

Orders Regarding Will (Wasiyyat)

2703. Will means that a person recommends that after his death such and such things should be done, or such and such thing out of his property will be the property of such and such person, or will be spent for charitable purposes, or he appoints someone as guardian of his children, or of those who are under his guardianship. The person to whom a Will is made is called executor (Wasi).

2704. If a person, who cannot speak, makes himself understood by means of signs, he can make a Will for anything he likes; and even if a person who can speak, makes a Will by means of signs end makes himself understood, his Will is in order.

2705. If there is found a writing signed or sealed by a person who is now dead, and it indicates its purport and it is established that he wrote it for making a Will, it should be acted upon. Rather, if it transpires that it was not his intention to make a Will and he had written certain things so that he might make a Will according to them later, it is not unlikely that it may be sufficient to be reckoned as a Will.

2706. A person who makes a Will should be sane and should make the Will with authority. Making a Will by a ten year old child for his near relatives is permissible, and it is difficult that a prodigal may not be relied upon for the enforcement of his Will and the obligatory precaution is that action according to his Will should not be abandoned.

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

2708. If a person makes a Will that something out of his property will belong to someone else and if that person accepts the Will although his acceptance may take place during the lifetime of the testator that thing becomes his property after the death of the testator. Rather, what is apparent is that in fact his acceptance is not necessary, and only the rejection of the Will by him prevents his becoming the owner of that property.

2709. When a person observes signs of death in himself he should return the things entrusted to him by others, or should send word to the owners to collect them. And in case he is indebted to others and the time for repayment of the debt has come, he should repay the debt. And in case he is not in a position to repay the debt, or the time for its repayment has not yet come, he should make a Will in the presence of witnesses for its repayment. In case, however, the particulars of his debt are already known it is not necessary for him to make a Will.

2710. If a person who observes signs of death in himself has to pay Khums or Zakat, or has other liabilities, he should make necessary payments at once. And in case he cannot make payments although he owns property or there is a probability that some other person will make these payments, he (the person on deathbed) should make a Will in this behalf. The same order applies if it is obligatory on him to perform Hajj.

2711. If a person who observes signs of death in himself has to perform the lapsed (Qaza) of some prayers and fasts he should make a Will that a person should be hired, and paid from his property for their performance. Rather, even if he does not possess any property but there is a possibility that someone will perform them without taking any award it is obligatory for him to make a Will in his behalf. And if the performance of his lapsed prayers and fasts is obligatory on his eldest son as explained in the chapter relating to lapsed prayers, he should inform him (i.e. the eldest son) about it or make a Will that the lapsed prayers and fasts should be performed and observed by him on his behalf.

2712. If a person who observes signs of 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 for his minor children but if it is possible that their property may perish or they themselves may be spoiled without a guardian he should appoint an honest guardian for them.

2713. The executor (Wasi) should be sane, and it is better that he should also be adult. And it is necessary that the executor of a Muslim should be a Muslim, and it is also necessary that the executor should be reliable with regard to the matters which do not concern the testator.

2714. If a person appoints several executors for himself and if he has permitted that every one of them may execute the Will individually, it is not necessary that they should obtain permission from one another for the execution of the Will. And if he has not accorded any such permission whether he has or has 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, the religious Head can compel them to do so and if they do not obey his orders he can appoint another person in place of one of them.

2715. If a person goes back upon his Will; for example if he 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 a guardian for his children and then replaces him by another person

his first Will becomes void and his second Will should be acted upon.

2716. If a person performs a task which shows that he has gone back upon his Will for example if he sells a house which he had willed to give to someone or appoints someone as his agent to sell it, the Will becomes void.

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

2718. If a person, who is on his deathbed, bestows a part of his property as gift on a certain person, and makes a Will that after his death a certain quantity be given to a certain person, then what he has bestowed as gift shall be given out of the property he leaves as inheritance as mentioned in Article 2264, but the property for which he has made a Will should be taken from 1/3 of his property.

