

The Inheritance of Children and Grandchildren

The Sons

In the absence of the decedent's parents and spouse, a son is entitled to the whole estate, and similarly two and more sons. When the sons and daughters inherit together, a male receives twice a female's share. A son, as per consensus, excludes grandchildren, brothers, sisters and grandparents. There is consensus that a son's son is like a son in the son's absence.

The Daughters

The Imamiyyah observe: A daughter or two or more daughters, in the absence of the parents and spouse, will inherit the whole estate (a single daughter takes half as her 'share' and the other half as 'return', and similarly two or more daughters take two-thirds as their 'share' and the remainder as 'return', without anything going to the residuaries).

The four Sunni schools say: Full and agnate sisters are residuaries with daughter or daughters. This implies that a single daughter will inherit half of the estate as her share in the absence of a son or another daughter, and that two or more daughters will inherit two-thirds as their share in the absence of a son. Hence if the decedent has a daughter, daughters, or a son's daughter, and also has a full or an agnate sister or sisters, if the decedent has no brother the sister or sisters will inherit the remainder as residuaries after the daughter or daughters have taken their share.

A full sister is like a full brother in the application of *ta'sib* and in excluding an agnate brother's son and those who come after him in the order of residuaries, and an agnate sister is a residuary like an agnate brother and excludes a full brother's son and those residuaries who come after him. (*al-Mughni*, 3rd. ed. vol. 6, p. 128, and al-Sa'idi's *al-Mirath fi al-Shari'at al-Islamiyyah*, 5th ed. p. 16)

The Imamiyyah state: None of the brothers or sisters inherit along with a daughter or daughters, nor with a son's daughter or a daughter's daughter, because a 'daughter', how lowsoever, belongs to the first category of heirs, whereas brothers and sisters belong to the second.

The Hanbali and the Hanafi schools state: If there is no sharer, residuary, or any other heir except daughters, they will be entitled to the whole estate, partly as a share and partly by the way of 'return'. But if the father is present with them, he will take the remainder after their share is given. If the father is not present, the remainder will go to the grandfather, and in his absence to the full brother, then to the agnate brother, then to the full brother's son, then to the agnate brother's son, then to the full paternal uncle, then to the agnate paternal uncle's son.

When none of these residuaries and sharers (such as sisters) is present, the daughters take the entire estate even if the decedent has daughters' children, sisters' children, brothers' daughters, uterine brothers' children, paternal aunts of all kinds, uterine paternal uncles, maternal uncles and aunts, and maternal grandmother.

The Maliki and the Shafi'i schools say: If the above-mentioned situation arises, a daughter or daughters will take their prescribed share and the remainder will escheat to the *bayt al-mal*. (*al-Mughni*, vol. 6, *bab al-fara'id* and *Kashf al-Haqa'iq*, vol. 2, p. 356)

Children's Children

The schools differ where the decedent is survived by children and grandchildren. The four Sunni schools concur that a son excludes both grandsons and granddaughters from inheritance; i.e. the children's children do not inherit anything in the presence of a son. But, if the decedent leaves behind a daughter and son's children, if the son's children are all males or some males and some females, the daughter will take a half and the other half will go to the son's children, who divide it among themselves in the proportion of the male taking twice a female's share. If there are son's daughters along with a daughter, the daughter will be entitled to a half and the son's daughter or daughters to one-sixth and the remainder will go to the sister. (*al-Mughni*, 3rd ed. vol. 6, p. 172)

If the decedent has two daughters and son's children, and there is no male among the son's children, the latter will not be entitled to anything. But if there is a male among them, the two or more daughters will take two-thirds and the remainder will go to the son's children, who divide it among themselves in the proportion of the male taking the share of two females (*al-Mughni*, vol. 6, pp. 170, 172). A daughter excludes the children of another daughter in a manner similar to the exclusion of a son's son by a son.

The Imamiyyah say: None of the grandchildren inherit in the presence of a single child, male or female, of the decedent. Hence if he leaves behind a daughter and a son's son, the entire estate will go to the daughter to the exclusion of the son's son.

If the decedent has no surviving children, male or female, though has children's children, the four Sunni schools concur that a son's son is like a son and represents him in excluding others from inheritance, in the application of *ta'sib*, etc. And if there are sisters inheriting with the son's son, the estate will be divided in the proportion of a male receiving twice a female's share. The four schools also concur that

son's daughters are like daughters in the absence of daughters, in that a single son's daughter is entitled to half the estate, and if they are two or more they are entitled to two-thirds.

Like daughters, they exclude uterine brothers from inheritance, and share the estate with the son's son, a male receiving twice a female's share, irrespective of whether the son's son is their own brother or their paternal uncle's son. To sum up, a son's daughter is similar to a daughter. In other words, the children of the decedent's son are exactly like his own children. (*al-Mughni*, vol. 6, p. 169)

According to the Shafi'i and the Maliki schools, daughters' children do not inherit anything irrespective of their sex, because they are considered as distant kindred. Hence if none among the sharers and residuaries exist, the daughters' children will be excluded from inheritance and the estate will escheat to the *bayt al-mal*. The same applies to the son's daughters' children.

The Hanafi and the Hanbali schools state: The son's daughters' children will inherit in the absence of sharers and residuaries. (*al-Mughni*, vol. 6, *fasl dhawi al-'arham* and *Kashf al-haqa'iq*, vol. 2, p. 255).

This was a summary of the opinions of the four Sunni schools regarding the inheritance of grandchildren in the absence of children.

The Imamiyyah observe: The children's children represent the children in their absence and each among them takes the share of the child through whom he is related. Therefore, the daughter's children, even if several and males, are entitled to one-third, and the son's children, even if a single daughter, are entitled to two-thirds. They distribute their share among themselves equally if of the same sex, and if they differ then a male is entitled to twice a female's share, irrespective of their being son's children or daughter's children, and the nearer descendants exclude the remote ones.

They inherit jointly with the decedent's parents and the 'return' reverts to the daughter's children, males or females, in the same manner as it does to the daughter. If the husband or the wife inherits with them, they are entitled to their minimum share. [1](#)

[1](#). See al-Jawahir, al-Masalik and other books on Imami fiqh. The whole text quoted here is from al-Shaykh Ahmad Kashif al-Ghita's *Safinat al-najat*, which I have preferred to the text of my own book *al-Fusul al-Shar'iyyah*, because it is more lucid and comprehensive.

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