

The Inheritance of a Fetus; Disowned and Illegitimate Children

[The Inheritance of a Fetus](#)

If a person dies while his wife is pregnant, the distribution will be postponed, if possible, till childbirth; otherwise, a share will be withheld for the child. The schools differ regarding the share to be withheld.

The Hanafis observe: The share of a single son will be withheld for the child in the womb, because it is generally so and it is improbable that it should fall short. (*Kash al-haqa'iq fi sharh Kanz al-daqa'iq*, vol. 2, *bab al-fara'id fi fiqh al-Hanafiyyah*)

Mu'awwad Muhammad Mustafa in *al-Mirath fi al-Shari'ah al-Islamiyyah* and Muhammad Muhammad Sa'afan, quoting from *al-Sirajiyah*, state that Malik and al-Shafi'i have said: A share of four sons and four daughters will be withheld.

A curious incident has been reported in *al-Mughni* (3rd ed. p.314): It has been narrated from *al-Maridini* that a pious and learned resident of Yaman informed him that a woman of Yaman gave birth to a thing resembling a paunch. They thought that it contained no child and threw it away on the wayside. When the sun rose and it was warmed up by sunshine, it wriggled and burst open and seven male infants emerged from it. All of them survived and were physically sound, except for the smallness of their bodily members. This gentleman from Yaman further added: One of them wrestled with me and put me down, and I was reproached by the people, who would say, "You were beaten by a seventh of a man!"

The Imamiyyah state: The share of two male children will be withheld for caution's sake and the husband and the wife will be given their minimum shares.

A child in the womb will inherit on condition of its being born alive¹ and its mother giving birth to it in less than six months --or even six months, if her husband copulates and dies immediately afterwards. It is also necessary for the maximum gestation period not to expire after the death, in accordance with the

difference among the schools regarding this period, as already mentioned in the chapters on marriage and divorce. Therefore, as per consensus, if the child is born after the expiry of the maximum gestation period, he will not inherit.

Child Disowned by the Father (Walad al-Mula'anah)

The schools concur that there will be no mutual inheritance between the couple if the husband accuses the wife of adultery, and between the child born thereafter and its father and paternal relatives. However, the child, its mother and maternal relatives will inherit mutually. While inheriting from the child, its relatives through both parents and relatives through the mother enjoy the same status. Hence his full and uterine brothers are considered equal in status.

The Imamiyyah observe: If the father takes back his accusation and accepts the child, the child will inherit from the father, but the father will not inherit from the child.

The Illegitimate Child (Walad al-Zina)

The four Sunni schools concur that an illegitimate child is similar to a child disowned by the father, in all that which has been mentioned concerning the absence of mutual inheritance between the child and the father and the presence of such inheritance between the child and its mother. (*al-Mughni*, vol. 6, *bab al-fara'id*)

The Imamiyyah say: There is no mutual inheritance between an illegitimate child and its fornicator mother, in the same manner as there is no such inheritance between the child and its fornicator father, because there is a common impeding cause between the two, i.e. fornication.

- ¹ The schools differ regarding the signs of life, whether it is the making of sounds or movement (crying or breast-feeding). That which is important is that life be proved in any possible manner. Hence, if it is proved that the child was born unconscious and possessed life, he will doubtlessly inherit.

Source URL:

<https://www.al-islam.org/inheritance-according-five-schools-islamic-law-muhammad-jawad-mughniyya/inheritance-fetus-disowned#comment-0>