these are the only five (5) examples of inheritance where grandfather gets grater than $\frac{1}{3}$(one-third) if he agreed with muqasamah.

b. $\frac{1}{3}$of the whole estate: in a situation whereby, sharing equally with the siblings will not favour the grandfather, he can now go for $\frac{1}{3}$of the whole estate. For instance,

Example 1, a man died and left behind grandfather and 3 full brothers. In this case, one-third of the estate would be more favourable to grandfather than Muqasamah. So, the grandfather should be given one-third of the estate left by the deceased.

	Heirs	**Share**	**3**	**9**
	Grandfather	$\frac{1}{3}$	1	3
	Full brother			2
3	Full brother	R	2	2
	Full brother			2

In the above example, the portion of the grandfather is more than that of full brothers because, had he agreed with Muqasamah in this case, he will not get what he has gotten now. So, whenever the brothers doubled him in the absence of Qur'anic sharers, taking one-third of the estate is always better for him.

Example 2, is when a person died and left behind his grandfather, 2 full brothers and a full sister. The distribution will be as follows:

	Heirs	**share**	**3**	**15**
	Grandfather	$\frac{1}{3}$	1	5
	Full brother			4
5	Full brother	R	2	4
	Full sister			2

The example above, shows that grandfather took one-third of the estate, and the two-third shared between the two brothers and a sister in two ratio one (1:2). That is *lizzakari mithlu hazzil unthayain*.

Example 3, a man died and left behind his grandfather and six full sisters. The distribution goes like this:

Number of Heads	**Heirs**	**Share**	**Base number**	**Corrected Base Number**
			3	**9**
	Grandfather	$\frac{1}{3}$	1	3
	Full sister			1
	Full sister			1
	Full sister			1
$6 \div 2 = 3$	Full sister	R	2	1
	Full sister			1
	Full sister			1

By looking at the left handside of the example above, there are some "numbers, division and equal to" signs. This shows that, there is need to correct the base number because, the 2 (share of the full sisters) that need to be divided for them is not upto their number. The full sisters are 6, and the number to be divided for them is 2. To corrct the base

number, the number of full sisters and what to be divided for them need to be considered. If the two numbers (number of heirs and their share) are the same or one could be divided be another is called *at-Tawafuq.* Andif the two numbers are not the same and none of them could divide another is called at-Tabayun. But in this example (*at-Tawafuq),* what is needed is to divide the number of the heads (heirs of that share e.g full sisters) and the share to be divided (2). Whatever is the answer, will be multiply by the first base number to get the corrected base number, then followed by the shares of the heirs. That is 3×3=9, 3×2=6 (6 is the share for the full sisters) then 6÷6=1 (now, each one of the full sister will get 1 out of 9).

These are some of the examples of the inheritance of grandfather with the brothers and sisters of the deceased without any other heir.

2. If the grandfather is inheriting along with full or consanguine brothers/sisters in the presence of other heirs that could neither exclude him or exclude the siblings of the deceased (i.e neighter Son (s) hls or father). In this case, grandfather has three options on either taking:

a. Muqasamah (sharing).

b. $\frac{1}{3}$of the residue (after other heirs have received their shares).

c.$\frac{1}{6}$ of the whole estate.

He takes whichever is the most favourable to him. But, uterine brothers and sisters are not part of the other heirs that could inherit with the grandfather, because he excludes them from inheritance.

However, whenever a grandfather is inheriting with the full and consanguine brothers and sisters of the deceased together with sharer(s) (اصحاب الفروض) the grandfather has three options. That is, either to share the estate equally, take one-sixth of the whole estate or one-third of the residue. In this situations, grandfather has right to choose any one of the three options that might favour him. These options are:

i- Share with the full and consanguine brothers and sisters of the deceased after the sharer has taken his/her share. In this situation, the true grandfather considered as a full brother like any other full brother. If he inherits with the full sister alone, he takes double of her share in accordance with the rule that the portion of a male is equal to the portion of two females. For example: A man died and left behind his wife, grandfather and a full sister.

Number of Heads	**Heirs**	**Share**	**Base Number 4**
	Wife	$\frac{1}{4}$	1
3	Grandfather	R	2
	Full sister		1

Another example is, if a grandfather inherits with the full brother and full sister, in this case his share will be equal to the share of the full brother as follows: A man died and left behind his grandfather, full brother and a full sister.

Heirs	Base number	Corrected Base number
	4	**8**
Wife 1/4	1	2
Grandfather	3	3
Full brother		3

ii- One-third ($\frac{1}{3}$R) should be given to grandfather, if muqasamah (share with the brothers and sisters) will not favour him. For example: A man died and left behind his wife, grandfather and 3full brothers.

Heirs	Share	Base number 4	Corrected Base number 12
Wife	$\frac{1}{4}$	1	3
Grandfather	$\frac{1}{3}$ R	1	3
Full brother			2
3 Full brother		2	2
Full brother			2

The above example shows that, if a grandfather agreed with *muqasama* (sharing with the siblings of the deceased) here, his share will be less than what he got now. In a situation like this, taking one-third ($\frac{1}{3}$ R) of the residue will favour him more than *muqasama*. One third of the residue is favourable to the grandfather if one dies leaving a grandfather with five or more sisters or a grandfather with two or more brothers and sisters as in the example above, here, the grandfather takes one – third of the residue and this will be more advantageous for him considering that his share will be reduced to less than one –

third of the residue if he agrees with *muqasama* (sharing). Remember that, the rules applicable to full brothers and sisters of the deceased when they inherit with the grandfather, as explained above are also applicable to consanguine brothers and sisters in the absence of full brothers and sisters.

iii- Grandfather takes one-sixth ($\frac{1}{6}$) of the estate when there is Qur'anic sharers. He takes one-sixth ($\frac{1}{6}$) of the whole estate if that will be better for him. The share of the grandfather must not be less than one – sixth of the whole estate. He should always be entitled to one sixth if that is the only thing left after sharers have taken their shares. That $\frac{1}{6}$should be given to him (the grandfather). For example, a woman died and left behind her husband, mother, grandfather and a full brother. The distribution goes like this:

Heirs	**Share**	**Base number 6**
Husband	$\frac{1}{2}$	3
Mother	$\frac{1}{3}$	2
Grandfather	$\frac{1}{6}$	1
Full brother		0

On the other hand, if what would be left after given all the sharers their portions will be less than one – sixth, he will be given one – sixth even if there would be increase (Awl) in the base number. A good example could be seen as follows:

Heirs	Share	Base number 12	12 = 13 Awl
Daughter			
Daughter	$\frac{2}{3}$	8	8
Husband	$\frac{1}{4}$	3	3
Grandfather			$\frac{1}{6}$= 2
Full brother			
Full brother	Residue	1	0

The above example shows that, the share remains for the grandfather ans siblings to share was $\frac{1}{6}$, and the share of a grandfather in any inheritance should not be less than $\frac{1}{6}$. That was the reason why he took $\frac{1}{6}$ and the full brothers got nothing. That shows that the grandfather did not exclude the full brothers, but is the estate that exhausted.

In addition to the examples given above on the cases of inheritance of grandfather with brothers and sisters of the deceased, there are some well known cases of inheritance that are very special in their popularity. These are:

4.1.1Analysis of the Inheritance of Troublesome Case (الأكدرية)

This is one of the famous cases of grandfather inheriting with the siblings of the deceased. It is named al-Akdariyyah (troublesome) because, the case really trouble the School of Zaid ibn Thabit which made him to ajust the principles of inheritance in his School by increasing the base nunba (اصل المسئلة) in order to include the full sister that was excluded.

This is a case of Al-Akdariyyah or Gharraa' as in Maliki School is a case where a woman died and left behind her husband, mother, grandfather and a full sister.

(A)

Heirs	**Share**	**Base number**
		6
Husband	$\frac{1}{2}$	3
Mother	$\frac{1}{3}$	2
Grandfather	Residue	1
Full sister		Excl.

The above distribution shows that, the grandfather got one-sixth of the estate because, his share should not be less than one-sixth of the whole estate in any circumstance. And the only share remain is one-sixth, that is why he took it and the full sister was left with nothing.

When the full sister realizes that, she was left with nothing as a result of her waiting for the grandfather to share whatever remains after the sharers have taken their share. She now dicided to take her prescribed share of $\frac{\mathbf{1}}{\mathbf{2}}$as it follows:

(B)

Heirs		**6 = 9 Awl**
Husband	$\frac{1}{2}$	3
Mother	$\frac{1}{3}$	2

Grandfather	$\frac{1}{6}$	1
Full sister	$\frac{1}{2}$	3

The example above shows that, the full sister took $\frac{1}{2}$ instead of waiting for the grandfather for *muqasama*. And that share is more advantageous for her than the *muqasama* with the grandfather **(C)**

	Heirs	**Share**	**6 = 9 Awl**	**27**
	Husband	$\frac{1}{2}$	3	9
	Mother	$\frac{1}{3}$	2	6
	Grandfather	$\frac{1}{6}$	1	8
3			4	
	Full sister	$\frac{1}{2}$	3	4

However, the grandfather now realizes that, if he allows the full sister to go with$\frac{1}{2}$, definetly her share is far better than his share. Now the share of the grandfather and that of a sister would be added together (1+3=4) and share it according to 1:2 (*lizzari mithlu hazzil unthayain*). The base number now increases to 9 from 6.Thus, the number of portion of grandfather and full sister is = 1 + 3 = 4. Grandfather and full sister cannot share 4 as their portion except by correcting the base number through تصحيح المسئلة(correction of the base number). The grandfather is taking double share of the full sister (that is the number of heads رئوس, 2+1=3), then 3 will now be multiplied by the

base number اصلالمسئلة(3×9=27), then 3 will also be multiplied by each portion 3×3=9, 3×2=6, 3×4=12 (this is the portion of sister and grandfather), then 12÷3=4 (the sister gets 4 and the grandfather gets 8).

According to Qurtubi (1980:1061 vol.2)

> Despit the fact thtat there is no *Awl* when grandfather is inheriting wih the siblings of the deceasd in the School of Zaid. But, this made the case to be well known among the companions and their students (Tabiun). But, some scholars are of the opinion that the name "Akdariyyah" was the name of the sister of the deceased whom the case happened to her, while others are of the opinion that, the woman came from the family of Akdar, that is why the case was maned after her family.

However, it has been said that her case troubled the School of Zayid Bin Thabit. It becomes therefore a special case because it has deviated from wellestablished principle. Hence the case is called Al – Akdariyyah but many others had other names for that. But, this case is called Gharraa' in the Maliki School of law not al-Akdariyyah like in other Schools. As stated by al-Halawiyy (nd: 252 vol.2)

> Imam Malik called it a blaze because of its popularity amongst the cases of grandfather inheriting with the siblings of the deceased like a house having a white mark in his forehead and legs.

However, this is not accepected to most of the Jurists because, full sister cannot be excluded by either husband, mother or grandfather. Because of this reason, this case of inheritance is refered to as a “troublesome case.” That is the reason why the most knowledgeable jurist (Zaid) among the Compnions of the Prophet (S.A.W.) in this field made adjustment which made him to deviate from the normal principles of inheritance

distribution to get a share for the full sister, since she cannot be excluded by any of the heirs mentioned above. He now allocated share for all of them.

According to al-Zuhaili (nd:458 vol.10)

قال الجمهور غير أبي حنيفة عملاً بمذهب زيد بن ثابت: لا يفرض للأخت النصف مع جد، بل ترث معه البقية إلا في الفريضة الأكدرية، فيكون للزوج النصف، وللأم الثلث، وللجد السدس، وللأخت النصف، فلا تسقط، وتعول المسألة إلى (9) ، وتصح من (27)، للزوج (9) ، وللأم (6) ، وللأخت (4) ، وللجد (8) ، بأن يضم الواحد الذي أعطي للجد إلى الثلاثة المعطاة للأخت، ويقتسمان جملة الأربعة بينهما للذكر مثل حظ الأنثيين ، أي على مبدأ المقاسمة بين الجد والأخت.

According to the majority of the Jurists with the exception of Abu Hanifah, which is in line with the opinion of Zaid bin Thabit that, the share of half ($\frac{1}{2}$) should not be allotted to full sister when inheriting with grandfather except in the case of Akdariyyah (troublesome), where the husband is entitled to half of the estate, mother is entitled to one-third, one-sixth for the grandfather,and another half of the estate goes to full sister without exluding her from the inheritance. Then the base nunba will now be increased to 9 and corrected to 27. Then the husband takes 9, mother takes

> 6, grandfather takes 8, and full sister takes 4, then the portion of the grandfather is added to the portion of full sister and divided among them in 2 ratio 1 (that is a male has double share of a female)

However, this case is only applicable to the full sister for being that she is among the Qur'anic heirs (she has a specific share from the Qur'an). But, if it is her brother (full brother) who is only an agnatic heir without having any specific share, he gets nothing since nothing remains after the grandfather has taken his portion.

4.1.2Analysis of the Inheritance of Al-Mu'ada (المعادة)

This is a case of inheriatance whereby grandfather was deceived by the full brothers and sisters of the deceased. In this case, both the full and consanguine brothers and sisters count their number as siblings of the deceased who are entitled for the inheritance, in order to decrease the share of grandfather. Thereafter the grandfather has taken his share, then the full brothers and sisters exclude the consanguine brothers and sisters from the inheritance. but, according to Al-Sa'diy (2010:273-274):

> There will be no need for *Mu'aaddah* except where the *muqasa* (sharing with siblings) will be better for the grandfather. For instance if left only with a full brother or sister, he gets either equal share with the full brother or gets double share of the full sister. So, in order to reduce his share the full brothers and sisters deceive him by the number of consanguine brothers and sisters in order to reduce his portion. But, if the muqasama will not bring any significant benefit for the grandfather, there is no need for al-*muaaddah*. He takes only one-third of the estate.

Here are some of the conditions of al-*Muaadah*:

(a) There should be a full brother among them. For instance, a man died and left behind a grandfather, full brother, and 2 consanguine brothers. In this situation,

taking one-third of the estate is better for him than Muqasama (sharinging with the siblilings) since they doubled him. The distribution is as follows:

Heirs	**Share**	**1st Distribution**	**2nd Distribution**
		Base Number	**Base Number**
		3	**3**
Grandfather	$\frac{1}{3}$	1	1
Full brother			2
Consanguine brother		2	Excl.
Consanguine brother			Excl.

The example above shows that, in the first distribution,where the full brother counted with the consanguine brothers to the grandfather, had made the grandfather to choosed $\frac{\mathbf{1}}{\mathbf{3}}$of the whole estate, as the better option for him than *Muqasamah* (equal sharing with the siblings of the deceased). But after the grandfather has taken his share of $\frac{\mathbf{1}}{\mathbf{3}}$, then the full brother excluded the consanguine brothers and take away the remaining portion. That is one way of al-*Mu'aadda*.

(b) Or there should be 2 full sisters or more, so that nothing will remain for consanguine brothers or sisters after the grandfather has taken his share, because what will remain

is only the share of two sisters and above. For instance, a man died and left behind a grandfather, 2 full sisters and 2 consanguine sisters. The distribution is as follows:

Heirs	**Share**	**1st Distribution**	**2nd Distribution**
		Base Number	**Base Number**
		3	**3**
Grandfather	$\frac{1}{3}$	1	1
Full Sister			1
Full Sister			1
Consanguine Sister		2	Excl.
Consanguine Sister			Excl.

Here, after the full sisters counted with the consanguine sisters, they now come back and take away their portion and share the two-third of the estate which is the residue and left nothing for the consanguine sisters. Had the full sisters not counted with the consanguine sisters, the grandfather will have been gotten the half of the estate.

(c) Or there should be only a full sister and a consanguine sister. In this situation *muqasama* (sharing with the sibilings of the deceased) will be better for the grandfather than taking one-third of the estate. Because, all his assumption is taking half of the estate. After taking his share the full sister will now take her

prescribed share which is one-half of the estate. For example; a man died and left behind his grandfather, full sister and a consanguine sister. The distribution will be:

Heirs	**1st Distribution**	**2nd Distribution**
	Base Number	**Base Number**
	4	**4**
Grandfather	2	2
Full Sister	1	$\frac{1}{2}$= 2
Consanguine Sister	1	

In the above example, the grandfather was deceived by the number of the deceased's sisters, and agreed to share the estate based on 2:1 (that is, to have double share of each sister) which is half of the estate. But, after taken his portion, the full sister claimed her prescribed share which is 1/2 of the estate left by the deceased, and left consanguine sister with nothing. But, in this sitiution she will not take more than one-half in case if something could remain, it will go to the consanguine sister.

However, this case is just like the opposite of al-Akdariyyah where grandfather deceived full sister in many ways.

4.1.3 Analysis of the Inheritance of Al-Kharqa' (الخرقاء)

This is another kind of the inheritance of grandfather with the siblings of the deceased. This is type of inheritance got its name throught the different discussions that took place in its regards during the time of the Companions of the Prophet (.S.A.W.). The name **الخرقاء** was given to this inheritance due to its popularity among the companions of the Prophet (S.A.W.) It is the inheritance where a man died and left behind a mother, grandfather and a sister. Regarding the inheritance of these heirs, al-Zuhaili (nd:458 vol.10) states that:

الخرقاء : هي أم وجد وأخت، قال زيد بن ثابت
ومالك والشافعي وأحمد: للأم الثلث، وما بقي
يقتسمه الجد والأخت، للذكر مثل حظ الأنثيين.
وقال علي: للأم الثلث، وللأخت النصف، وللجد
ما بقي وهو السدس.
وقال ابن عباس: لا شيء للأخت، وهو مذهب أبي
حنيفة.

