Rules regarding will (Wasiyyat) and Inheritance

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Will (Wasiyyat)

2703. A Will is purported to direct that after one's death, a certain task be completed, or that a portion of his property be given in ownership to someone, or that the ownership of his property be transferred to someone, or that it be spent for charitable purposes, or that he appoints someone as guardian of his children and dependents. A person who is to give effect to a Will is called executor (Wasi).

2704. If a person who is dumb, can make himself understood by means of signs, he can Will for anything he likes; and even if a person who can speak, makes a Will by means of signs and makes himself understood, his Will will be valid.

2705. If a written paper is found, signed and sealed by a deceased person, and if it is known or conveyed that he wrote it as a Will, it should be acted upon. But if it is known that it was not his intention to make any Will, and that he had simply made some notes for a Will to be written later, it will not be considered as a Will.

2706. A person making a Will should be baligh, sane, and he should not be a feeble-minded squanderer. And the Will must have been made with free will and choice. A Will made by a non-baligh child is invalid, but if a child of ten years of age Wills for the benefit of his blood relatives, or for general charity, then that Will is valid.

But if he Wills for the benefit of those other than his blood relatives, or if a seven year old child WIlls that a certain part of wealth be for someone, or be given to someone, that Will is a matter of Ishkal, and in both cases, precaution must not be ignored. As for the feeble-minded squanderer, his Will related to his property is not valid, but in matters other than the property, like in matters of some tasks or duties to be performed for the deceased, his Will is valid.

2707. If a person who injures himself intentionally, or takes a poison, because of which his death becomes certain or probable, makes a Will that a certain part of his property be put to some particular use, his Will is not in order.

2708. If a person makes a Will that something from his property will belong to someone, and if that person accepts the Will, even if his acceptance took place during the lifetime of the testator, that thing will become his property after the death of the testator.

2709. When a person sees signs of approaching death in himself, he should immediately return the things held in trust by him to their owners, or should inform the owners, acting

according to the details already mentioned in rule no. 2351. And if he is indebted to others, and the time for repayment of the debt has matured, and if the creditors make the demand, he should repay the debt.

And if he is not in a position to repay the debt, or the time for its repayment has not yet matured, or the creditor has not yet demanded, he should make arrangements to ensure that his creditor will be paid after his death, like, by making a Will to inform those who are unaware of the debt and then appoint witness to the Will.

2710. If a person who sees signs of approaching death in himself, has a debt of Khums and Zakat, or has other liabilities, and if he cannot make payment immediately, he should make a Will directing payment, if he owns some property, or if he knows someone will pay on his behalf. The same rule applies if he has obligatory Hajj on him. But, if he is capable of paying his religious dues immediately, he should pay at once, even if he sees no signs of impending death.

2711. If a person who finds signs of approaching death in himself, has lapsed (Qadha) of some prayers and fasts due to him, he should direct in his Will that a person be hired and paid from his estate for their performance. In fact, even if he does not leave any estate, but feels it probable that someone would perform them without taking any fees, it is obligatory for him to make a Will in this behalf. And if he has someone like his eldest son who would perform, it is sufficient to inform him about it, and it is not obligatory to Will in that respect.

2712. If a person who finds signs of impending death in himself has deposited some property with some other person, or has concealed it in some place of which his heirs are not aware, and if owing to the ignorance of the heirs their right is lost, he should inform them about it.

And it is not necessary for him to appoint a guardian, or an administrator for his minor children, except when it is feared that their property may perish, or they themselves may be ruined without an administrator, in which case, he should appoint a trustworthy administrator for them.

2713. The executor (Wasi) should be sane and trustworthy in matters related to the testator, and as a precaution, in matters related to others also. And it is necessary as a precaution, that the executor of a Muslim should be a Muslim. To appoint a Na-baligh child alone for putting the Will into effect, is not in order, if the said child is expected to exercise discretion without permission of the guardian. But if the child is directed to put the Will into effect after having become baligh, or with the permission of the guardian, there will be no objection.

2714. If a person appoints more than one executors, allowing each of them to execute the Will independently, it will not be necessary that they should obtain permission from one another for

the execution of the Will. And if he had not given any such permission – whether he had or had not said that both of them should execute the Will jointly, they should execute the Will in consultation with one another.

And if they are not prepared to execute the Will jointly, and this unwillingness is not occasioned by any religious scruple, the Mujtahid can force them to do so, and if they do not obey his orders, or any one has a religious excuse for not being prepared to act jointly, then the Mujtahid can replace the dissenting executor.

2715. If a person retracts a directive in his Will, for example, if he first says that 1/3 of his property should be given to a person, and then says that it should not be given to him, the Will becomes void. And if he changes his Will, for example, if he appoints an administrator for his children, and then replaces him with another person, his first Will becomes void, and his second Will should be acted upon.

