

The Inheritance of Paternal and Maternal Uncles and Aunts

The four schools say: Aunts, both paternal and maternal, uterine paternal uncles and all kinds of maternal uncles and aunts do not inherit with full or agnate paternal uncles and their sons. ¹ Hence if there exists a full or agnate paternal uncle or his son, all the above-mentioned will be excluded from inheritance because they belong to the class of distant kindred, whereas he belongs to the class of residuaries, and according to them the residuaries supersede the distant kindred; rather, the Shafi'i and the Maliki schools do not consider them capable of inheriting at all, as mentioned repeatedly above.

A full paternal uncle inherits in the absence of full or agnate brothers and their sons, and not with full and agnate sisters, because though residuaries, they (the sisters) supersede the paternal uncle in the application of the doctrine of *ta'sib*.

A full paternal uncle inherits jointly with the daughter and the mother, because the two inherit as sharers and he as a result of *ta'sib*, and when a residuary inherits jointly with a sharer, the sharer takes his share and what remains of the estate goes to the residuary. And if there is no sharer at all, the residuary receives the whole estate.

Accordingly, if there are daughter's children or daughter's son's children with full or agnate paternal uncle or their sons, according to the four schools the whole estate will go to the uncle or his son to the exclusion of the daughter's children, even if there happen to be males among them. According to the Imamiyyah the opposite applies and the whole estate is inherited by the daughter's children to the exclusion of the paternal uncle.

In the absence of a full paternal uncle, the agnate paternal uncle takes his place, and in his absence the full paternal uncle's son. As to the mode of inheritance of a full paternal uncle and those who take his place, he takes, as pointed out earlier, the whole estate in the absence of all sharers, and in their presence he takes the remainder. To sum up, a full or an agnate paternal uncle is exactly like a full brother, or an agnate brother in the absence of a full brother.

The nearer 'paternal uncle' will supersede the distant one; hence the decedent's paternal uncle supersedes his father's paternal uncle, and the father's paternal uncle supersedes the grandfather's paternal uncle. Similarly, the full paternal uncle supersedes the agnate paternal uncle. In the absence of full and agnate paternal uncles and their sons, according to the Hanafi and the Hanbali schools, uterine paternal uncles, paternal aunts of all kinds, maternal uncles and maternal aunts become entitled to inherit.

If one of them exists solely, he will receive the whole estate, and if they exist together, the agnates will receive two-thirds and the cognates one-third. Hence if the decedent is survived by a maternal uncle and a paternal aunt, the uncle will receive one-third and the aunt two-thirds. The uterine maternal uncles and aunts distribute the estate in the proportion of a male receiving twice the share of a female, despite the fact that the uterine brother's children distribute the estate by allocating equal shares to males and females.² ('Abd al-Muta'al al-Sa'idi's *al-Mirath fi al-Shari'at al-Islamiyyah, fas l irth dhawi al-'arham*)

The Imamiyyah state: In the absence of the parents, children, children's children, brothers, sisters, brothers' and sisters' children and the grandparents, the uncles and aunts, both maternal and paternal and of different kinds, become entitled to the estate. Some among them inherit to the exclusion of some others, while others among them inherit jointly.

If there exist paternal uncles and aunts and there are no maternal uncles and aunts with them, then a single paternal uncle or aunt is entitled to the entire estate irrespective of whether he or she is a full, an agnate, or a uterine uncle or aunt.

If there exist two or more paternal uncles and aunts related similarly to the decedent, and they are all full or agnate, they will distribute the estate with the male taking twice the female's share. If they are all uterine, they will distribute it without any difference between males and females. But if the paternal uncles and aunts differ in the manner of their relationship with the deceased (some being full, some agnate and others uterine) then only the agnates among them will be excluded from inheritance by the full paternal uncles, for they inherit only in the latter's absence. The agnate paternal uncle and aunt will take the same share which the full paternal uncle and aunt would take if present.

If full or agnate paternal uncles and aunts exist together with uterine paternal uncles and aunts, a sole uterine uncle or aunt will be entitled to one-sixth, and if more than one, they together will be entitled to one-third, sharing it equally without differentiating between the sexes.

