Principles and Practice of Succession under Islamic Law

By
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1.0 PREAMBLE:

I must start this paper by giving praise to Allah, the most beneficent, the most merciful. We thank Him for showing us the right way without whose blessings we would have been lost. We thank Him for His countless blessings and mercy on us and we vow that our lives shall continue to be devoted and dedicated to Him in worship so that in the end, we shall all have cause to say we thank You O! Allah, the Lord of the worlds-known and unknown to us.

We supplicate to Allah to continue to shower His blessings on Prophet Muhammad (s.a.w) who is sent as MERCY to the whole universe. May such blessings be on his household, his companions and on all those who follow his way until eternity. May the peace and blessings of Allah be with us all, amin.

Mylord, Chairman of session sir, my other noble lords, I wish to most humbly state here that under Islamic Law, a Muslim must continue to appreciate honour done him by human beings like him. The Islamic Law Principle states that: whoever is not grateful to people who accord him honour and privilege will never be grateful to Allah. Another principle says: whoever is ungrateful for honour and privilege done him by Allah, and by extension, by human beings like him, shall be severely punished by Allah.
For these two reasons and in the bid to comply with the divine directives, I most sincerely express my gratitude to the Administrator of this great institute the NJI, Hon. Justice R.P.I. Bozimo, OFR for this unique opportunity accorded me to deliver a paper titled: *Principles and Practice of Succession under Islamic Law* at this refresher course for Judges and Kadis with the theme: Modernizing Judicial Practice and Procedure. Similar gratitude is expressed to the hardworking management staff and to those other officers who make up the greatness of this Institute. I am indeed very grateful.

Chairman of session Mylord sir, I must also use this opportunity to salute all my former colleague Judges and Kadis for whom this refresher course is being organized. Please kindly accept my regards and high esteem to you all, mylords. *Assalam Alaekum Warahmatullahi Ta’ala Wabarakatuhu.*

### 2.0 INTRODUCTION

Mylord, Chairman of session and this house, I think I should quickly disclose here at the start of this paper that under Islamic Law, one of the most difficult if not the only most difficult subject is the subject of inheritance. It is energy sarping, very technical with all its arithmetic intrigues. Prophet Muhammad (s.a.w) is reported to have said that half of knowledge is the subject of inheritance (succession). He said:

*Acquire and teach the knowledge of inheritance because it is half of knowledge. It is easy to forget because it slips away easily and it is the first set of knowledge that will escape my people.*

Therefore, as a student of Islamic Law, I cannot claim that I am an authority on the subject matter.
However, for the purpose of this refresher course, I only need to remind Mylords, Judges and Kados of the various Islamic Law principles and practice interlocked together. Precisely I have endeavored to address this topic from the following perspectives, namely: meaning and connotation of succession, estate or inheritance under Islamic Law, practice of the Law in selected customs and traditions and the detailed reforms introduced by Islam which are in practice today and which shall be in practice until eternity.

2.01 MEANING AND CONNOTATION:

The word *Waritha* in Arabic language simply means “to inherit or “to be inherited”. One can say a son inherited the honour, the position, the knowledge and what have you, of his father. It is in this sense that Allah says: “…….and Sulaiman inherited Daud” (Q27:16)

It is also in this sense that prophet Zakariyyah supplicated to Allah when he said:

\[ O! \text{ my Lord, leave me not without off-spring though you are the best of inheritors” } (Q21:89). \]

The word also means the eventual divine possession by Allah of everything in this world and in the hereafter. It is in this sense that the Holy Qur’an tells us that:

\[ \text{To Allah belongs the inheritance of the heavens and earth } (Q3:180) \]
And that:

*We are indeed the inheritors (of everything) (Q28:58)*

وكنا نحن الوارثين (القصص: 58)

But when the word is used in legal terminology, it means, *simpliciter* succession when the property of a dead person is gathered, collated, valued and then shared among those who are entitled to it among his relations. In this sense, the word is used in its noun form as *Mirath* another word for it is *Al-faraid*. Sheikh Muhammad Sabuni a great scholar of this contemporary period defines it as: “Legal transfer of control of the estate from the deceased to his heirs whether the estate is wealth, landed property or legal rights and obligations (See Al-Mawarith by Sheikh Muhammad Sabuni P.34)

انتقال الملكية من الميت، إلى ورثه الأحياء، سواء كان المترك مالاً أو عقاراً، أو حقاً من الحقوق الشرعية.