2716. If a person conducts himself in a manner which shows that he has drawn back from his Will, for example, if he sells a house which he had willed to give away to someone, or appoints someone as his agent to sell it in spite of his original wish, the Will becomes void.

2717. If a person makes a Will that a particular thing be given away to someone, and later changes it to say that half of the same thing should be given to another person, that thing should be divided into two parts, and one part should be given to each of them.

2718. If a person who is on his death-bed, bestows a part of his property as gift on a certain person, and makes a Will that after his death another quantity be given to yet another person, and if both the gifts exceed one-third of his estate, and the heirs are not prepared to approve the excess, then in that case the first endowment should be given to the first beneficiary, and whatever remains from one-third should be spent according to the Will.

2719. If a person makes a Will that 1/3 of his property should not be sold and its income should be spent for some particular purpose, his instructions should be followed.

2720. If a person says during his terminal illness, that he owes certain amount to someone, and if he is suspected of having said that to harm his heirs, the amount specified by him should be given out of 1/3 of his property; and if he is not suspected of any such motive, his admission will be valid, and the payment should be made out of his estate.

2721. When a person makes a Will that something be given to another person, it is not necessary that that beneficiary should be existing at the time of the Will. If, therefore, he makes a Will that something be given to a child who may possibly be born of a particular wife, it is necessary that the thing should be given to the child if he is born after the death of the testator. And if he is not born, and if the Will is construed as general, then it should be spent in a manner

which would be nearer to the object of the Will, according to the testator.

But, if he makes a Will that after his death, a portion of his property will be owned by a particular person, and if that person exists at the time of the death of the testator, the Will is in order, otherwise it is void, and whatever he willed for that person should be divided by the heirs among themselves.

2722. If a person comes to know that someone has appointed him his executor, and he informs the testator that he is not prepared to perform the duties of an executor, it is not necessary for him to act as an executor after the death of the testator.

But, if he does not come to know of his appointment before the death of the testator, or comes to know about it, but does not inform the testator that he is not prepared to act as an executor, he should execute the Will if the execution of the Will does not involve any hardship to him. Also, if the executor comes to know of his appointment at a time when due to serious illness or some other hindrance, the testator cannot appoint any other executor, he should, on the basis of precaution, accept the appointment.

2723. After a testator dies, the executor cannot appoint another person to execute the Will and retire himself. But, if he knows that the deceased did not mean that the executor should execute the Will himself, what he wanted was only that the given work should be accomplished, he can appoint another person on his behalf.

2724. If a person appoints two persons as joint executors, and if one of them dies, or becomes insane, or an apostate, the Mujtahid will appoint another person in his place. And if both of them die, or become insane or apostates, the Mujtahid will appoint two persons in their place. However, if one person can execute the Will, it is not necessary to appoint two persons for the purpose.

2725. If an executor alone cannot perform all the tasks laid down in the Will of the deceased, even by appointing someone as his agent or by hiring someone, then the Mujtahid will appoint someone to assist him in his duties.

2726. If a quantity from the property of a dead person is lost or damaged while in the custody of the executor, and if he has been negligent in looking after it, or has gone beyond moderation, he will be responsible.

For example, if the dead person had willed him to give a certain quantity to the poor of a particular town, and he took it to some other town, and in the process it has perished, he will be responsible for it. But if, he has not been negligent nor immoderate, he will not be responsible for the loss.

2727. If a person appoints someone as his executor, and says that after that executor's death,

another person should be the executor in his place, the second executor should perform the tasks laid down in the Will of the deceased, after the death of the first executor.

2728. If obligatory Hajj remained unperformed by the dead person, or debts and dues like Khums, Zakat and Mazalim (wealth wrongly appropriated) which were obligatory to pay, were not paid, they should be paid from the estate of the deceased though he may not have directed in his Will for them.

2729. If the estate of the deceased exceeds his debt and expenses for obligatory Hajj, and obligatory religious dues like Khums, Zakat and Mazalim, and if he has also willed that 1/3 or a part thereof of his property be put to a particular use, his Will should be followed, and if he has not made a Will, then what remains is the property of the heirs.

2730. If the disposal specified by the deceased exceeds 1/3 of his property, his Will in respect of what exceeds the 1/3 of his property will be valid only if the heirs show their agreement, by words or by conduct.

Their tacit approval will not suffice. And even if they give their consent after some time, it is in order. But if some heirs permit and others decline to give consent (to the Will being acted upon), the Will is valid and binding only in respect of the shares of those who have consented.

2731. If the dispensation specified by the deceased exceeds 1/3 of his property, and his heirs give consent to that dispensation before his death, they cannot withdraw their permission after his death.