If there exist maternal uncles and aunts but no paternal uncle or aunt, a sole maternal uncle will take the whole estate irrespective of his being full, agnate or uterine. If there are two or more maternal uncles or aunts who are similarly related to the deceased (i.e. they are all either full or agnate or uterine), they will distribute the estate equally among themselves, a male receiving an equal share with a female.

But if they differ in the manner of their relation with the deceased (i.e. some are full, some agnate and

others uterine) only the agnates among them will be excluded by their full counterparts. Where the full or agnate maternal uncles or aunts inherit with their uterine counterparts, a sole uterine uncle or aunt will take one-sixth, and if more than one, they together will be entitled to one-third, sharing it equally without differentiating between the sexes, with the remainder going to the full or agnate maternal uncles and aunts who also share it equally without differentiating between the sexes.

If a paternal and a maternal uncle or aunt inherit together, the maternal uncle or aunt will take one-third irrespective of their being one or more, and the paternal uncle or aunt two-thirds irrespective of their being one or more. The maternal uncles and aunts will distribute their share of one-third as they distributed it while they were the sole heirs in the absence of paternal uncles and aunts, and the paternal uncles and aunts will also similarly distribute their share of two-thirds.

In the absence of all paternal and maternal uncles and aunts their children take their place, each of them taking the share of the person through whom he or she is related, irrespective of there being one or more. Hence if one paternal uncle has a number of children and another paternal uncle only one daughter, the single daughter will be entitled to a half and the children of the other uncle to the other half.

The nearer from among the paternal or maternal side excludes the remote from its own side as well as from the opposite side; hence a paternal uncle's son does not inherit in the presence of a paternal or a maternal uncle, except in the particular instance where a full paternal uncle's son is present with an agnate paternal uncle, when the whole estate goes to the paternal uncle's son. A maternal uncle's son does not inherit in the presence of a maternal or a paternal uncle; hence if a paternal uncle's son is present with a maternal uncle, the entire estate goes to the maternal uncle, and if a maternal uncle's son is present with a paternal uncle, the whole estate goes to the paternal uncle.

Paternal and maternal uncles and aunts of the decedent and their children supersede in inheritance the paternal and maternal uncles and aunts of his father. Every child born to a nearer relative supersedes the remoter relative. Hence if a paternal uncle's son exists with the father's paternal uncle, the former is entitled to the estate, and similarly a maternal uncle's son when present with the father's maternal uncle, following the rule of the supersedence of the nearer relative.

If the husband, or wife, is present with paternal and maternal uncles or aunts, the husband or the wife will be entitled to his or her maximum share, the maternal uncles or aunts to one-third, irrespective of their number, and the remainder will go to the paternal uncles or aunts irrespective of their number. Hence the reduction of share is borne by the paternal uncle in all cases where the spouse is present along with the paternal and maternal uncles.

Therefore. if the husband is present with a maternal uncle or aunt and a paternal uncle or aunt, the husband will take three-sixths, the maternal uncle or aunt two-sixths, and the paternal uncle or aunt one-sixth; and if there is a wife, she will take three-twelfths, the maternal uncle or aunt four-twelfths,

and the remainder of five-twelfths will go to the paternal uncle or aunt.

[1.](#) They don't inherit only with the paternal uncle's daughters; their presence is similar to their absence in the presence of paternal uncle's sons. Therefore, the four schools concur that if a decedent is survived by a full or agnate paternal uncle's son accompanied by the latter's own full sister, he will be entitled to the whole estate to her exclusion.

[2.](#) The Sunni fuqaha' have extensively discussed about distant kindred, whom they consider a third category of heirs after the sharers and the residuaries. They mention different situations and conditions, which cannot be recorded, enumerated and comprehended easily. Hence the instances mentioned here suffice to present a general outline of them. Those interested in details should refer to al-Mughni, 3rd ed. vol. 6, and al-Sa'idi's Kitab al-mirath fi al-Shari'at al-Islamiyyah.

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