Zaid Bin Thabit, Maliki, Shafi'i and Hanbali opined that, the mother is entitled to one-third of the estate while the grandfather and the sister should divide it according to the ratio of 2 and 1. But Aliyu bin Abi Talib in his opinion, mother is entitled to one-third of the estate, and sister is entitled to half of the estate and the grandfather is entitled to one-sixth of the estate. But, to Ibn Abbas the sister has nothing. This is also the opnion of Hanafi among the four sunni jurist.

The following example will give the clear picture of the above quotation:

The opinion of Zaid:

	Heirs		**Base Number**	**Corrected Base Number**
			3	**9**
	Mother	$\frac{1}{3}$	1	3
3	Sister Grandfather	R	2	2 4

In the example above, the sister and the grandfather shared what remains after the mother has taken her share based on the principle of 2:1 (male has double portion of female. 2+1=3). That 3 (number of heads) that is at the left handside will now be multiplying by the base number and the portions, to get the corrected base number and the corrected portions. That is, 3×3=9(corrected base number), 3×1=3(portion of the mother), 3×2=6(portion of grandfather and sister), and 6÷3=2 (2 is the portion of sister, while 4 is the portion of grandfather). And this is the distribution of Zaid bin Thabit based on the quotation above.

The opinion of Aliy:

Heirs	**Share**	**6 base number**
Mother	$\frac{1}{3}$	2
Sister	$\frac{1}{2}$	3
Grandfather	R	1

The above example shows that, Aliyu (R.A) is of the opinion that mother is entitled to one-third of the whole estate (2 out of 6), while sister should be given her prescribed share of $\frac{1}{2}$ (which is 3 out of 6) and whatever remains should be given to grandfather (which is 1 out of 6 remains, after deducting the portions of the mother and sister), as indicated above.

The opinion Ibn Abbas:

Heirs	**Share**	**Base Number**
		3
Mother	$\frac{1}{3}$	1
Sister	-	-
Grandfather	R	2

From the example above, the opinion of Ibn Abbas is exlution of the sister from inheritance, and whaever remains after deduction the share of the mother should go to the grandfather, whether small of large. And this is the view of the majority of Hanafi School of law.

From the above examples, there are three opinions from the Companions of the Prophet (S.A.W.). Zaid Bin Thabit (R. A.) is of the opnion of *muqasama* (sharing with the sibilings by the grandfather). Aliyu (R. A.) is of the opinion of taking residue by the grandfather which is one-sixth, and Ibn Abbas (R. A.) is of the opinion that full sister should be excluded by the grandfather. However, the opinion of Zaid Bin Thabit (R. A.) which is also the opinion of Maliki School of law and two other jurists (Shafi'i and Hanbali) of the four Schools of law, is moderate than the opinion of Hanafi School of law. This is because, *muqasama* here will be better for both of them, if not, one will have

double advantage on the other. For instance, if the opinion of Aliyu (R. A.) that says"grandfather should take the residue" is used, the portion of full sister will be 3 which is the half of 6, and the grandfather will be left with only one-sixth of the estate. And like wise, if the opinion of Ibn Abbas be used which is the opinion of Hanafi School, the grandfather will exclude the full sister, and nothing will be given to her. However, *muqasa* between the grandfather and the full sister is better and it is also the opinion of the majority of the jurists of the four Schools of law (Maliki, Shafi'i and Hanbali).

In a nutshell, we have discussed a lot about the inheritance of grandfather from the Companions of the Prophet (S.A.W.) to the orthodox sunni Schools of law. We are made to understand that there are two opinions regarding the inheritance of the grandfather surviving with the full or consanguine brothers and sister of the deceased, that is either to exclude the full or consanguine brothers and sisters from inheritance like the father do or to share the inheritance among themselves. This differences of opinions which was originated from the Companions of the Prophet (S.A.W.) down to our orthodox Sunni Scholars where Hanafi School of law followed the opinion of some companions and Maliki, Shafi'i and Hanbali followed the opinions of other companions. Each of the groups has its own reason for upholding its view, but actually those with the opinion of grandfather is not the same as father in terms of excluding the full and the consanguine brothers and sisters from inheritance, have a solid proofs which supersedes the proves of those having contrary opinions with them. This is because, their source of opinion originated from Zaid Ibn Thabit whom his knowledge of inheritance was given a goalden stamped of acknowledgement by the prophet (S.A.W.). Moreso, Islam is more concern about the circulation of wealth than concentration of it on few individuals. In some cases,

grandfather sharing with the siblings of the deceased will enhance their relationship more than when he exclude them from it. Also, this will reduce the level of poverty among the Muslim Ummah. Shafi'i (nd:179, vol.7) was reported to have said:

أخبرنا الرَّبِيعُ قال أخبرنا الشَّافِعِيُّ قال أخبرنا رَجُلٌ عن شُعْبَةَ عن عَمْرِو بن مُرَّةَ عن عبد اللَّهِ بن سَلَمَةَ عن عَلِيٍّ رضي اللَّهُ عنه أَنَّهُ كان يُشْرِكُ بين الْجَدِّ وَالإِخْوَةِ حتى يَكُونَ سَادِسًا وَلَيْسُوا يَقُولُونَ بهذا أَمَّا صَاحِبُهُمْ فيقول الْجَدُّ أَبٌ فَيَطْرَحُ الإِخْوَةَ وَأَمَّا هُمْ وَنَحْنُ فَنَقُولُ بِقَوْلِ زَيْدٍ يُقَاسِمُ الإِخْوَةَ ما كانت الْمُقَاسَمَةُ خَيْرًا له وَلاَ يُنْقِصُ من الثُّلُثِ من رَأْسِ الْمَالِ وَهُمْ يُنْكِرُونَ قَوْلَ عَلِيٍّ وَيَقُولُونَ ما يقول هذا أَحَدٌ.

> Narrated Shafi'i from Amr Ibn Murrah from Abdullah Ibn Salamah from Aliyu (may Allah be pleased with him) was sharing inheritance among grandfather and the siblings of a deceased which one-sixth of the inheritance will be for him. Unlike the others who said grandfather is like father in terms of excluding brothers and sisters of the deceased from inheritance. But, we are with the opinion of Zaid on sharing the inheritance between him (the grandfather) and the brothers and sisters of the deceased if that will be better for him if that will not be less than one-third of the total residue of the inheritance. And they are rejecting the opinion of Aliyu saying no one has this opinion. (Shafi'I, nd:179, vol.7)

The companions of the prophet (s.a.w.) were very mindfull regarding the inheritance of grandfather surviving with the brothers and sisters of a deceased. This is as a result of no verse from the Glorious Qur'an or a sound prophetic hadith that clears everything.

4.1.4Analysis of the Inheritance of the Case of Full Brother and Uterine Brothers (المشتركة أو الحجرية أو الحمارية)

This is another special case which has three names, and each name could be used interchangeably to mean the same thing. The case is called al-Mushtarikah or al-Hajariyyah or al-Himariyyah. All these three names refer to same case in Islamic law of inheritance. This is a case where a woman died and left behind a Husband, Mother, 2 Uterine Brothers, and 2 Full Brothers. This incident happened during the Khaliphat of Umar bin Al - Khattab (RA) where the estate left by the deceased woman was distributed in a normal way of distribution according to the Islamic law of inheritance as in the following example:

Heirs	**Share**	**Base number**
		6
Husband	$\frac{1}{2}$	3
Mother	$\frac{1}{6}$	1
Uterine brother		1
Uterine brother	$\frac{1}{3}$	1
Full brother		
Full brother	Residue	0

The Husband gets$\frac{1}{2}$, Mother gets$\frac{1}{6}$, 2 Uterine Brothers gets $\frac{1}{3}$and the Full Brothers are entitled to residue of the estate. And unfortunately, nothing was remain from the estates, after the sharers have taken their shares. Then the two Full brother complaint to the Umar

(R.A.) that they are more related to the deceased than the uterine brothers because, they have the same father and mother with the deceased whereas uterine brothers have only the same mother with the deceased.

Then the two full brothers argued that supposing their father was a donkey (Himar) or a stone (hajar) cast into the sea (Yammiyah) and they have no paternal relationship, they still had the same and equal relationship with the deceased as the Uterine Brothers through the same Mother. By hearing this, Umar Bin Al-Khattab (R.A.) made some adjustment to the previous distribution by includind the full brothers in the inheritance. Now the Husband gets $\frac{1}{2}$, Mother gets $\frac{1}{6}$, 2 Uterine Brothers and 2 Full Brothers share $\frac{1}{3}$ equally as in the following example:

	Heirs	**Share**	**Base number 6**	**Corrected Base Number 12**
	Husband	$\frac{1}{2}$	3	6
	Mother	$\frac{1}{6}$	1	2
	Uterine brother			1
	Uterine brother			1
4÷2=2	Full brother	$\frac{1}{3}$	2	1
	Full brother			1

For proper distribution, the base number need to be corrected in order to allot portion to each heir. The 4 by the left hand side indicate the number of the heads (2 full brothers and 2 uterine brothers). Then between the heads (4) and their portion (2) in the first

distribution, there is *at-Tawafuq* (4 could divided by 2). 4÷2=2, then 2 will now be multiplied by the base number and the portions. That is 2×6=12 (corrected base number), 2×3=6(for the husband), 2×1=2 (for the mother), 2×2=4 (for the uterine and full brothers), then 4÷4=1 (portion of each of the uterine and full brothers).

This is the adjustement made by Umar (R.A.) and adopted by Imam Malik and Imam As-Shafi'i. But, Imam Ahmad Ibn Hanbal and Abu Hanifa have contrary opinion with them. Accor ding to Lahham (1421A.H.:98):

> اختلف في تشريك الإخوة الأشقاء مع الإخوة لأم في الثلث في هذه المسألة على قولين:
> القول الأول: انهم لا يشركون، وهذا قول جماعة من الصحابة ﷺ، منهم علي وابن مسعود، وبه قال أبو حنيفة وأحمد .
> القول الثاني: أنهم يشركون، وهذا قول جماعة من الصحابة ﷺ، منهم عمر وعثمان وهو قول مالك والشافعي .

> There are differences of opninions regarding the the partnership of full brothers and uterine brothers in share of $\frac{1}{3}$. There are two opinions on this:the first group are of the opnion that, there is no partnership among them. And this ti the view of Aliyu (R.A.), Ibn Mas'ud and others from the copanions, and it is also the view of Abu Hanifa and Ahmad. While, the second group are of the opinion that, there is partnership among theem. And this is the view of Umar (R.A.), Uthman (R.A.) and many others from the Companions of the Prophet (S.A.W.). and it is also the view of Maliki and as-Shafi'i .

By this view the above quotation, both the first and the second group have the reason for supporting and opposing the the partnership among the uterine and full brothers in inheritance. The reason why the first group opposed the partnership of the full brothers

with the Uterine is that, the full brothers are residuaries whom take the whole estate when they are alone or take the residue when the sharers have taken their share, and if nothing is left (as in this case), they go with empty handed. While, the second group consider it as unfair that Full Brothers who are closer relative to the deceased get nothing while uterine brothers get share. That is the reason why some of highly respected Companions of Prophet (pbuh) including Umar bin Al-Khattab, Uthman bin Affan, Zaid bin Thabit and many others, as well as Imam Malik and Imam Shafii (may Allah be pleased with all of them) adopted a rule known as Al-Himariyyah Rule, that when there is Uterine siblings inheriting with full siblings, they all share 1/3 portion equally. While, Imam Abu Hanifa and Imam Ahmed bin Hanbal opposed the opinion of Al-Himariyyah Rule as in the above qoutation.

4.1.5 Analysis of the Inheritance of One of the couples surviving with father and Mother (عمريتين /غروين)

Umariyataini means the two cases of inheritance as decided by Khaliph Umar bin Al–Khattab (RA) in respects of the share of mother from $\frac{1}{3}$of the whole estate to$\frac{1}{3}$of the residue. The share of the Mother when she inherits with the father is one – third of the whole estate as discussed above. However, there are two cases that happened during the Khaliphateship of Umar (R.A.) which took a very good decision on them and it is accepted by the majority of the Sahabah (companions). Regarding the inheritance of mother when inheriting only with father and any one of the couples (i.e either father, mother and wife, or father, mother and husband). When following the normal procedure of distribution, the husband will get either less than her portion or will never have a double portion of hers. And the Qur-an says, “to the male, a

portion equal to that of two females;" (Al – Qur-an, 4:11). Le's look at the normal procedure of the distribution and decision of Umar (R.A.) on this case, so that we make comparison. For instance, a woman died and left behind her husband, father and mother. The distribution in a normal procedure is as follows:

Normal Distribution:

Heirs	**Share**	**Base Number 6**
Husband	$\frac{1}{2}$	3
Mother	$\frac{1}{3}$	2
Father	Residue	1

In the distribution above, the mother douled the portion of the father. But , Umar (R.A.) made correction to this case by introducing one-third of the residue ($\frac{1}{3}$R) instead of one-third ($\frac{1}{3}$) of the whole estate as follows:

Heirs	**Share**	**Base Number 6**
Husband	$\frac{1}{2}$	3
Mother	$\frac{1}{3}$R	I
Father	Residue	2

After the adjustment made by Umar (R.A.) to this case, the father is now having a double portion of the mother, since her share is now one-third of the residue unlike before, where her share was one-third of the whole estate.

Another example is where a husband died and left behind his wife, mother and father.

Normal Distribution:

Heirs	**Share**	**Base Number 12**
Wife	$\frac{1}{4}$	3
Mother	$\frac{1}{3}$	4
Father	Residue	5

When looking at the normal distribution above, the father got a portion which is not up to the double of the portion of mother. With this, Umar (R.A.) decided that the mother receives only one-third of the residue (after deduction of the share of tone of the wife) as follows.

Heirs	**Share**	**Base Number**
		12
Wife	$\frac{1}{4}$	3
Mother	$\frac{1}{3}$R	3
Father	Residue	6

In this case also, the father has double portion of a mother, unlike when following the normal distribution before the Umar's adjustment. This adjustment made the case to be well popular among the companions of the Prophet (S.A.W.) and the name Al–Garawaini (two Bright Stars) was gotten through its popularity.

4.1.6Summary of the Analysis of Item 4.1 ofthe Inheritance of Grandfather along side with the Brothers and Sisters of the Deceased (الجد مع الإخوة)

Item	Explanation	Justification	Findings
Grandfather exlude siblings of the deceased	A true grandfather (father's father) exclude brothers and sisters of the deceased from inheritance like the father.	This is the opinion of Hanafi School of law.	This is the opinion of the minority of the jurists.
Grandfather inherit side by side with the siblings of the deceased	A true grandfather inherit side by side with the brothers and sisters of the decease, and even take a portion that is better for him. Either to share equally with them (Muqasamah), take one-third ($\frac{1}{3}$) of the whole property left behind by the deceased, one-third ($\frac{1}{3}$R) of the residuary or one-sixth ($\frac{1}{6}$) of the whole property.	This is the opinion of Maliki, shafi'i and Hanafi Schools of law.	This is the opinion of the majority of the jurists.
Muqasamah (sharing with the siblings of the deceased) by the grandfather	In the absence of any sharer, grandfather share with the siblings equally if they are all males or take double share of a female, if the siblings are not more than his double. For example, when sharing with one or two brothers of the deceased, one brother and one or two sisters, with three or four sisters.	This is the opinion of Maliki, shafi'i and Hanafi Schools of law.	This is the opinion of the majority of the jurists.
Grandfather Takes one-third of the whole property ($\frac{1}{3}$)	Grandfather takes$\frac{1}{3}$of the whole property in the absence of ther sharer and the siblings are more than his double. Like three brothers or equivalent to.	This is the opinion of Maliki, shafi'i and Hanafi Schools of law.	This is the opinion of the majority of the jurists.
Grandfather Takes one-third ($\frac{1}{3}$R) of the	Grandfather takes$\frac{1}{3}$R of the residuary in the presence of a sharer and the siblings are	This is the opinion of Maliki, shafi'i and Hanafi	This is the opinion of the majority of the

residuary	more than his double.	Schools of law.	jurists.
Grandfather Takes one-sixth of the whole property ($\frac{1}{6}$)	Grandfather takes $\frac{1}{6}$ of the whole property when the sharers are much. For example, grandfather inheriting with those that are entitle for $\frac{1}{2}$, $\frac{1}{8}$, $\frac{1}{6}$ and then siblings of the deceased.	This is the opinion of Maliki, shafi'i and Hanafi Schools of law.	This is the opinion of the majority of the jurists.

4.2Analysis of the Inheritance of Inheritance of Distance Kindred (ذو الرحام)

Distance kindred or uterine relatives are all blood relations who are neither sharers nor residuary; they are uterine relations who are either female or linked to the deceased through a female. According to Ibn Qudamah (2009:96 Vol.8);

> *DhawulArham* are those relatives that are neither among the *Ashabul furudh* (Qur'anic sharers) nor among the Asabah (Agnatic heirs). These includes; the children of daughters, children of sisters, daughters of brothers, chidren of uterine brothers and sisters, paternal aunties, maternal aunties, maternal uncles, maternal grandfather."