2732. If a person makes a Will that Khums and Zakat and other debts due to him should be paid out of 1/3 of his property, and also someone be hired for performing his qadha prayers and fasts, and also perform Mustahab acts like feeding the poor, the precaution will be that, his debt should be paid first out of the 1/3 of his property, and if there is a balance, a person should be hired to perform his qadha prayers and fasts, and if there is still a residue, it should be spent on the Mustahab acts specified by him. If, however, 1/3 of his property is sufficient only for the payment of his debts, and his heirs, too, do not permit that anything more than the 1/3 of his property should be spent, his Will in respect of prayers, fasts, and Mustahab acts is void.

2733. If a testator wills that his debt should be paid, and also someone should be hired for the performance of his qadha prayers and fasts, and also Mustahab acts should be performed, but does not direct that the expenses for those acts should be paid from 1/3 of his estate, then his debt should be paid from his estate, and if anything remains, 1/3 of it should be spent on prayers and fasts and Mustahab acts specified by him. And if that 1/3 is not sufficient, and if his heirs permit, his Will should be implemented by paying from their share, and if they do not

permit, the expenses of prayers and fasts should be paid from the 1/3 of his estate, and if anything remains it should be spent on the Mustahab acts specified by him.

2734. If a person claims that the deceased had willed that a certain amount should be given to him, and two Adil men confirm his statement, or if he takes an oath, and one Adil man also confirms his statement, or if one Adil man and two Adil women, or four Adil women bear witness to what he says, the amount claimed by him should be given to him.

And if only one Adil woman bear witness, 1/4 of the amount claimed by him should be given to him, and if two Adil women bear witness, 1/2 of that amount, and if three Adil women bear witness, 3/4 of it should be given to him.

Also, if two non-Muslim males from amongst the people of the Book, who are esteemed as Adil in their own religion, confirm his statement, and if the dead person was obliged to make a Will while no Adil man and woman was present at that time, the amount claimed by that person should be given to him.

2735. If a person claims that he is the executor of the deceased, and can act according to the Will and put it into effect, or that the deceased had appointed him an administrator of his children, his statement should be accepted only if two Adil men confirm it.

2736. If a person makes a Will that something from his estate is for a particular person, and that beneficiary dies before accepting or rejecting it, his heirs can accept it as long as they do not reject the Will. However, this order applies when the testator does not retract his Will, .otherwise the beneficiary have no right to lay claim to that thing

Inheritance

2737. There are three groups of persons who inherit from a dead person, on the basis of relationship:

The first group consists of the dead person's parents and children, and in the absence of children, the grand children, however low, and among them whoever is nearer to the dead person inherits his property. And as long as even a single person from this group is present, people belonging to the second group do not inherit.

The second group consists of paternal grandfather, paternal grandmother, and sisters, brothers, and in the absence of sisters and brothers their children, whoever from among them is nearer to the dead person, will inherit from him. And as long as even one person from this group is present, people belonging to the third group do not inherit.

The third group consists of paternal uncles and paternal aunts and maternal uncles and maternal aunts, and their descendants. And as long as even one person from the paternal

uncles and paternal aunts and maternal uncles and maternal aunts of the dead person is present, their children do not inherit.

However, if the paternal step uncle and the son of the real paternal uncle are present, the son of the dead person's real paternal uncle will inherit from him to the exclusion of the paternal step uncle. But if there are several paternal uncles and several paternal cousins, or if the widow is alive, then this rule is not without Ishkal.

2738. If the dead person's own paternal uncle and paternal aunt and maternal uncle and maternal aunt and their children and their grandchildren do not exist, the property will be inherited by the paternal uncles and paternal aunts and maternal uncles and maternal aunts of dead person's parents. And if even they do not exist, the property will be inherited by their descendants. And in the absence of their descendants, the property is inherited by the paternal uncles and paternal aunts and maternal uncles and maternal aunts of the dead person's paternal grand parents. And if even they do not exist, the property is inherited by their descendants.

.2739. Husband and wife inherit from each other as will be explained later

Inheritance of the first group

2740. If out of the first group, there is only one heir of the deceased (for example, father or mother or only one son or only one daughter) he/she inherits the entire estate, and, if there are more than one sons or daughters, the estate is divided among them in such a way, that each son gets twice the share of each daughter.

2741. If the father and the mother of deceased are his only heirs, the estate is divided into 3 parts, out of which 2 parts are taken by the father and one by the mother. If, the deceased has two brothers or four sisters, or one brother and two sisters, who are Muslims and are related to him from the side of the father (i.e. the father of these persons and of the deceased is same, although their mothers may be different), the effect of their presence on the inheritance is that, although they do not inherit anything in the presence of the father and the mother, the mother gets 1/6 of the estate, and the rest is inherited by the father.

