

The Inheritance of the Spouses

The schools concur that the husband and the wife inherit jointly with all other inheritors without any exception, and that the husband is entitled to half the wife's estate if she does not have any child, neither from him nor from another husband, and to one-fourth if she has a child, either from him or from another husband. They also concur that a wife is entitled to one-fourth if the husband has no child, neither from her –nor from another wife, and to one-eighth if he has a child from her or from another wife.

The four Sunni schools observe: Here, by 'child' is meant only the decedent's own offspring or the son's child, irrespective of its sex. A daughter's child, on the contrary, does not prevent a spouse from taking his or her maximum share; rather, the Shafi'i and the Maliki schools say: The daughter's child neither inherits nor excludes others because it belongs to the category of distant kindred.

The Imamiyyah state: By 'child' is meant one's offspring as well as the children's, children irrespective of their being sons or daughters. Hence a daughter's daughter, exactly like a son, reduces the share of either spouse from the higher to the lower value.

If there are many wives, they will distribute their share of one-fourth or one-eighth equally among themselves. The schools concur that if a person divorces his wife revocably and then one of them dies during the period of *'iddah* of the divorcee, they will inherit from each other as if the divorce had not occurred.

The schools differ regarding the situation where there is no other heir except the spouse as to whether the remainder will return to the spouse or escheat to the *bayt al-mal*.

The four schools say: It will return neither to the husband nor to the wife (*al-Mughni*).

The Imamiyyah are divided on this issue into three groups, each having a different opinion.

The first view is that it will return to the husband and not to the wife; this is the preponderant opinion and the legists have acted accordingly.

The second view is that it returns to both the husband and the wife in all situations.

The third view is that it returns to both in the absence of accessibility to a just (*'adil*) imam, as is the case at the present, and it returns to the husband and not the wife in the presence of an *'adil* imam. This is the opinion of al-Saduq, Naji al-Din ibn Sa'id, al-'Allama al-Hilli and al-Shahid al-'Awwal, and their argument is that some traditions say that it returns to the wife while some other traditions say that it does not return to her; hence we consider the first group of traditions to be applicable in the absence of an *'adil* imam and the second group of traditions to be applicable in the event of his presence.

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