However, Dhawil Arham could be classified into four classes as follows:

The first class: is the class of those relatives that are directly descendant of the deceased. These are the:

i. Children of daughters and their descendants,

ii. Children of son's daughters and their descendants.

The second class: is the class of those relatives that are ascendants of the deceased (i.e they are the roots of the deceased, such roots who are neither among the *Ashabul furudh* (Qur'anic sharers) nor among the Asabah (Agnatic heirs). They are those:

i. False grandfather (mother's father) how high so ever,

ii. False grandmother (father's mother) how high so ever.

The third class: is the class of those relative that are descendants of the deceased's parents (i.e like the nephews and nieces who are not among the *Ashabul furudh* (Qur'anic sharers) or among the *Asabah* (Agnatic heirs). They are the entire sister's children (nephews and nieces), brother's daughter and the children of uterine brothers.

i. Daughters of full brothers and their descendants.

ii. Daughters of consanguine brothers and their descendants.

iii. Children of Uterine brothers and their descendants.

iv. Children of all sisters (full or consanguine or uterine) and their descendants.

The fourth class: is the class of those relative that are descendants of the grandparents (true or false) i.e they are such uncles and aunts who are not among *Ashabul furudh* and *asabah*. They are:

i. Uterine paternal uncle and their children,

ii. Paternal aunts (father's sisters, whether full/consanguine/uterine) and their children,

iii. Maternal uncle and aunts (Mother's brothers and Sisters) and their children,

iv. Daughters of full paternal uncles and their descendants,

v. Daughters of consanguine paternal uncles and their descendants.

With regards to the inheritance of *Dhawul Al-Arham*, Scholars differ in their opinions on whether *Dhawul Al-Arham* can inherite or not. On this, Scholars have two different

opinions. Some are of the opinion that *Dhawul Al-Arham* have the right to inheritance, while others have contrary opinion on that. The detailed explanation on these two opinions are as follow:

The first group are of the opinion that distant kindred (Dhawul Al-Arham) are eligible for inheritance in the absence of the Qur'anic sharers and agnatic heirs. According to Sa'adiy (2010:150):

> majority of the companions of the Prophet (S.A.W), including Khaliph Umar bn Khattab (R.A), Ali bn Abi Talib (R.A), Ibn Mas'ud (R.A), Mu'az bn Jabal (R.A) and Ibn Abbas (R.A) were of the view that; Dhawul Arham are entitled to inherit in the absence of Qur‟anic heirs and Asabah. This is also the view of some Tabi'um (successors of the companions of the Prophet S.A.W.) like Alqamah, Ibrahim an-Nakh'I, Shurayh, Hasan, Ibn Sireen, Ata', Mujahid, e.t.c. and this view has been adopted by Imam Abu Hanifah and Imam Ahmad bn Hanbal.

They based their view on the following verse of the Qur‟an: Allah (S.W.T) where Allah says:

> أُوْلُواْ ٱلْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَٰبِ ٱللَّهِ ۗ إِنَّ ٱللَّهَ بِكُلِّ شَيْءٍ عَلِيمٌ الأنفال: ٧٥
>
> . . . But kindred by blood are nearer to one another regarding inheritance in the decree ordained by Allah. Verily, Allah is the All-Knower of everything (Al-Anfal, 8:75)

According to Ibn Kathir, 'this verse encompasses all relatives, not only the degrees of relative who do not have a fixed, designated share in the inheritance, as some people claim and use this verse to argue. According to Ibn Abbas, Mujahid, Ikrimah, Al-Hasan, Qatadah and several others, this verse abrogated inheriting from those with whom one had ties of treaties or brotherhood, as was in the case at the beginning of Islam. So it applies to all relatives. As for those who do not inherit, then this is supported by the Hadith,

« إِنَّ اللَّهَ أَعْطَى كُلَّ ذِى حَقٍّ حَقَّهُ وَلاَ وَصِيَّةَ لِوَارِثٍ . . . ».

> Indeed Allah, Most Blessed and Most High, has given the right due to every one deserving a right. So there is no will for an heir. (Hasan) (Tirmidhi 2007:184 vol.4 2121)

Therefore, this verse also includes those who have a fixed share of inheritance. Allah knows best. In addition, the Prophet Muhammad (S.A.W) was reported to have said:

عَنْ أَبِى أُمَامَةَ بْنِ سَهْلِ بْنِ حُنَيْفٍ قَالَ كَتَبَ عُمَرُ بْنُ الْخَطَّابِ إِلَى أَبِى عُبَيْدَةَ أَنَّ رَسُولَ اللَّهِ -ﷺ- قَالَ « اللَّهُ وَرَسُولُهُ مَوْلَى مَنْ لاَ مَوْلَى لَهُ وَالْخَالُ وَارِثُ مَنْ لاَ وَارِثَ لَهُ ». قَالَ أَبُو عِيسَى وَفِى الْبَابِ عَنْ عَائِشَةَ وَالْمِقْدَامِ بْنِ مَعْدِيكَرِبَ. وَهَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ.

> Abu Umamah bin Sahl bin Hunaif said: "Umar bin AlKhattãb sent me with a letter to Abu 'Ubaidah (saying) that the Messenger of Allah said: 'Allah and His Messenger are responsible for the one who has no patron. And the maternal uncle inherits from the one who has no heirs." (Hasan) (Tirmidhi 2007:167 vol.4 2103)

The above quotations shows that *Dhawul Arham* are entitled for inheritance in the absence of Qur'anic sharers and the agnatic heirs. They are closer to the deceased than the public treasury. This is also the view of Bin-Baz (nd:102) among the contemporary scholars. Giving them share from their late relative could establish good relationship between the members of the family. More so, when we look critically at the case of a Li'an child (Cursing for Adultery), when he dies, only his relatives from his mother's side

that can inherit him, which are part of the *Dhawul Arham* (distant kindred)**.** That shows that*Dhawul Arham* are also among the relatives of the deceased entitle to inherit in the absence of sharers and the agnatic heirs.Allah says:

ٱلخ لم لى لي مج مح مخ مم مى مي تج تح تخ تم ته ثم ثه جم جح جخ هم هى هي يج

الـ نساء: ٧

> There is a share for men and ashare for women from what is left by parents and those nearest related, whether, the estate be small or large - a legal share (An-Nisa' 4:7)

The verse shows no sign of different among the heirs in terms of who to inherit and who should not inherit among the relatives of the deceased, but we know that in inheritance closeness to the deceased matters a lot. That is the reason why it is designed in hierarchical order (i.e Qur'anic sharers are considered first before agnatic heirs and then the distant kindred first before the public treasury) and also has a rule of exclusion (i.e the presence of some heirs in the inheritance, will make some heirs to be either totally or partially excluded from getting any share from the inheritance. In a nutshell, distant kindred are eligible for inheritance in the absence of the Qur'anic sharers and agnatic heirs. According to al-Hidady (d.800:267) one of the jurist of Hanafi school of law;

أَنَّ ذَوِي الْأَرْحَامِ أَوْلَى بِالْمِيرَاثِ مِنْ بَيْتِ الْمَال

> *Dhawil-Arham* are more eligible for inheritance than the public treasury.

This is also the view of Hanbali according to al-Kharqy (d.334:91), where he says:

ويورث ذوو الأرحام فيجعل من لم تسم له فريضة
على منزلة من سميت له ممن هو نحوه فيجعل الخال
بمنزلة الأم والعمة بمنزلة الأب

> *Dhawil-Arham* are eligible for inheritance, only that they would replace those that their shares were mentioned (the sharers) based on their level. So, that maternal uncle would replace mother and paternal aunt would replace father and so on.

The second group are of the opinion that *Dhawul Arham* (those heirs that are connected to female children) are not entitled for the inheritance. Therefore, whatever remains in the benefit of agnatic heirs shall be taken to *Bait al-Mal* (public treasury). They based their argument on the Hadith of the Prophet Muhammad (S.A.W) which says:

عَنْ عَمْرِو بْنِ خَارِجَةَ أَنَّ النَّبِيَّ -ﷺ- خَطَبَ عَلَى نَاقَتِهِ وَأَنَا تَحْتَ جِرَانِهَا وَهِىَ تَقْصَعُ بِجَرَّتِهَا وَإِنَّ لُعَابَهَا يَسِيلُ بَيْنَ كَتِفَىَّ فَسَمِعْتُهُ يَقُولُ « إِنَّ اللَّهَ أَعْطَى كُلَّ ذِى حَقٍّ حَقَّهُ وَلاَ وَصِيَّةَ لِوَارِثٍ».

> 'Amr bin Khärajah narrated: "The Prophet (S.A.W.) gave a *Khubah* upon his she-camel, while I was under the front of her neck, and she was chewing her cud, with her saliva dripping between my shoulders. I heard him saying: 'Indeed Allah, Most Blessed and Most High, has given the right due to every one deserving a right. So there is no will for an heir, ..." (Hasan) (Tirmidhi 2007:184 vol.4 2121)

Based on the above qoatation, al-Qurtabiy (1980 Vol2:1053) opposed the share of distant kindred saying: "Qur'an would have mentioned if the distant Kindred has a share in inheritance or they are among the legal heirs. Since they are not mentioned, that means they are not entitled to any portion of the estate". According to al-Azhari (nd)

> As for Malik and other Scholars of Hijaz are of the opinion that all the daughter's children are not entitled to the inheritance whether males or females. Likewise, the children of sisters (both full and consanguine), aunts (either paternal or maternal), uterine paternal uncle, maternal uncle

> and mother's father. These are the *Dhawul Arham* that are all excluded from inheritance.

The aforementioned individuals are not entitled to inheritance in the Maliki School of law, and this view got support from some of the Companions of the Prophet (S.A.W.) and Tabi'un (al-Baji nd:163 vol.3). Those with this view have all agreed that whatever remains after Qur'anic and agnatic heirs have taken their share, should be taken to public treasury. More so, Khalil (2005:230) stated that,

ولا يدفع لذوي الأرحام

And should not be taken to distant kindred

Murtadha (2016:76) explained more on the above quotation by saying: This group of Scholars are of the opinion that; *DhawulArham* are not entitled to inherit, and the estate goes to the Muslim Public Treasury (Bait al-Mal) in the absence of Qur'anic sharers and the agnatic heirs. This is the view of Abubakar, Umar, Uthman, Zaid bn Thabit and Ibn Abbas from the Companions of the Prophet [S.A.W. (may Allah have mercy on them all)]. Those with this view among the Tabi'um are Sa'id bn Zubair, Sa'id bn al-Mussiyyab, Sufyan al-Thauri. This view has been adopted by Imam Malik and Imam Shafi‟i.

Aminu (2016:73) shades more light on their bases of argument by saying in the following quotation that:

> If distant kindreds have shares of inheritance or are among the legal heirs, Qur'an could have mentioned categorically and specifically their portions or a shares. In the absence of this, it clearly shows that distant kindred are not entitled to inheritance.

However, based on the aforementioned arguments from the first and second groups on the inheritance of *Dhawul Arham*, it is cleared that the preponderant view is that of the

first group that says; they are entitled to inheritance. Even though, the most knowledgable companion in the field of inheritance (Zaid bn Thabit) is with those that opposed the entitlement of the *Dhawil Arham* to inheritance. But, the researcher is with the first group based on the following reasons:

> The absence of active Islamic Public Treasury (Bait al-Mal) in a country like Nigeria. Therefore, giving such inheritance to the uterine relative is better than taking it to the public treasury; more especially in the present time when people are in dear need and some are even dying of hunger.

The rule under Islamic law is that they take nothing in the presence of sharers or agnatic heirs. However, it has been argued that, instead of taking the estate or residue (if any) bait al-mal (public treasury), in the absence of sharers or agnatic heirs; *Dhawul Al-arham* should be considered. According to Aminu (2016:72):

> *Dhawul al-Arham* are entitled to inherit if there are no *Asabah* or Furud heirs. However, they can inherit if there is a "fard" heir who cannot inherit by "radd" such as husband or a wife in a situation where there is no "Asib" (residuary).

As mentioned at the beginning, *Dhawul Al-arham* are classified into four classes. Therefore, the first class inherits first. The second class is second in inheritance as well as third class is third and fourth class inherit last. There are also rules of preference or rule of exclusion in the distance kindred. The nearer to the deceased is more preferable than the more remote. And where they are mixed with female and male, the male portion is double of female portion. Where there are no sharers and residuary, a whole estate will go to distance kindred. And where there is only a husband or wife as a sharer and no

residuary, the rest heirs will go to distance kindred too. This is because, *Dhawul- Arham* are more closely related to the deceased than the public treasury.

4.2.1 Summary of theAnalysis of Item4.2 of the inheritance of Distance Kindred (ذو الرحام)

Item	Explanation	Justification	Findings
Dhawil Arham (Distance Kindred) are not entitled for inheritance.	*Dhawil Arham* (Distance Kindred) are not entitled for inheritance in the absence of sharer or agnatic heir. Whatever left behind by the deceased, should be taking to baitu-al-mal (public treasury)	This is the opinion of Maliki school of law.	This is the opinion of the minority among the jurists
Dhawil Arham (Distance Kindred) are entitled for inheritance.	*Dhawil Arham* (Distance Kindred) are more entitled for inheritance in the absence of sharer or agnatic heir than Bait-al-mal (public treasury).Whatever left behind by the deceased, should be taking to them not baitu-al-mal (public treasury)	This is the opinion of Hanafi, Shafi'i and Hanbali Schools of law.	This is the opinion of the majority of the jurists.

4.3Analysis of the Opinions Whether or not the Children Born Out of Wedlock Could Inherit

A child born out of wedloch, is refers to any child whose parents were not married at the time of his/her birth. On this case, Jurists differed regarding to the lineage of that child who was born out of wedlock, on whether to be attributed to the mother or to the adulterer? These jurists have two differents opinions.

The first opinion said that: the child shoud be attributed to his mother and not to the adulterer. This is the doctrine of the majority of jurists (Malik, Shafi'i and Hanbali) based

on the hadith of Aisha - may God be pleased with her -: “The child is for the bed, and for the prostitute is the stone.” Because lineage is a blessing from Allah (S.W.T.) in a legitimate relationship, it should not result in adultery, which is a crime. And under the Islamic law of inheritance, any child who born out of wedlock has no right to inherit from the father and the father cannot inherit from the child too.

عَنْ عَمْرِو بْنِ شُعَيْبٍ عَنْ أَبِيهِ عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ –ﷺ– قَالَ « أَيُّمَا رَجُلٍ عَاهَرَ بِحُرَّةٍ أَوْ أَمَةٍ فَالْوَلَدُ وَلَدُ زِنَا لاَ يَرِثُ وَلاَ يُورَثُ ». قَالَ أَبُو عِيسَى وَقَدْ رَوَى غَيْرُ ابْنِ لَهِيعَةَ هَذَا الْحَدِيثَ عَنْ عَمْرِو بْنِ شُعَيْبٍ. وَالْعَمَلُ عَلَى هَذَا عِنْدَ أَهْلِ الْعِلْمِ أَنَّ وَلَدَ الزِّنَا لاَ يَرِثُ مِنْ أَبِيهِ.

> Amr bin Shu'aib narrated from his father, from his grandfather, that the Messenger of Allah said: "Any man who fornicates with a free woman, or a slave woman, then the child born from Zinã does not inherit nor is it inherited from." (Hasan)
> Abu Isa said: This Hadith has been reported from others besides Ibn Lahi'ah, from Amr bin Shu'aib, and this is acted upon according to the people of knowledge; the child of Zinã does - not inherit from his father. (Tirmidhi, :176-177 Vol.4 no. 2113)

Based on the above qoatation, the four Sunni Schools of law have the following opinions:

Hanafi School of law, children born as a result of zina (illicit sexual relations) are considered illegitimate. According to al-Marghinani (2012: 148) "a child born from unlawful sexual relations does not have the legal status of a legitimate child”. This legal classification indicates that such children do not share the same rights as legitimate

offspring. Maore so, Hanafi School of law outlines clear responsibilities for the mother towards her child born out of wedlock. The responsibility for providing care and maintenance rests primarily on the mother. Al-Marginani (2012:149) further said: “an illegitimate child does not have any inheritance rights from the father, as the relationship between them is not acknowledged due to the lack of a valid marriage”. This exclusion from inheritance shows the strict legal rules about what is considered legitimate in Hanafi law.

Maliki School of law is of the opinion that, a child born out of wedlock is generally considered illegitimate and therefore does not have the same legal status as a child born within marriage. Ibn Rushd (1996:123), states that; "Children resulting from unlawful sexual relations (zina) have no legitimacy, and thus do not inherit from their fathers". Al-Dardir (1997: 411) added that "illegitimate offspring do not inherit from their fathers, as their legal ties are nonexistent in the eyes of Islamic law".This reflects a clear stance on the illegitimate status of such children concerning inheritance and family rights. Maliki School also emphasizes the obligation of the mother to care for her child. Ibn al-Hajib, (2002:220) in his work on family law, articulates that: "The mother is obliged to provide for her illegitimate child and must ensure the child’s welfare" This focus on maternal responsibility highlights the recognition that every child, regardless of legitimacy, has a right to care.

