FIQH FOR THE ECONOMIST: WEALTH DISTRIBUTION

IBRAHIM NUHU TAHIR
MUHAMMAD YUSUF SALEEM
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PREFACE

The International Institute of Islamic Thought was established as an educational trust in 1981 to promote research and publications to aid in the education of the *ummah*. As part of its IOK agenda, the IIIT has consistently called for a critical evaluation of existing disciplines and their methodologies - a call for epistemological reform based on twin sources of knowledge i.e. revelation and the universe. The aim was to re-mould disciplines taught in universities that would project the Islamic worldview in those disciplines for the betterment of the *ummah* and humanity at large.

The late Ismail Raji al-Faruqi, one of the founders of the IIIT in his IOK-Principles and Workplan (1982) talked about the need to develop textbooks that required 'mastery of both modern knowledge and Islamic heritage' and based on a critical evaluation of both - to have creative synthesis. More recently another co-founder of the IIIT- the late AbdulHamid Abu Sulayman (who was 2nd Rector of the International Islamic University Malaysia from 1988-1998)- initiated the Textbook/Teaching Materials Project (TMP) that was meant to produce books to be utilised for courses being taught at the IIUM. This was backed up with generous research funding from the IIIT.

Since late 2017, the TMP has been introduced not only in the IIUM, but also in a few other institutions of higher learning. Funds are granted to academics teaching a specific course/s to produce a course-book that would be used as a main reference in a particular course/s. Proposals and manuscripts were reviewed and feedback conveyed to the author. In many ways, these books are still 'a work in progress'. They are not meant for commercial purposes and have rather limited distribution. The aim is to utilise these materials in class, to receive further feedback from scholars and others and to keep improving these books until they become standard textbooks to be used in the courses taught.

The book that you have in your hands now is a result of these efforts. The IIIT East and SouthEast Asia Office is pleased to contribute to this project to realise the goals of its founders.

We look forward to constructive input for further improvement.

IIIT East and SouthEast Asia Office
IIUM Gombak, Kuala Lumpur

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CHAPTER ONE: INTRODUCTION

INTRODUCTION

إِنَّ الْحَمْدَ لِلَّهِ نَحْمَدُهُ وَنَسْتَعِينُهُ وَنَسْتَغْفِرُهُ وَنَعُوذُ بِاللهِ مِنْ شُرُورِ أَنْفُسِنَا وَمِنْ سَيِّئَاتِ أَعْمَالِنَا، مَنْ يَهْدِهِ اللهُ فَلَا مُضِلَّ لَهُ وَمَنْ يُضْلِلْ فَلَا هَادِيَ لَهُ وَأَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللهُ وَحْدَهُ لَا شَرِيكَ لَهُ وَأَنَّ مُحَمَّدًا عَبْدُهُ وَرَسُولُهُ.

Praise be to Allāh, we seek His help and His forgiveness. We seek refuge with Allāh from the evil of our souls and our bad deeds. Whomsoever Allāh guides will never be led astray, and whomsoever Allāh leaves astray, no one can guide. I bear witness that there is no God but Allāh and that Muḥammad is His slave and Messenger.

يَـٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوا۟ ٱتَّقُوا۟ ٱللَّهَ حَقَّ تُقَاتِهِۦ وَلَا تَمُوتُنَّ إِلَّا وَأَنتُم مُّسْلِمُونَ

«O you who believe! Fear Allāh (by doing all that He has ordered and by abstaining from all that He has forbidden) as He should be feared. [Obey Him, be thankful to Him, and remember Him always], and die not except in a state of Islam [as Muslims (with complete submission to Allāh)].»

(Āl ʿImrān, Q3:102)

يَـٰٓأَيُّهَا ٱلنَّاسُ ٱتَّقُوا۟ رَبَّكُمُ ٱلَّذِى خَلَقَكُم مِّن نَّفْسٍ وَٰحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَآءً ۚ وَٱتَّقُوا۟ ٱللَّهَ ٱلَّذِى تَسَآءَلُونَ بِهِۦ وَٱلْأَرْحَامَ ۚ إِنَّ ٱللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا

«O mankind! Be dutiful to your Lord, Who created you from a single person (Ādam), and from him (Ādam) He created his wife [Hawwā (Eve)], and from them both He created many men and women; and fear Allāh through Whom you demand (your mutual rights), and (do not cut the relations of) the wombs (kinship). Surely, Allāh is Ever an All-Watcher over you.»

(Al-Nisāʾ, Q4:1)

يَـٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوا۟ ٱتَّقُوا۟ ٱللَّهَ وَقُولُوا۟ قَوْلًا سَدِيدًا
يُصْلِحْ لَكُمْ أَعْمَـٰلَكُمْ وَيَغْفِرْ لَكُمْ ذُنُوبَكُمْ ۗ وَمَن يُطِعِ ٱللَّهَ وَرَسُولَهُۥ فَقَدْ فَازَ فَوْزًا عَظِيمًا

«O you who believe! Keep your duty to Allāh and fear Him and speak (always) the truth. He will direct you to do righteous good deeds and will forgive you your sins. And whosoever obeys Allāh and His Messenger has indeed achieved a great achievement (i.e. he will be saved from the Hellfire and will be admitted to Paradise.)»

(Al-Aḥzāb, Q33:70–71)

فَإِنَّ أَصْدَقَ الْحَدِيثِ كِتَابُ اللهِ تَعَالَى وَأَحْسَنُ الْهَدْيِ هَدْيُ مُحَمَّدٍ ﷺ وَشَرُّ الأُمُورِ مُحْدَثَاتُهَا وَكُلُّ مُحْدَثَةٍ بِدْعَةٌ وَكُلُّ بِدْعَةٍ ضَلالَةٌ وَكُلُّ ضَلالَةٍ فِي النَّارِ.

Verily, the most truthful speech is the Book of Allāh, the best guidance is the guidance of Muḥammad, and the worst affairs are newly invented matters. Every newly invented matter is a religious innovation, and every religious innovation is misguidance, and every misguidance is in the Hellfire.

The objective of this book is to address pertinent issues related to wealth management and distribution within the framework of Islam. It seeks to provide a clear and comprehensive understanding of the topics under discussion, catering not only to students but also to anyone pursuing knowledge of Islamic principles.

The methodology employed in this compilation draws upon the Qur'an, Sunnah, the opinions of the Companions, and the consensus of scholars. In cases of controversy, different perspectives are generally not elaborated upon unless deemed necessary. Instead, the book presents the most authoritative opinions from scholars, as guided by relevant texts, in a succinct manner.

The authors have concentrated on delivering essential information for students in this field of study, prioritizing brevity. The content is organized into chapters by topic, including *bayt al-māl*, *zakāh*, voluntary *ṣadaqah*, *hibah*, *waqf*, *waṣiyyah*, estate administration, and inheritance. The discussion commences with *bayt al-māl*, as it serves as the central theme that intersects with the other topics. It is imperative for students to familiarize themselves with *bayt al-māl* prior to engaging with subsequent subjects.

We beseech Allāh (Exalted be He) to render this work beneficial for the Ummah.

CHAPTER TWO:
BAYT AL-MĀL
(PUBLIC TREASURY)

LEARNING OUTCOMES

By the end of this section, the students should be able to:

1. Know the meaning of *Bayt al-māl* and a bit of its history.
2. Identify the sources of income of *Bayt al-māl*.
3. Learn more about the polices and expenditures of *Bayt al-māl*.

Baytul-māl, or *baytu māl al-muslimīn*, denotes an institution tasked with overseeing and managing the wealth of the Islamic state. During the era of Prophet Muḥammad (Peace and Blessings of Allāh be upon him), there was no singular, established framework designated for the collection of all Muslim wealth, such as *zakāh*, *jizyah*, *ṣadaqah*, and the spoils of war. The formal establishment of this institution began during the period of *the Rightly Guided Caliphs*, particularly under the governance of ʿUmar bin al-Khaṭṭāb (May Allāh be pleased with him). This development was prompted by the substantial wealth amassed by the Ummah during their rule, perceived as a divine blessing from Allāh (Exalted be He).

The functions performed by *bayt al-māl* in that era can be likened to the responsibilities of a contemporary finance ministry. Accordingly, any property that is not individually owned but is communal and belongs to the public is classified as the property of *bayt al-māl* (public treasury). It is not requisite for such property to be physically located within the treasury's vaults. Any revenue generated for the state that is not explicitly allocated by *Sharīʿah* to a specific group of Muslims, but which is recognized as belonging to the broader Muslim community, thus constitutes part of the public treasury. The primary functions of *bayt al-māl* include the collection, management, and allocation of public funds. The *Imam* has the authority to utilize these funds to address the general expenses of the state, as substantiated by relevant narrations:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ قَالَ: قَالَ رَسُولُ اللهِ ﷺ «مَا أُوتِيكُمْ مِنْ شَيْءٍ وَمَا أَمْنَعُكُمُوهُ إِنْ أَنَا إِلَّا خَازِنٌ أَضَعُ حَيْثُ أُمِرْتُ.»

Narrated by Abū Hurayrah (May Allāh be pleased with him) that the Prophet (Peace and Blessings of Allāh be upon him) said, «It is not on my own that I give you or withhold from you; I am just a treasurer, putting it wherever I have been commanded.»[1]

ʿUmar bin al-Khaṭṭāb (May Allāh be pleased with him), the second caliph, is reported to have said:

…وَإِنِّي لَا أَجِدُ هَذَا الْمَالَ يُصْلِحُهُ إِلَّا خِلَالٌ ثَلَاثٌ: أَنْ يُؤْخَذَ بِالْحَقِّ وَيُعْطَى فِي الْحَقِّ وَيُمْنَعَ مِنَ الْبَاطِلِ. وَإِنَّمَا أَنَا وَمَالُكُمْ كَوَلِيِّ الْيَتِيمِ إِنِ اسْتَغْنَيْتُ اسْتَعْفَفْتُ، وَإِنِ افْتَقَرْتُ أَكَلْتُ بِالْمَعْرُوفِ…

…In my opinion, there are only three things to be done with respect to public money: it should be collected with due right, it should be given to whom it is due, and it should be denied from improper use. My position vis-à-vis public money is like that of an orphan's guardian. If I can afford it, I will take nothing out of it, if I need it, I will take only what is customarily required…[2]

1. Abū Dāwūd Sulaymān bin al-Ashʿath, *Sunan Abī Dāwūd*, no. 2949.
2. Abū Yūsuf Yaʿqūb bin Ibrāhīm, *Kitāb al-Kharāj*, 117.

2.1 SOURCES OF INCOME

The *bayt al-māl* derives its income from several key sources:

1. Public Property: This category encompasses mineral resources, such as gold, silver, iron, oil, gas, and other natural assets, including rivers and forests, that are publicly owned. The government oversees the management of these properties, and any revenue generated from them is allocated to the bayt al-*māl*.
2. *Al-Ghanīmah* and *Fayʾ*: These terms refer to the spoils of war acquired by the *mujāhidīn* from their adversaries.
3. *Zakāh*: This represents the mandatory charity that is required from every Muslim who meets the necessary conditions.
4. *Kharāj*: Referring to agricultural taxes, *kharāj* is collected from farmers utilizing land owned by the *bayt al-māl*, rather than any individual Muslim or specific group. The amount of *kharāj* assessed is contingent upon the quality of the land, including factors such as fertility and irrigation requirements.
5. *ʿUshūr*: This is the customs duty imposed on imported goods produced by non-Muslims (*kuffār*). It is recognized that foreign manufacturers and traders profit from the domestic markets of Muslim nations while levying taxes on Muslim traders bringing goods into their territories. A tenth of the trading value is collected from foreign *kuffār* traders operating within a Muslim state. Notably, ʿUmar bin al-Khaṭṭāb (May Allāh be pleased with him) was the first to implement the *ʿushūr* after observing that non-Muslims were imposing customs duties on goods imported from Muslim merchants.
6. *Jizyah*: This is a tax levied on all adult male non-Muslims (*kuffār*) residing in an Islamic state. It serves as compensation for the protection and various social services provided by the Islamic government. The prevailing viewpoint suggests that there is no established minimum or maximum amount for the *jizyah*; rather, the determination of the rate is at the discretion of the *Imam*, who bases it on the financial capacity of each individual. Historical accounts indicate that when the Prophet Muḥammad (Peace and Blessings of Allāh be upon him) appointed Muʿādh bin Jabal (May Allāh be pleased with him) to Yemen, he instructed him to collect one dīnār or its equivalent in clothing from every eligible *dhimmī*.[3] ʿUmar bin al-Khaṭṭāb (May Allāh be pleased with him) would take four dīnār (gold coins) from the people using dīnārs, and 40 *dirhams* (silver coins) from those using *dirhams* yearly during his reign. This shows that *jizyah* is situational and based on capability. The Prophet (Peace and Blessings of Allāh be upon him) was aware of the weakness of the people of Yemen and was thus lenient with them. Similarly, ʿUmar bin al-Khaṭṭāb (May Allāh be pleased with him) knew about the financial capability of the

3. Abū Dāwūd Sulaymān bin al-Ashʿath, *Sunan Abī Dāwūd*, no. 1576.

people of Shām, and thus he asked them to pay more. Mujāhid bin Jabr (May Allāh have mercy on him) was once asked, "Why is it that the people of Shām have to pay four dīnārs while the people of Yemen pay only one dīnār?" He replied, "It is based on ease and the ability of the payer."[4]

7. Service fees which the government may charge for its services that it renders to the general public.
8. Heirless properties refer to assets that belonged to individuals who have deceased without leaving a *waṣīyyah* or identifiable heirs to inherit their estate.[5]

2.2 POLICIES

One of the fundamental objectives of the Islamic economic system is to protect, sustain, and enhance human welfare. Consequently, all economic policies implemented by the government should be oriented toward *Sharīʿah* principles. The government has a responsibility to promote Islamic values by appropriately emphasizing both the material and spiritual welfare of its citizens. Therefore, fiscal policies must be designed to achieve this overarching goal.[6] An Islamic state government has numerous roles to fulfill through its policies:

1. They should enable people to worship Allāh (Exalted be He), enjoin the right, and forbid the wrong.

وَعَدَ ٱللَّهُ ٱلَّذِينَ ءَامَنُوا۟ مِنكُمْ وَعَمِلُوا۟ ٱلصَّـٰلِحَـٰتِ لَيَسْتَخْلِفَنَّهُمْ فِى ٱلْأَرْضِ كَمَا ٱسْتَخْلَفَ ٱلَّذِينَ مِن قَبْلِهِمْ وَلَيُمَكِّنَنَّ لَهُمْ
دِينَهُمُ ٱلَّذِى ٱرْتَضَىٰ لَهُمْ وَلَيُبَدِّلَنَّهُم مِّنۢ بَعْدِ خَوْفِهِمْ أَمْنًا ۚ يَعْبُدُونَنِى لَا يُشْرِكُونَ بِى شَيْـًٔا ۚ وَمَن كَفَرَ بَعْدَ ذَٰلِكَ فَأُو۟لَـٰٓئِكَ
هُمُ ٱلْفَـٰسِقُونَ

«Allāh has promised those among you who believe and do righteous good deeds, that He will certainly grant them succession to (the present rulers) in the land, as He granted it to those before them, and that He will grant them the authority to practice their religion which He has chosen for them (i.e. Islam). And He will surely give them in exchange, a safe security after their fear (provided) they (i.e. believers) worship Me and do not associate anything (in worship) with Me. But whoever disbelieves after this, they are the Fāsiqūn (rebellious, disobedient to Allāh).»

(Al-Nūr, Q24:55)

4. For more details, see Sayyid Sābiq, *Fiqh al-Sunnah*, 859–61.
5. For more details, see Al-Māwardī, *Al-Aḥkām al-Sulṭānīyyah wa al-Wilāyāt al-Dīnīyyah*, 277–9.
6. Fiscal policy is a government economic policy concerned with the collection and expenditure of revenue.