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 an ailment, of which he dies, that he owes some amount to someone, and if it is alleged that he has said this to harm his heirs, the portion specified by him should be given out of 1/3 of his property and if he is not accused of any such thing his admission is valid and the payment should be made out of his real property.

2721. When a person makes a Will that something should be given to another person it is not necessary that that person should be existing at the time of the making of the Will. In case, therefore, he makes a Will that something may be given to a child who may possibly be conceived by such and such woman 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 does not exist that is, he is not born it should be spent in some other manner which may be nearer to the object of the Will according to the intention of the testator. However, if he makes a Will that after his death a portion of his property will belong to a particular person and if that person exists at the time of the death of the testator, the Will is in order, but otherwise it is void, and whatever he willed for that person can 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 execute the Will, it is not necessary for him to execute the Will after the death of the testator. However, if he does not come to know before the death of the testator that he has been appointed executor or comes to know about it but does not inform the testator that he is not prepared to execute the Will, and in case execution of the Will does not involve any hardship to him, he should execute the Will. Furthermore, if the executor takes notice of the fact (of his appointment as executor) when due to serious illness or some other obstacle the testator cannot make a Will to some other person, he should, on the basis of precaution, accept the Will.

2723. If a person who has made a Will dies the executor cannot appoint another person for the performance of the tasks as laid down in the Will of the deceased, and keep aloof himself. However, if he knows that the deceased did not mean that the executor should perform the task himself and what he wanted 'as only that the task should be accomplished, he may appoint another person as his representative.

2724. If a person appoints two persons as executors jointly and if one of them dies or becomes insane or apostatizes, the Religious Head can appoint another person in his place and if both of them die or become insane or apostatize, the Religious Head can 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 cannot perform the tasks as laid down in the Will of the deceased alone, the Religious Head can appoint 'other person to assist him.

2726. If a portion of the property of a dead person perishes while in the custody of the executor, and if he has been negligent in looking after it, or has handled it wrongly for example, if the dead person has willed him to give such and such quantity to the indigent persons of such and such city, but he has taken it to some other city and it has perished on the way, he is responsible for it. In case, however, he has not been negligent and has not handled the property wrongly, he is not responsible for the loss.

2727. If a person appoints someone as his executor and says that if he dies such and such person should be executor in his place the second executor should perform the tasks laid down in the Will of the dead person, after the death of the first executor.

2728. If Hajj was obligatory on the dead person it should be performed on his behalf and debts and dues like Khums, Zakat and Mazalim (rights of the oppressed) which were obligatory to pay, should be paid out of the real property of the deceased though he may not have made a Will for them.

2729. If the property of the deceased exceeds his debt and expenses for obligatory Hajj, and dues like Khums, Zakat and Mazalim (rights of the oppressed only) which it was obligatory for him to pay, and if he has willed the 1/3 or a portion of the 1/3 of his property to be put to a particular use, his Will should be acted upon, and if he has not made a Will whatever remains is the property of the heirs.

2730. If the expenditure specified by a dead person exceeds 1/3 of his property, his Will in respect of what exceeds the 1/3 of the property is valid only when the heirs say or do something which shows that they have permitted action being taken according to the Will and only their being agreeable is not sufficient. And even if they accord permission after some time, it is in order; and if some heirs permit and others decline to accord permission (to the Will being acted upon) the Will is valid and binding only in respect of the shares of those who have accorded permission.

2731. If the expenditure specified by a dead person exceeds 1/3 of his property and his heirs accord permission for that expenditure before his death (that is, they permit that the Will of the deceased should

be followed in respect of their shares) they cannot withdraw their permission after his death.

2732. If a person makes a Will that Khums and Zakat and other debts payable by him should be paid out of 1/3 of his property, and someone should be hired for performing his lapsed prayers and fasts, and recommended acts like feeding the indigent persons, should be performed, his debt should be paid first out of the 1/3 of his property, and if something remains a person should be hired to perform his lapsed prayers and fasts, and if something still remains it should be spent on the recommended acts specified by him. In case 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 recommended acts is void.