This means that inheritance is the process which makes a person to be entitled to the property of a deceased person from the legal point of view. By extension, this connotation also covers the order, the arrangement by which the heirs may inherit the property. There are quite a number of ways by which the estate of the propositus is shared among the heirs depending on the customs and traditions of each society and culture. For our purpose this morning, we shall consider very briefly, how inheritance takes place among the Igbos, Yorubas and Hausa/ Fulanis, the three major tribal groups in Nigeria. Many other ethnic groups take after these three groups. We shall also consider very briefly too how it used to take place in the pre-Islamic Arabia and in some other world civilizations.
3.0 PRACTICE OF INHERITANCE IN SOME SELECTED TRADITIONS AND CUSTOMS

3.1 THE IGBO CUSTOM

Despite the variations in the Igbo inheritance system, the general principles are basically the same. Inheritance devolves on the first male child. This principle determines the right to succeed to property in Igboland. The interest of other persons related to the deceased is considered along this line. The first male child otherwise known as Okpara, takes over the whole property, satisfies himself first and then decides what portion goes to who and who should not have anything at all (see pages 3, 5, 6 & 10 of Dawodu, M.M). Under this system, females do not have right at all to inherit landed property. That is to say that mother, daughter, wife, sister (no matter how the sisters are closely related to the deceased) have no inheritance right in respect of the real estate of the deceased. In another development, if the deceased is a polygamist, his estate is distributed in relation to the number of wives as there are, but have sons in them. This is known as Usoekwu formula. The general rule is that the eldest son takes the largest share while the youngest takes the smallest. Instead of a daughter to inherit, she will be maintained only by the Okpara until she is married out or until she dies. Similarly, she may be loaned a portion of her father’s land for her business. This right however terminates when she marries; or when she leaves the family, or when she dies. With respect to widows, they have nothing other than to be maintained – in terms of housing, feeding and clothing – until they decide to vacate their late husbands’ residence. But if they choose to remain in the family, they will continue to enjoy these rights until they die. Funnily enough, if a widow is not blessed with a child, or not blessed with a male child, the eldest son of the deceased reserves the right to expel her from the family compound without any compensation from either the personal or the real estate. That is the extent to which widows are treated in that custom. I however stand to be corrected now.
3.2 THE YORUBA CUSTOM

As for the Yoruba custom in relation to succession, there are two main methods for estate distribution: sharing per capital, Ori O Jori, or sharing per stripe, Idi Igi. (see pages 33-36 of Dawodu, op. cit.) The former is used in a situation where the deceased is a polygamist and all the wives had children by him; while the latter is simply distribution according to the number of wives regardless of whether or not they have children for the deceased. It should be noted here that due to the polygamous nature of the Yorubas, Idi Igi system becomes the general principle while Ori O Jori system is the exception. By this general principle, all the wives take equal share of the estate regardless of the number of children each wife has. Each wife now decides how she administers her share together with the shares of her children. One basic difference noticeable between the Yoruba and the Igbo customs here is that whereas the Igbo system has only infinitesimal regard for female heirs in regards to inheritance, the Yorubas accord it regard and, as of right, consider the wife, the daughter, the mother, the sister etc as co-sharers in the estate of the deceased person. It is however a taboo for father to share in the estate of his son, daughter, brother or sister. But in the case of the death of wife, her parents, husband, children, brothers and sisters can inherit her. Before we leave this point, I must say that the Ori O Jori method is akin to the Islamic method in the sense that the estate is shared among the male and female children whereby the sons have a little more shares than the daughter in terms of quantity. No wonder therefore the Yorubas prefer Ori O Jori system to the Idi Igi system simply because every member of the family is considered in his/her individual capacity. Finally, like Okpara in Igbo custom, the eldest son of the Yoruba deceased person otherwise known as Dawodu, also has greater influence in how the estate of his late father is shared.

3.3 THE HAUSA FULANI CUSTOMS

Let’s now briefly consider the system of inheritance in a typical Hausa Community. I may not be able to go far in this consideration because the system has, for time immemorial been greatly influenced by the Islamic culture. In his book under reference, M.M Dawodu wrote that, in the cause of
his research on Hausa/ Fulani customs as it relates to succession, many 95 years old people interviewed by him did not know the pre-Islamic customs of their people concluding that: “The factor of Islam--- has virtually wiped out traditional customs” (see page 18 Dawodu, M.M ibid) This is to say that the Hausa/ Fulanis have no other system other than the one stipulated by Islam and we shall, very soon come to discuss the details of this great system.