2742. If only the father, the mother and one daughter are the heirs of deceased, and he (the deceased) does not have two paternal brothers, or four paternal sisters, or one paternal brother, and two paternal sisters, with the conditions already explained, the estate will be divided into 5 parts, out of which the father and the mother take one share each, and the remaining 3 shares are taken by the daughter.

And if the deceased has two paternal brothers, or four paternal sisters, or one paternal brother,

and two paternal sisters, the estate will again be divided into 5 parts, as the presence of these persons will have no effect.

But it is commonly held by the Fuqaha that, in such situation, the estate will be divided into six parts. Father and mother will take one part each, and three parts will be taken by the daughter. As regards the remaining one part, it is again divided into 4 parts out of which one part is taken by the father and 3 by the daughter.

As a result, the estate of the deceased is divided into 24 parts, out of which 15 are taken by the daughter, 5 by the father, and 4 by the mother. But this verdict is not without Ishkal, and therefore precaution must be exercised while allocating one-fifth or one-sixth of the mother's share.

2743. If the heirs of the deceased are his father, mother, and one son only, the property is divided into 6 parts, from which one part is taken by the father and one by the mother, and 4 by the son. And if the deceased has several sons or several daughters, they divide the said 4 parts equally among them. If however, he has several sons and daughters, the 4 shares are divided among them in such a manner, that each son gets double the share of each daughter.

2744. If the heirs of deceased are only his father or mother and one or several sons, the property is divided into 6 parts, from which one goes to the father or mother, and 5 to the son. If there are more than one sons, they divide those 5 parts equally among them.

2745. If the deceased is survived by the father or the mother with his sons and daughters, the estate will be divided into 6 parts. One part is taken by the father or the mother, and the remaining 5 parts are divided among the sons and daughters, in such a manner that each son gets double the share of each daughter.

2746. If the heirs of deceased are only his father or mother and one daughter, his estate will be divided into four parts. Out of these one part is taken by the father or the mother, and the rest goes to the daughter.

2747. If the heirs of deceased are his father or mother and several daughters, the property is divided into 5 parts. One part is taken by the father or the mother, and the remaining 4 parts are equally divided among the daughters.

2748. If the deceased has no children, the child of his son gets a son's share even if it be a daughter, and the child of his daughter gets a daughter's share even if it be a son. For example, if the deceased has a grandson by his daughter, and a grand-daughter by his son, the property will be divided into 3 parts, from which one part will go to the grandson by his daughter, and 2 to the grand-daughter by his son.

nheritance of the second group

2749. The second group of persons, which inherits on the basis of relationship, consists of paternal grandfather, paternal grandmother, brothers and sisters and, if the dead person does not have brothers and sisters, their children inherit the estate.

2750. If the heirs of deceased is only one brother, or only one sister, he or she inherits the entire estate, and if he has several real brothers alone or several real sisters alone, they divide the property equally among themselves. If, however, he has several real brothers and some real sisters together, every brother gets double the share of a sister. For example, if he has two real brothers and one real sister, the property will be divided into 5 parts, and each brother will get 2 parts while the sister will get one.

2751. If a deceased has real brothers and real sisters, his half brothers and sisters (whose mother is the stepmother of the deceased) do not inherit his property. And if he has no real brothers or real sisters, and has only one half brother or only one half sister, (both from father's side) the entire estate will be inherited by him or her.

And if he has many paternal half brothers alone, or many paternal half sisters alone, the estate will be divided among them equally. And, if he has paternal half brothers together with paternal half sisters, every brother gets double the share of every sister.

2752. If the only heir of deceased is one maternal half sister, or one maternal half brother, their father being different from the deceased father, she or he gets the entire estate. And if he has several maternal brothers alone, or several maternal sisters alone, or both of them together, the estate is divided equally among them.

2753. If the dead person has real brothers and sisters, together with half brothers and sisters from father's side, and one half brother or one half sister from maternal side, the paternal brothers and sisters will not inherit. In this case, the estate will be divided into 6 parts, from which one part will be inherited by the maternal brother or sister, and the remaining 5 parts will be divided by the real brothers and sisters among themselves, in such a manner that every brother will get double the share of every sister.

2754. If a deceased has real brothers and sisters together with paternal brothers and sisters, and several maternal brothers and sisters, the paternal brothers and sisters will no inherit. In this case, the estate will be divided into 3 parts, from which one part will be divided by the maternal brothers and sisters equally among themselves, and the remaining 2 parts will be divided among the real brothers and sisters, in such a manner that every brother gets double the share of every sister.

2755. If the only heirs of deceased are his paternal brothers and sisters, and one maternal

brother or one maternal sister, the estate will be divided into 6 parts. One part will be given to the maternal brother or the maternal sister, and the remaining parts will be divided among the paternal brothers and sisters, in such a manner that every brother gets double the share of every sister.

