Inheritance of Persons Killed by Drowning, Fire and Debris

Both Sunni and Shi'i legists have discussed the issue of the inheritance of persons killed by drowning, fire, building collapse and the like. They differ regarding the inheriting of one of them from another in an obscure situation in which it is not known whose death among them took place earlier.

The Imams of the four Sunni schools, the Hanafi, the Shafi'i, the Maliki and the Hanbali, have observed that none among them inherits from the other and the estate of each one of them will be transferred to the living heirs, excluding the heirs of the other decedent, irrespective of whether the cause of death, and the resultant ambiguity, is drowning, building collapse, murder, fire or plague.[1]

The Imami *mujtahidun* have done extensive work on this issue, and those of the last generation have sufficiently elucidated it by going into minute details which have not crossed the minds of the legists of early and latter eras. Before going into the specifics of the inheritance of victims of drowning, building collapse, etc., they take up the more general issue of two incidents of known occurrence but of unknown sequence, in which the precedence of each to the other leads to different legal consequences.

The latter day Shi'i *mujtahidun* (*muta'akhkhirun*) view the issue of the inheritance of victims of drowning and the like as a particular case of a more general problem that is not limited to any single chapter or issue of fiqh, but relates to any two events of known occurrence but of obscure precedence and subsequence, irrespective of whether the two events relate to contracts, inheritance, crime, etc.

Hence the problem includes two contracts of sale, one concluded by the owner himself with A regarding a particular article, and the second by his agent concerning the same article with B, it being unknown which of the two preceded the other so that the validity of the former and the invalidity of the latter contract could be ascertained.

The problem thus concerns any two events in which the consequences of one event are dependent on

the precedence of the other over it, where there is nothing to prove that the two events took place simultaneously or successively. Therefore, the issue of drowned persons or the like is not an independent issue; rather, it is one of the many particular issues that come in the purview of a general rule.

Thus we see that the Shi'i *mujtahidun* initially concentrate on elucidating the rule itself and then discuss the issue of inheritance of victims of drowning and the like to see whether the general rule is applicable to them or if they are excluded from its application. There is no doubt that this manner of presenting the argument is more beneficial.

As the understanding of this rule depends upon the comprehension of two other closely-related principles, we shall explain them to the needed extent so as to grasp the said rule, although a discussion of these two principles is not less beneficial than that of the rule itself.

These two principles are as follows:

a) The presumption of non-occurrence of an event whose occurrence is doubtful.

b) The presumption of delayed occurrence of an event known to have occurred.

The Presumption of Non-Occurrence

Suppose you had a relative living abroad with whom you used to correspond. At one point he stopped writing to you and you did the same. After a long period of time it came to your mind that you should write to him. You wrote to him at his earlier address without the doubt troubling your mind that he might have died or moved to another place. What led you to pay no attention to the possibility of his death or change of his address?

Similarly, we believe in the honesty and integrity of a person, and rely upon him by depositing with him our valuables. Then he acts in a manner which raises a doubt in our minds that he might have changed, yet, we, despite this doubt, continue to treat him in the past manner. The same rule applies to all correspondences, transactions and communications.

The secret here is that man is led by his nature to accept the continuity of an earlier situation until the contrary is proved. Hence if A is known to be alive and later a doubt arises about his death, the presumption accepted by human nature is to consider him alive until his death is known in some manner. This is what is meant by 'the presumption of non-occurrence of an event' whose occurrence has not been proved, and the following statement of al-'Imam al-Sadiq (*a*) points towards it:

مَنْ كَانَ عَلَى يَقِين ثُمَّ شَكَّ فَلَا يُنْقَضُ اليَقِينُ بِالشَّكّ، إنَّ اليَقِينَ لَا يَنْقُضُهُ إلاّ اليَقِينُ،

لَا تُدْخِلِ الشَّكّ عَلَى اليَقِينِ، وَلَا تَخْلِطْ أَحَدُهُمَا عَلَى الآخَرِ،

وَلَا تَعْتَدَّ بِالشَّكِّ مَعَ اليَقِينِ فِي حَالٍ مِنْ الأَحْوَالِ

If a person is certain (*about something*) *and then doubts* (*its remaining so*),
his earlier certainty will not be demolished by the doubt.
Surely, certainty cannot be annulled by anything except certainty;
doubt cannot dislodge certainty, nor does any of them mix with the other,
under no circumstance give credence to doubt in the presence of certainty.