3.4 INHERITANCE IN SOME OTHER CIVILIZATIONS

May we now briefly see how inheritance has been in some other civilizations. In Greek-Roman Law, Jewish Law and Indian Law, to mention but a few, daughters, widows and other female relations have no share in inheritance. Daughters are discriminated against because the moment they marry, they cease to be members of the family. Similarly widows are excluded because they are considered as property to be inherited (see page 3 of Oniye, M.A).

Succession, both among the Arabs and non – Arabs before Islam, was quite unsatisfactory. The rules excluded women and children from inheriting anything in the estate of their deceased close relations. Their argument was that only those who could go to battle in order to defend the clan were eligible to inherit. And women and children could not go! A woman in this regard was considered to be part of her husband’s estate to be inherited. Therefore, she was to be valued and shared along with the other property.

_Bn jarir reported from bn Abbas may Allah be pleased with both of them, saying: when revelation came on inheritance where Allah made shares compulsory for the male child, the female child, and for the two parents, some men did not like it and said: how can a woman be given one quarter (of property), one over eight and even give a daughter up to a half and even share a child out of the estate! And these people do not partake in war and don’t bring home any booty from the war front! Stop talking about this. The messenger of Allah will soon forget it! Or, do we tell him so that he can change the law. They then went to the prophet (s.a.w) saying: o the messenger of Allah! Must we share a child (out of Inheritance)? He has not
been useful at all. Must we even share a girl half of what her father left and she has not been riding on horseback neither has she participated in fighting any war? (See: Al-Mawarith by sheik Muhammad Ali Sabuni P.21)

This was the position of inheritance as it affected the womenfolk and children before Islam.

4.0 THE REFORMS INTRODUCED BY ISLAM

The reform introduced by Islam into the rules relating to inheritance is twofold: it makes the female a co-sharer with the male (whether young or old) and also divides the property of the deceased person among his heirs on a democratic basis, instead of handling it all over to the eldest son, as is done by the law of other climes. The Holy Qur’an is categorical in its general principle on inheritance laid down first as follows:

Men shall have a portion of what the parents and the near relatives leave, and woman shall have a portion of what the parents and near relatives leave, whether there is little or much of it (Q4:7)
The subsequent revelation on this subject matter as largely contained in chapter four of the Holy Qur'an were borne out of the following incident reported in all Hadith books:

*The wife of Sa'ad Bn Rabi came with her two daughters by Sa'ad Bn Rabi’ to the messenger of Allah and said: o messenger of Allah! Here are my two daughters of Saad. Their father was martyred with you on the day of Uhud, and their uncle has taken their property. He has not left any property for them, and they cannot be married unless they have got some property. He said: Allah will decide about that. Then the verse of Inheritance was revealed (Q4:11) so, the prophet sent for their uncle and said: give the two daughters of Sa’ad two-thirds: give their mother one-eighth and what remains is for you. (Bukhari and Muslim)*
This is the basis, the foundation and divine direction of equal rights among Muslim male and Muslim female in the matter of succession. I would not bother you much to quote these verses here because they are lengthy. It will take much of our time and space. Suffice to refer my distinguished audience to them in chapter of women, chapter four verses 7-12. From all these verses it is glaring that a woman is entitled to share inheritance in different capacities. She can share as daughter, mother, wife, sister etc. I therefore crave your indulgence to allow me to briefly discuss these peculiar shares as follows:

(i) **Share as a daughter:**
Where the deceased leaves behind sons and daughters both, each daughter gets equal to half \((\frac{1}{2})\) of the share of each son. If the deceased leaves only one daughter and no son, the daughter is entitled to half \((\frac{1}{2})\) of the inheritance. In case of two or more daughters but no son, the daughter would get two-thirds \((\frac{2}{3})\) of inheritance and share it equally among themselves. (Al-Qur'an 4:11).