2756. If the only heirs of deceased is his paternal brother and sister, and several maternal brothers and sisters, the estate will be divided into 3 parts. One part will be shared among the maternal brothers and sisters equally, and the remaining 2 parts will be divided among the paternal brothers and sisters, in such a manner that every brother gets double the share of every sister.

2757. If the brother, the sister, and the wife of deceased are his only heirs, the wife gets her inheritance in the manner which will be explained later, and the sister and brother get their inheritance as stated in the foregoing rules. Also, if a woman dies and her only heirs are her sister, her brother and her husband, the husband gets half of the estate, and the sister and the brother inherit as explained earlier.

However, nothing is reduced from the share of maternal brother and sister to provide for the shares of the wife or the husband. But in the case of real brothers and real sisters, or paternal brothers and sisters, their shares may be reduced.

For example, if the heirs of deceased are her husband, maternal brother and sister, and real brother and sister, half of the estate will go to the husband, and one part out of the three parts of the original estate will be given to the maternal brother and sister, and whatever remains will be the property of the real brother and sister. Hence, if the total estate of the deceased is $6, $3 goes to the husband, $2 are taken by the maternal brother and sister, and $1 will be the share of the real brother and sister.

2758. If deceased does not have sister and brother, their share of the inheritance is given to their descendants, and the share of maternal brother's child and maternal sister's child will be divided among them equally. And as for the share of the paternal brother's child and paternal sister's child, or real brother's child and real sister's child, the commonly held principle is that every son gets twice as much as the daughter, but it may be true that they too may get equal shares. Therefore, it is better that they should resort to a compromise.

2759. If the heir of the deceased is only one grandfather or one grandmother, regardless of whether they are paternal or maternal, the entire estate goes to them, and the great grandfather of the deceased does not inherit in the presence of the grandfather.

And if only the paternal grandfather and paternal grandmother of the dead person are the heirs, the estate will be divided into 3 parts, from which 2 parts will be taken by the grandfather and

one part will be taken by the grandmother. And if the maternal grandfather and maternal grandmother are the heirs, the property will be divided between them equally.

2760. If the heirs of deceased is paternal grandfather or paternal grandmother together with maternal grandfather or maternal grandmother, the property will be divided into 3 parts. 2 parts will go to the paternal grandfather or paternal grandmother, and one part will go to the maternal grandfather or maternal grandmother.

2761. If the heirs of the deceased are paternal grand parents together with maternal grand parents, the estate will be divided into 3 parts. One part will be divided equally between the maternal grandfather and the maternal grandmother, and the remaining 2 parts will go to the paternal grandfather and the paternal grandmother, from which the paternal grandfather gets twice the share of the paternal grandmother.

2762. If the only heirs of a deceased are his wife together with his paternal grand parents, and his maternal grand parents, his wife gets her inheritance in the manner which will be explained later. And one of the 3 parts of the original estate of the deceased will be given to the maternal grandfather and grandmother, to divide it equally between them. The remaining part will be given to the paternal grand parents, and the paternal grandfather gets twice as much as the paternal grandmother. And if the heirs of the deceased are her husband together with her paternal or maternal grand parents, the husband gets half of the property, and the grand parents get their inheritance in the manner mentioned in the foregoing rules.

2763. There are a few combinations of brother or sister, or brothers or sisters with the grand parents:

That the grand parents and brothers or sister are each from the mother's side. In that event the estate is divided among them equally, though they are of different sex.

That all of them are from the father's side. In that case, the property will be divided among them equally, provided that all of them are males, or all of them are females. And if they are different, every male will get twice as much as the female.

That the grand parents from the paternal side combine with the real brother or sister. The rule explained in the foregoing clause will also apply in this case. And it should be remembered that if the paternal brother or sister of the deceased combines with real brother or sister, those who are paternal do not inherit alone, but all of them inherit.

That there are grand parents, paternal and maternal, all males or all females or mixed, combined with the brothers or sisters who are similarly of diverse categories. In this case, 1/3 of the estate will go to the maternal relatives to be divided equally among them, regardless of their sex. And 2/3 of the estate will go to the paternal relatives, among whom every male gets

twice as much as a female. And if there is no difference of sex among them, and all of them are males or all of them are females it will be divided equally among them.

That paternal grand parents are combined with maternal brother or sister. In this case, if there is only one brother or sister, he/she gets 1/6 of the property, and if they are many, 1/3 of the property is divided among them equally. The balance goes to the paternal grand parents, and if both the grandfather and the grandmother are there, the grandfather gets twice as much as the grandmother.