2733. If a person makes a Will that his debt should be paid and someone should be hired for the performance of his lapsed prayers and fasts, and a recommended act should also be performed, but has not made a Will that the expenses for those acts should be met out of the 1/3 of his property, his debt should be paid out of his own property, and if anything remains 1/3 of it should be spent on prayers and fasts and recommended acts specified by him. And in case 1/3 is not sufficient, and his heirs permit his Will should be acted upon, and if they do not permit, the expenses of prayers and fasts should be met out of the 1/3 of his property and if anything remains it should be spent on the recommended acts specified by him.

2734. If a person says that the dead person has made a Will that so much amount should be given to him, and two just men confirm his statement, or he takes an oath and one just man also confirms his statement, or one just man and two just women, or four just women bear witness to what he says, the amount stated by him should be given to him. And if one just woman bears witness, 1/4 of the amount demanded by him should be given to him, and if two just women bear witness 1/2 of that amount, and if three just women bear witness 3/4 of it should be given to him. Furthermore, if two infidel men from amongst the people of the Book, who are just in their own religion, confirm his statement, and in case the dead person was obliged to make a Will and no just man and woman was present at the time of his making the Will, the thing demanded by that person should be given to him.

2735. If a person says that he is the executor of a dead person and can utilize his property in such and such way or that the dead person had appointed him the guardian of his children, his statement should be accepted in case two just men confirm it.

2736. If a person makes Will that something out of his property is for a particular person and that person dies before accepting or rejecting it, his heirs on accept it unless they do not reject the Will. However, this order applies in case the testator does not go back upon his Will, otherwise the executor and his heirs

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

(i) The first group consists of the dead person's father, mother and children and in the absence of

children, the children's children, downwards, and among them whoever's nearer to the dead person inherits his property, and, so long as even a single person out of this group is present, people belonging to the second group do not inherit.

(ii) The second group consists of paternal grandfather, paternal grandmother, sisters, brothers and in the absence of sisters and brothers their children. Whoever from among them is nearer to the dead person inherits from him and, so long as even one person out of this group is present, people belonging to the third group do not inherit.

(iii) The third group consists of paternal uncles and paternal aunts and maternal uncles and maternal aunts and their descendants. And so long as even one person out of 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.

2738. If the dead person's own paternal uncle and paternal aunt and maternal uncle and maternal aunt and their children and their children's children do not exist, the property is inherited by the paternal uncles and paternal aunts and maternal uncles and maternal aunts of dead person's father as well as by the paternal uncles and paternal aunts and maternal uncles and maternal aunts of his mother. And if even they do not exist the property is 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 grandfather as well as by the paternal uncles and paternal aunts and maternal uncles and maternal aunts of his paternal grandmother. 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 dead person (for example, father or mother or only one son or only one daughter) he/she inherits the entire property and, if there are more than one sons or daughters, the property 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 a dead person are his only heirs, the property is divided into 3 parts out of which 2 parts are taken by the father and one by the mother. In case, however, the dead person 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 dead person is one and the 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 property and the rest is inherited by the father.

2742. If only the father, the mother and one daughter are the heirs of a dead person and he (the deceased) does not have two paternal brothers or four paternal sisters or one paternal brother and two paternal sisters, the property is 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 according to what is well known if the dead person has two paternal brothers or four paternal sisters or one paternal brother and two paternal sisters, the property is divided into 6 parts. One part is taken by the father and one by the mother and 3 parts are 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. Hence, the property of the dead person 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 objectionable and it is possible that this portion is divided into 5 parts too.

2743. If the heirs of the dead person are his father, mother and one son only, the property is divided into 6 parts out of which one part is taken by the father and one by the mother, and 4 by the son. And in case the dead person has many sons or many daughters they divide the said 4 parts equally among them. In case, however, he has many sons and daughter, 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 a dead person are only his father or mother and one or many sons, the property is divided into 6 parts out of which one goes to the father or mother and 5 go to the son. In case there are more than one sons they divide those 5 parts equally among them.