The Maliki School also expresses concern over the social implications of zina and emphasizes community responsibility in addressing these issues. Al-Qarafi (2004:129) notes:"It is the responsibility of the community to prevent such acts and to care for the

children resulting from them".This shows that we have a strong duty to take care of all the children in our community.

In Shafi'i School of law, a child born out of wedlock is deemed illegitimate and does not inherit from the father. This is based on the understanding that legitimacy is ascribed to children born within the legal framework of marriage. As stated by an-Nawawi (1997:384) "A child born from illegal relations (zina) is not a legitimate child. Hence, he/she does not inherit from the father". But, despite their illegitimacy, children born out of wedlock are recognized in terms of their rights to care and sustenance from their mothers. According to al-Mawardi (1996: 295)"The mother is obliged to support her illegitimate child and the rightful nurturing of the child falls upon the mother". This explanation highlights how important it is for mothers to care for their children, no matter what their legal status is. Imam al-Ghazali (1997:212), states that, "the emergence of children from unlawful relations is a societal issue that requires the community's attention to prevent moral decay". This understanding means that it is not just a legal position, but also a moral duty to protect family values and stop illegitimacy from growing.

Hanbali School of law considers children born from zina (illicit sexual relations) as illegitimate. Children born out of wedlock are not entitled to inherit from their biological father according to the School, they may receive inheritance from their mother and her family. This perspective aligns with the general consensus among Islamic scholars, though interpretations can vary.Ibn Taymiyyah (2009: 342) talks about this issue, pointing out that even though these children are considered the mother's children, they do not have the legal rights that come with being legitimate when it comes to inheriting from their father. Al-Buhuti (1997:164) affirmes that children born out of wedlock cannot

inherit from the father. Most scholars in the Hanbali School of law believe that children born out of wedlock cannot inherit from their biological father, but they do have the right to inherit from their mother.

In Islam, inheritance between the father and his children is established through lineage. No such relationship is established or recognized between the fornicator and his illegitimate child to most of the jurists. As such, neither of them can inherit from the other. If a man and woman fornicate, and a child is born as a result, whether or not they get married afterwards, the man is not the father of the child according to the opnions of the majory of the jurists, but the woman is the mother to such child. Hence such a child will inherit from his mother only and vice-versa. The Prophet (S.A.W.) was reported to have said:

الولد للفراش وللعاهر الحجر

> the child is ascribed to the bed, and the Hajar (stone) is for the fornicator". (Abu Dawud2008:78 Vol.3 no.2274).

The second opinion is the opinion of the jurists that attributed the child to the adulterer if he claims it. This is the opinion of the minorities among the jurists. According to Ibn Qudamah (2009:130, Vol.7)

الحسن و ابن سيرين قالا : يلحق الواطىء إذا أقيم
عليه الحد ويرثه وقال إبراهيم يلحقه إذا جلد الحد أو
ملك الموطوءة وقال إسحاق يلحقه وذكر عن عروة
و سليمان بن يسار نحوه وروى علي بن عاصم عن
ابي حنيفة أنه قال : لا أرى بأسا إذا زنا الرجل بالمرأة

فحملت منه أن يتزوجها مع حملها ويستر عليها والولد ولد له وأجمعوا على أنه إذا ولد على فراش فادعاه آخر أنه لا يلحقه وإنما الخلاف فيما إذا ولد على غير فراش

ولنا قول النبي صلى الله عليه و سلم : "الولد للفراش وللعاهر الحجر" ولأنه لا يلحق به إذا لم يستلحقه فلم يلحق به بحال كما لو لم يجلد الحد.

Al-Hasan and Ibn Sirin said that, the child would be attributed to the fornicator/adulterer if the punishment is imposed on him and the child inherits him. Ibrahim (Annakh'i) said: the child would be attributed to the fornicator if the punishment is flogged or (if he later) owns the intercourse. Ishaq said: He (the child) is attributed to him (fornicator/adulterer) and he mentioned something similar opinion on the authority of Urwah and Sulaiman bin Yasar, and Ali bin Asim narrated on the authority of Abu Hanifa that he said: I see no harm if a man commits adultery with a woman and she becomes pregnant. He has the right to marry her while she is pregnant and cover her up while the child is his. They unanimously agreed that if the child was born on a bed (after marriage) and someone else claimed that the child would not be attributed to him, but the disagreement regarding this is that, if the child was not born on a bed (born before marriage). This is because, the Prophet (may Allah's peace and blessings be upon him) said: "The child is for the bed and the stoner is for the adulterer." But, the child would not be attributed to him in any case if he does not claim him, or if he was not been flogged as punishment.

On this, the child's lineage from the mother is proven by pregnancy, and also, his lineage from the adulterer is also proven by his claim for the ownership of the child or

punishment by the law. So, with this reason, the child's lineage is not lost and he should not suffer harm and shame because of a crime he did not commit. Allah Almighty said:

ُكاكمجلخلخلنهَّالأنعام: ١٦٤

… and no bearer of burdens shall bear the burden of another … (An'am, 6:164)

By looking at opinions of the two groups of the jurists discussed above, the researcher is with the opinion of the first group of the jurists that said: "children born out of wedlock should not be attributed to the adulterers/fornicators and they are also not entitled for inheritance of the property left by their father. And this is the view of the majority of the jurists, and their opinion is the most popular among the jurists as well as supported by the Hadith of the Prophet (S.A.W.). Their opinion is the strongest way of minimizing illicite affairs among different sexes, which result in having illegigmate children among the Muslim comminities. Moreover, it would promote marriage especially among the youths which will control them in involving themselves in fornication as result of sexual desire. And this will make them to understand that the only way of satisfaying sexual desire is trough marriage.

More so, the hadith made it clear that a child could only be attributed to a man when there is valid marriage between the man and the woman before pregnancy. Absence, of a valid marriage could disconnect the child's lineage to the man, as well as disqualify them from inheriting one another, A child could only be qualified to inherit his/her biological father in the Shari'ah if the child is attributed to him (confirmed his perternity). And the confirmation of the man's perternity to the child, qualifies the man to be biological as well as legitmate father. This will qualify both the child and the father to inherit one another.

However, a Muslim needs to abide by the dos and don'ts of the *shari'ah* by controlling his/her sexual desire until he gets married. Allah (S.W.T.) says

ٱيح يخ يي يى ذٰ رٰ ىٰ ئر ئز ئم ئن ئى ئي بر بز بم بن

المؤمنون: ٥ - ٧

> And those who guard their chastity (i.e. private parts, from illegal sexual acts). Except from their wives or (the captives and slaves) that their right hands possess, for then, they are free from blame. But whoever seeks beyond that, then those are the transgressors. (Mu'minun, 23:5-7)

Ibn Kathir in his commentary to these verses said: this means, those who protect their private parts from unlawful actions and do not do that which Allah has forbidden; fornication and homosexuality, and do not approach anyone except the wives whom Allah has made permissible for them or their right hand possessions from the captives. One who seeks what Allah has made permissible for him is not to be blamed and there is no sin on him.

4.3.1 Summary of theAnalysis of Item4.3 of the Inheritance of the Children Born Out of Wedlock

Item	Explanation	Justification	Findings
A child born out of wedlock has no right to inherit the biological father	Any child whose parents were not married at the time of his/her pregnancy, has no right to inherit from the property left behind by his/her biological father and vice versa. But, can inherit his mother and vice versa.	This is the opinion of Hanbali, Maliki, Shafi'i	This is the opinion of the majority of the jurists
A child born out of wedlock has right to inherit the biological father like any other	Islam frowned at having intercourse before marriage, but, in a case where accidentally the suitors involved in premarital sex, which result to pregnancy and accepted by the husband-to-be or punished by the law. The child would be treated as legal	This is the opinion of some jurists like AbuHanifa, Ishaq bin Rahawayh and the choice of Ibn Taymiyyah and his student Ibn al-Qayyim as qoated	This is the opinion of the minorities of the jurists

child	child, and has right for inheritance like any other child of that man in order to protect his/her integrity in the society.	by Ibn Qudama in al-Mugny	

4.4Analysis of the Inheritance of Inheritance of Test-Tube Baby (طفل الأنابيب)

A Test-Tube babyis also called IVF (In Vitro Fertilization) as stated by Yasmeen eteal (2023:17). This is a child produced from an egg that was fertilized outside of a woman's body and then put back into the woman's body to finish developing". That is to say, in our contemporary period; pregnancy can be made by injecting male sperm into a tube, where it meets with the egg and fertilization takes place. Then the embrayo would be transferred into the woman's uterus, which continues to develop inside the womb until birth. That is, due to the advancement of technology and researches in our contemporary period, researches were conducted especially in other to help people with fertility problems to have a baby through the use of laboratories. And the outcome of the researches shows that it is very possible to do that. And the baby produced through this process is called "Test-Tube baby".

According to Zafar (2017:2) "Louise Brown of England was the first world Test-Tube baby born in this process of reproduction in 1978." More so, Muhammad, (2012:18-19) states that:

> This is a process of fertilising an egg with sperm in an artificial environment such as test-tube. A child produced using this method is popularly called “Test-Tube baby.” The procedure involves stimulation of the woman with injected medications to develop multiple follicles (egg-containing structures) in the ovaries. Thereafter, a trans-vaginal ultrasound-guided procedure is performed to remove the eggs from the follicles which are fertilized in the laboratory with her partner’s sperm. The embryos are

> finally placed in the woman's uterus where they will hopefully implant and develop to result in a live birth.

Yasmeen eteal (2023:17) shaded more light on the process of in vitro fertilization (IVF) of the woman's eggs, by saying:

> In the IVF procedure, the doctor first manages the eggs. Then incubated for 4-24 hours in a cultivated medium, which was specially prepared to ensure that 100 000-1000 000,000 specially prepared sperm swam and then put into the incubated eggs. In the next 24 hours.2–3 days, fertilization happens following a transfer of the embryo.

The qoutations above, explained what a Test-Tube baby is all about, as well as the procedure of getting it. But, at this juncture, let's here the juristic verdict on it from the Islamic point of view, especially with regards to Islamic law of inheritance. However, on this, Scholars have different opinions regarding the test-tube babies particulary in respect to inheritance. According to Inhorn (2003:50),

> In 1980, only 2 years after Louise Brown's birth in Britain, the Grand Shaykh of Egypt's centuries-old religious university, Al-Azhar, issued the first *fatwa* on medically assisted reproduction. This *fatwa* permitted treatment for Muslims, but disallowed any form of third-party reproductive assistance, including surrogacy. By 1986, the first treatment centre had opened in Egypt, with the first Egyptian assisted reproduction treatment baby born in 1987. By the year 2003, the Egyptian industry had truly blossomed, with approximately 50 clinics, five of them at least partially state subsidized. However, none of these clinics offered third party reproductive assistance to Egyptian patients

This ban on third-party assistance has been upheld in many *fatwas* issued since 1980 in the Sunni Muslim countries. For example, *fatwas* supporting assisted reproduction treatment but banning third-party assistance have been issued in Kuwait, Qatar, Saudi Arabia and the United Arab Emirates. For instance, Moosa (2003) states that,

> In 1997, at the ninth Islamic law and medicine conference, held under the auspices of the Kuwait-based Islamic

> Organization for Medical Sciences (IOMS) in Casablanca, Morocco, a landmark five-point bioethical declaration included recommendations to prevent human cloning and to prohibit all situations in which a third party invades a marital relationship through donation of reproductive material.

Such a ban on third-party reproductive assistance of all kinds is very important because, is the same as getting child through fornication or adultery. This is because, it will destruct the genealogical lineage (*nasab*) of the child to his father, as well as inheritance. That is why in Islam, the only way to attribute a child to a father is when there is a valid marriage between the man who is responsible for the pregnancy and the woman who is a mother to that child. The conditions of marriage have to be fulfilled before considering it as a valid marriage. And also, their must be sexual intercourse between the husband and the wife before attributing the child to the father. For instance, if after a valid marriage, but nothing like sexual intercourse had ever taken place between the wife and the husband, and also confessed by the wife. In this case, there will be no reason for attributing the child to that husband as his father. A child could only be attributed to a father when there is a marriage. So, the marriage will make the man to be the father of the child. In this regard, the child inherit the father and the vice-vassa. But, if these conditions are missing, there will be no reason for inheritance.

However, regarding the inheritance of a Test-Tube baby, al-Sa'eed (2019:269) stated that, 'the following conditions have to be fulfilled before considering a test-tube baby as legal and biological child to a father and the possibility of inheriting each other. These conditions are:

i- The man whosesperm will be used must be a true husband (a husband through a valid marriage) to the wife.

ii- Both of the couples have to agree on the problem they have, and getting child through this way is the only solution to their probem of not bearing children.

iii- The sperm and the eggs must be for the husband and wife and it has to be placed in the overy of the wife.

Muhammad (2012:18-19) added some conditions regarding the permissibility of inheritance between the father and the Test-Tube child, where he says:

In-vitro fertilization is may be allowed in Islam if certain conditions are fulfilled. They are:

i. The woman should not uncover her '*awrah* before men when there are female staffs available.

ii. It is not permissible for the husband to masturbate; rather he may be intimate with his wife without penetration, and produce semen in this manner.

iii. The woman's eggs and man's sperm should not be kept in a freezer for later use, or another appointment, and there should not be any delay in placing them in the woman's uterus. Rather that should be done immediately without any delay, so that there should not be mixed with others or be used for other people.

iv. There should be complete trust in the doctors who are doing this procedure. As far as inheritance is concerned, the most important condition is the sperm must come from the husband and the egg from the wife, and be implanted in the wife's uterus. Anything else is not permissible at all. This does not imply that others are not important as well.

More so, Muhammad and Annisa (2023:21-22) reported that, the *Fatwa* Council of Egypt, the Mufti of Tunisia, the Majma' Al-*Fiqh* in Makkah Al-Mukarramah during its

7th session in 1404 A.H, and the Nadwah Al-Injab in Kuwait, which gathered several renowned jurists and expert doctors in the field;

> It has been decided that the use of in vitro fertilization technology may be allowed in Islamic law if certain conditions are met. One of these conditions is that it should be performed by a married couple legally bound in a valid marriage without involving a third party as a donor, which would lead to the mixing of lineages.

So, when the aforementioned conditions are fulfilled, the child has every right to inherit the father like any other child and the father as well has right to inherit the child. And there will be no inheritance if the said conditions are not fulfilled. This is because, in the field of Islamic law, a child has right to inherit his father if the child is gotten through a valid marriag (that is a marriage that is in conformity with the conditions outlined by the sharia. Where there should be guardian, dawry and witness). If the said conditions are fulfilled, then each of them has right for the inheritance. Test-tube or in tiro fertilization baby, has right for inheritance if the parents are husband and wife through a valid marriag, and the egg came from the wife, while the sperm came from the woman and the emrayo placed in the uterus of the wife. Anything outside this, rendered the inheritance between the child and the so-called parent invalid.

In a nutshell, Scholars have agreed with the pregnancy through the process of in vitro fertilization (IVF) if the sperm used is from a legitimate husband. But, if the sperm is not from the husband, then the implementation of IVF is considered prohibited (haram) in Islamic law. However, with regards to a woman that will be paid or volenteer to carry the baby in her womb (known as surrogate mother), is not acceptable. Likewise a sperm donor is also not acceptable in Islam. This is what the above condtion meant by the "third part". And this is also including a case where the embryo is transferred to a

second wife or another wife of the man. This process can mix lineages and create complex issues related to inheritance matters.Also the sperm should not be used after the death of the husband. For instance, if the man died after collection of his sperm and before the implantation of the sperm in the wife's uterus**.**

The researcher's opinion on Test-tube baby or in vitro fertilization (IVF) may be permissible in Islam, if it is done to assist couples that have fertility problem. And the sperm should be from the husband, egg from the wife and then place it in the wife's uterus without the assistance of third party. This has to be done while the husband is alive. But, if the husband died after collection of his sperm before placing it in the wife's uterus, the process has to be canceled. If not, the pregnancy will enter after his death, which is not acceptable. Likewise the sperm will not be kept for later use, or for any other wife among his wives to use it. So, that it will not bring comfusion in the lineage of the child. If these conditions are fulfiled, then the parents have right to inherit the child and the child has right to inherit the parents too. This is because, the child is legitmate to the parents as the parents are the biological and legitmate parents to the child, which is one of the causes or reasons for inheritance in Islam.

However, Test-tube baby or in vitro fertilization (IVF) wast introduce to assist those coupls with fertility challenge, but remember only Allah bless whom He want with a child. Allah saidP:

ٱجحجخجسجسخصحصخصمضجضحضخضغطحظمعجعمغج
فجفحفخقمكجكحكخ الشورى: ٤٩ – ٥٠

49. To Allah belongs the kingdom of the heavens and the earth. He creates what He wills. He bestows female (offspring) upon whom He wills, and bestows male

(offspring) upon whom He wills. 50. Or He bestows both males and females, and He renders barren whom He wills. Verily, He is the AllKnower and is Able to do all things.(Asshurah'42:49)

Ibn Kathir (2003) in his commentary to the verses said; "Al-Baghawi said, "Like Yahya and Isa, peace be upon them." So people are divided into four categories: some are given daughters, some are given sons, some are given both sons and daughters, and some are not given either sons or daughters, but they are rendered barren, with no offspring.