That maternal grand parents combine with the paternal brother. In this case 1/3 goes to the grand parent, although he/she may be alone, and 2/3 goes to the brother although he may be alone. If there is a paternal sister combined with the maternal grandfather or the grandmother, and if she is alone, she will get 1/2 of the property, and if there are several sisters they get 2/3 of it.

And in every case, the share of the grandfather and grandmother is 1/3. And based on this calculation, there will be a residue of 1/6 if there is only one sister. Therefore, as an obligatory precaution, a compromise should be effected for that extra residue.

That there are some paternal and some maternal grand parents combined with one or more paternal brother or sister. In this case, the share of the maternal grandfather or grandmother is 1/3, and if they are many, it will be divided among them equally, although they are of different sex. And the remaining 2/3 of the estate is given to the paternal grandfather or the paternal grandmother and the paternal brother or the paternal sister.

If they are of different sex, the estate will be divided in the ratio of one to two, and if they are all of the same sex, it will be divided equally. And if there is a maternal brother or maternal sister with those grand parents, the share of the maternal grandfather or maternal grandmother, together with the maternal brother or maternal sister will be 1/3, which will be divided among them equally, even if they are of different sex. And the share of the paternal grandparents will be 2/3, which be divided among them in the ratio of one to two in the case of difference of sex, and otherwise equally.

That there are brothers and sisters, some of whom paternal and others maternal, combined with paternal grand parents. In this case, the share of the maternal brother or maternal sister is 1/6, if he/she is alone, and 1/3 if there are many of them, and it will be divided equally among them. And as for the paternal brother or paternal sister together with the paternal grand parents, the remaining estate will go to them, to be divided among them equally if they are all of one sex, and if they are different, it will be divided in the ratio of one to two.

And if there is a maternal grand parent combined with those brothers or sisters, the total share

of the maternal grandfather and maternal grandmother with maternal brother and maternal sister is 1/3, to be divided equally among them. The share of the paternal brother or paternal sister will be 2/3, which will be divided among them in the ratio of one to two, if they are of different sex, and equally if they are of the same sex.

2764. If the deceased has brothers or sisters, then the brother's or sister's children do not inherit. However, this law does not apply when the inheritance of brother's child or sister's child does not clash with that of brother or sister. For example, if the dead person has paternal brother and maternal grandfather, the paternal brother inherits 2/3 and the maternal grandfather inherits 1/3 of the estate. But if the deceased has a son of the maternal brother as well, the brother's son shares with the maternal grandfather the 1/3 of the estate.

Inheritance of the third group

2765. The third group of heirs consists of paternal uncle, paternal aunt, maternal uncle, maternal aunt and their children. As mentioned above, the persons constituting this group inherit when none of the persons belonging to the first two categories is present.

2766. If the only heir of deceased is one paternal uncle or aunt (whether he or she be the real, paternal or maternal brother or sister of his father), he or she inherits the entire estate. And if there are some paternal uncles alone, or aunts alone of the deceased, and they are all real or paternal brothers and sisters of his father, the estate will be divided equally among them. And if the survivors are several paternal uncles together with the aunts of the deceased and all of them are the real or the paternal brothers and sisters of his father, then the paternal uncle will get twice the share of the paternal aunt.

For example, if two paternal uncles and one paternal aunt are the heirs of the deceased, the estate will be divided into 5 parts, from which the paternal aunt will get one part, and the two paternal uncles will divide the remaining 4 parts equally between them.

2767. If the heirs of a deceased are several maternal uncles or several maternal aunts, the estate will divide equally among them. And if the survivors are maternal uncles together with the maternal aunts, the uncles will receive twice the share of the aunts, though, as a precaution, the uncles should compromise from the excess they receive.

2768. If the heirs of deceased are his paternal uncles and paternal aunts, some of whom are the real brothers and sisters of his father, while others are paternal or maternal half brothers and sisters of his father, those who are paternal half brothers and sisters will not inherit anything. And if the deceased is also survived by one paternal uncle or one paternal aunt, who are the maternal half brother and half sister of his father, the estate will be divided into 6 parts,

from which one part will be taken by the paternal uncle or paternal aunt of the deceased, and the remaining will be taken by the full real paternal uncles and paternal aunts of the deceased.

If the deceased has no real full paternal uncles and real full paternal aunts, the remaining 5 parts will be taken by those paternal uncles and paternal aunts of the deceased who are the paternal half brothers or sisters of his father. But, if the deceased happens to have those paternal uncles together with paternal aunts who are the maternal half brothers and sisters of his father, the estate will be divided into 3 parts, from which 2 parts will be taken by the real paternal uncles and real paternal aunts of the deceased, who are half paternal brothers and sisters of his father.