2745. If a father or a mother is the heirs of a dead person along with his sons and daughters, the property is divided into 6 parts. Out of these, 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 a dead person are only his father or mother and one daughter, his property is 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 a dead person are a few daughters, the property is divided into 5 parts. Out of these one part is taken by the father or the mother and the remaining 4 parts are equally divided among the daughters.

2748. If the dead person has no children, the child of his son, (even if it be a daughter only) gets the share of his son and the child of his daughter (even though it be a son only), gets the share of his daughter. For example, if the dead person has a grandson (daughter's son) and a granddaughter (son's daughter) the property will be divided into 3 parts out of which one part will go to the grandson and 2 to the granddaughter

Inheritance 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 property.

2750. If the heir of a dead person is only one brother or only one sister, he or she inherits the entire property and in case he has several real brothers or several real sisters they divide the property equally among themselves. If, however, he has some real brothers and some real sisters, 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 and the sister will get one.

2761. If a dead person has real brothers and sisters his paternal brothers and sisters (whose mother is the stepmother of the dead person) do not inherit his property. And if he has no real brothers or sisters, and has only one paternal brother or only one paternal sister, the entire property is inherited by him or her. And if he has many paternal brothers or many paternal sisters, the property is divided between them equally. And, in case he has paternal brothers as well as paternal sisters, every brother gets double the share of every sister.

2752. If the only heir of a dead person is one maternal sister or one maternal brother (who is stepsister or stepbrother of the dead person from father's side) she or he gets the entire property. And if he has some maternal brothers or some maternal sisters or some maternal brothers and sisters, the property is divided equally among them.

2753. If the dead person has real brothers and sisters and paternal brothers and sisters and one maternal brother or one maternal sister, the paternal brothers and sisters do not inherit. In this case the property is divided into 6 parts, out of which one part is inherited by the maternal brother or sister and the remaining 5 parts are divided by the real brothers and sisters among themselves in such a manner that every brother gets double the share of every sister.

2754. If a dead person has real brothers and sisters and paternal brothers and sisters and some maternal brothers and sisters the paternal brothers and sisters do not inherit. In this case the property is divided into 3 parts out of which one part is divided by the maternal brothers and sisters equally among themselves and the remaining 2 parts are 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 a dead person are his paternal brothers and sisters and one maternal brother or one maternal sister, the property is divided into 6 parts One part is given to the maternal brother or the maternal sister and the remaining parts are divided among the paternal brother and sisters in such a manner that every brother gets double the share of every sister.

2756. If the only heirs of a dead person are his paternal brothers and sisters and some maternal brothers and sisters, the property is divided into 3 parts. One part is divided among the maternal brothers and sisters equally and the remaining 2 parts are 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 a dead person are his only heirs the wife gets her inheritance in the manner which will be narrated later and the sister and brother get their inheritance as stated in the foregoing Articles. Furthermore, if a woman dies and her only heirs are her sister, her brother and her husband, the husband gets half of the property and the sister and the brother inherit as explained earlier.

However nothing is reduced from the share of maternal brother and sister and reduction does take place in the share of the real brother and sister or the paternal brother and sister on account of husband and wife inheriting the property. For example, if the heirs of a dead person are her husband, maternal brother and sister and real brother and sister half of the property goes to the husband and one part out of the three parts of real property is given to the maternal brother and sister and whatever remains is the property of the real brother and sister. Hence, if the total property of the dead person is \$ 6, \$ 3 goes to the husband, \$ 2 are taken by the maternal brother and sister and \$ 1 falls to the share of the real brother and sister.

2758. If a dead person 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 is divided between them equally. And as regards the share of the paternal brother's child and paternal sister's child and real brother's child and real sister's child, according to what is well-known every son gets twice as much as the daughter, although it is not unlikely that they too may get equal shares and it is better they should resort to compromise.