4.4.1Summary of theAnalysis of Item4.4of the Inheritance of Test-Tube Baby (طفل الأنابيب)

Item	Explanation	Justification	Findings
Inheritance of a Test-Tube Baby in Islam	A Test-Tube Baby inherit his/her parents in Islam when the following conditions are fulfilled: (a)Both of the couples have to agree on the fertility problem they have, and getting child trough this way is the only solution to their probem. (b) The man whos sperm will be used must be a true husband to the wife. (c)The sperm and the eggs must be for the husband and wife and it has to be placed in the overy of the wife. (d) The woman's eggs and man's	Report from the *Fatwa* Council of Egypt, the Mufti of Tunisia, the Lajma' Al-*Fiqh* in Makkah Al-Mukarramah during its 7th session in 1404 A.H, and the Nadwah Al-Injab in Kuwait, which gathered several renowned jurists and expert doctors in the field	Test –Tube baby has right for inheritance like any other child and the father as well has right to inherit the child if that is performed by a married couple legally bound in a valid marriage without involving a third party as a donor

	sperm should not be kept in a freezer for later use, or another appointment.		

4.5Analysis of the Inheritance of Inheritance of Atheist and other modern disbelieve in Islam

Atheism is a philosophical doctrine that denies the existence of Allah Almighty and any other deity, and also holds that the universe was created without a creator. Those who depend on rationality are regarded as the true founders of atheism, as they reject the idea of an afterlife because they believe that matter and material are everlasting and eternal. Martin (2007:1) states that the word rooted from the Greek,

> In Greek "a" means "without" or "not," and "theos" means "god." From this standpoint, an atheist is someone without a belief in God.

Atheism as a belief, is directly opposing the inherent nature of humanity; and also is not the same with polytheism or shirk. Since it is established that humans committed the *shirk* early in their history, but they did not deny the existence of Allah, rather, acknowledge His Existence. With reagards to this, Allah (S.W.T.) says:

ثيفىفيقىقيكاكلكمكىكيلملىليمامممىنرنزنمنن
يزيمينيىييئجئحئخ الزمر: ٣

> . . . And those who take Auliya (protectors and helpers) besides Him (say): "We worship them only that they may bring us near to Allah." Verily, Allah will judge between them concerning that wherein they differ. Truly, Allah guides not him who is a liar, and a disbeliever.

Ibn Kathir in his commentary to the verse said that, the polytheists said: "they made their idols in the image of the angels, which is what drives them to worship them. They believe that by worshipping those images, they are actually worshipping the angels, who will

then plead with Allah on their behalf to provide for their needs and other necessities of life."

However, there is no indication from the Qur'an that atheism was widely accepted by any community; rather, the Qur'an describes numerous earlier communities in which their common mistake was shirk (associating partners with Allah), rather than denial of Allah's existence. But, there is no hint of atheism being adopted by any community on a widespread scale.

Atheists disbelieved in the existence of Allah as well as His reward and punishment. To them, whoever die will not be resurrected after death. They disbeleived in the Day of accountability as well as paradise and Hell. This belief originated from Dahriyun as stated by Leaman (1999:45-47).

> The Dahrīyūn began to form around an organic group of physicists and empiricists in the ninth century CE, who rejected revelation as a source of knowledge and placed a focus on using reason and the senses instead. The Dahrīyūn rejected God, prophets, and the afterlife the same as atheist in the contemporary life.

This belief shows that, whatever that could not be seen, touched, felt, tasted, heard does not exist. And this is not true because, there are so many things we believe in their existence without seing them. So, common sense and conscious alone should be able to justify the existence of the creator (Allah). This is because, common sense should be able to tell any sensible person that whatever he/she has sees, must be either made or owned by someone. Likewise human beings and other creatures are created and owned by Allah (their creator). But, to them is not like that. Their assumption with this world is that, we only live and die, and nothing destroys us except time. They said:

ٹٱٹٹأَذۡرَىٰ ثُمَّ نُنَجِّي ٱلَّذِينَ ٱتَّقَواْ وَّنَذَرُ ٱلظَّٰلِمِينَ فِيهَا جِثِيّٗا الجاثية: ٢٤

And they say: "There is nothing but our life of this world, we die and we live and nothing destroys us except Ad-Dahr (the time). And they have no knowledge of it, they only conjecture. (Al-Jaathiya,45: 24).

Ibn Kathir in his commentary to the verse says: ' They say that there is only this life, some people die while others are born to life, without resurrection or Judgement. This was the creed of Arab idolators who used to deny resurrection, in addition to, the creed of the atheist philosophers among them who denied the creation and resurrection. Allah says:

ٹٱٹٹأَهِيَ إِلَّا حَيَاتُنَا ٱلدُّنۡيَا وَمَا نَحۡنُ بِمَبۡعُوثِينَ الأنعام: ٢٩

And they said: "There is no (other life) but our (present) life of this world, and never shall we be resurrected (on the Day of Resurrection).

That is the belief of atheists to this life. They denied the Allah's existence, the messengerhood of His messengers, resurrection, accountability, reward and punishment. This belief however, is intruding into the Muslim communities in our contemporary period. Whereby, some Muslims especially among those that went to abroad for studies, some of them are now coming back with new ideology of either doubting on the existence of Allah as the creator of the universe, or even affirming that he does not exist. Since his existence could not be tested through one of the sense organs. However, this belief debar an heir from inheritance, when his deceased has different beiefs with him. And differences of religion alone disqualifies an heir from inheritance. The Prophet (S.A.W.) was reported to have said:

لايتوارث أهل ملتين شتى .قال الشيخ الألباني :

حسن صحيح

The Messenger of Allah said: 'The people of two religions do not inherit (each other) at all." (Hasan)

He was also reported to have said:

لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ

A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim." (Bukhari, 1997:400 Vol.8 no. 6764)

TheseHadiths indicate that, differences of religion alone could prevented an heir from inheriting the deceased's estate. That is the opinion of majority of the companions of the Prophet (S.A.W.) as well as the Sunni jurists. However, the position of a Muslim with this belief either out of ignorance or is fully aware of its implication is that. There is no doubt that, any one who denies the existence of Allah is not a Muslim. So those atheists that have the full knowledge of the belief (of debunking the existence of Allah), should not be given inheritance after the death of their deceased. But those that have no much idear about the belief, or they just accepted it out of ignorance of its implication, shouid be given their share of inheritance. But, they need to be educated about it and its implication.

Pantheism on the other hands, is another belief which is direct opposite with atheism. The doctoring of the pantheism is qualifying everything as God, as well as derogating God to be servant. According to Ibn Arabi (nd:93 vol.1)

أنت عبد و أنت رب

You are a servant and you are a Lord

Some Muslims believed that everything is God, whether moveable or immoveable, human being or animal. This is the doctrine of Ibn Arabi on the concept of "*Wahdatul Wujud".Wahdatal-wujud* is the idea of the inherent unity of all created things. This idea might be compared to or associated with pantheism. The idea does not acknowledge the distinction between the divine and the material world. This believe is also intruding into the North-West Nigeria, where some Muslims in a family believed in elevating some of the Scholars to the rank of Allah. A typical example was the incident of Yahayaa Sharif-Aminu a musian in Kano who was sentenced to death by hanging in 2020, for giving some attributes of Allah to his sheikh.

However, with regard to the two cases of inheritance of those who are either denying the existence of Allah, or giving some attributes of Allah to His creatures, debarred them from inheriting any thing from the property left behind by the deceased. This is a modern apostacy which could be serve as an impediment to Islamic law of inhericance. The prophet (peace and blessings of Allah be upon him was reported to have said:

لايتوارث أهل ملتين شتى .قال الشيخ الألباني :

حسن صحيح

The Messenger of Allah said: 'The people of two religions do not inherit (each other) at all." (Hasan)

He was also reported to have said:

لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ

A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim." (Bukhari, 1997:400 Vol.8 no. 6764)

4.5.1 Summary of theAnalysis of Item4.5of the inheritance of Atheist and other modern disbelieve in Islam

Item	Explanation	Justification	Findings
Inheritance of an atheist or pantheist in Islam	Any body who disbelifves in the existence of Allah is called Atheist, while those qualifying the creatures of Allah to the same rank of Allah are called pantheists. Under the impedements to Islamic law of inheritance, differences of religion between the deceased and the heir is a cause for the debarment of inheritance. the prophet (S.A.W.) was reported to have said: لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim." (Bukhari, 1997:400 Vol.8 no. 6764).	The sunni jurists (Hanafi, Maliki, Shafi'i and Hanbali School of law) unanimousely agreed on that.	There should be no inheritance between the deceased and the heirs when they have diferent religion.

4.6.1Analysis of the Inheritance of Man Divorces his Wife in Death Sickness and other Related Issues

If a man divorces his wife in a sickness that he doesn't recover from, the wife will inherit from her late husband. She cannot be excluded. Likewise, if a man divorces his wife with one or two pronouncements (revocable divorce), would inherit him provided her *Iddah* (waiting period) has not elapsed. But if the divorce is irrevocable (three pronouncements), she will not inherit from him whether her *Iddah* has elapsed or not.

However, if the husband divorces his wife irrevocably during his illness in which he dies, the four Schools of Islamic jurisprudence have divergent opinions as discussed by the researcher under the grounds or causes of inheritance. But, the summary to the detailed discussion are as follow:

i. Abu-Hanifa: If the Iddah has not expired, she will inherit from him, otherwise, she will become a non-heir.

ii. Malik: She will inherit from him even if the Iddah has expired or she has married another person. (al-Azhary (nd:642)

iii. As-Shafi'i : She will not inherit from him whether or not the Iddah has expired.

iv. Ahmad ibn Hanbal: She has the right to inherit from him whether the Iddah has expired or not provided she has not married another person.

According to al- Halawi (nd:186-188);

> the Maliki School of law are of the opinion that, if a husband divorces his wife during his fatal sickness and is accused of having done that with the intention of preventing her from inheritance, in this case, she inherits his estate even after the completion of her *'Iddah (waiting period)*, and even if she gets married to another person. But, according to Hanafi's opinion, she only has the right to inherit him before the expiration of her *iddah* (waiting period), while according to Shafi'i as reported by al-Jabwiy and Ahmad (2018:38-39) she has no right to inherit him after divorce. Hanbali School of law are of the opinion that, she is only entitled to inherit him after her iddah, if she did not get married to another husband or apostate.

From the above quotation, it could be understood that, the four renowned *sunni* Schools of law differ with each other regarding the irrevocable divorce. Hanafi School of law is of the opinion that, the divorcee is entitle for the inheritance if she is in her *'iddah'* (waiting time after marriage) period. While Malikiyyah opined that, she is entitled for the inheritance even if she got married to another husband, so far as the intention is to deny her right for the inheritance (An-Nagrawi 1126:88) vol.1). But, to Shafi'i yyah a divorcee has no right for the inheritance after that final divorce (irrevocable), whether the divorce occurred during the husband death sickness or not, and likewise whether she is in her *iddah* period or after the *iddah*, and also whether the intention of the divorce was to deny her from benefiting from the inheritance or not. Hanbali are of the opinion that she has right for the inheritance if her *iddah* period is not cut off.

4.6.1(a)Analysis of the Inheritance of Exclusion of paternal grandmother

Hanafi, Maliki and Shafi'i Schools of law are of the opinion that, a paternal grandmother is not eligible for inheritance if her son (father of the deceased) is a life. The presence of her son will automatically exclude her from inheritance. When looking at the rules of exclusion, a paternal grandmother can be excluded by mother and father of the deceased, while maternal grandmother could only be excluded by mother alone. According to al-Kalbiy (2022:571), "the mother's mother is only be excluded by the mother, and father's mother is excluded by the mother and father of the deceased." But, to ibn Qudama (2009:69 vol.8), Hanbali School of law are of the opinion that father's mother is eligible for inheritance even if her son (father of the deceased) is a life, as stated below:

وَالْجَدَّةُ تَرِثُ وَابْنُهَا حَيٌّ وَجُمْلَتُهُ أَنَّ الْجَدَّةَ مِنْ قِبَلِ الْأَبِ إِذَا كَانَ ابْنُهَا حَيًّا وَارِثًا . وَهُوَ ظَاهِرُ مَذْهَبِ أَحْمَدَ بْنِ حَنْبَلٍ رَضِيَ اللَّهُ عَنْهُ.

The grandmother inherits even if her son is a life. In short, the paternal grandmother inherit even if her son (father of the deceased) is a life. And this is the opinion of Ahmad bin Hanbal.

The above quotations show that, mother's mother is excluded by only mother of the deceased, while mother's father is excluded by the mother and father of the deceased except in the Hanbali School, who sees her as eligible heir for inheritance.

4.6.1(b)Analysis of the Inheritance of Unborn Child (حمل)

An unborn child is a young human creature in the womb of the mother. There is no any assurance of his life and nature of sex. As will be discussed in due course, majority of the jufrists agreed for a temporary division of the estate to it. When the nature of the foetus is determine after its birth, then the permanent devision of the estate would be done.

Before talking about the inheritance of the unborn child, there is need to discuss the duration of the pregnancy in Islam from day-one to the delivery (from the day the sexual intercourse takes place to the day of delivery). On this, the jurists unanimously agreed that is six months as al-Zuhaili (nd:515 vol.10) says:

رأى جمهور الفقهاء: أن أقل مدة الحمل حتى يولد حياً هي ستة أشهر . وهذا ما فهمه علي وابن عباس رضي الله عنهما.

The view of the majority of the jurists regarding pregnancy is six months from the day of sexual intercourse or divorce to delivery. And this is also the view of Ibn Abbas.

This shows that whoever divorces his wife after six month of their marriage, and she delivered thenceford, that child will be attributed to him whether he likes it or not. Except if it is otherwise. This is in line with the Qur'anic verse that says:

ٹ ٱﭑﭒ ﭓ لم لى لي مج مح مخ مم مى مي نج نح نخ نم الأحقاف:
١٥

> And We have enjoined on man to be dutiful and kind to his parents. His mother bears him with hardship and she brings him forth with hardship, and the bearing of him, and the weaning of him is thirty (30) months . . .(al-Ahqaf,46:15)

Ibn Kathir (2003) in his commentary to the verse, explains that, a woman who delivered six months after her wedding, then her husband went to Uthman and informed him what happened regarding her delivery. Then Uthman (R.A.) sent for her, and rule that she should be stoned to death. When Aliy (R.A.) heard that, he went to Uthman (R.A.) the communication of the verse. Meaning, when twenty-four months (2years of breastfeeding) are subtracted from thirty months, the remaining will be six months, and that will be least. which is for the duration of pregnancy. 1bn Kathir (700:280 vol.7).

But, regarding the maximum duration of the pregnancy, jurists have different opinions on that. According to al-Zuhaili (nd:515 vol.10):

للفقهاء آراء في أكثر مدة الحمل
قال المالكية على المشهور: أكثرها خمس سنين.
وقال الشافعية، والحنابلة في الأصح: أكثرها أربع
سنين.وقال الحنفية: سنتان.وقال الظاهرية: تسعة

أشهر.وقال مُحَمَّد بن عبد الحكم من تلاميذ مالك:

أكثرها سنة قمرية

> Scholars differed in their opinions regarding the duration of the pregnancy. Maliki is of the opinion that a pregnancy could last for five years, but four years to Shafi'i and Hanbali , while to Abu Hanifa two years, to Zahiri is nine months and to Muhammad Bin Hakam is one year who is one of the disciples of Maliki.

However, with regards to the inheritance rights for unborn child (baby in the womb), the fuqaha (jurists) agreed that unborn child is entitled to inheritance of a deceased together with the other beneficiaries. However, the inheritance rights for the unborn child are subject to two conditions according to Bin Baz (1418A.H.:79) namely:

i) The unborn child is already present in its mother's womb at the time of death of the deceased.

ii) The unborn child is born alife even for a few seconds. The Islamic Law of Inheritance identifies several signs that indicate that the unborn child is born alife such as crying, feeding, breathing, moving its limbs and so forth.

The *fuqaha'* have different opinions on whether the whole body of the unborn child has to be born alife or just part of it. The Shafii, Maliki and Hanbali Schools require that the unborn child be born alife as a whole. If only some parts of the unborn child are born alife and then it passes away, the unborn child is not entitled to inherit the inheritance. But Hanafi School are of the opinion that even if most parts of it is born and then died later, he can still inherit. Al-Zuhaili (nd:515 vol.10) says:

وأما ولادته حياً: فتثبت حياته عند الحنفية بخروج أكثره حياً.

ولاكن عند الجمهور تثبت حياته بأن يولد حياً؛ وتعرف حياته بظهور أمارة من أمارات الحياة، كالصراخ والعطاس ونحوهما، قال رسول الله صلّى الله عليه وسلم : «إذا استهل المولود وَرِث»

Hanafi School are of the opinion that a newborn baby can inherit even if most parts of the body is born alife, the baby is entitle for inheritance. But, to other jurist (Maliki, Shafi'i and Hanbali) the unborn child can only inherit if the whole body is born alife. And this could be understood through some signs like crying, and sneezing e.t.c as the Prophet (S.A.W.) says: "It was reported from Abu Hurairah (may Allah be pleased with him): the Prophet (S.A.W.) said: "If a newborn raises its voice, and then dies, it will be treated as an heir." (Abu Dawu ;447 no. 2920.)

al-Shaybani (2002:102 vol.2) states that: Malik and Ahmad, Hanafyyah and Shafi'i yyah narrated to have said:

فقال مالك وأحمد : لا يرث وإن تحرك وتنفس إلا أن يطول ذلك ويرضع .