ٱلَّذِينَ إِن مَّكَّنَّـٰهُمْ فِى ٱلْأَرْضِ أَقَامُوا۟ ٱلصَّلَوٰةَ وَءَاتَوُا۟ ٱلزَّكَوٰةَ وَأَمَرُوا۟ بِٱلْمَعْرُوفِ وَنَهَوْا۟ عَنِ ٱلْمُنكَرِ ۗ وَلِلَّهِ عَـٰقِبَةُ ٱلْأُمُورِ

«Those (Muslim rulers) who, if we give them power in the land, (they) enjoin for Iqāmah al-Ṣalāh (i.e. to perform the five compulsory congregational ṣalāh [prayers; the males in mosques]), to pay the zakāh, and they enjoin al-maʿrūf (i.e. Islamic Monotheism and all that Islam orders one to do) and forbid al-munkar (i.e. disbelief, polytheism, and all that Islam has forbidden) [i.e. they make the Qur'an as the Law of their country in all the spheres of life]. And with Allāh rests the end of (all) matters (of creatures).»

(Al-Ḥajj, Q22:41)

لَقَدْ أَرْسَلْنَا رُسُلَنَا بِٱلْبَيِّنَـٰتِ وَأَنزَلْنَا مَعَهُمُ ٱلْكِتَـٰبَ وَٱلْمِيزَانَ لِيَقُومَ ٱلنَّاسُ بِٱلْقِسْطِ ۖ وَأَنزَلْنَا ٱلْحَدِيدَ فِيهِ بَأْسٌ شَدِيدٌ وَمَنَـٰفِعُ لِلنَّاسِ وَلِيَعْلَمَ ٱللَّهُ مَن يَنصُرُهُۥ وَرُسُلَهُۥ بِٱلْغَيْبِ ۚ إِنَّ ٱللَّهَ قَوِىٌّ عَزِيزٌ

«Indeed, We have sent Our Messengers with clear proofs, and revealed with them the Scripture and the Balance (justice) that mankind may keep up justice. And We brought forth iron wherein is mighty power (in matters of war), as well as many benefits for mankind, that Allāh may test who it is that will help Him (i.e. His religion) and His Messengers in the unseen. Verily, Allāh is All-Strong, All-Mighty.»
(Al-Ḥadīd, Q57:25)

2. It is essential to ensure that the fundamental needs of the population are adequately addressed, which necessitates the promotion of economic growth.
3. The state must also safeguard the religion, life, property, intellect, honor, and lineage of its Muslim citizens.
4. Furthermore, it is imperative for the state to maintain law and order and ensure the provision of justice. Consequently, an Islamic state should possess sufficient resources to develop and enhance its defense capabilities.
5. An Islamic government should refrain from initiating any projects that are prohibited by *Sharīʿah*, including the establishment of breweries and gambling establishments.

يَـٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓا۟ إِنَّمَا ٱلْخَمْرُ وَٱلْمَيْسِرُ وَٱلْأَنصَابُ وَٱلْأَزْلَـٰمُ رِجْسٌ مِّنْ عَمَلِ ٱلشَّيْطَـٰنِ فَٱجْتَنِبُوهُ لَعَلَّكُمْ تُفْلِحُونَ

«O you who believe! Intoxicants (all kinds of alcoholic drinks), gambling, al-anṣāb, and al-azlām (arrows for seeking luck or decision) are an abomination of Shayṭān's handiwork. So avoid (strictly all) that (abomination) in order that you may be successful.»

(Al-Māʾidah, Q5:90)

6. Experts should be consulted on the best ways to collect and spend *Sharīʿah*-compliant revenue.

فَبِمَا رَحْمَةٍ مِّنَ ٱللَّهِ لِنتَ لَهُمْ ۖ وَلَوْ كُنتَ فَظًّا غَلِيظَ ٱلْقَلْبِ لَٱنفَضُّوا۟ مِنْ حَوْلِكَ ۖ فَٱعْفُ عَنْهُمْ وَٱسْتَغْفِرْ لَهُمْ وَشَاوِرْهُمْ
فِى ٱلْأَمْرِ ۖ فَإِذَا عَزَمْتَ فَتَوَكَّلْ عَلَى ٱللَّهِ ۚ إِنَّ ٱللَّهَ يُحِبُّ ٱلْمُتَوَكِّلِينَ

«And by the Mercy of Allāh, you dealt with them gently. And had you been severe and harsh-hearted, they would have broken away from about you; so pass over (their faults), and ask (Allāh's) Forgiveness for them; and consult them in the affairs. Then when you have taken a decision, put your trust in Allāh, certainly, Allāh loves those who put their trust (in Him).»

(Āl ʿImrān, Q3:159)

وَٱلَّذِينَ ٱسْتَجَابُوا۟ لِرَبِّهِمْ وَأَقَامُوا۟ ٱلصَّلَوٰةَ وَأَمْرُهُمْ شُورَىٰ بَيْنَهُمْ وَمِمَّا رَزَقْنَـٰهُمْ يُنفِقُونَ

«And those who answer the Call of their Lord (i.e. to believe that He is the only One Lord [Allāh], and to worship none but Him Alone), and perform al-salāh (Iqāmah al-Ṣalāh), and who (conduct) their affairs by mutual consultation, and who spend of what We have bestowed on them.»

(Al-Shūrā, Q42:38)

2.3 EXPENDITURES

Every expenditure that must be incurred for the benefit of the Muslim community as a whole (*maṣāliḥ al-muslimīn*) is deemed a liability of the *bayt al-māl*. The expenditure functions of an Islamic state government can be categorized into three principal areas:

1. Expenditure functions mandated by the *Sharīʿah* on a permanent basis, which includes the allocation of zakāt funds to the eight designated beneficiary groups as outlined in the Qur'an.
2. Expenditure functions derived from *Sharīʿah* through the process of *ijtihād*.
3. Expenditure functions articulated by the government via a consultative process.

Fundamental components of public expenditure encompass defense, law and order (justice), public administration, fulfillment of basic needs, *daʿwah*, environmental protection, economic development, and scientific research. It is important to note that the list of public expenditure functions cannot be considered fixed, as the socio-economic needs of society may evolve over time. Ultimately, Allāh (Exalted be He) possesses complete knowledge of all matters.

2.4 QUESTIONS

1. What is the definition of *bayt al-māl*?

2. State three sources of income for the *bayt al-māl*?

3. Who has been reported to be the first to establish the *bayt al-māl*?

4. Is there a *bayt al-māl* in these modern days? If not, what is the substitute?

5. Mark as TRUE or FALSE:

a. The *Sharīʿah* has fixed the areas of expenditure of *bayt al-māl*.
b. Abū Bakr (May Allāh be pleased with him) was the first caliph to charge *ʿushūr*.
c. The Ministry of Finance is the perfect substitution of the *bayt al-māl* in this modern era.

6. Write short notes on the reason why there was no *bayt al-māl* during the time of the Messenger of Allāh (Peace and Blessings of Allāh be upon him) and Abū Bakr (May Allāh be pleased with him).

FURTHER READING MATERIALS

1. Al-Māwardī, Abū al-Ḥasan ʿAlī bin Muḥammad bin Ḥabīb. *Al-Aḥkām al-Sulṭānīyyah wa al-Wilāyāt al-Dīnīyyah*. Kuwait: Dār Ibn Qutaybah, 1989..k
2. Zaidan, Ahmad. *The Rightly Guided Caliphs*. Egypt: Islamic Inc, 1998
3. *Al-Mawsūʿah al-Fiqhīyyah al-Kuwaytīyyah*. 45 vols. Kuwait: Ministry of Awqaf and Islamic Affairs, 1983

CHAPTER THREE:
ZAKĀH

LEARNING OUTCOMES

By the end of this section, the students should be able to:

1. Know the meaning of *zakāh*, its objectives and the difference between *zakāh* and taxes.
2. Know more about the conditions and the types of wealth liable for *zakāh*.
3. Learn more about the *nisāb* of the zakātable items and the amount to be given.
4. Learn more about *zakāh* disbursement and the people who are entitled to it.

3.1 INTRODUCTION

Zakāh is one of the pillars of Islam.

عَنِ ابْنِ عُمَرَ رَضِيَ اللهُ عَنْهُمَا قَالَ: قَالَ رَسُولُ اللهِ ﷺ «بُنِيَ الإِسْلاَمُ عَلَى خَمْسٍ شَهَادَةِ أَنْ لا إِلَهَ إِلاَّ اللهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللهِ، وَإِقَامِ الصَّلاَةِ، وَإِيتَاءِ الزَّكَاةِ، وَالْحَجِّ، وَصَوْمِ رَمَضَانَ.»

Narrated Ibn ʿUmar (May Allāh be pleased with them both) that Allāh's Messenger (Peace and Blessings of Allāh be upon him) said, «Islam is based on (the following) five (principles): to testify that none has the right to be worshiped but Allāh and that Muḥammad is Allāh's Messenger, to offer the (compulsory congregational) prayers dutifully and perfectly, to pay zakāh (i.e. obligatory charity), to perform Ḥajj (i.e. Pilgrimage to the House of Allāh), and to observe fast during the month of Ramaḍān.»[7]

Zakāh has been mentioned several times in the Qur'an; In fact, it is mentioned together with *ṣalāh* around eighty-two (82) times, indicating that *zakāh* is the most important pillar of Islam after *ṣalāh*. Allāh (Exalted be He) says:

فَإِن تَابُوا۟ وَأَقَامُوا۟ ٱلصَّلَوٰةَ وَءَاتَوُا۟ ٱلزَّكَوٰةَ فَإِخْوَٰنُكُمْ فِى ٱلدِّينِ ۗ وَنُفَصِّلُ ٱلْـَٔايَـٰتِ لِقَوْمٍ يَعْلَمُونَ

«But if they repent, perform al-ṣalāh (Iqāmah al-Ṣalāh), and give zakāh, then they are your brethren in religion. (In this way) We explain the āyāt (proofs, evidences, verses, lessons, signs, revelations, etc.) in detail for a people who know.»

(Al-Tawbah, Q9:11)

وَأَقِيمُوا۟ ٱلصَّلَوٰةَ وَءَاتُوا۟ ٱلزَّكَوٰةَ ۚ وَمَا تُقَدِّمُوا۟ لِأَنفُسِكُم مِّنْ خَيْرٍ تَجِدُوهُ عِندَ ٱللَّهِ ۗ إِنَّ ٱللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

«And perform al-ṣalāh (Iqāmah al-Ṣalāh), give zakāh, and whatever of good [deeds that Allāh loves] you send forth for yourselves before you, you shall find it with Allāh. Certainly, Allāh is All-Seer of what you do.»

(Al-Baqarah, Q2:110)

Zakāh was mandated for the believers during the period in Makkah, although its specifics were not outlined at that time. The detailed regulations governing *Zakāh* were subsequently revealed in Madīnah in the second year of the *Hijrah*.[8]

7. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 8.
8. Al-Qaraḍāwī, *Fiqh al-Zakāh*, 58–62.

3.2 DEFINITION

Linguistically, *zakāh* means growth and purification. Technically, *Zakāh* is obligatory charity that must be given from specified wealth (i.e. type and amount) to specified groups of people [as mentioned in the Qur'an] at a specific time.[9]

The other term used in the Qur'an that corresponds with *zakāh* is *ṣadaqah*. *Ṣadaqah* is categorized into two distinct types: voluntary and obligatory. Voluntary *ṣadaqah* pertains to any form of charity that is given for the sake of Allah (Exalted be He), whereas *zakāh* denotes a mandatory portion that must be paid by a financially capable Muslim whose wealth has attained the minimum threshold known as *niṣāb*. It is important to note that *zakāh* constitutes a duty for the affluent, while those in need possess a legitimate claim to receive it.[10]

3.3 OBJECTIVES AND BENEFITS

Zakāh serves as an antithesis to usury, leading to markedly different outcomes. The fundamental purpose of paying *zakāh* is to attain the pleasure of Allāh (Exalted be He) through compassionate assistance to those in need, characterized by kindness and self-denial. In contrast, usury embodies a defiance of Allāh (Exalted be He), accompanied by hard-heartedness, excessive greed, and the heartless exploitation of others. The *zakāh* system fulfills a distributive function by transferring wealth from the affluent to the impoverished, thereby preventing the concentration of wealth in a few hands. This distribution fosters equity, promoting social security, justice, and the alleviation of poverty. Furthermore, *zakāh* cultivates a sense of mutual love and brotherhood between individuals of differing economic statuses.

At an individual level, the act of giving *zakāh* refines one's character and mitigates moral shortcomings such as greed and an excessive attachment to material wealth. It acts as a safeguard against the displeasure of Allāh (Exalted be He) and the potential consequences of the hereafter, ultimately guiding individuals toward His mercy and favor.

It is noteworthy that *zakāh* is not levied on resources necessary for converting raw materials into finished goods and services, thus promoting business activity and enhancing productivity. An additional advantage of the *zakāh* framework is its imposition on liquid assets rather than on land or other production factors, which incentivizes entrepreneurs to invest their capital. This investment yields a favorable impact by generating job opportunities and creating sources of income, thereby

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9. Al-Bahūtī, Manṣūr bin Yūnus, *Al-Rawḍ al-Murbiʿ*, vol. 4, p. 9.
10. Al-Qaraḍāwī, *Fiqh al-Zakāh*, 37–42.

contributing to the reduction of poverty. Lastly, an intriguing aspect of the *zakāh* system is that it discourages the hoarding of wealth, as funds are distributed to those in need, thereby fostering a more equitable economic environment.

3.4 CONDITIONS FOR OBLIGATION

Scholars have delineated specific conditions that must be met for *zakāh* to be obligatory for an individual. The primary conditions are as follows:

1. Islam: An individual must be a Muslim to be liable for zaikāh. There are varying opinions among different madhhabs regarding whether children or individuals deemed mentally incapacitated who possess zakātable property are exempt from this obligation. The Ḥanafīs maintain that such individuals are not duty-bound to pay *zakāh*, while the majority holds the contrary view.
2. Ownership: It is essential for the individual to possess full ownership of the wealth in question. Consequently, a slave is not required to pay *zakāh*, as their possessions are considered the property of their owner.
3. *Niṣāb*: The wealth must meet the threshold value known as *niṣāb*, which is the minimum amount that must be reached before *zakāh* becomes obligatory.
4. *Ḥawl*: The individual must retain possession of the wealth for a complete Islamic lunar year, referred to as a *ḥawl*. This requirement is derived from relevant narrations and guidelines within Islamic jurisprudence:

عَنْ نَافِعٍ أَنَّ عَبْدَ اللهِ بْنَ عُمَرَ رَضِيَ اللهُ عَنْهُمْ كَانَ يَقُولُ: لَا تَجِبُ فِي مَالٍ زَكَاةٌ حَتَّىٰ يَحُولَ عَلَيْهِ الحَوْلُ.

Narrated Nāfiʿ that ʿAbd Allāh bin ʿUmar said (May Allāh be pleased with them), «Whoever acquired wealth, then there is no zakāh on it until al-ḥawl has passed.» [11]

The payment of *zakāh* is expected to occur promptly at the prescribed time, with any delays deemed unacceptable unless justified by a valid reason. Additionally, it is permissible to make advance payments. According to the teachings of *Imam* al-Shāfiʿī, if an individual defers *zakāh* payments for multiple years, they are required to remit the cumulative amount owed for the preceding years.

Sawm: Most scholars maintain the position that the obligation of *zakāh* does not apply to an individual who utilizes fodder and forage to nourish their livestock, rather than permitting them to graze in natural pastures.

11. Mālik bin Anas, *Al-Muwaṭṭaʾ*, no. 557; Al-Bayhaqī, Aḥmad bin al-Ḥusayn bin ʿAlī, *Al-Sunan al-Kubrā*, no. 7356; see also Al-Tirmidhī, *Sunan al-Tirmidhī*, nos. 635–6; Al-Dāraquṭnī, ʿAlī bin ʿUmar, *Sunan al-Dāraquṭnī*, nos. 1864–72.