(ii) **Share of mother**
If the deceased leaves a child and parents, each of the parents, mother and father, would inherit one sixth \((\frac{1}{6})\) share of the net estate. If the deceased leaves no children and no brothers or sisters and his parents are the only heirs, mother would get one third \((\frac{1}{3})\) and father the remaining two thirds \((\frac{2}{3})\) of the estate. In case where the deceased leaves no child but leaves mother, brothers and sisters, the mother would get one sixth \((\frac{1}{6})\) (share) of the estate (Al-QUR'AN 4:11)

(iii) **Share as a wife**
Where the husband dies leaving no child but his wife, the wife would get one-fourth \((\frac{1}{4})\) of his estate. If he leaves a child or children along with wife, the wife would get one eighth \((\frac{1}{8})\). In case of wives more than one, they would share equally from one-eighth \((\frac{1}{8})\). (Al-Qur'an 4:12)

(iv) **Share as a sister**
If the deceased is not survived by parents and children but leaves behind uterine brother and sister (brother and sister on mother
side) each would get one-sixth ($\frac{1}{6}$) and in case of more such brother and sisters, they would share from one-third ($\frac{1}{3}$). (Al-quran 4:12)

4.1. JUSTIFICATION IN THE SHARE OF MALE BEING TWICE THAT OF FEMALE

It has been noticed that generally the male takes a share double that of a female as his own share. So an explanation of this inequality is necessary. Islam has placed the responsibility of earning livelihood for the family on the shoulders of male members while the females have been exempted from this burden. A woman when she is not married lives with her parents and her father is responsible to pay all her expenses and in case of the death of her father, her brothers becomes responsible for her maintenance and also for meeting her marriage expenses. After marriage she is entitled to maintenance from her husband. In addition to food, clothing and residence, all her expenses are met by her husband. If the husband is poor and she spends out of her personal property for her family, she is entitled to take it back from her husband when the husband is back to comfort.

Besides maintenance, the woman is also entitled to receive dower from the husband which is most essential feature of a muslim marriage. There is no upper limit of dower and she can demand any amount of dower while entering into marriage contract and in case of his death, from his estate as a debt. In old age also the entitlements of the woman for maintenance continues and if her husband dies and she is unable to live on her share of estate of the deceased, she can claim maintenance from her children. Thus it is seen that a woman has practically very few material needs to satisfy on her own account as compared with a man who has been saddled with very heavy economic obligations and liabilities. In this situation there is ample justification for giving a man greater share in the estate of inheritance.

My distinguished audience, I have deliberately gone this far to enable us appreciate justice and fairplay brought about by Islam with regards to inheritance as it affects womenfolk in particular. And with your kind permission, I must say that whoever implements these divine directives
would gain by it and whoever flouts or brushes it aside will have himself to blame. The Almighty Allah is emphatic on this when He says:

These are the limits (set by) Allah (or ordainments as regards laws of inheritance) and whosoever obeys Allah and his messenger (Muhammad s.a.w) will be admitted to Gardens under which rivers flow (in paradise), to abide therein, and that will be great success. An whosoever disobeys Allah and his messenger, and transgresses his limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment (Q4:13,14)

4.2 THE OTHER REFORMS

May I at this point treat briefly the other reforms introduced by Islamic Law to succession. These reforms include those of:

a) Prior charges on an estate
b) Grounds of inheritance
c) Conditions of inheritance
d) Impediments to inheritance among others

4.2.1 PRIOR CHARGES

There are four basic charges deductible from the deceased property before distribution. These are: funeral expenses, debts, actual and ascertained liabilities and Will.

(i) **Funeral Expenses:** Islam does not saddle the responsibility of funeral expenses on the relations of the deceased person if he left property. All such expenses may be met from his estate. And these
expenses include cost of washing, dressing of corpse, preparing the grave by digging and even the cost of transporting the corpse to the cemetery.

(ii) **Debts:** This aspect can be viewed from two main perspectives: settlement of all debts he owed when alive but which he could not pay before his demise. This includes personal debts which may include bank loans. And to recover all debts owed him by others for the purpose of distribution among his heirs.

(iii) **Actual and ascertained liabilities:** this is slightly different from ordinary debts in the sense that it is the debt owed Allah like **Zakat.**

(iv) **The Will (if any):** **Will** or **Wasiyyah** is the transfer of a physical estate or investment, making it effective after death. The Islamic law stipulates that it cannot be more than one-third of the whole estate after deduction of debts owed and the funeral expenses. The law also stipulates those who can benefit from such **Will.** The prophet (s.a.w) said:

\[\text{لا وصية للوارث} \]

“Certainly, whoever is qualified to inherit shall not qualify for Will”.