وقال أبو حنيفة والشافعي : إن تحرك أو تنفس أو عطس ورث وورث عنه .

Malik in another narration was reported to have said. The newborn baby will not inherit even if it moves its limbs, and breast feed except for a longer time. But, to Hanafi and Shafi'i , the newborn baby as far as it move its limbs, breathes, and sneezes, it inherit and be inherited.

When the unborn child fulfills the conditions above, it has the rights to the inheritance and the portions of the inheritance should be kept for it until its birth. According to the

majority of fuqaha, the inheritance can be distributed before the birth of the unborn child, but the portion that should be kept for it is the maximum whether it is a male or female. For the Maliki sect, the inheritance cannot be distributed until the baby is born and his sex is determined. As al-Zuhaili (nd:516 vol.10) further said:

رأى المالكية: أن التركة لا تقسم حال وجود حمل، ويعد الحمل سبباً يُوقف به المال إلى الوضع، فيوقف قسمة التركة حتى الولادة .

ورأى الجمهور: أن التركة تقسم من غير انتظار الولادة، منعاً من إضرار الورثة.

> Malikiyyah are of the opinion that the estate left by a deceased should not be distributed when there is pregnancy. This is enough reason for the distribution to be delayed until the baby is born. But, the majority of the jurists (Hanai, Shafi'i and Hanbali Schools) are of the opinion that the estate can be distributed in order not to cause any harm to other heirs.

However, by this view the opinions of the jurists and their reasons regarding the inheritance of the unborn child; conclusion could be made as the unborn baby is eligible for inheritance only when it born completely alife. To clarify any doubt, the newborn baby has to either cry or sneeze before it will be entitled for inheritance. If it does that, its shows that is competent to inherit as it born alife. Unborn child is regarded as a living person and, as such, the estate be allocated immediately to that child. But, if such a child is not born alive, then is assumed that there was no such heir in the womb. On this, each heir gets complete of his/her share.

4.6.1(e) Summary of theAnalysis of item 4.6.1of the Inheritance of Man Divorces his Wife in Death Sickness and other Related Issues

Item	Explanation	Justification	Findings
Inheritance of a wife divorced by her husband in death sickness	She will inherit from the husband, if the *Iddah* period has not expired, otherwise, she will become a non-heir.	This is the opinion of Hanifa School of law.	The research found out that, out of the four different opinions of these sunni jusrists on this case, the most practicable in Nigeria is the opinion of shafi'i that says: "the divorcee will not inherit from him whether or not the *Iddah* has expired."
	She will inherit from him even if the *Iddah* has expired or she has married another person.	This is the opinion of Malik School of law.	
	She will not inherit from him whether or not the *Iddah* has expired.	This is the opinion of Shafi'i School of law.	
	She has the right to inherit from him whether the *Iddah* has expired or not provided she has not married another person	This is the opinion of Hanbali. School of law.	
Exclusion of pertanal grandmother from inheritance	a paternal grandmother is excluded from inheritance if her son (father of the deceased) is a live.	This is the opinion of Hanafi, Maliki and Shafi'i	This is the opinion of the majority of the Sunni jurists.
	a paternal grandmother	This is the opinion of Hanbali other sunni Scholars.	This is the opinion of the

	has right for inheritance even when her her son (father of the deceased) is a live.		minority of the Sunni jurists.
Inheritance of an unborn child	The unborn child is only entitled for inheritance if he born alive as a whole. If only some parts of the unborn child are born alive and then it passes away, the unborn child is not entitled to inherit the inheritance.	This is the opinion of the Hanbali, Maliki and Shafii, Schools	This is the opinion of the majority of the Sunni jurists.
	The unborn child is entitled for inheritance even if most parts of it's body is born alive and then died later, he can still inherit	This is the opinion of the Hanafi	This is the opinion of the minority of the Sunni jurists.

4.7Summary ofthe Research Findings

This research titled "Analysis of Maliki School of law and others in Some Cases of Inheritance and its Practices among Muslims"was able to establish the following findings.

1. The research found out that grandfather can inherit alongside with the siblings (brothers and sisters) of the deceased.
2. The research also found out that, *Dhawil Arham* are more entitled to inherit the estate in the absence of Qur'anic sharers or agnatic heirs, rather than taking it to the public treasury (Bait-al-Mal)
3. The research also found out thata Test-tube baby conceived within a valid marriage without the involvement of a third-party, has the same inheritance rights as any other child of the parents.
4. The research also found out that, there should be no inheritance between the deceased and the heir when havingdifferences of religions.
5. The research found out that children born out of wedlock are not entitled for inheritance.
6. The research revealed that,a divorcee should not inherit the husband after the expiation of her*Iddah* as opined by the majority of the jurists, pertanal grandmother should be excluded when the father of the deceased is alive, unborn child (foetus) is entitled for inheritance if born alive.

4.8 Discussion of the Findings

Having established the above findings of this research, there is the need to discuss each finding as follows:

1. Maliki and other Schools of law are of the opinion that grandfather inherit with the brothers and sisters of the deceased. And this is the opinion of the majority of the jurists. Grandfather has no right to exclude them like the father of the deceased, which is in contrary to the view of Hanafi School of law.This opinion of the majority

of the SunniScholars is the most suitable in our society. This is because, it will make the wealth to be circulated among the relatives of the deceased rather than making it concentrated on an individual.But, when sharing the estate amaong the grandfather and sibbblings of the deceased, the following should be considered:

i- When the grandfather is inheriting along with the full and consanguine brothers and sisters of the deceased without any other sharer, the grandfather has option on whether to share equally with the full and consanguine brothers and sisters, if they are all males, or should have double shares of a sister, when inhering with a sister of the deceased. If this will not favour him, then he can take $\frac{1}{3}$of the whole estates.

ii- But, when there is a sharer, the grandfather has option on whether to share equally with the full and consanguine brothers and sisters of the deceased after the sharer has taken his/her share, or taking one-third ($\frac{1}{3}$) of the residue. And if these two will not favour him, he has option of taking one-sixth($\frac{1}{6}$) of the whole estate. So, grandfather has the options mentioned when inheriting with the full or consanguine brothers and sisters of the deceased.

However, when comparing this current study with the empirical study, none of the researchers discuss fully on this case of grandfather's inheritance with the siblings (brothers and sisters) of the deceased like Maibushira (1998). A researcher/reader would hardly read the research without benefiting from it. But, the researcher only based his discussion on the view of Maliki School of law. Which some researchers might need to see some discussion on the different opinions of the orthodox sunni jurists especially the remaining three schools of law (Hanafi, Shafi'i and Hanbali) on the inheritance of grandfather alongside with siblings of the deceased. But, the current study was able to

discuss fully on that. Because, finding out areas of the differnces among jurists (Hanafi, Maliki, Shafi'i and Hanbali) was the main objective of the research.

2. The research found out that *Dhawil Arham* are more entitled to inherit the property left by their relative, than taking it to *bait-al-mal* (public treasury) in the absence of a sharer or agnatic heir. This is the view of the majority of the jurists except Maliki School of law. Where the school opined that the property should be taking to public treasury instead of *DhawilArham*. But, taking the estate left by a deceased to *DhawilArham*, will really help them because of the contemporary condition of high cost of living we are in now.

   Giving them share from their late relative could enhance good relationship between the members of the family. More so, when looking at the case of a Li'an child (Cursing for Adultery), when he dies, only his relatives from his mother's side can inherit him, which are part of the distant kindred(*Dhawul Arham*)**.** That shows that*Dhawul Arham* are also among the relatives of the deceased that are entitled to inherit in the absence of sharers and the agnatic heirs. On this, the researcher is with the opinion of the first group based on the following reasons:

   The absence of active Islamic Public Treasury (Bait al-Mal) in a country like Nigeria therefore, giving such inheritance to the uterine relative is better than taking it to the public treasury; more especially in the present time when people are in dare need and some are even dying of hunger.

However, with regard to the researches conducted by other researchers discussed under the empirical study, Umar (2018) discussed briefly on the inheritance of *DhawilArham*under the Maliki School of law alone. But, this study see the need to

discuss the opinions of theothe three Sunni jurists (Hanfi, Shafi'i and Hanbali) regarding the inheritance of *Dhawil Arham,* which is the main objective of the study.

3. The research also found out that Test –Tube baby has right for inheritance like any other child and the father as well has right to inherit the child if that is performed by a married couple legally bound in a valid marriage without involving a third party as a donor, which would lead to the mixing of lineage. Both the sperm and the egg should come from the couple as well as placing the embrayo in the wife's uterus without involving any donor of either sperm or egg. Ant it has to be done while the husband is alive. But, if the husband died after collection of his sperm before placing it in the wife's uterus, the process has to be canceled. If not, the pregnancy will enter after his death, which is not acceptable. Likewise the sperm will not be kept for later use, or for any other wife among his wives to use it. So, that it will not bring confusion in the lineage of the child. The majority of the jurists are of the opinion that, if these conditions are full filed, then the parents have right to inherit the child and the child has right to inherit the parents too.

However, with regard to the empirical study, the researcher was unable to lay hands on the research on a Test-Tube baby. So, none of the researchers discussed on the inheritance of a Test-Tube Baby in the empirical study. And there is need for Islamic guidance on it. Due to the increasing number of people with infertility problem that the world is facing. In order not to avoid having problem regarding the distribution of inheritance among heirs. That is why a research like this need to be conducted with the aims of providing Islamic solution to that.

4. The Sunni jurists unanimous agreed that, there should be no inheritance between the deceased and the heirs when theyhave diferent religion. The Prophet was reported to have said:

لايتوارث أهل ملتين شتى .قال الشيخ الألباني :

حسن صحيح

The Messenger of Allah said: 'The people of two religions do not inherit (each other) at all." (Hasan)

He was also reported to have said:

لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ

A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim." (Bukhari, 1997:400 Vol.8 no. 6764)

This shows that differences of religion could prevented an heir from inheriting the deceased's estate. That is the opinion of majority of the companions of the Prophet (S.A.W.) as well as the Sunni jurists. However, the position of a Muslim with this belief either out of ignorance or is fully aware of its implication is that. There is no doubt that, any one who denies the existence of Allah is not a Muslim. So those atheists that have the full knowledge of the belief (of denaying the existence of Allah), should not be given inheritance after the death of their deceased. This is because, they have different religion with the deceased. But those that have no much idear about the belief, or they just accepted it out of ignorance of its implication, shouid be given their share of inheritance. But, they need to be educated about the belief and its implication.

With regards to some Muslims with either the doctrine of atheism or pantheism (donctrinesrejecting the existence of Allah or believed that every thing has power as

Allah), majority of the scholars considered this as apostasy, and an apostate has no right for inheritance.

However, with regard to the empirical study, none of the researchers discussed on the inheritance of atheist or pantheist. But, there is need for Islamic guidance on that. In order not to fall victims of any one of such deviant doctrines when it comes to inheritance.

5. The research also found out that, any child born out of wedlock is no entitle to inherit the father and vice versa. This is because, majority of the jurists are of the opinion that, any child gotten before marriage is not a legal or legitimate child to the fornicator/adulterer even if he claims the pregnancy or punished for his action. This is because of the Hadith of the Prophet (May Allah's peace and blessings be upon him) that says, “The child is for the bed, and for the prostitute is the stone.” these jurists are of the opinion that, the child should be attributed to his mother and not to the adulterer. This is the view of the majority of jurists including Malik, Shafi'i and Hanbali. This is because, any child who born out of wedlock has no right to inherit from the father and the father cannot inherit from the child too.

However, with regard to the researches discussed under empirical study, Musa (2011) and Maibushira (1998) discussed the inheritance of child born out of wedlock under Ipediment to inheritance, which solelmnly relied on the Maliki School of law. But, Maibushira discussed on the opinions of other Schools. But, the current research gave a detailed explanation on the different views of scholars and how those schoolars failed in two diffenet groups of either accepting or rejecting such child/children as heirs.

6. Other areas of differences among the four sunni jurists includes:

i. Divorce by a man in death sickness: Jurists differed on a case when a man divorces his wife in death sickness, on whether the wife will inherit from such husband after his death or not. On this, the four renowned *sunni* Schools of law differ with each other regarding the irrevocable divorce. Hanafi School of law is of the opinion that, the divorcee is entitle for the inheritance if she is in her *'iddah'* (waiting time after marriage) period. While Malikiyyah opined that, she is entitled for the inheritance even if she got married to another husband, so far as the intention is to deny her right for the inheritance (An-Nagrawi 1126:88) vol.1). But, to Shafi'i yyah a divorcee has no right for the inheritance after that final divorce (irrevocable), whether the divorce occurred during the husband death sickness or not, and likewise whether she is in her *iddah* period or after the *iddah*, and also whether the intention of the divorce was to deny her from benefiting from the inheritance or not. Hanbali are of the opinion that she has right for the inheritance if her *iddah* period is not cut off.

However, the researcher's opinion is with the opinion of Hanbali School that said: "she has right for the inheritance if her *iddah* period is not cut off." This is because, this opinion harmonizes the opinions of Maliki and Shafi'i schools of law. In Maliki's opinion the divorcee is entitled for inheritance even if she got married to another husband. And actually this could bring misunderstanding amoungst the heirs, when taking her share to another man's house. Hanbali's opinion on the other hand, was too rigid on that, by saying: "whether she is in her *iddah* period or after the *iddah*, and also whether the intention of the divorce was

to deny her from benefiting from the inheritance or not." This opinion might be a support to those who want to deny some of their wives from inheriting them after their death. But, Hambali's opinion did not completely deny the divorcee from inheritance until she finishes her *Iddah*, and she is entitled for the inheritance before the expetiation of her *Iddah*.

ii.Exclusion of pertanal grandmother from inheritance when her son (the father of the deceased is alive): Juriststs also differ on their opinions regarding the exclusion of the paternal grandmother from inheritance. Hanafi, Maliki and Shafi'i Schools of law are of the opinion that, a paternal grandmother is not eligible for inheritance if her son (father of the deceased) is a live as stated by Kalbiy (2022:571), "the mother's mother is only be excluded by the mother, and father's mother is excluded by the mother and father of the deceased." The presence of her son will automatically exclude her from inheritance.

When looking at the rules of exclusion, a paternal grandmother can be excluded by mother and father of the deceased, while maternal grandmother could only be excluded by mother alone. But, to ibn Qudama (2009:69 vol.8), Hanbali School of law are of the opinion that father's mother (pertanal mother) is eligible for inheritance even if her son (father of the deceased) is a live, as stated below:

وَالْجَدَّةُ تَرِثُ وَابْنُهَا حَيٌّ وَجُمْلَتُهُ أَنَّ الْجَدَّةَ مِنْ قِبَلِ
الْأَبِ إذَا كَانَ ابْنُهَا حَيًّا وَارِثًا . وَهُوَ ظَاهِرُ مَذْهَبِ
أَحْمَدَ بْنِ حَنْبَلٍ رَضِيَ اللَّهُ عَنْهُ.

> The grandmother inherits even if her son is a life. In short, the paternal grandmother inherit even if her son (father of the deceased) is a life. And this is the opinion of Ahmad bin Hanbal.

The above quotations show that, mother's mother is excluded by only mother of the deceased, while mother's father is excluded by the mother and father of the deceased except in the Hanbali School, who sees her as eligible heir for inheritance. The researcher's opinion is with the opinion of the majority of the jurists on the exclution of pertanal grandmother from inheritance in the presence of her son (the father to the deceased). This is closer to the rule of exclusion. This is because, in the rule of exclusion, the most closer to the deceased excludes the one who is more remote to the deceased. The deceased father is closer to the deceased than the pertanal grandmother. Excluding her in this case, is in line with the the rule of exclusion in the Islamic law of inheritance.

iii. Inheritance of an unborn child (foetus): Jurists have also differ on the inheritance of an unborn child, but, they unanimously agreed on the minimum duration of the pregnancy is six months as al-Zuhaili (nd:515 vol.10) says:

رأى جمهور الفقهاء: أن أقل مدة الحمل حتى يولد حياً هي ستة أشهر . وهذا ما فهمه علي وابن عباس رضي الله عنهما.

> The view of the majority of the jurists regarding pregnancy is six months from the day of sexual intercourse or divorce to delivery. And this is also the view of Ibn Abbas.

But, regarding the maximum duration of the pregnancy, jurists have different opinions on that. According to al-Zuhaili (nd:515 vol.10):

للفقهاء آراء في أكثر مدة الحمل

قال المالكية على المشهور: أكثرها خمس سنين.

وقال الشافعية، والحنابلة في الأصح: أكثرها أربع سنين.وقال الحنفية: سنتان.وقال الظاهرية: تسعة أشهر.وقال مُحَمَّد بن عبد الحكم من تلاميذ مالك: أكثرها سنة قمرية

> Scholars differed in their opinions regarding the duration of the pregnancy. Maliki is of the opinion that a pregnancy could last for five years, but four years to Shafi'i and Hanbali , while to Abu Hanifa two years, to Zahiri is nine months and to Muhammad Bin Hakam is one year who is one of the disciples of Maliki.