Additionally, certain conditions have been articulated by various scholars, including the condition of growth, which stipulates that the funds must possess productive characteristics. While there exist numerous other conditions, this discussion will focus on the aforementioned criteria due to the constraints of brevity. These conditions reflect the consensus of the majority and are commonly documented in literature pertaining to the subject.[12]

3.5 TYPES OF WEALTH LIABLE FOR *ZAKĀH*

Zakāh is obligatory on the following types of wealth:

1. Gold, silver, and currencies
2. Trade goods
3. Agricultural produce, plants, and fruits
4. Minerals and *rikāz*
5. Livestock

3.5.1 Gold, Silver, and Currencies

Zakāh becomes obligatory when an individual's assets reach the level known as *niṣāb*. The *niṣāb* for gold is defined as 20 *mithqāl*, which is equivalent to 85 grams, whereas the *niṣāb* for silver is established at 595 grams. Some scholars suggest that if the combined total of both gold and silver reaches the *niṣāb* standard for either metal, the obligation of *zakāh* is triggered. However, according to *Imam* al-Shāfiʿī and a narration attributed to *Imam* Aḥmad, it is advised that gold and silver should not be combined, as the Sunnah distinctly separates the two.[13] This is supported by the following narration:

عَنْ عَلِيٍّ رَضِيَ اللهُ عَنْهُ عَنِ النَّبِيِّ ﷺ بِبَعْضِ أَوَّلِ [هَذَا] الْحَدِيثِ قَالَ «فَإِذَا كَانَتْ لَكَ مِائَتَا دِرْهَمٍ وَحَالَ عَلَيْهَا الْحَوْلُ فَفِيهَا خَمْسَةُ دَرَاهِمَ وَلَيْسَ عَلَيْكَ شَيْءٌ - يَعْنِي فِي الذَّهَبِ - حَتَّى يَكُونَ لَكَ عِشْرُونَ دِينَارًا فَإِذَا كَانَ لَكَ عِشْرُونَ دِينَارًا وَحَالَ عَلَيْهَا الْحَوْلُ فَفِيهَا نِصْفُ دِينَارٍ فَمَا زَادَ فَبِحِسَابِ ذَلِكَ.»

Narrated ʿAlī bin Abī Ṭālib (May Allāh be pleased with him) that the Prophet (Peace and Blessings of Allāh be upon him) said, «When you possess two hundred dirhams and one year passes on them, five dirhams are payable. Nothing is incumbent on you, that is, on gold, till it reaches twenty dinars. When you possess twenty dinars and one year passes on them, half a dinar is payable. Whatever exceeds that will be reckoned properly.»[14]

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12. For more details regarding conditions, see Al-Bahūtī, Manṣūr bin Yūnus, *Al-Rawḍ al-Murbiʿ*, vol. 4, pp. 9–35 and pp. 37–75; see also Al-Qaraḍāwī, *Fiqh al-Zakāh*, 95–119.
13. Al-Bahūtī, Manṣūr bin Yūnus, *Al-Rawḍ al-Murbiʿ*, vol. 4, pp. 124–5.
14. Abū Dāwūd Sulaymān bin al-Ashʿath, *Sunan Abī Dāwūd*, no. 1573.

If the total amount of cash held is equivalent to the value of 85 grams of gold or 595 grams of silver, as determined by the specific regulations of the relevant country, the obligation to pay *zakāh* arises. The prescribed portion of *zakāh* is set at 2.5%, as established by the Prophet Muhammad (Peace and Blessings of Allāh be upon him). This principle is further supported by the previously referenced narration.

Type	*Niṣāb*	**Equivalence (g)**
Gold	20 *dinārs*	85g
Silver	200 *dirhams*	595g
Paper currency	Equivalent to that of gold or silver	Value of 85g of gold or 595g of silver

Zakāh from gold, silver, and paper currency

3.5.1.1 Debt

In instances where the borrower acknowledges the debt and demonstrates both the willingness and capacity to repay it, the creditor is obligated to pay *zakāh* on the debt for each year it remains outstanding with the debtor. In this scenario, the debt functions similarly to funds that the creditor has saved in a bank: while not immediately accessible, it remains available upon request. Conversely, if the debt is not acknowledged or if the borrower is either unwilling or unable to repay it, the creditor is required to pay *zakāh* on the debt only for the year in which it is received. This practice aligns with the actions of notable figures such as ʿUmar, ʿUthmān, Jābir, and ʿAbd Allāh bin ʿUmar (may Allāh be pleased with them).[15]

Scholarly discussions indicate that the presence of sufficient wealth reaching the threshold of *niṣāb* obligates an individual to fulfill their *zakāh* obligations, regardless of any outstanding debts.

3.5.1.2 Jewelry

As previously noted, *zakāh* is applicable to gold once it attains the minimum threshold known as *niṣāb*. However, there exists a divergence of opinions regarding the *zakāh* obligations on gold or silver jewelry possessed by women for decorative purposes upon reaching the *niṣāb* of either gold or silver.

15. Abū ʿUbaydah al-Qāsim bin Sallām, *Al-Amwāl*, 530–8.

Most Islamic jurisprudential schools of thought contend that standard jewelry owned by women for the purpose of beautification is exempt from *zakāh*. In this view, should a woman possess an excessive quantity of jewelry that could be deemed extravagant, or if she retains it as a form of wealth, she is then required to pay *zakāh*. Conversely, *Imam*s Abū Ḥanīfah and Ibn Ḥazm maintain that *zakāh* is mandatory on women's jewelry, provided that it meets the *niṣāb* criteria and is held for a complete lunar year.

عَنْ عَمْرِو بْنِ شُعَيْبٍ، عَنْ أَبِيهِ، عَنْ جَدِّهِ رَضِيَ اللهُ عَنْهُمْ، أَنَّ امْرَأَةً مِنْ أَهْلِ الْيَمَنِ أَتَتْ رَسُولَ اللهِ ﷺ وَبِنْتٌ لَهَا فِي يَدِ ابْنَتِهَا مَسَكَتَانِ غَلِيظَتَانِ مِنْ ذَهَبٍ فَقَالَ «أَتُؤَدِّينَ زَكَاةَ هَذَا؟» قَالَتْ: لَا. قَالَ «أَيَسُرُّكِ أَنْ يُسَوِّرَكِ اللهُ عَزَّ وَجَلَّ بِهِمَا يَوْمَ الْقِيَامَةِ سِوَارَيْنِ مِنْ نَارٍ؟» قَالَ فَخَلَعَتْهُمَا فَأَلْقَتْهُمَا إِلَى رَسُولِ اللهِ ﷺ فَقَالَتْ: هُمَا لِلَّهِ وَلِرَسُولِهِ ﷺ.

ʿAmr bin Shuʿayb narrated from his father, who narrated from his father (May Allāh be pleased with them), that a woman came to the Messenger of Allāh (Peace and Blessings of Allāh be upon him) with a daughter of hers, and on the daughter's hand were two thick bangles of gold. He said, «Do you pay zakāh on these?» She said, "No." He said, «Would it please you if Allāh were to put two bangles of fire on you on the Day of Resurrection?» So, she took them off and gave them to the Messenger of Allāh (Peace and Blessings of Allāh be upon him) and said, "They are for Allāh and His Messenger (Peace and Blessings of Allāh be upon him)."[16]

عَنْ أُمِّ سَلَمَةَ رَضِيَ اللهُ عَنْهَا، قَالَتْ كُنْتُ أَلْبَسُ أَوْضَاحًا مِنْ ذَهَبٍ فَقُلْتُ: يَا رَسُولَ اللهِ أَكَنْزٌ هُوَ؟ فَقَالَ «مَا بَلَغَ أَنْ تُؤَدَّى زَكَاتُهُ فَزُكِّيَ فَلَيْسَ بِكَنْزٍ».

Narrated Umm Salamah (May Allāh be pleased with her): I used to wear gold ornaments. I asked, "Is that a treasure (kanz), O Messenger of Allāh?" He replied, «Whatever reaches a quantity on which zakāh is payable is not a treasure (kanz) when the zakāh is paid.»[17]

Therefore, this viewpoint represents the most accurate perspective based on specific evidence that remains uncontradicted by broader or less authentic sources. It is recommended that a Muslim woman exercise caution and fulfill her obligation of *zakāh* on her jewelry upon reaching the *niṣāb* threshold.

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ، يَقُولُ: قَالَ رَسُولُ اللهِ ﷺ «مَا مِنْ صَاحِبِ ذَهَبٍ وَلَا فِضَّةٍ، لَا يُؤَدِّي مِنْهَا حَقَّهَا، إِلَّا إِذَا كَانَ يَوْمُ الْقِيَامَةِ، صُفِّحَتْ لَهُ صَفَائِحُ مِنْ نَارٍ، فَأُحْمِيَ عَلَيْهَا فِي نَارِ جَهَنَّمَ، فَيُكْوَى بِهَا جَنْبُهُ وَجَبِينُهُ وَظَهْرُهُ، كُلَّمَا بَرَدَتْ أُعِيدَتْ لَهُ، فِي يَوْمٍ كَانَ مِقْدَارُهُ خَمْسِينَ أَلْفَ سَنَةٍ، حَتَّى يُقْضَى بَيْنَ الْعِبَادِ، فَيَرَى سَبِيلَهُ، إِمَّا إِلَى الْجَنَّةِ، وَإِمَّا إِلَى النَّارِ

16. Ibn Ḥajar, Aḥmad bin ʿAlī, *Bulūgh al-Marām*, nos. 606–7.
17. Ibid., no. 608.

قِيلَ: يَا رَسُولَ اللهِ، فَالْإِبِلُ؟ قَالَ: «وَلَا صَاحِبُ إِبِلٍ لَا يُؤَدِّي مِنْهَا حَقَّهَا، وَمِنْ حَقِّهَا حَلَبُهَا يَوْمَ وِرْدِهَا، إِلَّا إِذَا كَانَ يَوْمُ الْقِيَامَةِ، بُطِحَ لَهَا بِقَاعٍ قَرْقَرٍ، أَوْفَرَ مَا كَانَتْ، لَا يَفْقِدُ مِنْهَا فَصِيلًا وَاحِدًا، تَطَؤُهُ بِأَخْفَافِهَا وَتَعَضُّهُ بِأَفْوَاهِهَا، كُلَّمَا مَرَّ عَلَيْهِ أُولَاهَا رُدَّ عَلَيْهِ أُخْرَاهَا، فِي يَوْمٍ كَانَ مِقْدَارُهُ خَمْسِينَ أَلْفَ سَنَةٍ، حَتَّى يُقْضَى بَيْنَ الْعِبَادِ، فَيَرَى سَبِيلَهُ إِمَّا إِلَى الْجَنَّةِ، وَإِمَّا إِلَى النَّارِ

قِيلَ: يَا رَسُولَ اللهِ، فَالْبَقَرُ وَالْغَنَمُ؟ قَالَ «وَلَا صَاحِبُ بَقَرٍ، وَلَا غَنَمٍ، لَا يُؤَدِّي مِنْهَا حَقَّهَا، إِلَّا إِذَا كَانَ يَوْمُ الْقِيَامَةِ بُطِحَ لَهَا بِقَاعٍ قَرْقَرٍ، لَا يَفْقِدُ مِنْهَا شَيْئًا، لَيْسَ فِيهَا عَقْصَاءُ، وَلَا جَلْحَاءُ، وَلَا عَضْبَاءُ تَنْطَحُهُ بِقُرُونِهَا وَتَطَؤُهُ بِأَظْلَافِهَا، كُلَّمَا مَرَّ عَلَيْهِ أُولَاهَا رُدَّ عَلَيْهِ أُخْرَاهَا، فِي يَوْمٍ كَانَ مِقْدَارُهُ خَمْسِينَ أَلْفَ سَنَةٍ، حَتَّى يُقْضَى بَيْنَ الْعِبَادِ، فَيَرَى سَبِيلَهُ إِمَّا إِلَى الْجَنَّةِ، وَإِمَّا إِلَى النَّارِ

قِيلَ: يَا رَسُولَ اللهِ، فَالْخَيْلُ؟ قَالَ «الْخَيْلُ ثَلَاثَةٌ: هِيَ لِرَجُلٍ وِزْرٌ، وَهِيَ لِرَجُلٍ سِتْرٌ، وَهِيَ لِرَجُلٍ أَجْرٌ، فَأَمَّا الَّتِي هِيَ لَهُ وِزْرٌ، فَرَجُلٌ رَبَطَهَا رِيَاءً وَفَخْرًا وَنِوَاءً عَلَى أَهْلِ الْإِسْلَامِ، فَهِيَ لَهُ وِزْرٌ، وَأَمَّا الَّتِي هِيَ لَهُ سِتْرٌ، فَرَجُلٌ رَبَطَهَا فِي سَبِيلِ اللهِ، ثُمَّ لَمْ يَنْسَ حَقَّ اللهِ فِي ظُهُورِهَا وَلَا رِقَابِهَا، فَهِيَ لَهُ سِتْرٌ وَأَمَّا الَّتِي هِيَ لَهُ أَجْرٌ، فَرَجُلٌ رَبَطَهَا فِي سَبِيلِ اللهِ لِأَهْلِ الْإِسْلَامِ، فِي مَرْجٍ وَرَوْضَةٍ، فَمَا أَكَلَتْ مِنْ ذَلِكَ الْمَرْجِ، أَوِ الرَّوْضَةِ مِنْ شَيْءٍ، إِلَّا كُتِبَ لَهُ، عَدَدَ مَا أَكَلَتْ حَسَنَاتٌ، وَكُتِبَ لَهُ، عَدَدَ أَرْوَاثِهَا وَأَبْوَالِهَا، حَسَنَاتٌ، وَلَا تَقْطَعُ طِوَلَهَا فَاسْتَنَّتْ شَرَفًا، أَوْ شَرَفَيْنِ، إِلَّا كَتَبَ اللهُ لَهُ عَدَدَ آثَارِهَا وَأَرْوَاثِهَا حَسَنَاتٍ، وَلَا مَرَّ بِهَا صَاحِبُهَا عَلَى نَهْرٍ، فَشَرِبَتْ مِنْهُ وَلَا يُرِيدُ أَنْ يَسْقِيَهَا، إِلَّا كَتَبَ اللهُ لَهُ، عَدَدَ مَا شَرِبَتْ، حَسَنَاتٍ

قِيلَ: يَا رَسُولَ اللهِ، فَالْحُمُرُ؟ قَالَ «مَا أُنْزِلَ عَلَيَّ فِي الْحُمُرِ شَيْءٌ، إِلَّا هَذِهِ الْآيَةُ الْفَاذَّةُ الْجَامِعَةُ: (فَمَن يَعْمَلْ مِثْقَالَ ذَرَّةٍ خَيْرًا يَرَهُ ۝٧ وَمَن يَعْمَلْ مِثْقَالَ ذَرَّةٍ شَرًّا يَرَهُ ۝٨)» [سورة الزلزلة]

Abū Hurayrah (May Allāh be pleased with him) narrated that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «There is no owner of gold or silver who does not pay what is due on them, but when the Day of Resurrection comes, there will be beaten out for him plates of fire which will be heated in the Fire of Hell, and his sides, forehead and back will be branded with them. Every time they cool down, they will be reheated for him, on a day the length of which is as fifty thousand years, until judgment is passed among the people. Then he will be shown his path, either to Paradise or to Hell.»

It was said, "O Messenger of Allāh, what about camels?" He (Peace and Blessings of Allāh be upon him) said, «There is no owner of camels who does not pay what is due on them – which includes milking them on the day when they are brought to water – but when the Day of Resurrection comes, a vast plain will be spread out for them, and the whole herd will be gathered, and not a single young camel will be missing. They will trample him with their hooves and bite him with their mouths, and every time the first one of them has passed the last of them will return, on a day the length of which is as fifty thousand years, until judgment is passed among the people. Then he will be shown his path, either to Paradise or to Hell.»

It was said, "O Messenger of Allāh, what about cattle and sheep?" He (Peace and Blessings of Allāh be upon him) said, «There is no owner of cattle or sheep who does not pay what is due on them, but when the Day of Resurrection comes, a vast plain will be spread out for them, and the whole herd will be gathered, and not one of them will be missing, and there will be none with twisted horns, missing horns or broken horns. They will gore him with their horns and trample him with their hooves. Every time the first one of them has passed the last of them will return, on a day the length of which is as fifty thousand years, until judgment is passed among the people. Then he will be shown his path, either to Paradise or to Hell.»