**Will**, certainly, is a very important branch of Islamic law of succession with its own set of rules and regulations. We cannot dabble into its details here for time and scope of this topic.

### 4.2.2 QUALIFICATIONS REQUIRED FOR SUCCESSION

The basis of claim to inheritance have been established to be four, namely: **Nasab** (blood relationship, **Nikkah** (Marriage), **Walaa** (slave-master relationship) and **Baetul Mal** (public treasury). **Nasab** can further be classified into two: male and female relationship. In the male category there are thirteen (13) probable heirs while in the female category, we have eight (8) heirs. Allow me to run through the list as follows:
Male

1. Son
2. Son’s son
3. Father
4. Grand father (how high)
5. Full brother
6. Consanguine brother
7. Uterine brother
8. The son of full bother (i.e nephew)
9. The son of consanguine brother (i.e nephew)
10. The full brother of the father (i.e uncle)
11. The paternal half brother
12. The son of the full brother of the father (i.e Uncle’s son)
13. The son of the paternal half brother

Number 12 and 13 are also referred to as Cousins

Female

As for the female heirs, we have:

1. Daughter
2. Son’s daughter
3. Full sister
4. Consanguine sister
5. Uterine sister
6. Mother
7. Paternal grandmother (how high)
8. Maternal grandmother (how high)

Out of all these twenty-one (21) probable heirs, six (6) of them stand out as those who must inherit so long they survive the deceased person. In other words, they are never excluded. They are known as Ashabul Faraid, the Qur’anic heirs and they are: father, mother, husband, wife (wives), son(s) and daughter(s).
Marital relationship shall give right of inheritance to either spouse. What is important in this case is that such marriage should have met the yard stick of the Islamic law as valid as at the time of the demise of the *propositus*. If such marriage was declared invalid, inheritance becomes barred. Like the issue of *Will*, this is another subject matter which may consume pages upon pages before it could be exhausted, so, we stop at that with your kind permission, mylords.

In the case of slave-master relationship, *Walaa*, the slave is barred outright to inherit his master or mistress. But the master or mistress inherits everything the slave left behind including his family if he had not been set free before his death. But in a situation where the slave had been set free or emancipated before his demise and he is survived by his wife and daughter(s), his estate will be inherited by his wife and daughter children only while the residue will go to his master or mistress. But in a situation where the freed slave is survived by his wife, sons and daughters (particularly son(s)) the right of the former master or mistress to inherit as residuary lapses outright. This is because the male issue will now be the residuary to his deceased father’s property.

The public treasury, *Baetul-Mal*, as an institution can take over the estate of the *propositus* as “heir” in some circumstances We can give two instances here. One, the whole of the estate goes to the public treasury in a situation where there is nobody who qualifies to inherit by virtue of blood-relationship, marriage or being a former master or mistress of an emancipated slave. Another instance is when the late Muslim, although survived by certain heirs but when none of these heirs falls in the category of a residuary, *Asib*. In this particular circumstance, the public treasury becomes residuary where the balance will go after the qualified or identified heirs have been given their dues.

On the fractions that may be due to those who qualify to inherit, I decided to reproduce the table as contained in the fantastic work of His Lordship, Hon. Justice M.A Ambali (OFR), retired Grand Kadi of Kwara State titled: *THE PRACTICE OF MUSLIM FAMILY LAW IN NIGERIA* (2nd Edition) at pages 275

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and 276. The table which is reproduced below contains the details of the fractions as given in Qur’an chapter 4 verses 11 & 12. It also contains the specific heirs who qualify for those fractions and also the circumstances for their qualification.

4.2.3 CONDITIONS OR CIRCUMSTANCES FOR SUCCESSION

All said and done, the Islamic law lays or stipulates certain conditions or circumstances to be met or ascertained before embarking on estate distribution of a deceased person. Such conditions or circumstances include confirmation of death of the deceased person or declaration of such by a competent court in case of a missing person, Mafqud.

In the case of the Mafqud, he may be declared dead by judicial decree after four years of intensive search and his estate shared to his qualified heir after such declaration. If however he surfaces after his estate has been distributed, he reserves the right to retrieve only what is left which is not yet consumed, like real estate.