Then the remaining one part will be taken by those paternal uncles and paternal aunts of the deceased person, who are the maternal half brothers and sisters of his father. It is commonly held by the Fuqaha that the uncles and aunts who are maternally connected with the father of the deceased, should divide their share between them equally, but it may be true that the uncles will receive twice the share of the aunts - however, as a precaution, they should effect a compromise between them.

2769. If a deceased has only one maternal uncle or only one maternal aunt, he or she inherits the entire estate. And if he has a maternal uncle together with the maternal aunt (whether they be the full, or the paternal, or the maternal half brothers and sisters of his mother), the estate should be divided giving the uncle twice the share of the aunt. And since there is a probability that they should inherit equally, observing precaution should not be ignored in that respect.

2770. If the heirs of the deceased are one or several maternal uncles, together with maternal aunts from the mother's side, and full maternal uncle and full maternal aunt, and also maternal uncles and aunts from the father's side, then to deprive the maternal uncle and maternal aunt from the father's side is a matter of Ishkal. In all the situations, the uncles will inherit twice the share of the aunts, but a precaution by way of compromise is recommended.

2771. If the heirs of deceased are one or several maternal uncles, or one or several maternal aunts, or maternal uncle together with maternal aunt with one or several paternal uncles, or one or several paternal aunts, or paternal uncle together with paternal aunt, then the estate will be divided into 3 parts from which one part will be taken by the maternal uncle, or maternal aunt, or both of them, and the remaining part will go to the paternal uncle, or paternal aunt, or both of them.

2772. If the heirs of the deceased are one maternal uncle, or one maternal aunt together with paternal uncle and paternal aunt, and if they are full paternal uncle and the paternal aunt or related from the father's side, the estate will be divided into 3 parts. One part will be taken by

the maternal uncle or the maternal aunt, and from the balance two parts of it, 3 will be given to the paternal uncle and one part will be given to the paternal aunt. Based on this calculation, the estate will be divided into 9 parts, from which 3 parts will be given to maternal uncle or maternal aunt, 4 parts are given to the paternal uncle and 2 parts are given to the paternal aunt.

2773. If the heirs of the deceased are one maternal uncle, or one maternal aunt together with one paternal uncle, or one half paternal aunt related from the mother's side together with full or half paternal uncles and aunts, the estate will be divided into 3 parts. One part will be given to the maternal uncle or the maternal aunt, and the remaining 2 parts will be equally divided between the paternal uncles and aunts, with uncles taking twice the share of the aunts, though precaution is recommended.

2774. If the heirs of deceased are several maternal uncles and several maternal aunts, all of whom are either full or related from father's or mother's side, and also a paternal uncle and a paternal aunt, the estate will be divided into 3 parts. 2 parts will be divided between the paternal uncle and the paternal aunt as mentioned above, and one part will be divided equally between the maternal uncles and the maternal aunts as explained in rule no. 2770.

2775. If the heirs of deceased is maternal uncle only, or if there are half maternal aunts related from the mother's side together with several maternal uncles and several maternal aunts who are either full or half related from father's side, and also paternal uncle and paternal aunt, the estate will be divided into 3 parts. Two of these parts will be divided between the paternal uncle and the paternal aunt, in the manner already mentioned, and quite likely, the remaining heirs will share the third part equally.

2776. If the deceased is not survived by paternal uncle, and paternal aunt and maternal uncle and maternal aunt, the share to which the paternal uncle and the paternal aunt are entitled will go to their descendants, and the share to which the maternal uncle and maternal aunt are entitled will go to their descendants.

2777. If the heirs of the deceased are paternal and maternal uncles and aunts of his father, and paternal and maternal uncles and aunts of his mother, the estate will be divided into 3 parts. One part will be given to the paternal and maternal uncles and aunts of his mother, to be divided among them equally, though a precaution by way of compromise should not be ignored.

The remaining 2 parts, the same will be again divided into 3 parts. One part will be divided as above between the father's maternal uncle and aunt, and the remaining 2 parts will be divided as above between the father's paternal uncle and aunt.

Inheritance by the husband and the wife

2778. If a woman dies without any children, 1/2 of her property is inherited by her husband, and the remaining 1/2 is given to her other heirs. If, she has children from that or another husband, her husband will get 1/4 of the estate, and the remaining part will be inherited by her other heirs.

2779. If a man dies childless, 1/4 of his estate will go to his wife, and the remaining part will be given to his other heirs. And if the man has children from that or another wife, the wife gets 1/8th of the estate, and the remaining part will be inherited by his other heirs. A wife does not inherit anything from the land of a house or a garden or a farm, or from any other land, nor does she inherit from the proceeds of such lands. She does not also inherit from that which stands on that land, like the house and the trees, but she inherits from their proceeds. The same rule applies to the trees and crops and buildings standing on the land of a garden, and on agricultural land, or on any other lands.