It was said, "O Messenger of Allāh, what about horses?" He (Peace and Blessings of Allāh be upon him) said, «Horses are of three types: those which are a burden for a man, those which are a shield for him, and those which are a source of reward. As for those which are a burden, a man keeps them to show off and to oppose the people of Islam. They are a burden (of sin) for him. As for those which are a shield for a man, he keeps them for the cause of Allāh (i.e. Jihād), and he does not forget the rights of Allāh concerning their backs and their necks. They will be a shield for him. As for those which bring reward to a man, he keeps them for the people of Islam for the cause of Allāh, in a meadow or field. They do not eat anything from that meadow or field, but it will be recorded for him as ḥasanāt, however much they eat. And their dung and urine will be recorded for him as ḥasanāt. If they break their halters and run away over one or two hills, Allāh will record the number of their hoof marks and dung for him as ḥasanāt. If their owner takes them to a river and they drink from it, even though he did not intend to give them water, Allāh (Exalted be He) will record the amount that they drank for him as ḥasanāt.»

It was said, "O Messenger of Allāh, what about donkeys?" He said, «Nothing has been revealed to me about donkeys except this comprehensive āyah, (So whosoever does good equal to the weight of an atom (or a small ant) shall see it. And whosoever does evil equal to the weight of an atom (or a small ant) shall see it.)

[Al-Zalzalah, Q99:7–8]»[18]

3.5.1.3 Houses, Factories or Vehicles for Rent

In the context of property ownership, residences are not subject to *zakāh* obligations. Conversely, properties intended for sale are classified as trade goods (*ʿurūḍ al-tijārah*) and therefore are liable for *zakāh*. The *zakāh* is based on the value of these properties, provided that all requisite conditions pertaining to *zakāh* on trade goods are met.

18. Muslim bin al-Ḥajjāj, *Ṣaḥīḥ Muslim*, no. 2290. Translation adopted from the English edition by the same publisher.

In contemporary times, substantial investments are made in various assets such as residential properties, hotels, commercial buildings, factories, and vehicles, primarily for the purpose of rental. Shaykh al-Qaraḍāwī has examined the implications of *zakāh* on these types of investments in one of his scholarly works.

A summary of his findings is presented below:

Assets subject to *zakāh* fall into two categories. The first category includes those assets on which *zakāh* is assessed annually, taking into account both the asset itself and its usufruct. The second category comprises assets on which *zakāh* is calculated solely based on the usufruct upon its collection, without regard to whether an Islamic lunar year has elapsed.

In relation to rental assets, there exist two prevailing perspectives. The first perspective treats these assets similarly to trade goods. This viewpoint is grounded in the notion that individuals who exchange only the usufruct have a greater guarantee of profit compared to those who exchange the asset itself. In this case, the *zakāh* payable is 2.5%. Conversely, another group contends that rental assets should be regarded differently for four primary reasons. Firstly, fixed assets are intended for rental rather than sale. Secondly, if the aforementioned analogy were accurate, landowners would be obligated to appraise the value of their land and plantations annually and to pay 2.5% of that value as *zakāh*, which is deemed untenable. Thirdly, the obligation to pay *zakāh* would pose difficulties in situations where revenue generation ceases. Finally, the annual appraisal of properties necessitates expertise, representing a burden that the *Sharīʿah* did not impose.

The second perspective advocates for the assessment of *zakāh* based on the income generated by an asset. Under this framework, the *niṣāb* is defined as the value of 200 *dirhams*, with a *zakāh* rate of 2.5%. This view is supported by notable figures such as Ibn ʿAbbās, Ibn Masʿūd, and Muʿāwiyah (may Allāh be pleased with them), as well as others from the Tābiʿīn (may Allāh have mercy on them). The rationale for this perspective is found in the general guidance of the *ḥadīth*, which states that “a quarter of a tenth (i.e., 2.5%) is obligated on minted silver.”

Furthermore, a contemporary interpretation draws an analogy (*qiyās*) between *zakāh* on rental assets and *zakāh* on agricultural produce. The reasoning behind this analogy is the similarity between landowners and those who possess rental assets. According to this interpretation, if the asset is a movable item, the *zakāh* rate would be 2.5%; however, if it is a fixed asset, then the *zakāh* rate would be either 10% or 5%. Should it be feasible to determine the net income after deducting costs, the applicable rate would be 10%; otherwise, it would be set at 5%. This interpretation has been endorsed by the late scholars Abū Zahrah, ʿAbd al-Wahhāb Khallaf, and ʿAbd al-Raḥmān Ḥasan.

Despite two critical analogical concerns, this contemporary perspective appears to reflect sound *ijtihād*. The first concern suggests that owners of fixed rental assets should be compared to landowners rather than those engaged in agriculture, on the premise that the latter might have utilized rented land for cultivation. The second concern highlights that, unlike land which does not diminish in value over time, fixed assets depreciate, thus impacting income continuity. This concern may be addressed through considerations of capital depreciation to facilitate the eventual replacement of such assets.

The specifics of the *niṣāb* have not been extensively detailed by scholars endorsing this contemporary view. It is suggested that the *niṣāb* should correlate to monetary value, as this represents the form in which benefits are ultimately realized. In terms of the timing for *zakāh* payment, the analogy with the harvest of crops is deemed most fitting. Should the annual income achieve the *niṣāb* threshold, *zakāh* ought to be remitted at the time the income is realized, typically on a monthly basis.[19]

Accordingly, there are two main opinions:

1. *Zakāh* is due on the total value of such assets and their respective revenues. The *zakāh* portion to be paid out is 2.5%. This opinion is based on analogy (*qiyās*) with trade goods (*ʿurūḍ al-tijārah*).
2. *Zakāh* is only due on the revenues yielded by such assets. Advocates of this opinion disagree on the method of paying *zakāh*:
   a. *Zakāh* is paid out like that of money. The *niṣāb* is the value of 200 *dirhams* and the *zakāh* portion to be paid out is 2.5%.
   b. *Zakāh* is to be paid out like that of the harvest of fruits and crops:
      i. For mobile assets, the *zakāh* portion to be paid out is 2.5%.
      ii. For fixed assets, the *zakāh* portion to be paid out is either 10% or 5%. If the net income can be determined after deducting costs, the *zakāh* rate would be 10%. Otherwise, it would be 5%.

It is important to note that *zakāh* applicable to trade goods (*ʿurūḍ al-tijārah*) is assessed based on both the value of the goods themselves and their revenues. Therefore, the analogy (*qiyās*) utilized in opinion (1) warrants scrutiny, as highlighted by Shaykh al-Qaraḍāwī. In the practice of analogical reasoning, it is essential that there be no significant distinction between the root (*aṣl*) and the branch (*farʿ*). In the context of rental assets, there is no transfer of ownership, contrasting with the sale of assets. Consequently, analogical reasoning is not applicable in this scenario.

19. Al-Qaraḍāwī, *Fiqh al-Zakāh*, vol. 1, pp. 458–486.

To derive an appropriate ruling, the matter must be analyzed from the perspective of the root (*aṣl*). An examination of the items in question reveals that, according to the texts (*nuṣūṣ*) of *Sharīʿah*, rented assets are not subject to *zakāh*. Thus, *zakāh* should not be levied on their inherent value. However, these assets generate revenue, referred to as "the benefited money" (*al-māl al-mustafād*), within its broader definitions. This form of revenue is similar to normal money that is indeed subject to *zakāh*. Thus, in accordance with opinion (2a), rental revenue should be governed by the same rulings and conditions as those applicable to gold and silver. This is due to the fact that gold and silver serve as the foundational assets (*aṣl*) for *zakāh* on monetary wealth.

Zakāh must be extracted from the wealth of the believer based on definitive evidence. Otherwise, one risks contravening the established teachings concerning this obligation:

عَنْ عَمِّ أَبِي حُرَّةَ الرُقَاشِي رَضِيَ اللهُ عَنْهُمَا قَالَ: قَالَ رَسُولُ اللهِ ﷺ «أَلَا لَا تَظْلِمُواْ، أَلَا لَا يَحِلُّ مَالُ اِمْرِئٍ إِلَّا بِطِيبِ نَفْسٍ مِنْهُ».

Narrated by the paternal uncle of Abū Ḥurrah al-Ruqāshī (May Allāh be pleased with them both) that the Prophet (Peace and Blessings of Allāh be upon him) said, «Do not transgress; the wealth of a Muslim is not permitted except with his consent.»[20]

Lastly, the perspective presented in opinion (2b) draws an analogy between the harvest of fruits and crops. This analogy is flawed due to the inherent differences between the two. *Zakāh* on the harvest of fruits and crops is derived from the produce itself rather than the intrinsic value of the land. In contrast, with rental assets, *zakāh* is assessed based on the revenues generated. Furthermore, the nature of these revenues—monetary—differs substantially from that of the physical assets. Consequently, the practice of assessing *zakāh* from such revenues on a monthly basis is neither correct nor justifiable according to the authoritative texts (*nuṣūṣ*) of *Sharīʿah*.

In conclusion, opinion (2a) is deemed the only valid perspective. *Zakāh* becomes obligatory on rental income only when it reaches the threshold of *niṣāb* and a complete Islamic lunar year has elapsed since the acquisition of the asset. This viewpoint is widely accepted by the majority of scholars. Allāh (Exalted be He) knows best.

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20. Al-Albānī, *Ṣaḥīḥ al-Jāmiʿ al-Ṣaghīr*, no. 7662.

3.5.2 Trade Goods

Trade goods refer to items acquired with the intention of reselling them at an elevated price to generate profit. When the value of these goods reaches or exceeds the equivalent of 85 grams of gold, the obligation to pay *zakāh* arises. Additionally, it is essential that the value of these goods is held for a complete Islamic lunar year. *Zakāh* is to be calculated based on the total amount that includes both the total value of trade goods in the business and any profits earned.

3.5.3 *Zakāh* on Shares

In relation to *zakāh* on shares, it is noteworthy to mention the comprehensive work conducted by Shaikh Muhammad Salih al-Munajjid,[21] which serves as a valuable resource for students seeking to understand this topic. Thus, the text will be completely be quoted here with a few modifications. The work began by defining the word share where it says: “Share” in the context of business refers to a partner’s portion of the capital of a joint-stock company. The word is also used to refer to the document which proves that he owns this share. The share produces a part of the company profits and may increase or decrease based on the success of the company and its increase or decrease in profits. It is possible that shares may suffer loss, because the shareholder owns a part of the company proportionate to his number of shares.

As for the value of the shares, the share has a number of values, as follows:

(i) Nominal value: this is the value assigned to the share when the company was founded, and is mentioned in the share certificate.
(ii) Book value: this is the value of the share after the company’s obligations have been deducted and the remainder has been shared out according to the number of shares issued.
(iii) True value. This is the monetary value represented by the share, i.e., if the company were to be dissolved and its assets divided according to the number of shares.
(iv) Market value. This is the value for which the share is sold in the market, which changes according to supply and demand.

Shares can be traded among individuals, like other products, which makes people take them as a means of trade by buying and selling them with the aim of making a profit. This is fine as long as the company’s activities are not haraam.[22]

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21. Al-Sulaimani, Fahd ibn Nasir ibn Ibrahim, Majmoo’u al-Fatawa wa rasaa’il Fadilat al-Shaikh Muhammad ibn Salih al-Uthaimin, (Al-Riyadh: Dar al-Wadan, 1413), p. 651-653
22. Al-Munajjid, Muhammad Salih, Detailed discussion of zakaah on shares, https://islamqa.info/en/answers/69912/detailed-discussion-of-zakaah-on-shares, accessed on 26 February 2022.

When it comes to the question on how to pay *zakāh* on a company shares, there are some shareholders who buys shares to trade them with the aim of making a profit, and some of them buy them and kept them so that they may have income from their profits, without trading in them. In the former case, the shares are regarded as trade goods, for buying and selling on the stock exchange. So they come under the same ruling as trade goods, and *zakāh* must be paid on them according to their value at the end of every year.[23]

As for the latter case, the contemporary scholars and researchers differed concerning such shares, but there are two main points of view: the first view said: they should be regarded as trade goods, regardless of the company's activities. This view was adopted by Muhammad Abu Zahrah, 'Abd al-Rahmaan ibn al-Hasan, 'Abd al-Wahhab Khallaaf and others. They said: because their owner makes a profit from them like any other trader makes a profit from his goods, so in this sense they are like trade goods. This opinion is based on the idea that tools and equipment for manufacturing are now subject to *zakāh* because, in their view, they are regarded as wealth whose value may increase. Whereas the second view said: the ruling on shares differs according to the type of company that has issued the shares. This is the view of the majority of contemporary scholars, although they may differ amongst themselves concerning some details. The share-issuing companies may be divided into four kinds:

(i) Manufacturing and service companies that do not engage in any kind of trade, such as dye companies, hotel companies and transportation companies. In this case, no *zakāh* is due on shares in these companies. This is because the value of these shares is based on equipment, tools, buildings, furnishings and so on, which are needed in order to do the work, and there is no *zakāh* on these things. Rather, *zakāh* is due on the profits of these shares if it reaches the *niṣāb* and one year has passed.
(ii) Companies which engage only in trade (commercial companies).
(iii) Companies which engage in both manufacturing and trade.[24]

Companies which engage only in trade are those which buy goods and sell them without doing anything to change them, such as import/export companies, and international trade companies. As for companies which engage in both manufacturing and trade, these are companies that combine both activities, such as companies that extract or buy raw materials, subject them to some changes, then trade in them, like petroleum companies, textile companies, metal companies, chemical companies, and so on. *Zakāh* must be paid on shares in these two types of companies (those that engage in trade only and those that engage in manufacturing and trade), after deducting the value of the buildings, tools, and equipment owned by these companies. The net value of the buildings and equipment may be worked out by referring to the company's annual budget.[25]

23. ibid
24. Ibid.
25. Ibid.

(iv) Agricultural companies
With regard to the agricultural companies, *zakāh* is due on the crops and produce – if the produce is of the type on which *zakāh* is due. So it should be worked out what each share is worth in terms of crops and produce, then the share-owner must pay *zakāh* on it. He should pay one-tenth if the crops are irrigated naturally and half of one-tenth if they are irrigated artificially, subject to the condition that the shares reach the *niṣāb*, which is 300 saa's.

The above is based on the assumption that the factories, buildings such as hotels, and cars etc that are used by the company are not subject to *zakāh*, except the *zakāh* that is due on any profits made, if it reaches the *niṣāb* and one year has passed. This second view is more correct, because a share is a part of the company, so it comes under the same rulings with regard to *zakāh*, whether the company is involved in manufacturing, trade or agriculture. This was the view of Shaykh 'Abd al-Rahmaan 'Eesa and Shaykh 'Abd-Allāh al-Bassaam and Dr. Wahbah al-Zuhayri. Al-Bassaam stated that differentiating between commercial and manufacturing companies is the view of the majority.[26]

It is important to recognize that manufacturing and agricultural enterprises typically maintain cash reserves, and there is a consensus regarding the obligation of *zakāh* on these funds. It is necessary to determine the value of each shareholder's share of this cash. The shareholder is required to pay *zakāh* on this amount, either if it independently meets the *niṣāb* or if, when combined with their personal assets, it reaches the *niṣāb* threshold. This perspective is supported by Dr. 'Ali al-Saloos.[27] Shaykh Ibn 'Uthaymeen also drew attention to this when he said: If a person has bought these shares for the purpose of trade – meaning that he buys these shares today and will sell them in the future whenever he can make a profit – then he must pay *zakāh* on these shares every year, and pay *zakāh* on any profit that he makes. But if these shares are for the purpose of investment, and he does not intend to sell them, then it depends. If they are money – gold, silver or cash money – then *zakāh* must be paid on them, because *zakāh* is due on cash, gold and silver and must be paid every year. In that case he should ask those who are in charge of this institution what money they have in their reserve. If the wealth is in the form of a product or other benefits, other than gold, silver or cash, then no *zakāh* is due on it, rather *zakāh* is due on any profits that are made, when one year has passed since taking possession of it.[28] nis

26. Ibid.
27. Al-Salus, Ali Ahmad, Mawsu'at al-Qadaya al-Fiqhiyyah al-Mu'asirah wa al-Iqtisaad al-Islami, (Beirut: Mu'assasat al-Rayyan, 2008), p. 651-653.
28. Al-Sulaimani, Fahd ibn Nasir ibn Ibrahim, Majmoo'u al-Fatawa wa rasaa'il Fadilat al-Shaikh Muhammad ibn Salih al-Uthaimin, (Al-Riyadh: Dar al-Wadan, 1413), vol. 18. p. 199.