Another condition or circumstance that must be ascertained is the fact that Al-Warith, the heir, really survives the maoruth, the Propositus – even if by few minutes breathing after the death of the deceased. The type of relationship of the heir to the deceased should also be ascertained beyond doubt in order to ensure the right to inheritance. Another important condition or circumstance which shall be discussed soonest, in a fair detail, is the absence of what can bar a prospective heir from inheriting anything.

4.2.4 IMPEDIMENTS TO SUCCESSION

The Islamic law has given, in clear terms quite a number of impediments to inheritance. We shall hereunder mention the following seven (7) reasons which will bar an heir from inheriting:
(i) **Bondage:** A slave cannot inherit his master or mistress as he cannot inherit from his wife who is free-born. The parents of a slave cannot also inherit because as said earlier, whatever he leaves behind belongs to his master or mistress.

(ii) **Difference of Religion:** A Muslim cannot inherit a non-Muslim and vice versa. This is because succession is decided on the basis of the deceased personal law. This rule is based on the saying of the Prophet (s.a.w)

“A Muslim cannot inherit a non-Muslim; and a non-Muslim cannot inherit a Muslim. (agreed upon by consensus of the jurists)”

However, the non-Muslim relation (e.g wife) can benefit by way of Will which should not be more than one-third of the net estate.

(iii) **Homicide or Murder:** as a general rule, the murderer of a **Propositus** shall not inherit him. Prophet Muhammad (s.a.w) is also emphatic on this point when he said:

“A murderer has nothing from the estate of the murdered (person)”

However, this rule will apply only when such killing is declared unlawful, unjustifiable, intentional and premeditated. If it is otherwise, he shall inherit him. That is, if the killing is not with the criminal intent (i.e manslaughter) but lawful like carrying out the lawful order of a court of law or in self-defense. What such killer will not benefit from is from the **Diyyah**, blood money paid to the family of the deceased.

(iv) **Disclaim of paternity or pregnancy:** If a Muslim has disclaimed paternity or pregnancy of his wife by due process of Islamic Law, known as the process of **Li’an**, such a husband shall be barred from inheriting his wife in the event of the death of the wife. Such a wife
too upon whom *Li’an* has been pronounced shall not inherit her husband upon his death. Furthermore, neither the man nor the child born out of *Li’an* shall inherit each other. Opposite is however the case between the mother and her child. They shall both inherit each other.

(v) **Illegitimacy:** A bastard child will not inherit from his father but may inherit from his mother. A bastard child is a child born out of wedlock. He is otherwise known as *Waladuz-zina*. He is often referred to as the son of his mother-only. Therefore, there are mutual rights of inheritance as between the bastard and his mother and his other maternal relations. The wife (or husband) and the descendants of a bastard may inherit from him and vice versa. However, he cannot inherit his legitimate brother born during a subsequent marriage.

(vi) **Still birth:** A child who was delivered dead cannot inherit. He can also not be inherited. But the child in the womb is entitled to inherit and a share of the estate must be reserved for him. Imam Malik is of the view that where there is an embryonic heir, the estate distribution should be delayed until he/she is delivered in order to ascertain the sex of the child.

(vii) **Death in the same calamity:** If an accident occurs (e.g motor accident) or other calamities like collapse of building, capsizing of a boat or air disaster and who died first between, for instance, the husband and wife, is unknown neither shall inherit each other. However, the property of each of them would be inherited by his or her living other heirs, like father, mother, son, daughter etc.
4.2.5 HERMAPHRODITE

Mylord, Chairman of session sir, my other noble lords, we can as well mention the case of the share of hermaphrodite in inheritance. He is technically referred to as *Khuntha Mushkilun*. He is a person who has male and female sexual organs or a person who possesses neither male nor female sexual organs.

This is a special case because a share of inheritance should be judiciously allocated to every person based on the group he or she belongs. In a situation where a person possesses the two organs, there is bound to be confusion on which of the shares to be allocated to him; male or female shares?

The *Ulama*, may Allah be pleased with them, have tried a lot to classify hermaphrodites so as to make the distribution of legacy easy for the prospective heirs. They have identified some hermaphrodites to be male whenever they have the following characteristics:

(a) If they urinate through the male sexual organ;
(b) When they attain the age of the maturity and grow beard or can attend to women.

They also identify those with the following characteristics as female:

(a) If they urinate through the female sexual organ;
(b) When they attain the age of maturity and grow breast or are menstruating.