Hence, when we know that someone owes a debt for a particular sum and later claims having repaid it, the presumption is that he owes the debt until its repayment is proved. That is, we ought to know the payment of debt in the way that we know the fact of indebtedness, because knowledge is not annulled by anything except knowledge and a doubt arising after knowledge has no effect.

Therefore, one who makes a claim which contradicts the earlier condition of something, the burden of proof rests on him to prove his claim, and he whose claim is in accordance with the earlier condition is only liable to take an oath.

The gist of the above discussion is that the principle of presumption of non–occurrence of an event means the acceptance of an earlier existing situation until the contrary is proved.

The Presumption of the Delayed Occurrence of an Event

If a judge has knowledge of A's being alive on Wednesday and of his being among the dead on Friday, without knowing whether he died on Thursday or on Friday and has no clue to determine the time of his death, how should he decide the issue? Should he rule that A died on Friday, or that he died on Thursday?

Three different periods are involved in this case:

a) the period in which he was known to be living i.e. Wednesday;

b) the time at which he is known to be dead, i.e. Friday;

c) the period between the two times, i.e. Thursday, in which he is neither known to be alive nor dead.

The above principle requires that this intermediate period be considered similar to the period preceding it, not to the period subsequent to it. That is, the period of ignorance about his life will be regarded similar to the preceding period in which he was known to be alive. Hence we will remain on our knowledge of his being alive until the time of the knowledge of his death. The result is that his death will

be presumed to have taken place on Friday. The same rule is applicable to every event of known occurrence in which a doubt arises regarding the time of its occurrence, provided that it is a single event and not a chain of events.

The Knowledge of Occurrence of Two Events with Ignorance of Their Order of Succession

Having explained the two principles concerning the presumption of non-occurrence of an event and the delayed occurrence of a single event, let us examine the general rule which is the end of this discussion.

The general rule concerns two events known to have occurred in which the consequences of each are dependent on its preceding the other, while there exists total ignorance about the precedence of any one of them. Among the instances when this problem arises are: the conclusion of two contracts, one concluded by the owner and the other by his agent; the occurrence of a birth and the making of a gift of property; the deaths of two mutual heirs none of whom is known to have died before the other.

The application of this rule depends upon the judge's knowledge of the time of occurrence of each one of the two events or his ignorance about the time of occurrence of both events or one of them. Hence three different situations arise:

1. Where the judge comes to know the time of occurrence of both the events by examining the statements made by the parties to the suit or through circumstantial evidence. Here he will rule in accordance with his knowledge.

2. Where the judge is ignorant of the precedence of one event over the other, though he comes to know the time of occurrence of one of them (such as, his knowing that a horse was sold on June 2, without knowing whether or not it was defective on June 1, to justify its return, or became such on June 3, to make it unreturnable).

Here the event whose time of occurrence is known will be given precedence over the event whose time of occurrence is unknown, because the presumption of delayed occurrence of an event will not be applicable to an event whose time of occurrence is known; this knowledge prevents the application of the presumption to it. As to the event whose time of occurrence is unknown, the presumption of delayed occurrence is applicable to it because this principle is relied upon in instances of ignorance.

To sum up, if two events take place one whose time is known and the other whose time is unknown, the one whose time is known will be considered as having occurred earlier irrespective of whether the two events are of the same kind (e.g. the death of two persons, or the conclusion of two contracts) or of different kinds.

3. Where the judge is ignorant of the time of occurrence of both the events, there is no rule capable of

determining the precedence or subsequence of either event, because there are no grounds for applying the principle of presumption to one of them as opposed to the other.

Therefore, the presumption of delayed occurrence of an event is applicable only where a single event has taken place, or where two events occur and the time of occurrence of one of them is known. But where both the events have no known time of occurrence and there is nothing to differentiate between the time of occurrence of the two, reliance on the principle of presumption becomes impossible.2

Victims of Drowning and Burial under Debris

At times, there are two close relatives who do not inherit from each other––e.g. two brothers who have children––; such a case does not come in the purview of our present discussion, for the inheritance of each is received by his own children, irrespective of his and his brother's death occurring simultaneously or successively.

At times, only one of the two decedents is entitled to inherit from the other (e.g. two brothers of whom only one has children). This situation is also outside our ambit of discussion (because the estate of the brother having children will be transferred to his children, and the estate of the childless brother will be transferred to his relatives, excluding the brother who has died along with him by drowning, fire, etc.).