The Standing Committee for Issuing Fatwas in Saudi Arabia was consulted regarding an individual who has invested in company shares. This individual recognizes that some of these companies deduct *zakāh* before distributing profits, while others do not calculate *zakāh* at all. The inquiry pertains to whether *zakāh* should be paid on the capital or on the profits of these companies. It is important to note that there are two distinct types of shares:

a) Shares intended primarily for-profit generation rather than for sale.
b) Shares that are bought with the intention of being sold, akin to other types of trade goods.

The Committee's response indicated that the individual must pay *zakāh* on the shares intended for sale, as well as on their profits annually. If the company pays *zakāh* on behalf of its shareholders, with their consent, this suffices as fulfillment of the obligation. Conversely, for shares held exclusively for investment purposes, *zakāh* should be paid on the profits when a complete Islamic lunar year has elapsed, unless the investment is in cash. In such cases, *zakāh* must be paid on both the capital and the profits.[29]

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) was also asked about some commercial companies that invest in real estate etc and issue shares, and the money may be left with the company for a long time, maybe years. How should *zakāh* be paid on the value of these shares? Is it permissible for the owner of the company to pay *zakāh* on all these shares at the proper time, then deduct it from the capital of the shareholders or from the profits before they are distributed? He replied by saying that *zakāh* is due on commercial shares every year, because they are trade goods. Their value should be worked out every year when the *zakāh* becomes due, and one-quarter of one-tenth should be paid, whether it is equivalent to the purchase price, or more or less. With regard to the company owner paying the *zakāh* on these shares, if that is done with authorization from the shareholders, there is nothing wrong with it, and the *zakāh* should be worked out as explained above. But if they did not authorize him to pay the *zakāh*, then he should not do so; but he has to inform the shareholders of its value at the time when *zakāh* becomes due, so that each of them may pay the *zakāh* on his shares by himself, or authorize him to pay the *zakāh*. If some of them authorize him and some do not, then he should pay the *zakāh* of those who authorized him and not that of the others. Of course, if he pays the *zakāh* he will deduct it from the capital, or from the profit.[30]

The Standing Committee for Issuing Fatwas in Saudi Arabia has addressed a query regarding an individual who has invested in company shares. This inquiry

29. Al-Munajjid, Muhammad Salih, Detailed discussion of zakaah on shares, https://islamqa.info/en/answers/69912/detailed-discussion-of-zakaah-on-shares, accessed on 26 February 2022.
30. Al-Sulaimani, vol.18. p. 217

pertains to the knowledge that certain companies deduct *zakāh* prior to profit distribution, while others do not calculate *zakāh* at all. The question arises as to whether *zakāh* should be paid on the capital invested in these shares or on the profits generated by these companies.

It is important to note that there are two distinct categories of shares:

a) Shares intended primarily for-profit reception, rather than for resale.
b) Shares that are intended for resale, akin to other trade goods.

In response, it was determined that the individual is obligated to pay *zakāh* on shares designated for resale and on the associated profits on an annual basis. If the company pays *zakāh* on behalf of its shareholders, with their consent, such payment is considered sufficient. Conversely, for shares held purely for investment purposes, *zakāh* should only be paid on the profits after one year has elapsed. However, if the asset in question is cash, *zakāh* must be calculated on both the capital and the profits accrued.[31]

The question of whether *zakāh* is owed by the company in which shares are held or by the shareholders themselves warrants careful consideration. Some scholars contend that the obligation of zakāt on shares rests with the company, citing the fact that a company functions as an independent entity capable of managing its wealth. They argue that zakāt pertains to the wealth itself, and no stipulations regarding age or mental competency apply in this context.

Conversely, a significant counterargument posits that although a company is indeed an independent entity, this does not imply that *zakāh* is mandated for it. This position highlights that several conditions must be met for the obligation of *zakāh*, including being a Muslim and being free rather than a slave—attributes that cannot be ascribed to a company. Furthermore, it is important to note that the company's ownership of wealth is held on behalf of its shareholders, thereby making the shareholders the actual owners.

Proponents of the view that *zakāh* is due from the company have also drawn an analogy to the ownership of shares in livestock, such as camels or cows, noting that *zakāh* is assessed on the total shared wealth rather than individually on each partner's assets. However, it is crucial to clarify that the obligation of *zakāh* on combined herds does not imply that the partnership itself is considered a separate entity with respect to *zakāh*. Instead, it indicates that the assets of the partners are aggregated, and the *zakāh* is calculated similarly to that of an individual.[32]

31. Al-Munajjid, Muhammad Salih, Detailed discussion of zakaah on shares, https://islamqa.info/en/answers/69912/detailed-discussion-of-zakaah-on-shares, accessed on 26 February 2022.
32. Ibid.

The prevailing view among scholars is that *zakāh* is mandatory for shareholders, which is the accurate position. This is due to the fact that shareholders are the rightful owners of their assets, while the company administers their shares in accordance with the stipulations outlined in the company's regulations. *Zakāh*, as an act of worship, necessitates the intention (niyyah) of the individual when it is fulfilled, with associated rewards for compliance and penalties for non-payment. This principle holds true for shareholders in corporate entities. Consequently, it is the responsibility of the shareholder to fulfill the *zakāh* obligation on their shares. However, it is permissible for the company to pay *zakāh* on behalf of its shareholders. The Fiqh Council has articulated that companies may pay *zakāh* on behalf of shareholders under the following conditions:

a) If such an arrangement is specified in the foundational regulations,
b) If a decision to that effect is passed by the general membership,
c) If there exists a state law mandating companies to remit *zakāh*, or
d) If the shareholder authorizes the company to discharge the *zakāh* obligation on their behalf.

3.5.3.1 Rate of *Zakāh* on Shares

The obligation of *zakāh* on equity shares in corporations is established at two and a half percent (2.5%), equivalent to one-quarter of one-tenth, regardless of whether the owner intends to engage in trading or retain the shares for the purpose of generating annual income. This principle applies as follows: if the shares are acquired for trading purposes, they are classified as trade goods, and the *zakāh* applicable to trade goods is set at one-quarter of one-tenth. Conversely, if the shares are purchased to secure benefits from their annual profits, they are analogous to rental real estate, and the *zakāh* on rental income from properties is also one-quarter of one-tenth.[33]

3.5.3.2 When Does The Year for Shares Begin?

With regard to shares in commercial companies or shares that a person deals in, the profits are connected to the capital with regard to the year (for calculating zakat). This is because a new year cannot be started for the profits on trade, rather the year starts when the wealth was originally acquired, if the original wealth reached the *niṣāb*. It must be noted that if trade goods are bought with gold, silver or cash, a new year cannot be started for them from the time of purchase, rather the year should continue from the time when the money with which they were bought was acquired, if it reaches the *niṣāb*. In this regard, Shaykh Ibn ‘Uthaymeen (may Allāh have mercy on him) said: it should be noted that the year for trade goods does

33. Ibid.

not come one year after buying them, rather it comes one year after the original wealth was acquired. This is because trade goods are a form of money and part of your capital which you turned into trade goods, so the year starts from the time you acquired the wealth with which you bought the trade goods."[34]

With regard to manufacturing companies and those whose shares are kept for the purpose of investment and earning the annual profit, not for trade, *zakāh* is due on the profits of these shares if the profit on its own reaches the *niṣāb*, or if it reaches the *niṣāb* when added to the money that a person has. The year begins from the time this profit was acquired.

It must be noted that in the case of shares in agricultural companies and produce and crops on which *zakāh* is due, it is not stipulated that one year should pass before *zakāh* becomes due, according to scholarly consensus, because Allāh says:

وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ وَلَا تُسْرِفُوا إِنَّهُ لَا يُحِبُّ الْمُسْرِفِينَ

(interpretation of the meaning):
"but pay the due thereof (their Zakāh) on the day of their harvest" [al-An'aam 6:141] So the zakāh of each harvest should be worked out separately.[35]

3.5.3.3 How Should The Value of Shares be Calculated inOrder to Pay *Zakāh*?

With regard to the shares on which *zakāh* is due (namely shares in which the owner deals, or shares in commercial companies), the *zakāh* must be paid according to their market value at the end of the year. This is because these shares are trade goods, and the value of trade goods should be worked out at the end of the year and the *zakāh* paid on the basis of this value, regardless of the nominal value of the shares. With regard to shares on which no *zakāh* is due (shares in manufacturing or service companies), there is no need to work out their value at the end of the year. This is because *zakāh* is due only on their profits, not on the shares. In this regard, Shaykh Ibn 'Uthaymeen (may Allāh have mercy on him) said when replying a question about whether *zakāh* is on shares based on the official value of the shares or on the market value, or what? He then replied: *Zakāh* on shares and other kinds of trade goods is based on their market value. If it was worth one thousand at the time of purchase and is worth two thousand at the time when *zakāh* becomes due, then *zakāh* must be based on the value of two thousand. This is because what counts is the value of a thing at the time when *zakāh* becomes due, not at the time of purchase.[36]

34. Al-Sulaimani, vol.18. p.234.
35. Al-Munajjid, Muhammad Salih, Detailed discussion of zakaah on shares, https://islamqa.info/en/answers/69912/detailed-discussion-of-zakaah-on-shares, accessed on 26 February 2022.
36. Ibid & Al-Sulaimani, vol.18. p.197.

3.5.4 Agricultural Produce, Plants and Fruits

عَنْ أَبِي سَعِيدٍ رَضِيَ اللهُ عَنْهُ قَالَ: قَالَ النَّبِيُّ ﷺ «لَيْسَ فِيمَا دُونَ خَمْسِ أَواقٍ صَدَقَةٌ، وَلَيْسَ فِيمَا دُونَ خَمْسِ ذَودٍ صَدَقَةٌ، وَلَيْسَ فِيمَا دُونَ خَمْسِ أَوْسُقٍ صَدَقَةٌ

Narrated Abū Saʿīd (May Allāh be pleased with him) that the Prophet (Peace and Blessings of Allāh be upon him) said, «No zakāh is due on property mounting to less than five awāqin (of silver), and no zakāh is due on less than five camels, and there is no zakāh on less than five awsuq.»[37]

A *wisq* is equivalent to 60 *āṣuʿ* (the plural of *ṣaʿ*), and it is approximately established that one *ṣaʿ* corresponds to 2.40 kilograms. Consequently, 5 *awsuq* can be calculated as follows: 5 × 60 × 2.40 = 720 kilograms. It should be noted, however, that the conversion from *ṣaʿ* to kilograms represents a transition from a unit of volume to a unit of mass, which may result in inaccuracies. Therefore, the kilogram equivalent should be considered an estimate.

In terms of agricultural practices, if the land is irrigated through natural means such as rain, rivers, fountains, or streams, one-tenth (10%) of the produce is required to be paid as *zakāh*. Conversely, if the irrigation is achieved through artificial methods, one-twentieth (5%) of the produce is mandated for *zakāh*. The scholarly consensus recognizes *zakāh* as obligatory on crops such as wheat, dates, and raisins. Furthermore, a majority of scholars assert that *zakāh* is required for all types of agricultural produce that are cultivated by human intervention and can be stored, dried, or utilized as staple food. However, they typically exempt vegetables and fresh fruits based on the following narration:

رَوَى مُوسَى بْنُ طَلْحَةَ رَضِيَ اللهُ عَنْهُ: أَنَّ مُعَاذًا رَضِيَ اللهُ عَنْهُ لَمْ يَأْخُذْ مِنَ الخَضْرَاوَاتِ صَدَقَةً.

Narrated Mūsā bin Ṭalḥah (May Allāh be pleased with him) that Muʿādh (May Allāh be pleased with him) never took zakāh from vegetables.[38]

Moreover, there is no record indicating that the Messenger of Allah (Peace and Blessings of Allah be upon him) ever collected *zakāh* from vegetables or fruits. This practice was consistent throughout the era of *the Rightly Guided Caliphs*. Such evidence can be utilized to further support the aforementioned narration.[39]

37. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 1405.
38. Al-Albānī, *Irwāʾ al-Ghalīl fī Takhrīj Aḥādīth Manār al-Sabīl*, no. 801.
39. Al-Bahūtī, Manṣūr bin Yūnus, *Al-Rawḍ al-Murbiʿ*, vol. 4, p. 80.

Imam Abū Ḥanīfah asserts that *zakāh* should be applicable to all agricultural produce. His perspective is supported by a specific narration that underlines this viewpoint:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ قَالَ: قَالَ رَسُولُ اللهِ ﷺ «فِيمَا سَقَتِ السَّمَاءُ وَالعُيُونُ العُشْرُ، وَفِيمَا سُقِيَ بِالنَّضْحِ نِصْفُ العُشْرِ

Narrated Abū Hurayrah (May Allāh be pleased with him) that the Prophet (Peace and Blessings of Allāh be upon him) said, «A tenth (i.e. 10%) is due on whatsoever is watered from the sky (i.e. rain) and springs, and half a tenth (i.e. 5%) on what is irrigated by carried water.»[40]

It is accurate to state that the *ḥadīth* is broad in scope and encompasses all that is cultivated and irrigated by a Muslim. Nonetheless, the *ḥadīth* predominantly referenced by the majority is, in contrast, specific in nature. Additionally, a fundamental principle in *Uṣūl al-Fiqh* asserts that: "Whenever the general (*ām*) contradicts the specific (*khāṣ*), preference is given to the specific."[41] Therefore, the opinion of the majority is closer to the truth. Allāh (Exalted be He) knows best.

Zakāh becomes obligatory upon the maturation of grains, signifying readiness for harvest, or the ripening of fruits. However, the duty to pay *Zakāh* arises only after the grains have been husked or the fruits have dried.

وَءَاتُوا۟ حَقَّهُۥ يَوْمَ حَصَادِهِۦ ۖ وَلَا تُسْرِفُوٓا۟ ۚ إِنَّهُۥ لَا يُحِبُّ ٱلْمُسْرِفِينَ

«…but pay the due thereof (i.e. its zakāh, according to Allāh's orders, a tenth or a twentieth) on the day of its harvest, and waste not by extravagance. Verily, He likes not al-Musrifūn (those who waste by extravagance).»

(Sūrah al-Anʿām, 141)

The condition of *ḥawl* is not applicable to agricultural produce. *Zakāh* is to be paid only once even if the rest of the produce is kept or not spent for many years.

Irrigation	*Niṣāb*	**Portion to give**
Natural	5 *awsuq*	tenth (10%)
Artificial	5 *awsuq*	twentieth (5%)

How *zakāh* should be taken from plants and crops

40. Al-Tirmidhī, *Sunan al-Tirmidhī*, no. 643.
41. Majd al-Dīn ʿAbd al-Salām bin ʿAbd Allāh, Shihāb al-Dīn ʿAbd al-Ḥalīm bin ʿAbd al-Salām, and Taqī al-Dīn Ahmad bin ʿAbd al-Ḥalīm, Al-Muswaddah fī *Uṣūl al-Fiqh*, 134.

3.5.4.1 Honey

Some scholars assert that *zakāh* should be imposed on honey in the same manner as it is on other forms of agricultural produce. Conversely, other scholars contend that honey should be categorized as a trade good rather than as agricultural produce. *Imam* al-Bukhārī stated that there exists no authentic *ḥadīth* confirming the obligation of *zakāh* on honey. *Imam* Ibn al-Mundhir stated that there exists no authentic *ḥadīth* or consensus (ijmaʿ) regarding the obligation of *zakāh* on honey.[42] Consequently, the opinion that is most aligned with the truth is one that negates *zakāh* on honey, unless if utilized as a trade commodity. Nonetheless, a noteworthy perspective has been expressed by Abū ʿUbayd al-Qāsim bin Sallām:

The closest approach to me on the issue of honey is to say that the owners of honey should be commanded and recommended to give some part of it as charity, it should be made disliked for them to not give the charity, and they should be reminded that they might be sinning if they hide it. Nonetheless, the charity should not be made obligatory upon them in the same way it is obligatory upon agricultural produce and livestock. This is because there is no authentic Sunnah addressing the issue of honey as opposed to those (authentic narrations) which address agriculture and livestock…[43]

Allāh (Exalted be He) knows best.