However, with regards to the inheritance rights for unborn child (baby in the womb), the fuqaha (jurists) agreed that unborn child is entitled to inheritance of a deceased together with the other beneficiaries. However, the inheritance rights for the unborn child are subject to two conditions according to Bin Baz (1418A.H.:79) namely:

i) The unborn child is already present in its mother's womb at the time of death of the deceased.

ii) The unborn child is born alife even for a few seconds. The Islamic Law of Inheritance identifies several signs that indicate that the unborn child is born alife such as crying, feeding, breathing, moving its limbs and so forth.

The *fuqaha (jurists)*have different opinions on whether the whole body of the unborn child has to be born alife or just part of it. The Shafii, Maliki and Hanbali

Schools require that the unborn child be born alife as a whole. If only some parts of the unborn child are born alife and then it passes away, the unborn child is not entitled to inherit the inheritance. But Hanafi School are of the opinion that even if most parts of it is born and then died later, he can still inherit. Al-Zuhaili (nd:515 vol.10) says:

وأما ولادته حياً: فتثبت حياته عند الحنفية بخروج أكثره حياً.

ولاكن عند الجمهور تثبت حياته بأن يولد حياً؛ وتعرف حياته بظهور أمارة من أمارات الحياة، كالصراخ والعطاس ونحوهما، قال رسول الله صلّى الله عليه وسلم : «إذا استهل المولود وَرِث»

Hanafi School are of the opinion that a newborn baby can inherit even if most parts of the body is born alife, the baby is entitle for inheritance. But, to other jurist (Maliki, Shafi'i and Hanbali) the unborn child can only inherit if the whole body is born alife. And this could be understood through some signs like crying, and sneezing e.t.c as the Prophet (S.A.W.) says: "It was reported from Abu Hurairah (may Allah be pleased with him): the Prophet (S.A.W.) said: "If a newborn raises its voice, and then dies, it will be treated as an heir." (Abu Dawu ;447 no. 2920.)

al-Shaybani (2002:102 vol.2) states that: Malik and Ahmad, Hanafyyah and Shafi'i yyah narrated to have said:

فقال مالك وأحمد : لا يرث وإن تحرك وتنفس إلا أن يطول ذلك ويرضع .

وقال أبو حنيفة والشافعي : إن تحرك أو تنفس أو عطس ورث وورث عنه .

> Malik in another narration was reported to have said. The newborn baby will not inherit even if it moves its limbs, and breast feed except for a longer time. But, to Hanafi and Shafi'i , the newborn baby as far as it move its limbs, breathes, and sneezes, it inherit and be inherited.

When the unborn child fulfills the conditions above, it has the rights to the inheritance and the portions of the inheritance should be kept for it until its birth. According to the majority of fuqaha, the inheritance can be distributed before the birth of the unborn child, but the portion that should be kept for it is the maximum whether it is a male or female. For the Maliki sect, the inheritance cannot be distributed until the baby is born and his sex is determined. As al-Zuhaili (nd:516 vol.10) further said:

رأى المالكية: أن التركة لا تقسم حال وجود حمل، ويعد الحمل سبباً يُوقف به المال إلى الوضع، فيوقف قسمة التركة حتى الولادة .

ورأى الجمهور: أن التركة تقسم من غير انتظار الولادة، منعاً من إضرار الورثة.

> Malikiyyah are of the opinion that the estate left by a deceased should not be distributed when there is pregnancy. This is enough reason for the distribution to be delayed until the baby is born. But, the majority of the jurists (Hanai, Shafi'i and Hanbali Schools) are of the opinion that the estate can be distributed in order not to cause any harm to other heirs.

However, by this view the opinions of the jurists and their reasons regarding the inheritance of the unborn child; conclusion could be made as the unborn baby is eligible

for inheritance only when it born completely alife. To clarify any doubt, the newborn baby has to either cry or sneeze before it will be entitled for inheritance. If it does that, its shows that is competent to inherit as it born alife. Unborn child is regarded as a living person and, as such, the estate be allocated immediately to that child. But, if such a child is not born alife, the share already allocated in it is dispossed and, it is assumed as if there was no such heir (in the womb) at all.

The inheritance could be distributed before it delivery in order not to be benefited only by few individuals when the distribution is delayed. And the people that will be excluded if the unborn baby happens to be a male child, should be delayed in giving them their share. But for those that, their share would not be tempered by the unborn child, could get their own shares. The share that will be kept for the unborn child is the maximum (i.e. when it is a boy, girl, 2 girl, 1 boy and 1 girl e.t.c.).

CHAPTER FIVE

Summary, Conclusion and Recommendations

5.0 Introduction

This chapter presents the general summary of the research, conclusion and recommendations.

5.1 Summary

1. The research is divided into five chapters in order to analyse some cases of inheritancedistribution in Maliki and other Schools of law. In this regard, chapter one presents the general introduction of the work with the aim to analyze the differences between Maliki and other Schools of law on the inheritance distribution of grandfather inheriting along side with the siblings of the deceased, to evaluate the differences between the Maliki School of Law and others on the inheritance of *Dhawil Arham* (uterine), to determine the inheritance of a Test-Tube baby based on the principles of Maliki School and others among other objectives.The chapter serves as prelude to chapter two; where various cases of inheritance were discussed. This leads to careful analysis and using of the relevant methodology of the research in chapter three. The research therefore employed comparative content analysis approach to analyse the Maliki School of law and others in some cases of inheritance distribution among Muslims.Therefore, in chapter fourcases related to the analysis of the inheritance of grandfather along with the brothers and sisters of the deceased, inheritance of Dhawil Arham, inheritance of a Test-Tube baby, inheritance of Atheist, inheritance of a child born

out of wedloched and other areas of difference among Sunni jurists were all ananlysed in the chapter. This leads to derivation of research findings and subsequent discussions in the chapter. The research findings lead to the recommendations as in chapter five.

5.2 Conclusion

The distribution of inheritance is governed by principles of Qur'an and Sunnah of the Prophet Muhammad (peace and blessings of Allah be upon him) and interpreted by the jurists. Different schools of Islamic law, such as the Maliki, Hanafi, Shafi'i, and Hanbali schools, offer distinct interpretations and methodologies for determining shares of inheritance. Their different perceptions on some cases of inheritance distribution could cause problem if the heirs follow different Schools of law and disagree to follow one School of law for the distribution ofinheritance. Likewise, where some heirs are been rejected as a result of the nature of their non-traditional birth, like test tube baby or in vitro fertilization. However, addressing these challenges requires a deep understanding of Islamic jurisprudence and its interpretation in contemporary contexts. Balancing religious principles with evolving societal norms and legal frameworks is essential in ensuring equitable and just inheritance practices within Muslim communities. Clarifying the rights of individuals with non-traditional familial relationships and navigating the complexities of modern reproductive technologies are crucial steps towards achieving fairness and justice in inheritance distribution among Muslims.

5.3 Recommendation

The research has the following recommendations:

1. There is need for the inheritance distributors to comply with the opinion of Maliki School of law in sharing inheritance between grandfather and the brothers and sisters of the deceased. This will enhance peaceful co-existence amoung the family members.
2. There is need to transfer the estate left behind by the deceased to *Dhawil Arham*in the absence of Qur'anic sharers and agnatic heir, than taking it to *bait-al-mal* (public treasury). Even though is contradictiong the opinion of the Maliki School of law.This is because of the inactive public treasury and financial status of the country.
3. There is also need for the Muslims parcularly the Schoars, to give awareness to those couples having fertility challenges to avoid involvement of the third party in the process of having a Test-tube baby, in order not to mix up the lineage of the baby as well as disqualifying one another from inheritance.
4. There is need for the government to take action on those Muslims commiting adultery and fornication in Muslim communities which increasing the number of children born out of wedlock in such communities. Also, the Scholars need to warn Muslims on Allah's wrath and its repercussion on that their illicit action of testing fertility before marriage. The child or children born as a result of that, should not inherit the father and vice versa.
5. There is need for the Muslim inheritance distributors to emphasiseon the denial ofinheritance to any heir having different religion with the deceased. Atheism and

pantheism are beliefs/religion on their own, and they are not the same with Islam. Anay Muslim who is fully aware with the implication of those beliefs (atheism and pantheism) should not be given a share of inheritan from the estate left behind by their deceased.

6. There is also need for the Muslims ofa country like Nigeria to have a "Muslim Code of Inheritance Law" that reconciles the diverseopinions of the Hanafi, Maliki, Shafi'i, and Hanbali Schools of law to incorporate the most relevant opinions from these Schools of law to form a unified and suitableinheritance law for the Muslims of their country. Through identifying the key areas of differences and commonalities, a comprehensive and inclusive code can be developed.

Suggestion for Further Studies

Suggested research topics and with guide on how to conduct the research:

1. **Impact of Inheritance Practices ofMaliki School of law on Family Dynamics**: Investigate how adherence to the opinion ofMaliki School of lawin the inheritance distribution, particularly regarding the allocation between grandfathers and siblings of the deceased, influences family relationships and dynamics. Utilize qualitative methods to explore the experiences and perceptions of family members affected by inheritance distribution practices, shedding light on the role of Islamic law in shaping harmony.in the family.

2. **Estate Distribution Strategies in Muslim Societies**: Examine the socio-economic and legal implications of prioritizing *Dhawil Arham* over the public treasury in estate distribution, despite contradicting the Maliki School's opinion. Conduct comparative research across different Muslim-majority countries to

assess the effectiveness and feasibility of alternative inheritance distribution strategies in addressing financial challenges and fostering social welfare.

3. **Ethical Considerations of the Inheritance of Assisted Reproductive Technologies (Test-Tube Babies) Among Muslims**: Investigate the ethical dilemmas surrounding third-party involvement in the process of conceiving test-tube babies among Muslim couples facing fertility challenges. Utilize mixed-methods research to explore the attitudes, beliefs, and decision-making processes of Muslim couples, scholars, and healthcare professionals regarding assisted reproductive technologies and lineage integrity.
4. **Religious Perspectives on the inheritance of Children born out of Wedlock**: Examine the theological, legal, and ethical dimensions of adultery and fornication in Islam, particularly in the context of premarital relations and fertility testing. Analyze religious texts, legal opinions, and scholarly discourses to understand the varying interpretations and approaches within Islamic jurisprudence towards addressing sexual misconduct and its implications on inheritance rights.
5. **Interfaith Inheritance Practices in Islamic Law: a Case Study of Muslims with Atheism and Pantheism belief:** Investigate the legal and theological justifications for denying inheritance to heirs of different religious beliefs, such as atheism and pantheism, according to Islamic law. Conduct comparative legal analysis across different Islamic schools of thought to explore the divergent opinions and approaches towards inheritance distribution to heirs with differing religious affiliations.

6. **Development of a Unified Inheritance Code for Nigerian Muslims**: Explore the feasibility and implications of developing a unified code of inheritance law for Nigerian Muslims, drawing from the four Sunni schools of law. Utilize legal analysis and stakeholder consultations to identify common principles and relevant opinions from diverse legal traditions, aiming to create a coherent and inclusive inheritance framework tailored to the needs of Nigerian Muslims.

References

Arabic Books

Abdul-Jawad, A. (nd). Usul Ilm al-Mawarith. Al-Qahirah; Daru al-Taufiqiyyah Litturath.

Abu-Zahrah (nd). At-Tarikh al-Mazahib al-Fiqhiyyah. Madinah; madba'atu al-Madinah

Ahmad IbnHambal (nd). Musnad Imam Ahmad Ibn Hambal. Al-Qahirah; Mu'assasatu Qurtabah.Vol:5

Ahmad, A. (1404). Seeratu Imm Ahmad Ibn Hanbal. Iskandariyyah; Daru ad-Da'wah

Aliyu S. M. (2000). Al-Durar al-Bahiyyah Fi al-Mas'alatu al-Fiqihiyyah.

al-Ashqar. U, S. (2007), Al-Madkhal Ila Dirasat Al-Madhhab Wa Almadaris Al-Fiqhiyyah. Amman: Dar Al-Nafa'is.

Anbo, M. M. (1992).*Fiqhul Mawarith Fi Dau'il Kitab Wassunnah.* Al-Azhar: Maktabul Iman.

An-Nagrawi, A.G.S. (1126A.H (DD). AL-Fawakihu al-Dawani Ala Risalati Ibn Abi Zaid al-Qirawani. Maktabah al-thaqafatu ad-Diniyyah

Assalum, M.A. (1998:24). Wasilatu ar-Ragibeen Wa Bugyatu al-Mustafiideen Fi Ilmu al-Fara'id. Riyad: Maktabatu ar-Rasheed Wa at-Tauz

Ataya, Ibrahim, I. R. (2018). Al- Furuq al-Fiqhiyyah Baina Masa"il al-Far"iyyah Fi al-Mirath

al-Azhary,Salih, A. (nd). Al- Thamaru ad-Dani Fi Taqrib al-Ma'ani Sharhu Risaltu Ibn Abi Zaid al-Qirawan. Beruot; Maktabatu al-Thaqafiyyah.

Baihaqy (1344AH:28). Sunan Baihaqy. vol.6 no. 13027

al-Baji (nd). al- Muntaqa - Sharhu Muwatta Malik. vol.3

Bashir, Sakina (2016). Manhu al-Mugheeth fi Ilm al-Mawareeth. Kano; versatile Educational Consultancy services LTD

Bin-Baz, A. A. (nd). Al-Fawa'id al-Jalilah Fi Mabahith al-Faridh. Saudi; Wizaratu al-Shu'un al-Islamiyyah wal Awqaf wadda'wah wal Irshad.

al-Buhuti. (1997). Kashaf al-Qina' 'ala al-Muqni'. Riyadh: Dar al-Kutub al-

al-Bukhari, M. I. (2001). Sahih al-Bukhari. Beirut: Dar al-Kutub al-Ilmiyyah.

al-Dardir, M. (1997). Sharh al-Kabir. Cairo: Dar al-Hadith.

al-Dhahabi, M. (1997). Siyar A'lam al-Nubala. Beirut: Dar al-Kutub al-Ilmiyyah.

al-Halawi, Y. A. N. (1418A.H). Kitab Mukhtasar al-Waseet Fi al-Fara'id. www.investintech.com

al-Halawi, Y. A. N.(nd). Sinaa Al-Barq Al-Aridh Fi Sharhi Nur Al-Fara'idh. www.investintech.com

Ibn al-Hajib, A. (2002). Al-Mukhtasar fi al-Fiqh. Casablanca: Dar al-Nafa'is.

Halabi, H. N. (ND). Fiqhu al-Ibadat Ala Madh'habi al-Hanafi. NP, NP

al-Hidadi, M.A..A (D800A.H). al-Jawharatu al-Nirah.

Ibrahim, M.A. (1999). Taiseer al-Mawareeth. Makkah; Daru al-wafa'i

al-Jabwiy, A.M. and Ahmad, Y.H. (2018). Fiqh al-Mawarith, wa Alaihil Amal Bi Qanunil Ahkam al-Shakhsiyyah bi Daulatul Imaratul Arabiyyah al-Muttahidah. Kulliyatu Dirasatul Islamiyyah Wal Arabiyyah.

al-Jaziri, A. (2009). *Kitab al-Fiqh 'ala al-Madhahib al-Arba'a*. Beirut: Dar al-Kutub al-Ilmiyya.

al-Kharqy, U.H.A. (D. 334:93). Matu Al-Kharqy Ala Madhhabi Abi Abdullah Ahmad Bin Hanbal Al-Shaybani. Daru As-Sahabah Litturath

al-Kharshiyy, A. M. (nd). Sharhu Mukhtasr Khalil Li al-Khurshiyy. Shamila

Ibn Khaldun. (2005). *Muqaddimah*. Beirut: Dar al-Kutub al-Ilmiyyah.

Khalil, I. J. (2005). Mukhtasar al-Khalil Fi Ibaadah Ala Fiqhu al-Maliki. Qahirah; Darul Hadith.

al-Khassaf, A. (1994). Al-Mabsut. Beirut: Dar al-Kutub al-Ilmiyyah.

al-Khatrawy, M.A. (nd). Al-Raa'id fi Ilm al-Faraa'idh. Makkah: np

al-Khattabi, A. (1997). Ma'alim al-Sunan. Cairo: Maktabat al-Ma'ariful.

Labeeb, M. (1995). Al-Jadwal al-Mawreeth. Madinatu Tanta; Darus-Sahabah Litturath.

Lahham (1421 A.H.). Al-Fara'idh. Saudi; Wizaratu al-Shu'un al-Islamiyyah wa al-Awqaf wa al-Da'wah Wa al-Irshad.

al-Mami Muhammad Al-Mukhtar (2002), Al-Madhhab Al-Maliki, Madarisuhu, Muʿ Alafatuhu, Khasa'isuhu Wa Sammatuhu. Al-ʿAyn: Markaz Zaid Li Al-Turath Wa Al-Tarikh.