This is because a condition of inheritance is that the heir be known to live at the time of death of the person being inherited (while in the above case we have no knowledge of the brother having children being alive at the time of the childless brother's death).3

There are other cases where both are entitled to inherit from each other (e.g. a son and a father; two brothers who do not have surviving parents and are childless; a couple, where the heirs of some of them are not those of the other).

This situation is the focus of our discussion, and the Imamiyyah legists lay down two conditions for the mutual inheritance of each from the other.

1. The deaths of both should be the result of a single cause, and should result specifically either by drowning or by being buried under fallen debris (such as where they are in a building which collapses upon them or in a boat which sinks with them). Hence if one of them dies by drowning and the other due to fire or the collapse of a building, or both die together in a plague or battle, they will not inherit mutually. Reportedly, the French law requires the unity of cause for mutual inheritance, but does not limit the causes to drowning and burial under debris, as observed by the Imamiyyah; rather, in that law, mutual inheritance also takes place if the cause of death is fire.

2. The time of death of both should be unknown; hence if the time of death of just one of them is known, only the one whose time of death is unknown will inherit.

To give an example, suppose a building collapses on a couple or a boat sinks with both aboard and during the rescue operations the husband is found taking his last breath at 5 o'clock. Two hours later the wife is found dead, and no one knows whether she died before, after or simultaneously with the husband. The time of death of the husband is known, while that of the wife is unknown. The principle of presumption of delayed occurrence of an event requires that the wife, whose time of death is unknown, inherit the husband whose time of death is known, while he is not entitled to inherit anything from her.

Where the situation is reversed, the time of death of the wife being known and that of the husband remaining unknown, the husband will inherit not the wife. In other words, where the time of death of only one of them is known, the person whose time of death is unknown inherits from the one whose time of death is known, without the latter inheriting from the former. As the right to inherit is limited to the person whose time of death is unknown, there is no difference made in this situation by the cause of death, and the result is the same irrespective of whether the cause of death is drowning, fire, burial under fallen debris, epidemic or war.

But if the time of death of both is unknown, such as where the couple is found dead without the time of death of any of them being known, both are entitled to inherit mutually; that is, each inherits from the other. This difference between a situation where the time of death of one of two decedents is known and where the time of death of neither is known, has neither been reported from any foreign law, nor have I found it in the books of the early and latter Sunni legists nor the early Shi'i legists. This difference is only mentioned in the works of jurisprudence (*usul al-fiqh*) of recent Shi'i *mujtahidun*.

To sum up, the Imamiyyah limit the scope of mutual inheritance to the situations where the cause of death is either drowning or falling debris and where the time of death of both the decedents is unknown. Accordingly, if both die natural deaths, or by fire or are killed in battle, or as a result of a plague, etc., mutual inheritance will not take place, and the estate of each decedent will be transferred to his own living heirs without any of the two decedents inheriting from the other.

And where the time of death of only one of them is known, the decedent whose time of death is not known will inherit from the one whose time of death is known, without the latter inheriting from the former.

The Mode of Mutual Inheritance

The method applied in mutual inheritance is that it is first assumed, in the example given above, that the husband died before the wife. Consequently, her share of his estate is separated and her heirs inherit her property which existed while she was alive, along with her share of her husband's estate that was added to it.

Then it is assumed that the husband died after the wife. Consequently, his share of her estate is separated and his heirs inherit his property which existed prior to his death, along with his share of the

wife's estate which was added to it. None of the two will inherit from the property which each of them has inherited from the other.

Hence, if the wife possessed 100 liras and the husband 1000 liras, the wife inherits from his 1000 and the husband from her 100 only, because if one of them inherits from the property which the other has inherited from him, it will lead to a person inheriting a part of his own property after his death! And it is impossible for a person to inherit a thing which he has left to be inherited by another.

To sum up, if two mutual heirs die by drowning or being buried under falling debris, when neither the sequence of their deaths is known nor the time of death of one of them, according to the Imamiyya h, each of them will inherit from the other from the property each owned prior to death.

1. Al-Shi'rani, vol. 2, Kitab al-mizan, bab al-'irth.
2. The details of this will be found in the books of usul al-fiqh of the Imamiyyah (bab tanbihat al-'istishab); of these is the popular al-Rasa'il of al-Shaykh al-'Ansari, Taqrirat al-Na'ini of al-Sayyid al-Khu'i , and Hashiyat al-Rasa'il of al-Shaykh al-'Ashtiyani.
3. See Miftah al-Karamah, al-Masalik, and al-Lum'ah.