3.5.5 Minerals and *Rikāz*

Zakāh is applicable to minerals at the time of extraction, provided that they reach the *niṣāb*, which is determined by their value equivalent to 85 grams of gold. The *zakāh* obligation is set at a rate of 2.5% of the minerals' value for those that are not gold or silver, while in the case of gold or silver, the rate is 2.5% of the total quantity extracted. It is important to note that the condition of *ḥawl*, or the passing of a lunar year, is not necessary for the *zakāh* assessment on minerals.[44]

As for *rikāz*,[45] the *zakāh* due on it is a fifth (20%) of their value, regardless of *niṣāb* or *ḥawl*. This is based on the following narration:

43. Abū ʿUbaydah al-Qāsim bin Sallām, *Al-Amwāl*, 606.
44. Ibn ʿAbd al-Barr, Yūsuf bin ʿAbd Allāh bin Muḥammad, *Al-Kāfī fī Fiqh Ahl al-Madīnah al-Mālikī*, 296.
45. Treasure or wealth buried during Jāhilīyyah. Majmaʿ al-Lughah al-ʿArabīyyah, *Al-Muʿjam al-Wasīṭ*, 369.

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ أَنَّ رَسُولَ اللهِ ﷺ قَالَ: «جَرْحُ العَجْمَاءِ جُبَارٌ، وَالبِئْرُ جُبَارٌ، وَالمَعْدِنُ جُبَارٌ وَفِي الرِّكَازِ الخُمُسُ.»

Abū Hurayrah (May Allāh be pleased with him) narrated that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «The injuries caused by the beast are without liability, and wells are without liability, and mines are without liability, and khumus (one-fifth) is due on rikāz.»[46]

According to *Imam* Mālik, all minerals that exist in the depths of the earth belong to the public treasury (*bayt al-māl*) of the Muslim government and are to be spent for the benefit of all Muslims.[47]

3.5.6 Livestock

Livestock includes camels, cows, bulls, buffaloes, sheep, and goats. The following conditions should be observed:

1. The animals concerned must reach *niṣāb*. The fixed minimum number of animals is: five (5) for camels, forty (40) for sheep, and thirty (30) for cows.
2. *Ḥawl*. The aforementioned *nisāb* should be possessed for a complete lunar year.[48]

Niṣāb	**No. of animals to be given out as** *zakāh*
5 – 9	One sheep
10 – 14	Two sheep
15 – 19	Three sheep
20 – 24	Four sheep
25 – 35	*Bint Makhāḍ* (a one-year-old she-camel) or *Ibn Labūn* incase *Bint Makhāḍ* is not to be found.
36 – 45	*Bint Labūn* (a two-year-old she-camel)
46 – 60	*Ḥiqqah* (a three-year-old she-camel)
61 – 75	*Jadhaʿah* (a four-year-old she-camel)
76 – 90	Two *Bint Labūn*s
91 – 120	Two *Ḥiqqah*s

Zakāh on Camels

46. Al-Nisāʾī, *Kitāb al-Mujtab*ā, no. 2516.
47. Al-Bahūtī, Manṣūr bin Yūnus, *Al-Rawḍ al-Murbiʿ*, vol. 4, p. 116.
48. Al-Qaraḍāwī, *Fiqh al-Zakāh*, 169.

Niṣāb	**No. of animals to be given out as** *zakāh*
30 – 39	*Tabīʿun or Tabīʿah* (a one-year-old cow)
40 – 59	*Musinnah* (a two-year-old cow)
60 – 69	Two *Tabīʿun or Tabīʿah*
70 – 80	One *Tabīʿun or Tabīʿah* and one *Musinnah*

Zakāh on Cows

Niṣāb	**No. of animals to be given out as** *zakāh*
40 – 120	One sheep or goat
121 – 200	Two sheep or goats
201 – 399	Three sheep or goats
400 – 499	Four sheep or goats
500 – 600	Five sheep or goats

Zakāh on Sheep and Goats

3.6 WEALTH EXEMPTED FROM *ZAKĀH*

The following wealth is exempted from *zakāh*:

1. Any number of houses and cars for personal use, household furniture, crockery, and personal clothes. However, extravagance is prohibited. *Zakāh* is only obligated on the income obtained from a car, truck, or bus, or any other vehicles used in running a business.
2. Precious and semi-precious stones for personal use.
3. The inherent value of factories, ships, planes, buildings, etc, are not subject to *zakāh*. However, the income from all these properties is liable to *zakāh*.
4. Fresh fruits and vegetables.

3.7 DISBURSEMENT OF *ZAKĀH*

Zakāh should be spent in the locality from which it is collected. The Sunnah states that *zakāh* collected in one region or locality should be disbursed in the same region or locality.

عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللهُ عَنْهُمَا قَالَ: قَالَ رَسُولُ اللهِ ﷺ لِمُعَاذِ بْنِ جَبَلٍ رَضِيَ لله عَنْهُ حِينَ بَعَثَهُ إِلَى اليَمَنِ: «إِنَّكَ سَتَأْتِي قَوْمًا أَهْلَ كِتَابٍ، فَإِذَا جِئْتَهُمْ فَادْعُهُمْ إِلَى أَنْ يَشْهَدُواْ أَنْ لَا إِلَهَ إِلَّا اللهُ وَأَنَّ مُحَمَّدًا رَسُولُ اللهِ، فَإِنْ هُمْ أَطَاعُواْ لَكَ بِذَلِكَ فَأَخْبِرْهُمْ أَنَّ اللهَ قَدْ فَرَضَ عَلَيْهِمْ خَمْسَ صَلَوَاتٍ فِي كُلِّ يومٍ وَلَيْلَةٍ، فَإِنْ هُمْ أَطَاعُواْ لَكَ بِذَلِكَ فَأَخْبِرْهُمْ أَنَّ اللهَ قَدْ فَرَضَ عَلَيْهِمْ صَدَقَةً تُؤْخَذُ مِنْ أَغْنِيَائِهِمْ فَتُرَدُّ عَلَى فُقَرَائِهِمْ. فَإِنْ هُمْ أَطَاعُواْ لَكَ بِذَلِكَ فَإِيَّاكَ وَكَرَائِمَ أَمْوَالِهِمْ. وَاتَّقِ دَعْوَةَ المظْلُومِ، فَإِنَّهُ لَيْسَ بَيْنَهُ وَبَيْنَ اللهِ حِجَابٌ».

Narrated Ibn ʿAbbās (May Allāh be pleased with them both) that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said to Muādh bin Jabal (May Allāh be pleased with him) when he sent him to Yemen, «You are going to some of the People of the Book. When you come to them, call them to testify that there is none worthy of worship except Allāh and that Muḥammad is the Messenger of Allāh. If they obey you in that, then tell them that Allāh, the Mighty and Sublime, has enjoined on them a charity (zakāh) to be taken from their rich and given to their poor. If they obey you in that, then do not touch the most precious of their wealth, and beware of the supplication of the oppressed person for verily there is no hijāb between their duʿā and Allāh.»[49]

عَنْ عَوْنِ بْنِ أَبِي جُحَيْفَةَ، عَنْ أَبِيهِ رَضِيَ اللهُ عَنْهُمَا قَالَ: قَدِمَ عَلَيْنَا مُصَدِّقُ النَّبِيِّ ﷺ، فَأَخَذَ الصَّدَقَةَ مِنْ أَغْنِيَائِنَا فَجَعَلَهَا فِي فُقَرَائِنَا، وَكُنْتُ غُلَامًا يَتِيمًا فَأَعْطَانِي مِنْهَا قَلُوصًا.

ʿAwn bin Abī Juḥayfah (May Allāh be pleased with them both) narrated from his father, "The charity collector of the Prophet (Peace and Blessings of Allāh be upon him) came to us. So, he took the charity from our rich and gave it to our poor. I was an orphan boy, so he came to me and gave me a young she-camel from it."[50]

Abū ʿUbayd, a classical Muslim economist, said, "All these traditions prove that every people are better entitled to their *zakāh* till they do not need it anymore. The Sunnah has provided this because of the importance of neighborhood and the fact that they (the local poor) live near the rich."[51] Thus the needy in a locality where *zakāh* is collected have the priority on the *zakāh* funds. However, it can be transferred from one locality to another provided that the needs of the locality from where *zakāh* was initially collected are satisfied. This is based on the *ḥadīth* of the Prophet (Peace and Blessings of Allāh be upon him), where he asked a man named Qabīṣah to wait until the charity arrived in Madinah, implying that charity can be transferred if needed.

49. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 1496.
50. Al-Tirmidhī, *Sunan al-Tirmidhī*, no. 654; *Imam* al-Tirmidhī has declared this narration ḥasan gharīb. Shaykh al-Albānī ruled the isnād weak. See Al-Albānī, *Ḍaʿīf Sunan al-Tirmidhī*, no. 649. However, the previous *ḥadīth* is sufficiently strong evidence.
51. Abū ʿUbaydah al-Qāsim bin Sallām, *Al-Amwāl*, 707–8.

عَنْ قَبِيصَةَ بْنِ مُخَارِقٍ الهِلَالِيِّ رَضِيَ اللهُ عَنْهُمَا قَالَ: تَحَمَّلْتُ حَمَالَةً، فَأَتَيْتُ رَسُولَ اللهِ ﷺ أَسْأَلُهُ فِيهَا، فَقَالَ: «أَقِمْ حَتَّىٰ تَأْتِيَنَا الصَّدَقَةُ، فَنَأْمُرَ لَكَ بِهَا.» - قَالَ -: ثُمَّ قَالَ: «يَا قَبِيصَةُ! إِنَّ المَسْأَلَةَ لَا تَحِلُّ إِلَّا لِأَحَدِ ثَلَاثَةٍ: رَجُلٍ تَحَمَّلَ حَمَالَةً فَحَلَّتْ لَهُ المَسْأَلَةُ حَتَّىٰ يُصِيبَهَا ثُمَّ يُمْسِكُ، وَرَجُلٍ أَصَابَتْهُ جَائِحَةٌ اجْتَاحَتْ مَالَهُ، فَحَلَّتْ لَهُ المَسْأَلَةُ حَتَّىٰ يُصِيبَ قِوَامًا مِنْ عَيْشٍ - أَوْ قَالَ سِدَادًا مِنْ عَيْشٍ -، وَرَجُلٍ أَصَابَتْهُ فَاقَةٌ حَتَّىٰ يَقُولَ ثَلَاثَةٌ مِنْ ذَوِي الْحِجَا مِنْ قَوْمِهِ: لَقَدْ أَصَابَتْ فُلَانًا فَاقَةٌ، فَحَلَّتْ لَهُ المَسْأَلَةُ حَتَّىٰ يُصِيبَ قِوَامًا مِنْ عَيْشٍ - أَوْ قَالَ سِدَادًا مِنْ عَيْشٍ - فَمَا سِوَاهُنَّ مِنَ المَسْأَلَةِ يَا قَبِيصَةُ! سُحْتًا يَأْكُلُهَا صَاحِبُهَا سُحْتًا.»

Narrated Qabīṣah bin Mukhāriq al-Hilālī (May Allāh be pleased with them both): I became a guarantor for a payment, and I came to the Messenger of Allāh (Peace and Blessings of Allāh be upon him). He (Peace and Blessings of Allāh be upon him) said, «Wait till I receive the ṣadaqah and I shall order it to be given to you.» He (Peace and Blessings of Allāh be upon him) then said, «Begging, Qabīṣah, is allowable only to one of three classes: a man who has become a guarantor for a payment, for whom begging is allowed till he gets it, after which he must stop (begging); a man who has been stricken by a calamity and it destroys his property, for whom begging is allowed till he gets what will support life (or he (Peace and Blessings of Allāh be upon him) said, "…what will provide a reasonable subsistence."); and a man who has been smitten by poverty, about whom three intelligent members of his people confirm by saying, "So and so has been smitten by poverty," for such a person, begging is allowed till he gets what will support life (or he (Peace and Blessings of Allāh be upon him) said, "…what will provide a reasonable subsistence."), after which he must stop (begging). Any other reason for begging, Qabīṣah, is forbidden, and one who engages in such, consumes it as a thing which is forbidden.»[52]

According to some scholars, *zakāh* funds can be transferred from one place to another in the following circumstances:[53]

1. If it is intended for the needy relative as this may strengthen relationships and blood ties.
2. When the needs of a group of Muslims are more pressing than those of the locals. For instance, where earthquakes, floods, famine, or war afflict an area.
3. When the transfer is done based on the general interest of the Muslims.
4. When it is transferred from a country that is at war against the Muslims to a Muslim land.
5. When it is intended for the benefit of a scholar.

3.8 *ZAKĀH* ENTITLEMENT

The Qur'an has identified the following eight groups as the recipients of *zakāh*:

52. Muslim bin al-Ḥajjāj, *Ṣaḥīḥ Muslim*, no. 2404.
53. For more details, see Al-Bahūtī, Manṣūr bin Yūnus, *Al-Rawḍ al-Murbiʿ*, vol. 4, pp. 199–202; Al-Qaraḍāwī, *Fiqh al-Zakāh*, 809–20.

إِنَّمَا ٱلصَّدَقَٰتُ لِلْفُقَرَآءِ وَٱلْمَسَٰكِينِ وَٱلْعَٰمِلِينَ عَلَيْهَا وَٱلْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِى ٱلرِّقَابِ وَٱلْغَٰرِمِينَ وَفِى سَبِيلِ ٱللَّهِ وَٱبْنِ ٱلسَّبِيلِ فَرِيضَةً مِّنَ ٱللَّهِ وَٱللَّهُ عَلِيمٌ حَكِيمٌ ﴿٦٠﴾

«Al-Ṣadaqāt (here it means zakāh) are only for the Fuqarāʾ (poor), and al-Masākīn (the needy) and those employed to collect (the funds); and to attract the hearts of those who have been inclined (toward Islam); and to free the captives; and for those in debt; and for Allāh's Cause (i.e. for Mujāhidīn), and for the wayfarer (a traveler who is cut off from everything); a duty imposed by Allāh. And Allāh is All-Knower, All-Wise.»
(Al-Tawbah, Q9:60)

1. *Fuqarāʾ*: poor who have nothing to suffice their basic needs.
2. *Masākīn*: poor who earn below their basic needs. In addition, scholars mention that poor people who can work to remove their poverty but are unable to do so due to their dedication and sacrifice for the sake of seeking knowledge or spreading Islam and righteousness through *Daʿwah* are also entitled to *zakāh*. Students, scholars, and researchers are intended by this.
3. *ʿĀmilūna ʿalayhā*: *zakāh* collectors and administrators assigned by the leader to collect and manage the rights of Allāh (Exalted be He) from the wealth of the rich and transfer them to rightful recipients. Charity organizations[54] that collect *zakāh* for distribution to its legible recipients are not included in this unless the government has appointed them to collect on their behalf.
4. *Muʿallafatu qulūbuhum*: people – to whom we believe – giving *zakāh* would motivate them to accept Islam, or if they are Muslims, would encourage them to become righteous believers who would use their authority and power to support the affairs of Islam. Examples of intended people are leaders of tribes whose acceptance of Islam would be the cause of great good in their communities.
5. *Riqāb*: slaves who are short of satisfying their contract for purchasing their freedom from their owners.[55]

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54. This includes charity organisations that are registered with the government. Registration with the government does not mean that the organisation collects money on the government's behalf; it is merely for attaining benefits and subsidies that governments generally provide to such organisations.