Mansur, Sa’eed (d.227). Sunan Sa'eed Ibn Mansur. Berout; Daru Kutub al-Ilmiyyah. Vol.1

al-Marghinani, B. (2012). Al-Hidayah: The Guidance. (translated by Imran Ahsan Khan Nyazee). Maryland: The Islamic Book Trust.

al-Mawardi (1996). *Al-Ahkam al-Sultaniyya*. Beirut: Dar al-Kutub al-Ilmiyya.

Al-Mawardi, A. (1996). Al-Hawi al-Kabir. Cairo: Dar al-Hadith.

Moosaa M. Y. (1955). Taareekh Al-Fiqh Al-Islaamee. Cairo, Daar Al-Kitaab Al-Arabee, Vol. 3.

Mukhlis, M. M. (2009). Ilm al-Fara’idh wal-Mawarith. Iraq; Ma’ahad al-Qisam al-Far’iyy

Murtadha, Ahmad (2016). Manhu al-Mugith Fi Ilm al Mawarith. Kano; Versatile Education and Consultancy services LTD

al-Mutlaq A.M. (1993). Tafdheel al-Rajul Ala al-Mar'ah fi al-Mirath: Ahwalihi wa Asbabihi.madinah; Daru al-Muslim.

Ibn Najeem al- Misry (nd). al-Bahr al-Raa'iq- Sharh Kanzu al-Daqaa'iq. Berout; Daru al-Ma'rifah

an-Nawawi, Y. (1997). Al-Majmu' Sharh al-Muhadhdhab. Beirut: Dar al-Fikr.

al-Qarafi, A. (2004). Al-Furuq. Beirut: Dar al-Ma'rifah.

Ibn al-Qasim, M. (1996). Al-Mudawwana al-Kubra. Beirut: Dar al-Kutub al-Ilmiyyah.

al-Qirawani, I. A. Z. (nd:145). Matnu ar-Risalah. Daru al-Fikar

Ibn Qudamah, A.A.M (2004). Umdatu al-Fiqh. Maktabatu al-Asriyyah

Ibn Qudamah, A.A.M. (2009 vol. 8). Al-Mughny Ala Mukhtasar al-Khiraqy Fi Fiqh Ahmad Ibn Hanba Al-Shaybani. Lebanon; Dar al-kotob Al-Ilmiyah

al-Qurtabiy Y(1980). Al-Kafy Fi Fiqh Ahlil Madinah al-Maliki. Riyadh; Maktabah al-Riyadh al-Hadithaah vol.2

al-Qurtubi (2003). Tafsir al-Qurtubi. Cairo: Dar al-Kutub al-Misriyyah.

Qurtubi, M. A. (1964). Al-Jami’ Li Ahkam al-Qur’an. Al-Qahirah; Daru al-Kutub al-Misriyyah

al-Ramly, M.A.A.A. (D.1004). Annihayat Al-Muhtaj Ila Sharh Al-Minhaj.

Ibn Rushd, A. (1996). Bidayat al-Mujtahid wa Nihayat al-Muqta fid. Beirut: Dar al-Ma'rifah.

Ibn Sa'ad, M. (1990). Tabaqat Ibn Sa'ad. Beirut: Dar al-Kutub al-Ilmiyyah.

Sa'diy, M. S. (2010). Al-Jaam' Fi Ahkam Fiqh al-Mawarith. Al-Qahirah; Daru al-Tauqifiyyah li-at-Turath.

Sahnun (854AH). Al-Mudawwanatu al-Kubra. Lebanun; Daru al-Kutubu al-Ilmiyyah Bearout.

Samraqandy A. (1984). Tuhfatu al-Fuqaha'. Berout; Daru Kutub al-Ilmiyyah.

al-Sarakhsi (1989). *Al-Mabsut*. Beirut: Dar al-Ma'rifah.

Sathi, S. and Sulieman, N. (N.D). *Fiqhul Mawarith Fi Dau'il Kitab Wassunnah*. Daru Ibn Hazm.

Saymary, H. A. (1995:24). Akhbar Abi Hanifah wa Ashabih. Berout; Nashiru al-Kutub

al-Shafi'i, (1993). Al-Risala. Cairo: Al-Maktaba al-Tijariyya al-Kubra.

al-Shafi'i , M. I.(nd:179, vol.7). Al-Ummu. Berout; Daru al-Ma'rifa

al-Shatibi. (1997). *Al-Muwafaqat fi Usul al-Shariah*. Cairo: Dar al-Fikr.

al-Shaybani Y. (2002). Ikhtilafu A'immatu al-Ulama'. Lebanon; Daru Kutubu al-Ilmiyyah. Vol.2

al-Shaybani, M. H. (1403 A.H.): Al- Hujjatu Ala Ahlu al-Madinah. Alimu al- Kutub

al-Suyuti, J. (1983). Al-Burhan fi Ulum al-Qur'an. Cairo: Dar al-Kutub al-Misriyyah.

as-Shaukaniy, A. M. (nd:24). Al-Durar al-Bahiyyah Fi al-Mas'alatu al-Fiqihiyyah.

Shuwaidih, Mu'min, A. Z. (2006). Atharu Wasa'il al-Ittiswal al-Hadithiyyah ala Mirath al-Mafqud fi al-Fiqh al-Islamiy.unpublished M.A thesis Islamic University-Ghuzah

Suleimiy, U. A. (1998:21). Kursiyyu al-Fara'idh. Oman; Wazaratu at-Turaath al-Qaumiy wa al-thaqafatu Sultanatu Oman.

Suyuti, A. A. (1952). Tarikh al-Khulafa'. Masar; matba'atu as-Sa'adah.

al-Taraabilisy A. (2003:580). Mawaahib al-Jalil Li-Sharhi Mukhatasar al-Khalil. Daru Aalimu al-Kutub

Ibn Taymiyah, M.A.A. (1984).Al-Muharrar Fi Al-Fiqh Ala Madhhab Al-Imam Ahmad Bin Hambal. 2nd Edit. Riyad; Maktabau Al-Mu'arif

Ibn Taymiyyah. (2009). Majmu' al-Fatawa. Riyadh: Dar al-Wahbah.

al-Tha'labi, A.A.N. (2004). Al-Tahqeen Fi Fiqh al-Maliki. Dar al-Kutub al-Ilmiyyah.

Uthaimeen, M.S. (1429AH). Al-Usuul Min Ilm al-Usuul. Al-Iskandariyyah; Dar al-Iman

Uthaimeen, M.S. (2010). Tasheel al-Faraa'idh. Makkah; Daru al-taiseer.

Wah'batu ar-Ruhaili, A.D. (ND). Al-Fiqhu al-Islamiy wa Adillatuhu. Damashq: Daru al-Fikar

Zaila'iy, A.A.F. (743d A.H.). Tabyeen al-Haqa'iq; Sharhu Kanzu al-Daq'iq.

al-Zarkashy, M. (2000:1:7). Al- Bahr-al Muheet Fi Usulul Fiqh. Berut; Daru Kutubu al-Ilmiyyah. Vol.1

al-Zuhaili, W. (2005). Fiqh al-Islam wa Adillatuh. Damascus: Dar al-Fikr.

al-Zuhaili, Wahbatu, (nd). Fiqhu al-Islam Wa Adillatahu. 3rd Edition. Damashq; Daru al-Afkar

English Books

Abdurrahman, A. B. (2014) (trans.). Al-Muwatta of Imam Malik. UK; Diwan press

Abu Dawud (2008) (trans) Qadhi Yaser. English Translation of Sunan Abu Dawud. U.S.A; Darussalam

Abu Zahrah M. (2001). The Four Imam, Aisha Bewley (Trans). London: Dar Al-Taqwa.

Ahmed, Shoayb (2005). The Development of Islamic Jurisprudence (Fiqh) and reasons for Juristic Disagreements among Schools of Law. Unpublished M.A Dissertation; University of South Africa

Bilal, Philiphs Abu Ameenah (Nd). The Evolution of Fiqh (Islamic Law & The Madh-Habs). International Islamic Publishing House

Bukhari, A.N.M. (2004).Treatise on Inheritance in Islam. Madinah; al-Rasheed Printers.

Bukhari. (1997). (trans.) Khan M. M. Sahih al-.Bukhari Riyad; Darussalam.

Creswell J. W. and Creswell J. D. (2018:253). Research Design: Qualitative, Quantitative, and Mixed Methods Approaches. California; 5th Edition; SAGE Publications, Inc.

Gwandu, A.A (1988). Aspects *Of Administration Of Justice In The Sokoto Caliphate And Shaykh Abdullahi Ibn Fodio's Contribution To It,* In Islamic Law In Nigeria (Application & Teaching). Edited By Syed Khalid Rashid. Islamic Publications Bureau Lagos – Nigeria.

Hallaq, W. (2009). An Introduction to Islamic Law. Cambridge: Cambridge University Press.

El-Hibri, T. (1999). Reinterpreting Islamic Historiography: Harun al-Rashid and the Narrative of the Abbassid Caliphate. Cambridge University Press.

Hilali, M.T & Khan, M.M (1430). The Noble Qur'an. Madina; King Fahad Complex for the printing of th Holy Qur'an.

Husain, A. (2005). The Islamic Law of Succession. Riyadh: Dar-us-Salam.

Ibn Kathir (2003) (trns.) Furi, Mubarak etael. Tafsir Ibn Kathir. Riyadh: Darussalam publication.

Ibn Khaldun, ʿAbd Al-Rahman Ibn Muhammad (1967), The Muqadimah: An Introduction to History, Franz Rosenthal (Trans). London: Routledge & Kegan Paul, Vol. 3.

Ibn Majah (2007) (trans.) Nasirudden Al-Khattab. Sanan Ibn Majah. Riyadh: Darussalam

Inhorn, M.C., (2003). Local Babies, Global Science: Gender, Religion, and In Vitro Fertilization in Egypt. Routledge, New York

al-Jaza'Iry, A. J. (2001). Minhaj al-Muslim (trans.). Riyadh; Darussalam.

al-Kalbiy, Ibn Juzay (2022). The Canons Of Islamic Jurisprudence. Zaria; Centre For Islamic And Legal Studies, Ahmadu Bello University, Zaria- Nigeria. (Trans)

Kamali, M. H. (2003). Principles of Islamic Jurisprudence (3rd ed.). Cambridge: Islamic Texts Society.

Kamali, M. H. (2003). Principles of Islamic Jurisprudence. Islamic Texts Society.

Kamali, M. H. (2008). Shari'ah Law: An Introduction. Oxford: Oneworld Publications.

Keffi U.D. (1990). Some Aspects of Islamic Law os Succesion. Zaria; centre for Islamic Legal Studies Institute of Administration, Ahmadu Bello University, Zaria.

Khan, S.A. (2004). How to Calculate Inheritance: A Simple Approach. India; Goodword pvt Ltd

Krippendorff, K. (2018). Content Analysis: An Introduction to Its Methodology (4th ed.).. SAGE Publications.

Lakhyi, S.H. (2003). Almirath: justice of Islam in the rules of inheritance. Pakistan; al-Maktabah al-Muhammedia Ghulla Mandi, renala Khurd-Okara.

Leaman, O. *(1999). A Brief Introduction to Islamic Philosophy*. Cambridge: Polity Press,

Lincoln, Y.S. and Guba, E..G. (1985). Naturalistic Inquiry. Sage publication

Martin, M. (2007). The Cambridge Campanion to Atheism. Cambridge; University press.

Mohammad D. (2017:16). The Four Juristic Schools – Their Founders – Development – Methodology – Legacy. Kuwait; Ministry of Endowments & Islamic Affairs.

Muhammad, M. I. (2012:18-19). Inheritance in Islam – An Attempt to Simplify One of the Complex Branches of Sharia. Minna-Nigeria; Sadaqatu Tayyibatu Foundation.

Muslim, bin Hajjaj (2007) (trans) al-Khattab Nasiruddin. English Translation of Sahih Muslim. Riyadh; Darussalam

Nasa'I, (2007) (trans) al-Khattab Nasiruddin. English Translation of Sunan Nasa'i. Riyadh; Darussalam

Patton, M. Q. (2014). Qualitative Research & Evaluation Methods: Integrating Theory and Practice. SAGE Publications.

Qureshi, A. J. (2020). The Maliki School. India; Jiwaji Univerty press

Shaharuddin, A. (2010) The Development of Islamic Law: A Case Study Of Maliki's Rules On Mudarabah. Jurnal Syariah, Jil. 18, Bil. 1 (2010) 53-66

Al-Shaybani, M. (2000). Kitab al-Fiqh al-Akbar. Translated by A. Al-Nasiri. Beirut: Dar al-Kutub al-Ilmiyyah.

Silverman, D. (2016). *Qualitative Research*. SAGE Publications.

al-Talib, M. (2010). Islamic Jurisprudence: The Early Development. London: Islamic Studies Press.

Tirmidhi(2007) (trans.) Abu Khalil. Jami' al-Tirmidhi. Riyadh: Darussalam

Wakili, A.A. Q. (2021). Issues in Islamic Legal Theory (Usul Al-Fiqh). Kaduna; Real advance prints LTD.

Unpublish sources

Aliah, M. P. (2014). Muslims' Inheritance Law In Mindanao – Philippines: A Guide For Beginners. Unpublished (M.LL) thesis Muhammadiyah University of Surakarta.

Barkindo, Ahmad (2012). Blood Relationship as a Basis of Inheritance under Islamic Law: A Case Study of the Inner and Outer Circles of Family. Unpublished (M.LL) Thesis A.B.U, Zaria

Khalid, K. E. (1996). Impact of Juristic Differences in the formation of Islamic Law. Unpublished (M.LL) Thesis A.B.U, Zaria

Maibushira, I. M. (1998). Distribution of Inheritance in Islam and its Application in Kano State-Nigeria.

Musa O.A. (2011). Appraisal of the impediments to inheritance under Islamic law. Unpublished (M.LL) thesis A.B.U, Zaria

Ohunene, R. R. (2020). Analysis on the Implication of Culture and Traditions of Ebira People on the Practices of Islamic System of Inheritance among Muslims in Ebira Land. Unpublished M.Ed Dessertation A.B.U, Zaria

al-Sa'eed, S. (2019). Ahkam al-Ikhsaab al-Istinaa'ay. Unpublished Ph.D dissertation. Wizart at-Ta'leem al- Aliy wa Bahth al-Ilmiyy, Jami'atu Muhammad Khaidhar Sakarah.

Sha'ban, B. (2013). Al-Ikhtilaf fi al-Hukum Ala al-Hadith wa Atharihi fi al-Fiqh; Dirasa Nadhriyyah Tatbiqiyyah. Unpublished M.Ed Dessertation University of Wahran

Suleiman. A. (2021). Assessment of the perception of Some Contemporary Muslims Scholars to the Development of Maliki School of Law in North-Western Nigeria. Unpublished Ph.D Dissertation A.B.U, Zaria

Umar, Mustapha, (2018). Analysis of the Views and Practices of Maliki Law on the Principle of Female inheritance in Kaduna State Nigeria. Unpublished M.Ed thesis A.B.U, Zaria.

Yusha'u A. S. (2010). Textual Provisions and Implementation of Female Inheritance in Islam. A Case Study of Kano State, Nigeria. Unpublished M.Ed thesis A.B.U, Zaria.

Journals

Aminu, M. Y. (2016). Scholarstic Views on Inheritance of Distant Uterine Relations: A Study of Sokoto State of Nigeria. Bassey Andah Jounal Vol. 9

Firdaus, Meirison etel (2018). The Perished Madhhabs and Their Imams in Historical Review. Al-Ahkam journal; Institut Agama Islamiyyah sinjai Azhar. vol.1 No.1

Muhammad, Y.G. and Annisa, F. (2023). The Inheritance Status of Test-Tube Baby Children in the Perspective of Islamic Law and Inheritance Law in Indonesia. Indonesia; WARAQAT: Jurnal Ilmu-Ilmu Keislaman, Volume VIII, No. 1, January-June 2023 /18

Yasmeen, M. Yaseen, N. Eteal. (2023). Pros And Cons Of Test-Tube Baby Fertilization. Journal Of Hunan University（Natural Sciences); Vol. 50. No. 03. March 2023.

Yusup, A. A. (2017). Controversy of Islamic Law on the Distribution of Inheritance to the Heirs of Different Religion. Hunafa: Journal Studia Islamik. Vol. 14, Number 2, December 2017: 377-403.

Zafar, M. I. M. N. (2017). Artificial Insemination In Shari'ah: A Case of Test-Tube Baby Inshari'ah and Its Legal Status In Pakistan. Pakistan Annual Research Journal ISSN: 1990-6579 Vol. No 53, 2017

Comference Presentations

Muhammad, .S.O. (2017). Principles and Practice of Succession under Islamic Law. A paper presented at the Refresher course for Judges and Kadis in Nigeria on Current Trends in Law and Administration of Justice, took place on 20th March, 2017 at Abuja. Under the theme "Promoting Judicial Performance Through Innovations and Reforms" which was organized by the National Judicial Institute and the Management.

Zakariyya, K. M. I. (2016). Administration of estate and succession under Islamic Law. A paper presented at the Refresher course for judicial Officers on Current Trends in Law and Administration of Justice, took place between 14th –18th March, 2016 at Abuja. Under the theme "Promoting Judicial Performance Through Innovations and Reforms" which was organized by the National Judicial Institute and the Management.

YouTube channel

Abdullah, J. (2019). Rabon Gado a Musulunchi