

[Home](#) > [Inheritance according to the Five Schools of Islamic Law](#) > [The Mother's Share in Inheritance](#) >

Does the Mother Take One-Third of the Remainder?

The Mother's Share in Inheritance

Following are the different situations relating to the mother's inheritance:

1. The Imamiyyah observe: The mother is entitled to the whole estate in the absence of the father, children, children's children and spouse.

The other schools say: The mother will not receive the whole estate except in the absence of all sharers and residuaries, i.e. in the absence of the father, the paternal grandfather, children, children's children, brothers, sisters, their children, grandfathers how highsoever, paternal uncles and their children. As to the presence of grandmothers, they do not prevent her from inheriting the whole estate, because all of them are excluded by her in the same manner as the grandfathers are excluded by the father. Similarly, maternal uncles and aunts do not prevent her from inheriting the whole estate, because they are related to the decedent through her and one who is related through another person is excluded by that person.^{[1](#)}

2. If the situation mentioned in the first mode prevails along with the presence of a spouse, the spouse will take his/her maximum share and the remainder will go to the mother.

3. If with the mother are present a son, or sons, or sons and daughters, or son's son how lowsoever, according to consensus she will take one-sixth and the remainder will be taken by the others.^{[2](#)}

4. If a single daughter inherits with the mother and there are no other residuaries, such as the paternal grandfather, brothers, and paternal uncles, and no sharers, such as sisters and spouse, the mother will receive one-sixth and the daughter half as sharers, and the remainder, according to the Imami, the Hanafi and the Hanbali schools, will be shared by both after dividing it into four parts, the mother receiving one part and the daughter three parts.

The Shafi'i and the Maliki schools state: The remainder will escheat to the *bayt al-mal*, and it has been mentioned in *al-Iqna' fi hall al-faz Abi Shuja'* (vol. 2) that if an –orderly system of *bayt al-mal* does not exist, as when the ruler is unjust, the remainder will return to the sharers in proportion of their shares.

5. If there are two daughters inheriting with the mother in the absence of all other sharers and

residuaries, as in the preceding illustration, the views expressed there apply here as well, except that the remainder here will be divided into five parts, one part going to the mother and the other four to the two daughters.

6. The case where she inherits with the father has been discussed in the preceding section regarding the father's share in inheritance.

7. Where she inherits with the paternal grandfather in the absence of the father, the four Sunni schools observe: The paternal grandfather will represent the father, and the rule is the same in both cases.

The Imamiyyah say: The mother is entitled to the whole estate, to the exclusion of the grandfather, because he belongs to the second category and she to the first. As per consensus, the grandmothers, paternal as well as maternal, do not inherit with the mother and, similarly, the maternal grandfather too does not inherit with her. According to the Sunni schools, none of the grandparents except the paternal grandfather inherit with the mother, and none of them inherit with the father except the maternal grandmother. But the Imamiyyah do not consider grandparents capable of inheriting with either parent.

8. If a full or consanguine brother is present with the mother, she will, according to the Sunni schools, take one-third as sharer and the remainder will go to the brother on account of *ta'sib*, and if there are with her two full or consanguine or uterine brothers or sisters,³ she will take one-sixth and the remainder will be taken by the brothers, because she is excluded by them from inheriting more than one-sixth.

According to the Imamiyyah, she will take the whole estate by share and 'return,' to the exclusion of the brothers.

9. If, along with her, are present a full or consanguine sister or two such sisters, the rule is like the case where a daughter or two daughters are present with her, as mentioned in the fourth and fifth cases.

10. If a single uterine brother or sister is present with her, and there exists no other sharer or residuary, he/she will take one-sixth and the mother one-third, as sharers, and the remainder will 'return' to them in proportion to their shares. If there are with her two or more uterine brothers or sisters, they and the mother will each take one-third as sharers and the remainder will be proportionately shared by them together, because that which remains after the sharers have been assigned their shares returns to them proportionately in the opinion of the Hanafi and Hanbali schools, and escheats to the *bayt al-mal* according to the Shafi'is and the Malikis. The Imamiyyah give the whole estate to the mother.

11. If a full sister and a consanguine sister are present with her, the mother will take one-third, the full sister half, and the consanguine sister one-sixth to complete the two-thirds (for her one-sixth and the full sister's half add up to two-thirds, the maximum which two or more sisters can inherit). The Imamiyyah entitle the mother to the whole estate.