55. Some scholars opine that the portion of *riqāb* also involves helping oppressed Muslim minorities. They argue that *Zakāh* funds could help them become economically independent. In turn, they conclude, this would help liberate the Muslim Ummah, or a section of it, from economic and cultural slavery. Based on both cases, scholars argue that emancipation may also refer to liberating nations or groups. This is considered an additional meaning besides emancipation of individuals from slavery (see Al-Qaraḍāwī, *Fiqh al-Zakāh*, pp. 620–1). However, this *ijtihād* needs to be proven through the practice of the Prophet (Peace and Blessings of Allāh be upon him), or at least that of the Rightly-Guided Caliphs. This is because the word *riqāb* has its own intended meaning by the *Sharīʿah*, so to add or incur another meaning to it requires evidence. For so long as such evidence does not exist, this *ijtihād* will be baseless. Therefore, the best and safest approach to the issue of *zakāh* recipients is that of the majority of the scholars who say that these words are supposed to be kept in accordance with their original use by the *Sharīʿah*. Allāh (Exalted be He) knows best.
As for helping oppressed Muslim minorities, there are a lot of other Islamic means to ease their affairs. The use of *bayt al-māl* and encouraging Muslims towards the establishment of *awqāf* for that single purpose is a longer-term solution. Conversely, the use of *zakāh* alone may not be continuous. As the conflict between the truth of Islam and falsehood will not end, there may be no permanent solution to these problems. Therefore, there is necessity for continuous and constant means that could respond promptly to the needs of such communities. This is exactly what the *waqf* should be based on. Allāh (Exalted be He) knows best.

6. *Ghārimūn*: overburdened debtors who are unable to pay their legal debts. They shall be given only what is sufficient to settle their debts. This does not include people who have fallen into debt due to extravagance, as that would encourage people to commit this evil.
7. *Fī sabīl Allāh*: those who fight for the sake of Allāh (i.e. *mujāhidīn*). It also encompasses strengthening the defense capability of the Muslim states. However, it does not include every voluntary good deed, according to the view of the vast majority of scholars.
8. *Ibn al-Sabīl*: travelers who do not have enough money to reach their destination. This includes travelers who are not able to return to their homeland due to financial restraints. They qualify regardless of their financial status back home. It is important to note that the journey must have been undertaken for an Islamically acceptable reason.

3.9 *ZAKĀH* ABNEGATION

There are certain people who are not entitled to receive *zakāh*.

عَنْ عَبْدِ اللهِ بْنِ عَمْرٍو رَضِيَ اللهُ عَنْهُمَا عَنِ النَّبِيِّ ﷺ قَالَ: «لا تَحِلُّ الصَّدقةُ لِغَنِيٍّ وَلا لِذِي مِرَّةٍ سَوِيٍّ».

Narrated ʿAbd Allāh bin ʿAmr (May Allāh be pleased with them both) that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «It is not permissible to give charity to a rich man (or one who is independent of means) or to one who is strong and healthy.»[56]

عَنْ عَطَاءِ بْنِ يَسَارٍ رَحِمَهُ اللهُ أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ «لَا تَحِلُّ الصَّدَقَةُ لِغَنِيٍّ إِلَّا لِخَمْسَةٍ: لِغَازٍ فِي سَبِيلِ اللَّهِ، أَوْ لِعَامِلٍ عَلَيْهَا، أَوْ لِغَارِمٍ، أَوْ لِرَجُلٍ اشْتَرَاهَا بِمَالِهِ، أَوْ لِرَجُلٍ لَهُ جَارٌ مِسْكِينٌ فَتُصُدِّقَ عَلَى الْمِسْكِينِ فَأَهْدَى الْمِسْكِينُ لِلْغَنِيِّ».

Narrated ʿAṭā bin Yasār (May Allāh have mercy on him) that the Prophet (Peace and Blessings of Allāh be upon him) said, «Ṣadaqah may not be given to a rich man, except in five (cases): one who fights for Allāh's sake, or who collects it, or is a debtor, or a man who buys it with his money, or a man who has a poor neighbor who has been given ṣadaqah and gives a present to the rich man.»[57]

56. Abū Dāwūd Sulaymān bin al-Ashʿath, *Sunan Abī Dāwūd*, no. 1634.
57. Mālik bin Anas, *Al-Muwaṭṭaʾ*, no. 578.

عَنْ قَبِيصَةَ بْنِ مُخَارِقٍ رَضِيَ اللهُ عَنْهُمَا، قَالَ: سَمِعْتُ النَّبِيَّ ﷺ يَقُولُ «لَا تَصْلُحُ الْمَسْأَلَةُ إِلَّا لِثَلَاثَةٍ: رَجُلٍ أَصَابَتْ مَالَهُ جَائِحَةٌ، فَيَسْأَلُ حَتَّىٰ يُصِيبَ سِدَادًا مِنْ عَيْشٍ ثُمَّ يُمْسِكُ، وَرَجُلٍ تَحَمَّلَ حَمَالَةً فَيَسْأَلُ حَتَّىٰ يُؤَدِّيَ إِلَيْهِمْ حَمَالَتَهُمْ ثُمَّ يُمْسِكُ عَنِ الْمَسْأَلَةِ، وَرَجُلٍ يَحْلِفُ ثَلَاثَةُ نَفَرٍ مِنْ قَوْمِهِ مِنْ ذَوِي الْحِجَا بِاللَّهِ لَقَدْ حَلَّتِ الْمَسْأَلَةُ لِفُلَانٍ؛ فَيَسْأَلُ حَتَّىٰ يُصِيبَ قِوَامًا مِنْ مَعِيشَةٍ ثُمَّ يُمْسِكُ عَنِ الْمَسْأَلَةِ، فَمَا سِوَىٰ ذَٰلِكَ سُحْتٌ.»

Narrated Qabīṣah bin Mukhāriq (May Allāh be pleased with them both): I heard the Messenger of Allāh (Peace and Blessings of Allāh be upon him) say, «It is not right to ask (for help) except in three cases: a man whose wealth has been destroyed by some calamity, so he asks until he gets enough to get him going, then he refrains from asking; a man who undertakes a financial responsibility, and asks for help until he pays off whatever needs to be paid; and a man concerning whom three wise men from his own people swear by Allāh (Exalted be He) that it is permissible for so-and-so to ask for help, so he asks until he has enough to be independent of means, then he refrains from asking. Apart from that, (asking) is unlawful.»[58]

The following is a short list of the main people who should not receive *zakāh*:

1. The rich.
2. Those who can work and earn their livelihood.
3. Disbelievers, atheists, and apostates. *Dhimmīs* who may convert to Islam can be given a share of the *zakāh*. Other poor *dhimmīs* may be given from the bayt al-*māl*.
4. Parents, offspring, and wives are not entitled to *zakāh*. As for sisters, brothers, and uncles, aunts and their children, it is permissible to give them a share of *zakāh* money. However, a poor husband is entitled to receive *zakāh* from his wealthy wife.
5. The Family of Prophet Muḥammad (Peace and Blessings of Allāh be upon him). These are the people of *Banū Hāshim*. According to some scholars, the people of *Banū al-Muṭṭalib* are included.[59]

58. Al-Nisāʾī, *Kitāb al-Mujtab*ā, no. 2610.
59. For more details, see Al-Qaraḍāwī, *Fiqh al-Zakāh*, 695–739.

3.10 QUESTIONS

1. What are the literal and technical meanings of *zakāh*?

2. List the conditions of *zakāh* and state why *zakāh* from a non-Muslim is unacceptable.

3. Briefly discuss the controversy of the scholars concerning *zakāh* on debt.

4. Mark as TRUE or FALSE:

a. *Zakāh* is only taken from the excess a Muslim has.
b. One of the conditions of *zakāh* on the livestock is al-*Sawm*.
c. The *niṣāb* of gold is 85 grams, whereas the *niṣāb* of silver is 959 grams.
d. The *niṣāb* of camels begins with 25 camels.
e. If a Muslim owns 40 cows, a two-year-old cow is to be given as *zakāh*.
f. A *zakāh* collector is anyone who collects *zakāh* and disburses it to the needy.
g. Horses are among the Zakātable items.
h. Under the category of *fī sabīl Allāh*, *zakāh* can be used in building schools and *masājid*.
i. *Zakāh* on the agricultural yield is to be given on a yearly basis.
j. If a Muslim pays taxes, he does not need to pay *zakāh*.
k. *Zakāh* is taken from salaries even if they don't reach *niṣāb*.
l. *Zakāh* on rented houses is taken from their values on a yearly basis.
m. One of the rich people that can receive *zakāh* is the *zakāh* collector.
n. A student of knowledge is only entitled to *zakāh* if they are poor or needy.
o. It is not the responsibility of the authority to make sure that the rich are paying the *zakāh* due on their wealth.
p. Abū Bakr (May Allāh be pleased with him) waged war against those who refused to pay *zakāh*.

5. Write an essay discussing the eight *zakāh* recipients and their definitions based on Sūrah al-Tawbah (Q9:60).

6. Write an essay on the importance of *zakāh* in poverty alleviation.

FURTHER READING MATERIALS

1. Al-Qaraḍāwī, Yūsuf. *Fiqh al-Zakāh*. 2 vols. Beirut: Muʾassasah al-Risālah, 1973.
2. Sayyid Sābiq. *Fiqh al-Sunnah*. Cairo: Al-Fatḥ li al-Iʿlām al-ʿArabī, 2004.
3. Al-Bahūtī, Manṣūr bin Yūnus. *Al-Rawḍ al-Murbiʿ*. 9 vols. Riyadh: Madār al-Waṭan, 2005.

CHAPTER FOUR:
ḌARĪBAH (TAXATION)

LEARNING OUTCOMES

By the end of this section, the students should be able to:

1. Know the meaning of taxation.
2. Know more about the conditions to be fulfilled before the taxes are collected.
3. Understand the differences between tax and *zakāh*.

Taxation represents a significant source of government revenue in addition to *zakāh*, particularly in times of pressing necessity. The imposition of taxes is justified on the premise that an Islamic government bears the responsibility of meeting the needs of its citizens, which necessitates substantial funding. Expenditures related to infrastructure development, education, and public health, for example, require considerable financial resources. The public treasury (*bayt al-māl*) may not possess sufficient funds to address these demands. Consequently, certain Muslim scholars advocate for the imposition of taxes on the populace as a means of generating the necessary financial resources. According to this perspective, taxes may only be levied when the public treasury is entirely depleted or when military requirements exceed existing capabilities. In such scenarios, the state retains the authority to impose taxes on individuals of affluence to the extent required or until the treasury has attained adequate financial resources.[60]

The implementation of taxation should be calibrated to avoid discouraging taxpayers from engaging in economic activities. It is essential to conduct research to identify the various types of taxation and to establish reasonable rates that will generate the necessary funds to meet the essential needs of the population, all while ensuring that taxpayers remain motivated to contribute.

4.1 JUSTIFICATION

The following are potential justifications for the imposition of taxes:

1. To enable the government to fulfill its fiscal responsibilities, as *zakāh* funds must be allocated to specific groups and purposes, whereas the government is required to finance a wider range of groups and initiatives.
2. Public interests take precedence over private interests. In instances where the public treasury (*bayt al-māl*) requires additional funding, it is permissible to impose taxes on individuals. Tolerating a minor private inconvenience is justified if it serves to alleviate a greater public detriment.
3. Revenues generated from taxation are utilized for the fulfillment of public needs. These needs encompass various areas, including national defense against external threats, maintaining internal security, infrastructure development, environmental preservation, education, and public health. Additionally, the government must cover the operational costs of its various administrative branches, such as the judiciary, legislature, and executive. When the government lacks sufficient resources to meet legitimate public necessities, the imposition of taxes becomes obligatory (*wājib*) upon the citizens, in accordance with their financial capacity.
4. Islam mandates that Muslims engage in *jihād* in the service of Allāh (Exalted be He) through both their financial contributions and physical efforts.

60. For more details, see ibid., 1072–1105.

4.2 CONDITIONS

The following conditions should be observed when imposing taxes:[61]

1. There must be a genuine public need which the government has no other financial means to satisfy except through imposing taxes. The basic principle governing the acquisition of others' property is prohibited except through lawful ways.

عَنْ عَمِّ أَبِي حُرَّةَ الرُّقَاشِي رَضِيَ اللهُ عَنْهُمَا قَالَ: قَالَ رَسُولُ اللهِ ﷺ «أَلا تَظْلِمُوا، أَلَا لَا يَحِلُّ مَالُ امْرِئٍ إِلَّا بِطِيبِ نَفْسٍ مِنْهُ.»

Narrated the paternal uncle of Abū Ḥurrah al-Ruqāshī (May Allāh be pleased with them both) that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «Do not transgress; the wealth of a Muslim is not permitted except with his consent.»[62]

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ عَنْ رَسُولِ اللهِ ﷺ قَالَ: «أُمِرْتُ أَنْ أُقَاتِلَ النَّاسَ حَتَّى يَشْهَدُواْ أَنْ لَا إِلٰهَ إِلَّا اللهُ، وَيُؤْمِنُواْ بِي وَبِمَا جِئْتُ بِهِ، فَإِذَا فَعَلُواْ ذَلِكَ عَصَمُواْ مِنِّي دِمَاءَهُمْ وَأَمْوَالَهُمْ إِلَّا بِحَقِّهَا وَحِسَابُهُمْ عَلَى اللهِ.»

Narrated Abū Hurayrah (May Allāh be pleased with him) that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «I have been commanded to fight against people, till they testify to the fact that there is no god but Allāh, and believe in me (that) I am the messenger (from the Lord) and in all that I have brought. And when they do, their blood and riches are guaranteed protection on my behalf except where justified by law, and their affairs rest with Allāh.»[63]

Similarly, the basic principle with regard to liability is absence. It means that an individual is not liable unless the law states so. Thus, it is not allowed to violate private ownership except for a justified reason based on public interest.

2. Taxes should be imposed based on justice. Situations where a section of the population would benefit at the cost of others should be avoided.
3. Tax money should be spent on legal *Sharīʿah*-compliant interests of the public, and not on sinful projects nor in extravagance. It should not be spent for political purposes nor for the personal interests of the rulers or the people in authority.
4. Taxes should be imposed by the *shūrā* committee. It is not for a ruler or a president to impose taxes.

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61. For more details, see ibid., 1079–88.
62. Al-Albānī, *Ṣaḥīḥ al-Jāmiʿ al-Ṣaghīr*, no. 7662.
63. Muslim bin al-Ḥajjāj, *Ṣaḥīḥ Muslim*, no. 126.

4.3 DIFFERENCES BETWEEN *ZAKĀH* AND TAX

1. *Zakāh* literally means purification and increase, while tax literally means a heavy demand, strain, or change.
2. *Zakāh* is imposed by revelation while taxes are imposed by legislation. *Zakāh* is not a government tax but an act of worship (*ʿibādah*) through which a Muslim expresses his gratitude to Allāh, shows his obedience to Him, and seeks His pleasure. In Islam, all acts of *ʿibādah* depend on intention. Thus, a *zakāh* payer should make his intention purely for the sake of Allāh. It is not permissible to consider some past payments as *zakāh* because intentions must precede acts of *ʿibādah*.
3. *Zakāh*, as an act of *ʿibādah*, is only obligatory upon Muslims. Tax, on the other hand, is imposed by the government upon both Muslims and *Kuffār*.
4. *Zakāh* has both spiritual and moral objectives. Its spiritual objective is to gain the pleasure of Allāh (Exalted be He), while its moral objective is to purify a Muslim's soul (*nafs*) from greed and the love of the world. Taxes, on the other hand, have no such objectives.
5. The amount paid as *zakāh* is predetermined by the *Sharīʿah* and cannot be changed, while taxes can be increased or decreased depending on the decision of the government.
6. *Zakāh* is a continuous well-established obligation which will remain as long as Muslims exist. Taxes, on the other hand, should not be continuous except in cases of perpetual necessity. Furthermore, there are different types of taxes which can be imposed, and their amounts may vary from time to time.
7. There are eight categories for *zakāh* expenditure which are specified in the Qur'an, whereas taxes can be spent on any necessary purpose decided by the government. Thus, *zakāh* collected from the Muslims and taxes collected from Muslims and *Kuffār* should be kept separately.
8. Payment of tax is based on a relationship between an individual and the authority. If the authority is weak, taxes may not be collected and utilized efficiently. In contrast, *zakāh* is based on a relationship between Allāh and a Muslim. Even if there is no authority to collect *zakāh*, a Muslim is under obligation to pay *zakāh* in the same way as he is under obligation to offer prayers (*ṣalāh*).