2780. If the wife wishes to have any right of discretion over things from which she does not inherit (for example, the land of a residential house) she should obtain the permission of other heirs to do so. Also, it is not permissible for other heirs to have any right of disposal, without the permission of the wife,over those things from the proceeds of which she inherits (for example, the value of the buildings and trees).

2781. If one wishes to evaluate the buildings and the trees and other similar things, it should be calculated as assessors usually do, that is, by estimating its value as they stand, and not as objects uprooted or extirpated from the land. Or, they should be valued as unrented property remaining on the land, till they are destroyed or till they perish.

2782. The canals for the flow of water fall under the category of land, and the bricks etc, used for its construction fall under the category of building.

2783. If a deceased has more than one wives, and if he is childless, 1/4 of the estate will be divided equally among the wives, in the manner explained above, and if he has children, 1/8 of the estate will be divided equally among them. And the rule applies even if the husband may not have had sexual intercourse with some or all of them.

However, if he married a woman during a terminal illness, and did not have sexual intercourse with her, that woman will not inherit from him nor will she be entitled to Mahr.

2784. If a woman marries a man during her illness, and dies in that illness, her husband inherits from her even if he did not have sexual intercourse with her.

2785. If a woman is given revocable divorce, in the manner explained in the orders relating to 'divorce', and she dies during the waiting period of divorce (Iddah), her husband inherits from

her. Also, if the husband dies during the period of that Iddah, the wife inherits from him. But, if one of them dies after the expiry of that period (Iddah) or during the period (Iddah) of irrevocable divorce, the other does not inherit from him/her.

2786. If a husband divorces his wife during his illness, and dies before the expiry of twelve lunar months, the wife inherits from him on the fulfilment of three conditions:

If she has not married another man during that period. And if she has married another man during that period, she will not inherit, though, as a precaution, a compromise should be reached (between the heirs and the wife). If she had not sought divorce herself, of her own accord, irrespective of whether she paid her husband some consideration to obtain divorce or not. If she had herself asked for divorce, she does not inherit.

If the husband died during the illness in which he divorced her, as a result of that illness, or some other reason. If the husband recovers from that illness, and dies later owing to some other cause, the divorced wife will not inherit from him.

2787. The dress which a husband gives to his wife to wear, is to be treated as a part of his estate after his death, even if the wife may have worn it.

Miscellaneous rules of inheritance

2788. The Holy Qur'an, a ring, and a sword of the deceased, and the clothes worn by him, belong to the eldest son. And if of the first three things, the deceased has left more than one - for example, if he has left two copies of the Qur'an, or two rings, the obligatory precaution is that his eldest son should make a compromise with the other heirs in respect of those things.

The travel baggage, the gun, the dagger and other such weapons may also be included in the above list, but, as an obligatory precaution, the eldest son may compromise with other heirs in that regard.

2789. If the deceased has two eldest sons, for example, if his two sons are born of two wives at one and the same time - they should divide his clothes, Qur'an, ring and sword equally between themselves.

2790. If the deceased is indebted, and if his debt is equal to his estate or more, the four things which belong to the eldest son, as mentioned in the preceding rule, should be given by him for the settlement of the debt, or he should pay equal value from his own wealth. And if the debt is less than the estate,

and if the debt cannot be set off by what remains of the estate after setting apart the four things for the eldest son, the eldest son should give those four things, or from his own wealth to set off the debt of the deceased. And if the balance is adequate to clear the debt fully, even

then the eldest son should participate, as an obligatory precaution, to clear the debt as explained above. For example, if the entire estate of the deceased is US $60, and the articles given to the eldest son are worth $20, and the deceased has a debt worth $30, the eldest son will proportionally pay $10 from the four things he received from the deceased.

2791. A muslim inherits from a non-Muslim, but a non-Muslim does not inherit from a deceased Muslim, even if he be his father or son.

2792. If a person kills one of his relatives intentionally and unjustly, he does not inherit from him. But, if it was due to some error, for example, if he threw a stone in the air and by chance, it hit one of his relatives and killed him, he inherits from him. Nevertheless, it is a matter of Ishkal for him to inherit from the diyah (blood money) for the killing.

2793. Whenever it is proposed to divide the inheritance, as a precaution, the share equal to that of one son, should be set aside for a child who is in its mother's womb, expected to be a son, and would inherit if he is born alive (when it is expected that only one child will be born) and the remaining parts should be divided among the others heirs.

In fact, even if the children in the womb are expected to be more than one, for example, if the woman is expected to give birth to twins or triplets, as a precaution, their shares should be set aside for them. And if, contrary to expectation, one boy or one girl was born, then other heirs should divide the surplus among themselves.