12. According to the Sunni schools the presence with her of full or consanguine paternal uncles and

aunts is like that of full or consanguine brothers with respect to inheritance and their respective shares.

13. Where there are with her a paternal uncle and a uterine sister, the mother will take one-third, the sister one-sixth, and the remainder will go to the uncle. Hence the uncle who, according to the Imamiyyah, belongs to the third category, inherits together with the sister (who belongs to the second category) and the mother (who belongs to the first category). The Imamiyyah entitle the mother to the entire estate.

14. If with the mother are present the husband, uterine brothers and full brothers, this case is called *al-mas'alat al-himariyyah* (the case of the donkey), because in such a case the Caliph 'Umar had recognized the uterine brothers' right to inheritance and excluded the full brothers, which led one of the full brothers to say:

يَا أَمِيرَ الْمُؤْمِنِينَ هَبْ أَنْ أَبَانَا كَانَ حِمَارًا

O Leader of the Faithful, assume that our father were a donkey.

Thereat, 'Umar changed his decision and included them among the heirs.

The Hanafi and the Hanbali schools observe: The husband will take half, the mother one-sixth, and the uterine brother one-third. The full brothers will receive nothing as they are residuaries and the inheritance is exhausted by the sharers alone; i.e. every sharer takes his share and nothing remains for the residuaries. The Maliki and the Shafi'i schools say: The one-third will be distributed among the full and uterine brothers, a male receiving the share of two females (*al-Mughni*, vol. 6, p. 180, 3rd ed.)

The Imamiyyah state: The whole estate goes to the mother.

15. If only a daughter's daughter is present with the mother, according to the Sunni schools, the mother will take one-third as sharer and the rest as 'return' and the daughter's daughter will receive nothing.

The Imamiyyah say: The position of the mother with the daughter's daughter is similar to her position with the daughter, as mentioned in the fourth case.

Does the Mother Take One-Third of the Remainder?

The Sunni schools observe: If the father and a spouse are present with the mother, the mother will take one-third of what remains after the spouse has taken his/her share, not a third of the undivided estate. The stated reason, as mentioned in *al-Mughni*, is that if she takes one-third of the original estate, her share will exceed the father's share. Al-Shaykh Aba Zuhrah says in *al-Mirath 'inda al-Ja'fariyyah*: "The father's taking half the mother's share appears far-fetched from the viewpoint of the intent of the Qur'anic verse."

He means that on the basis of the mother's taking one-third from the original estate and not from the remainder, her share will be 8/24, the husband's share 12/24 and the father's 4/24, which is half the mother's share. It is improbable for the verse to have intended such a result. But if she takes one-third of the remainder, her share will be 4/24 and the father's will be 8/24, which is twice her share; this is more probable and possibly what might have been intended by the verse.

The author of *Kashf al-haqa'iq* says: If the paternal grandfather is present instead of the father, he will not cause the mother to take one-third of the remainder; rather, she will take one-third of the original estate. Accordingly, this situation arises only when the father and a spouse are present with the mother, and other instances are not covered by it.

The Imamiyyah say: The mother is entitled to one-third of the original estate and not to a third of the remainder, irrespective of the presence of a spouse because the *zahir* (literal sense) of the Qur'anic verse:

فَإِلَيْهَا النُّسُبُ

for his mother is one-third (4:11)

proves that it is one-third of what the decedent has left, and this statement has not been restricted to a situation where a spouse is not present. Further, the rules of the *Shari'ah* are not derived by reasoning or by applying the criterion of improbability.

- [1.](#) The rule that one who is related through another is excluded by the other, is fully accepted by the Imamiyyah, while the Sunni schools consider the uterine brothers an exception. Hence, according to them, they inherit with the mother though they are related through her. The Hanbalis are of the opinion that a paternal grandmother inherits along with the father, i.e. along with her son. (al-Mughni, 3rd. ed., vol. 6, p. 211)
- [2.](#) According to the Sunni schools, the mother will receive one-sixth if the decedent has children or son's children, how lowsoever. As regards the daughter's children, their presence or absence is of no effect and they do not stop the mother from inheriting more than one-sixth. According to the Imamiyyah, the daughter's children are like one's own children. Hence, the daughter's daughter is considered a child who excludes the mother from inheriting more than one-sixth, exactly like a son.
- [3.](#) Kashif al-haqa'iq fi sharh Kanz al-daqa'iq, vol. 2, and al-'Iqna' fi hall al-faz Abi Shuja, vol. 2, bab al-fara'id.

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