In a situation where the person cannot be identified as male or female by the above mentioned characteristics, there are different opinions, but the most popular and acceptable system of allocating share of inheritance to this type of hermaphrodite is by giving him what could neither be male nor female share. This can be done by first of all, considering him as a male and giving him a share, and also by considering him as a female, and giving him a female share, the two shares are then added together, and divided by two. The average is his share (see page 19 of Abdullah, Sheikh Ahmad Ph.D).
5.0 CONCLUSION

Mylord, Chairman of session Sir, my amiable lords, I have humbly been able to give you all an insight into the principles and practice of succession under Islamic Law. We have been able to see, in particular, how the inheritance used to be in various customs, traditions and in some world civilizations before Islam and may be up to the present time (in some areas). And we have been able to highlight the reforms introduced by Islam which are sustainable now and until eternity. Certainly, I have not said it all. If anything, what I have been able to do is just an ice berg. The other areas which may have been left undiscussed may be addressed by our other seasoned Islamic jurists in the subject matter in the nearest future. May the Almighty Allah continue to guide all of us aright. We supplicate that He shows us the right way and guide us to follow it. He should please endow us with the knowledge that will enable us identify evil ways and to give us the courage to shun those ways.

I thank you all Mylords for your patience and attention. May the Almighty Allah bless you all, ameen.

Assalam Alaekum Warahmatullah Wabarakatuhu.
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<th>ITS SHARERS</th>
<th>REMARKS</th>
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<td>$\frac{1}{2}$</td>
<td>(a) The husband</td>
<td>In the absence of any child</td>
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<td></td>
<td>(b) The Only daughter</td>
<td>When she has no brother to agnatise her</td>
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<td>(c) The only daughter of the son</td>
<td>(i) If there is no direct son of the deceased (ii) If there is no brother to agnatise her</td>
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<td></td>
<td>(d) Full sister (e) Consanguine sister</td>
<td>(i) If there is no direct male child of the deceased or grand male child to bar her. (ii) If she has no other sister or brother of equal status. (iii) That the deceased was not survived by his/her father or grand father.</td>
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<td>$\frac{1}{4}$</td>
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<td>If there is no full brother or sister to the deceased.</td>
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<tr>
<td></td>
<td>(a) husband</td>
<td>(i) In the presence of any child or any grand child even if the child is a product of an illicit union.</td>
</tr>
<tr>
<td></td>
<td>(b) Wife/wives</td>
<td>(i) In the absence of any child or any grand child</td>
</tr>
<tr>
<td>$\frac{1}{8}$</td>
<td>Wife or wives</td>
<td>(i) In the presence of any child or any grand child.</td>
</tr>
<tr>
<td>1/3</td>
<td>(a) Mother</td>
<td>(i) In the absence of any child or any grand child, and in the absence of more than one brother or sister.</td>
</tr>
<tr>
<td>-----</td>
<td>------------</td>
<td>-------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td></td>
<td>(b) Plurality of uterine brothers/sisters or combination of both</td>
<td>In the absence of father, child and that they are not less than two.</td>
</tr>
<tr>
<td>2/3</td>
<td>(a) Daughters</td>
<td>(i) If they do not have a brother to agnatise them.</td>
</tr>
<tr>
<td></td>
<td>(b) son’s daughters</td>
<td>(i) if there is no direct male child or male grand child</td>
</tr>
</tbody>
</table>
|     | (c) full sisters | (i) If the deceased is not survived by any direct male child or grandson.  
(ii) In the absence of a brother to agnatise them.  
(iii) That the deceased is not survived by his/her father to bar them. |
| 1/6 | (a) Father | If the deceased is survived by a child |
|     | (b) Grandfather | (i) If the deceased is survived by a child  
(ii) If he is not survived by father |
|     | (c) Mother | (i) If the deceased is survived by a child or more than one brother/sister |
|     | (d) Grandmother | In the absence of the mother |
|     | (e) Son’s daughter | If there is only one direct daughter to complete 2/3 and be co-sharer. |
| (f) Germane and consanguine sister | If there is only sister to complete 2/3  
(i) if there is only one direct daughter (to complete 2/3)  
(ii) if there is only daughter of the son of the deceased (to complete 2/3) |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(g) Uterine brother or sister</td>
<td>If he/she is not barred from inheriting by father or children of the deceased.</td>
</tr>
</tbody>
</table>
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