2759. If the heir of the dead person is only one grandfather or one grandmother, whether paternal or maternal, the entire property goes to him and the great grandfather of the dead person does not inherit in the presence of his/her grandfather. And if only the paternal grandfather and paternal grandmother of the dead person are his/her heirs the property is divided into 3 parts out of which 2 parts are taken by the grandfather 'd one part is taken by the grandmother. And in case the maternal grandfather and maternal grandmother are the heirs the property is divided between them equally.

2760. If the heirs of the dead person are one out of paternal grandfather or paternal grandmother and one out of maternal grandfather or maternal grandmother the property is divided into 3 parts. Out of these 2 parts go to the paternal grandfather " paternal grandmother and one part goes to the maternal grandfather or maternal grandmother.

2761. If the heirs of the dead person are his/her paternal grandfather and paternal grandmother and maternal grandfather and maternal grandmother the property is divided into 3 parts. One of these parts

is divided equally between the maternal grandfather and the maternal grandmother and the remaining

2 parts go to the paternal grandfather and the paternal grand mother out of which the paternal grandfather gets 2/3 and the paternal grandmother 1/3.

2762. If the only heirs of a dead person are his wife and his paternal grandfather and grandmother, and his maternal grand father and grandmother, his wife gets her inheritance in the " which will be explained later. And one of the 3 parts of the real property of the deceased is given to the maternal grandfather End grandmother, who divide it equally between them, and the remaining part is given to the paternal grand father and grandmother and the paternal grandfather gets twice as much as the paternal grandmother. And if the heirs of the dead person are her husband and her paternal or maternal grandfather and grandmother, the husband gets half of the property and the grandfather and the grandmother get their inheritance in the manner mentioned in the previous Articles.

2763. There are a few ways of combination of brother or sister or brothers or sisters with paternal grandfather or paternal grandmother or maternal grandfather or maternal grandmothers or paternal or maternal grandfathers and grandmothers:

- (i) That the maternal grandfather or grandmother and brother or sister are from the mother's side. In that event the property is divided among them equally though they are of different sex.
- (ii) That with paternal grandfather or grandmother the brother and sister are from the side of the mother. In that case also the property is divided among them equally provided that all of them are males or all of them are females. And in case they are different every male gets twice as much as the female.
- (iii) That with the paternal grandfather or the grandmother the brother or sister are from the side of mother and father. The order applicable in the previous case also applies in the present case. And it should be remembered that if the paternal brother or sister of the dead person is combined with real brother of sister those who are paternal do not inherit alone, but all of them inherit.
- (iv) That there are paternal or maternal grandfathers or grandmothers whether all of them are males or females or they are different and similarly there are maternal and paternal brothers and sisters. In this case 1/3 of the inheritance is for the maternal relatives and it is divided equally among them although they may be different as regards sex. And 2/3 of the inheritance is for 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 is divided equally among them.
- (v) That paternal grandfather or grandmother 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, and what remains goes to the paternal grandfather or the grand mother and if both the grandfather and the grandmother are there, the grandfather gets twice as much as the grandmother.

(vi) That maternal grandfather and grandmother and paternal brother are combined. In this case 1/3 goes to the grandfather or the grandmother, although he/she may be one only and 2/3 goes to the brother although he too, may be one only. In case there is a paternal sister with the maternal grandfather or the grandmother and if she is alone she gets 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 paternal grandfather and grandmother is **1/3**. And on the basis of this if there is one sister only 1/6 'mains after giving the shares of all, and the obligatory precaution is that compromise should be made.

(vii) 'That there are some paternal and some maternal grandfathers or grandmothers and with them there is one maternal or paternal brothers or these are several of them. In this case the share of the maternal grandfather or grandmother is 1/3 and if they are more than one it is divided among them equally although they may be different in the matter of sex. And the remaining 2/3 of the inheritance is for the paternal grandfather or the paternal grandmother and the paternal brother or the paternal sister. and the case of difference of sex the property is divided according to sex and it is distributed equally, if there is no such difference.

And if there is a maternal brother or maternal sister with those paternal or maternal grandfathers or grand mothers, the share of the maternal grandfather or maternal grandmother with the maternal brother or maternal sister is 1/3, which is divided among them equally although they may be different from one another in the matter of sex. And the share of the paternal grandfather or paternal grandmother is 2/3 which is divided among them with difference in the case of difference of sex and otherwise equally.

(viii) That there are brothers and sisters some of whom are paternal and others are maternal, and there are paternal grand father or paternal grandmother with them. In this case the share of the maternal brother or maternal sister is 1/6 if he/she if alone and 1/3 if there are many of them and it is divided equally among them when there is no difference among them in the matter of sex; and in case they are of different sex it is divided among them with the usual difference.

And as regards the paternal brother or paternal sister and the paternal grand father and paternal grandmother the remaining inheritance goes to them and is divided among them equally if there is no difference between them in the matter of sex and with usual difference if they are of different sex. And if there is a maternal grandfather or maternal grandmother with those brothers or sisters the total share of the maternal grandfather and maternal grandmother with maternal brother and maternal sister is 1/3 and is divided equally among them and the share of the paternal brother or paternal sister is 2/3 which is divided among them with difference if there is difference between them in the matter of sex and equally if there is no such difference.

2764. If the dead person has brothers or sisters, his/her brother's or sister's children do not inherit. However this order 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 property.

And in this case if the dead person has a son of the maternal brother as well, the brother's son joins the maternal grandfather in the 1/3 of the property.

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 the property when none of the persons belonging to the first two groups is present.

2766. If the only heir of a dead person 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 property. And if there are some paternal uncles or aunts of the dead person and all of them are the real or paternal brothers and sisters of his father, the property is divided equally among them. And if there are some paternal uncles and aunts of the dead person and all of them are the real or the paternal brothers and sisters of his father, the well-known view is that the paternal uncle gets twice the share of the paternal aunt. For example, if two paternal uncles and one paternal aunt are the heirs of the dead person, the property will be divided into 5 parts, out of which the paternal aunt will get one part and the two paternal uncles will divide the remaining 4 parts equally between them. However, it is not unlikely that the property may be divided equally between them (i.e. between the paternal uncles and the paternal aunt).

2767. If the heirs of a dead person are some maternal uncles or some maternal aunts or one maternal uncle and one maternal aunt, the apparent view is that the property will be divided equally among them.

2768. If the heirs of a dead person are his paternal uncles and paternal aunts, out of whom some are the real brothers and sisters of his father and others are paternal or maternal brothers and sisters of his father, the paternal uncles and paternal aunts of the dead person, who are paternal brothers and paternal sisters of his father, do not inherit anything.

And the well-known view is that if the dead person has a paternal uncle or a paternal aunt, who are the maternal brother and sister of his father, the property is divided into 6 parts, out of which one part is taken by the paternal uncle or maternal aunt of the deceased, and the remaining is taken by the dead person's paternal uncles and paternal aunts, and, in case the dead person has no real paternal uncles and real paternal aunts, the remaining 5 parts are also taken by the paternal uncles and paternal aunts of the deceased, who are the maternal brothers or sisters of his father.

And if the dead person happens to have also paternal uncles and paternal aunts, who are the maternal brothers and sisters of his father, the property is divided into 3 parts, out of which 2 parts are taken by the real paternal uncles and real paternal aunts of the dead person and in case there are no such uncles and aunts, they are taken by those paternal uncles and paternal aunts of the dead person who are the paternal brothers and sisters of his father, and one part is taken by those paternal uncles and paternal aunts of the dead person who are the maternal brothers and sisters of his father.

It is not, however, unlikely that in both the cases the paternal uncles and paternal aunts of the dead person, who are the maternal brothers and sisters of his father, may also inherit like his other paternal uncles and paternal aunts and the property of the dead person may be divided equally among all his paternal uncles and paternal aunts.

2769. If a dead person has only one maternal uncle or only one maternal aunt, he or she gets the entire property. In case, however, he has many maternal uncles or maternal aunts (whether they be the real or the paternal or the maternal brothers and sisters of his mother), the property is divided among them equally.

2770. If the heirs of the dead person are only one or some maternal uncles and maternal aunts from the mother's side and real maternal uncle and real maternal aunt (i.e. from father's and mother's side) the maternal uncle and maternal aunt from the father's side do not inherit, and it is not unlikely that the remaining persons may share the property equally.

2771. If the heirs of the dead person are one or more maternal uncles or one or more maternal aunts or maternal uncle and maternal aunt, and one or more paternal uncles or one or more paternal aunts, or paternal uncle and paternal aunt, the property is divided into 3 parts out of which one part is taken by the maternal uncle or maternal aunt or both of them, and the remaining part goes to the paternal uncle or paternal aunt or both of them.

2772. If the heirs of the dead person are one maternal uncle or one maternal aunt and paternal uncle and paternal aunt and if the paternal uncle and the paternal aunt are real or from the father's side, the property is divided into 3 parts. One part is taken by the maternal uncle or the maternal aunt and as regards the remaining part what is well known is that $\frac{2}{3}$ is given to the paternal uncle and $\frac{1}{3}$ to the paternal aunt. On the basis of this the property is divided into 9 parts out of which 3 parts are given to maternal uncle or maternal aunt, 4 parts are given to the paternal uncle and 2 parts are given to the paternal aunt. However, it is not unlikely that the remainder may be divided equally between the paternal uncle and the paternal aunt.

2773. If the heirs of the dead person are one maternal uncle or one maternal aunt and one paternal uncle or one paternal aunt from the mother's side and real paternal uncle and paternal aunt or paternal uncle and paternal aunt from mother's side the property is divided into 3 parts. Out of these one part is given to the maternal uncle or the maternal aunt and the remaining 2 parts are equally divided between the other heirs.

2774. If the heirs of a dead person are some maternal uncles and some maternal aunts all of whom are either real or from father's side, or from mother's side and a paternal uncle and a paternal aunt, the property is divided into 3 parts. Out of these 2 parts are divided between the paternal uncle and the paternal aunt as mentioned above and one part is divided equally between the maternal uncles and the maternal aunts.

2775. If the heirs of a dead person are maternal uncle or maternal aunt from the mother's side and some maternal uncles and some maternal aunts who are real or from father's side (in case there are no real ones) and paternal uncle and paternal aunt, the property is divided into 3 parts. Two of these parts are divided between the paternal uncle and the paternal aunt in the manner already mentioned and it is not unlikely that the remaining heirs may get equal shares out of the 3rd part.

2776. If the dead person does not have paternal uncle and paternal aunt and maternal uncle and maternal aunt the share to which the paternal uncle and the paternal aunt are entitled goes to their descendants and the share, to which the maternal uncle and maternal aunt are entitled, goes to their descendants.

2777. If the heirs of a dead person are the paternal uncle and paternal aunt and maternal uncle and maternal aunt of his/her father and paternal uncle and paternal aunt and maternal uncle 'd maternal aunt of his/her mother the property is divided into 3 parts. One of these parts is divided between the paternal uncle and paternal aunt and maternal uncle and maternal aunt of his/her mother equally between them. As regards the remaining 2 parts the same are again divided into 3 parts. One part is divided equally between the maternal uncle and maternal aunt of the father of the dead person. and the remaining 2 parts are also divided equally between the paternal uncle and paternal aunt of the father of the dead person.

Property Inherited By The Husband And Wife

2778. If a woman dies without any children. 1/2 of her property is taken by her husband and the remaining 1/2 is taken by her other heirs. In case, however, she has children from that or some other husband, her husband gets 1/4 of the property and the remaining part is inherited by her other heirs.

2779. If a man dies childless, 1/4 of his property is taken by his wife, and the remaining part is taken by his other heirs. In case, however, the man has children from that or some other wife, the wife gets 1/8th of the property and the remaining part is inherited by his other heirs. A wife does not inherit anything from the land on which a house or a garden or crop is situated, or from any of her land, nor does she inherit from the value of such lands. She does not also inherit from the things situated within the space of the house (for example, buildings and trees), but inherits from their value. The same rule applies to the trees and crops and buildings situated in the land of a garden and agricultural land and other lands.

2780. If the wife wishes to appropriate 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. Further it is not permissible for other heirs to appropriate, without the permission of the wife, those things from which she inherits (for example, buildings and trees), unless her share from those things has been paid to her by them.

2781. If it is desired to evaluate buildings and trees and other similar things it should be calculated as to how much value they should have, if they remain on the land without lease till they perish and the share

of the wife should be given on the basis of that value.

2782. The place on which the canals now falls under the category of land and the bricks etc. used on it fall under the category of building.

2783. If a dead person has more than one wives and if he is childless 1/4 of the property and if he has children 1/8 of the property is divided equally between the wives in the manner explained above, even though the husband may not have had sexual intercourse with some or all of them. However, if he marries a woman during an illness as a consequence of which he dies, but does not have sexual intercourse with her, that woman does not inherit from him and she is also not entitled to dower (Mehr).

2784. If a woman marries a man during illness and dies as a consequence of that illness, her husband inherits from her even though he may not have had 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. Furthermore, if the husband dies during the period of that Iddah the wife inherits from him. However, 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 divorce his wife during illness and dies before the expiry of twelve lunar months, the wife inherits from him on the fulfillment of three conditions:

(i) That she has married another man during this period and if she marries another man during that period precaution is that they should make a compromise ie. the heirs of the dead person should make a compromise with the woman).

(ii) That owing to her disliking the husband she has not given him anything so that he may divorce her. Rather even if she has not given anything to the husband but the divorce has taken place on her demand, it is difficult that she should be entitled to inherit from him.

(iii) That the husband died during the illness in which he divorced her on account of that illness or some other reason. In case, therefore, he recovers from that illness and dies owing to some other cause, the woman does not inherit from him.

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

Miscellaneous Problems Relating To Inheritance

2788. The Holy Qur'an, a ring, and a sword of the dead person and the clothes worn by him, are the property of the eldest son. And if out of the first three things the dead person 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.

2789. If a dead person has two eldest sons for example, if his two sons are from 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 dead person is indebted and if his debt is equal to his property or more than that the four things which are the property of the eldest son and have been mentioned in the preceding Article should be given for the settlement of his debt. And if his debt is less than what his property is worth the four things which go to his eldest son should be given proportionately for his debt. For example, if his entire property consists of \$ 60 and the things which are the property of the eldest son are worth \$ 20, and he (the dead person) owes \$ 30, the eldest son should give an amount of \$ 10 out of those four things for the clearance of the debt of his father.

2791. A Muslim inherits from an infidel but an infidel does not inherit from a deceased Muslim, even though he may be his father or son.

2792. If a person kills one of his relatives intentionally and unjustly, he does not inherit from him. However, if it is due to inadvertence for example, if he throws a stone in the air and by chance it hits one of his relatives and kills him he inherits from him. Nevertheless, it is difficult that he should inherit out of the diyah (bloodmoney) for murder, which will be explained later.

2793. Whenever it is proposed to divide the inheritance the share of one son should be set aside for a child who is in its mother's womb and will inherit if it is born alive (when it is not probable that more than one child will be born) and the remaining part should be divided among the other heirs. How ever, if the children in the womb are likely to be more than one, for example if it is probable that the woman may give birth to two or three children and the heirs are not agreeable to set aside the share of the probable issues it is permissible that after ensuring the safety of the share of the issue of a son, the rest of the property may be divided amongst the heirs.

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