4.4 QUESTIONS

1. What is the difference between tax and *zakāh*?

2. What are the conditions of tax collection in Islam?

3. Mark as TRUE or FALSE:
   a. Taxes were collected by the Prophet (Peace and Blessings of Allāh be upon him).
   b. Unjustified taxes are among the major sins.

4. Write an essay discussing the concept of taxation in Islam and its effect on the economy.

FURTHER READING MATERIALS

1. Al-Qaraḍāwī, Yūsuf. *Fiqh al-Zakāh*. 2 vols. Beirut: Muʾassasah al-Risālah, 1973.
2. Sayyid Sābiq. *Fiqh al-Sunnah*. Cairo: Al-Fatḥ li al-Iʿlām al-ʿArabī, 2004. hjjhj
3. Al-Māwardī, Abū al-Ḥasan ʿAlī bin Muḥammad bin Ḥabīb. *Al-Aḥkām al-Sulṭānīyyah wa al-Wilāyāt al-Dīnīyyah*. Kuwait: Dār Ibn Qutaybah, 1989.

CHAPTER FIVE:
VOLUNTARY *ṢADAQAH*

LEARNING OUTCOMES

By the end of this section, the students should be able to:
1. Know the virtues of voluntary charity.
2. Know more about the *nūṣūṣ* that talk about the importance of voluntary charity.

Ṣadaqah is recommended by the Qur'an as well as the Sunnah.

ٱلَّذِينَ يُؤْمِنُونَ بِٱلْغَيْبِ وَيُقِيمُونَ ٱلصَّلَوٰةَ وَمِمَّا رَزَقْنَٰهُمْ يُنفِقُونَ

«Who believe in the Ghayb and perform al-Ṣalāh (Iqāmah al-Ṣalāh), and spend out of what we have provided for them [i.e. give zakāh, spend on themselves, their parents, their children, their wives, etc. and also give charity to the poor and also in Allāh's Cause – Jihād].»

(Al-Baqarah, Q2:3)

...وَءَاتَى ٱلْمَالَ عَلَىٰ حُبِّهِۦ ذَوِى ٱلْقُرْبَىٰ وَٱلْيَتَٰمَىٰ وَٱلْمَسَٰكِينَ وَٱبْنَ ٱلسَّبِيلِ وَٱلسَّآئِلِينَ وَفِى ٱلرِّقَابِ...

«...and gives his wealth, in spite of love for it, to the kinsfolk, to the orphans, and to the al-Masākīn (the poor), and to the wayfarer, and to those who ask, and to set slaves free...»

(Al-Baqarah, Q2:177)

يَسْـَٔلُونَكَ عَنِ ٱلْخَمْرِ وَٱلْمَيْسِرِ ۖ قُلْ فِيهِمَآ إِثْمٌ كَبِيرٌ وَمَنَٰفِعُ لِلنَّاسِ وَإِثْمُهُمَآ أَكْبَرُ مِن نَّفْعِهِمَا ۗ وَيَسْـَٔلُونَكَ مَاذَا ۞
يُنفِقُونَ قُلِ ٱلْعَفْوَ ۗ كَذَٰلِكَ يُبَيِّنُ ٱللَّهُ لَكُمُ ٱلْءَايَٰتِ لَعَلَّكُمْ تَتَفَكَّرُونَ

«They ask you (O Muḥammad [Peace and Blessings of Allāh be upon him]) concerning alcoholic drink and gambling. Say, "In them is a great sin, and (some) benefits for men, but the sin of them is greater than their benefit." And they ask you what they ought to spend. Say, "That which is beyond your needs." Thus, Allāh makes clear to you His Laws in order that you may give thought.»

(Al-Baqarah, Q2:219)

مَّثَلُ ٱلَّذِينَ يُنفِقُونَ أَمْوَٰلَهُمْ فِى سَبِيلِ ٱللَّهِ كَمَثَلِ حَبَّةٍ أَنۢبَتَتْ سَبْعَ سَنَابِلَ فِى كُلِّ سُنۢبُلَةٍ مِّا۟ئَةُ حَبَّةٍ ۗ وَٱللَّهُ يُضَٰعِفُ لِمَن
يَشَآءُ ۗ وَٱللَّهُ وَٰسِعٌ عَلِيمٌ
ٱلَّذِينَ يُنفِقُونَ أَمْوَٰلَهُمْ فِى سَبِيلِ ٱللَّهِ ثُمَّ لَا يُتْبِعُونَ مَآ أَنفَقُوا۟ مَنًّا وَلَآ أَذًى ۙ لَّهُمْ أَجْرُهُمْ عِندَ رَبِّهِمْ وَلَا خَوْفٌ عَلَيْهِمْ
وَلَا هُمْ يَحْزَنُونَ

«The likeness of those who spend their wealth in the way of Allāh, is as the likeness of a grain (of corn); it grows seven ears, and each ear has a hundred grains. Allāh gives manifold increase to whom He wills. And Allāh is All-Sufficient for His creatures' needs, All-Knower. Those who spend their wealth in the Cause of Allāh, and do not follow up their gifts with reminders of their generosity or with injury, their reward is with their Lord. On them shall be no fear, nor shall they grieve.»

(Al-Baqarah, Q2:261–2)

قَوْلٌ مَّعْرُوفٌ وَمَغْفِرَةٌ خَيْرٌ مِّن صَدَقَةٍ يَتْبَعُهَآ أَذًى ۗ وَٱللَّهُ غَنِىٌّ حَلِيمٌ ۝
يَـٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوا۟ لَا تُبْطِلُوا۟ صَدَقَـٰتِكُم بِٱلْمَنِّ وَٱلْأَذَىٰ كَٱلَّذِى يُنفِقُ مَالَهُۥ رِئَآءَ ٱلنَّاسِ وَلَا يُؤْمِنُ بِٱللَّهِ وَٱلْيَوْمِ ٱلْـَٔاخِرِ ۖ
فَمَثَلُهُۥ كَمَثَلِ صَفْوَانٍ عَلَيْهِ تُرَابٌ فَأَصَابَهُۥ وَابِلٌ فَتَرَكَهُۥ صَلْدًا ۖ لَّا يَقْدِرُونَ عَلَىٰ شَىْءٍ مِّمَّا كَسَبُوا۟ ۗ وَٱللَّهُ لَا يَهْدِى
ٱلْقَوْمَ ٱلْكَـٰفِرِينَ

«Kind words and forgiving of faults are better than Ṣadaqah (charity) followed by injury. And Allāh is Rich (Free of all needs) and He is Most-Forbearing. O you who believe! Do not render in vain your Ṣadaqah (charity) by reminders of your generosity or by injury, like him who spends his wealth to be seen of men, and he does not believe in Allāh, nor in the Last Day. His likeness is the likeness of a smooth rock on which is a little dust; on it falls heavy rain which leaves it bare. They are not able to do anything with what they have earned. And Allāh does not guide the disbelieving people.»

(Al-Baqarah, Q2:263–4)

وَمَثَلُ ٱلَّذِينَ يُنفِقُونَ أَمْوَٰلَهُمُ ٱبْتِغَآءَ مَرْضَاتِ ٱللَّهِ وَتَثْبِيتًا مِّنْ أَنفُسِهِمْ كَمَثَلِ جَنَّةٍۭ بِرَبْوَةٍ أَصَابَهَا وَابِلٌ فَـَٔاتَتْ أُكُلَهَا
ضِعْفَيْنِ فَإِن لَّمْ يُصِبْهَا وَابِلٌ فَطَلٌّ ۗ وَٱللَّهُ بِمَا تَعْمَلُونَ بَصِيرٌ
أَيَوَدُّ أَحَدُكُمْ أَن تَكُونَ لَهُۥ جَنَّةٌ مِّن نَّخِيلٍ وَأَعْنَابٍ تَجْرِى مِن تَحْتِهَا ٱلْأَنْهَـٰرُ لَهُۥ فِيهَا مِن كُلِّ ٱلثَّمَرَٰتِ وَأَصَابَهُ ٱلْكِبَرُ
وَلَهُۥ ذُرِّيَّةٌ ضُعَفَآءُ فَأَصَابَهَآ إِعْصَارٌ فِيهِ نَارٌ فَٱحْتَرَقَتْ ۗ كَذَٰلِكَ يُبَيِّنُ ٱللَّهُ لَكُمُ ٱلْـَٔايَـٰتِ لَعَلَّكُمْ تَتَفَكَّرُونَ

«And the likeness of those who spend their wealth seeking Allāh's Pleasure while they in their ownselves are sure and certain that Allāh will reward them (for their spending in His Cause), is the likeness of a garden on a height; heavy rain falls on it and it doubles its yield of harvest. And if it does not receive heavy rain, light rain suffices it. And Allāh is All-Seer (knows well) of what you do. Would any of you wish to have a garden with date-palms and vines, with rivers flowing underneath, and all kinds of fruits for him therein, while he is stricken with old age, and his children are weak (not able to look after themselves), then it is struck with a fiery whirlwind, so that it is burned? Thus, does Allāh make clear His āyāt (proofs, evidences, verses) to you that you may give thought.»

(Al-Baqarah, Q2:265–6)

يَـٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓا۟ أَنفِقُوا۟ مِن طَيِّبَـٰتِ مَا كَسَبْتُمْ وَمِمَّآ أَخْرَجْنَا لَكُم مِّنَ ٱلْأَرْضِ ۖ وَلَا تَيَمَّمُوا۟ ٱلْخَبِيثَ مِنْهُ تُنفِقُونَ
وَلَسْتُم بِـَٔاخِذِيهِ إِلَّآ أَن تُغْمِضُوا۟ فِيهِ ۚ وَٱعْلَمُوٓا۟ أَنَّ ٱللَّهَ غَنِىٌّ حَمِيدٌ
ٱلشَّيْطَـٰنُ يَعِدُكُمُ ٱلْفَقْرَ وَيَأْمُرُكُم بِٱلْفَحْشَآءِ ۖ وَٱللَّهُ يَعِدُكُم مَّغْفِرَةً مِّنْهُ وَفَضْلًا ۗ وَٱللَّهُ وَٰسِعٌ عَلِيمٌ
يُؤْتِى ٱلْحِكْمَةَ مَن يَشَآءُ ۚ وَمَن يُؤْتَ ٱلْحِكْمَةَ فَقَدْ أُوتِىَ خَيْرًا كَثِيرًا ۗ وَمَا يَذَّكَّرُ إِلَّآ أُو۟لُوا۟ ٱلْأَلْبَـٰبِ

«O you who believe! Spend of the good things which you have (legally) earned, and of that which We have produced from the earth for you, and do not aim at that which is bad to spend from it, (though) you would not accept save if you close your eyes and tolerate therein. And know that Allāh is Rich (Free of all needs), and Worthy of all praise. Shayṭān (Satan) threatens you with poverty and orders you to commit faḥshā (evil deeds, illegal sexual intercourse, sins); whereas Allāh promises you Forgiveness from Himself and Bounty, and Allāh is All-Sufficient for His creatures' needs, All-Knower. He grants ḥikmah to whom He pleases, and he, to whom ḥikmah is granted, is indeed granted abundant good. But none remember (will receive admonition) except men of understanding.»

(Al-Baqarah, Q2:267–9)

وَمَآ أَنفَقْتُم مِّن نَّفَقَةٍ أَوْ نَذَرْتُم مِّن نَّذْرٍ فَإِنَّ ٱللَّهَ يَعْلَمُهُۥ ۗ وَمَا لِلظَّـٰلِمِينَ مِنْ أَنصَارٍ
إِن تُبْدُوا۟ ٱلصَّدَقَـٰتِ فَنِعِمَّا هِىَ ۖ وَإِن تُخْفُوهَا وَتُؤْتُوهَا ٱلْفُقَرَآءَ فَهُوَ خَيْرٌ لَّكُمْ ۚ وَيُكَفِّرُ عَنكُم مِّن سَيِّـَٔاتِكُمْ ۗ وَٱللَّهُ بِمَا
تَعْمَلُونَ خَبِيرٌ

«And whatever you spend for spendings (e.g. in ṣadaqah — charity for Allāh's cause) or whatever vow you make, be sure Allāh knows it all. And for the ẓālimūn (wrongdoers) there are no helpers. If you disclose your ṣadaqāt (almsgiving), it is well; but if you conceal them and give them to the poor, that is better for you. (Allāh) will expiate you some of your sins. And Allāh is Well-Acquainted with what you do.»

(Al-Baqarah, Q2:270–1)

لَّيْسَ عَلَيْكَ هُدَىٰهُمْ وَلَـٰكِنَّ ٱللَّهَ يَهْدِى مَن يَشَآءُ ۗ وَمَا تُنفِقُوا۟ مِنْ خَيْرٍ فَلِأَنفُسِكُمْ ۚ وَمَا تُنفِقُونَ إِلَّا ٱبْتِغَآءَ وَجْهِ ٱللَّهِ ۚ
وَمَا تُنفِقُوا۟ مِنْ خَيْرٍ يُوَفَّ إِلَيْكُمْ وَأَنتُمْ لَا تُظْلَمُونَ

«Not upon you (Muḥammad [Peace and Blessings of Allāh be upon him]) is their guidance, but Allāh guides whom He wills. And whatever you spend in good, it is for yourselves, when you spend not except seeking Allāh's Countenance. And whatever you spend in good, it will be repaid to you in full, and you shall not be wronged.»

(Al-Baqarah, Q2:272)

لِلْفُقَرَآءِ ٱلَّذِينَ أُحْصِرُوا۟ فِى سَبِيلِ ٱللَّهِ لَا يَسْتَطِيعُونَ ضَرْبًا فِى ٱلْأَرْضِ يَحْسَبُهُمُ ٱلْجَاهِلُ أَغْنِيَآءَ مِنَ ٱلتَّعَفُّفِ تَعْرِفُهُم
بِسِيمَـٰهُمْ لَا يَسْـَٔلُونَ ٱلنَّاسَ إِلْحَافًا ۗ وَمَا تُنفِقُوا۟ مِنْ خَيْرٍ فَإِنَّ ٱللَّهَ بِهِۦ عَلِيمٌ
ٱلَّذِينَ يُنفِقُونَ أَمْوَٰلَهُم بِٱلَّيْلِ وَٱلنَّهَارِ سِرًّا وَعَلَانِيَةً فَلَهُمْ أَجْرُهُمْ عِندَ رَبِّهِمْ وَلَا خَوْفٌ عَلَيْهِمْ وَلَا هُمْ يَحْزَنُونَ

«(Charity is) for fuqarā (the poor), who in Allāh's Cause are restricted (from travel), and cannot move about in the land (for trade or work). The one who knows them not, thinks that they are rich because of their modesty. You may know them by their mark, they do not beg of people at all. And whatever you spend in good, surely, Allāh knows it well. Those who spend their wealth (in Allāh's Cause) by night and day, in secret and in public, they shall have their reward with their Lord. On them shall be no fear, nor shall they grieve.»

(Al-Baqarah, Q2:273–4)

وَءَاتِ ذَا ٱلْقُرْبَىٰ حَقَّهُۥ وَٱلْمِسْكِينَ وَٱبْنَ ٱلسَّبِيلِ وَلَا تُبَذِّرْ تَبْذِيرًا

«And give to the kinsman his due and to the miskīn (poor) and to the wayfarer. But spend not wastefully (your wealth) in the manner of a spendthrift»

(Al-Isrāʾ, Q17:26)

Generally, *ṣadaqah* means *charity*. Legally, it refers to any "property given for a thing which is pleasing to Allāh."[64] It has also been defined as "the transfer of ownership of wealth without expectation, seeking reward in the hereafter."[65] However, charity under Islamic Law has various terms. The definitions differ slightly, depending on the *madh'hab*, due to the different principles used to derive rulings from the Qur'an and Sunnah. In *ḥadīth* literature, *ṣadaqah* is also used to refer to *zakāh*. As explained previously, *zakāh* "is obligatory charity that must be given from specified wealth to specified groups of people at a specific time."[66] It differs from regular charity by virtue of being one of the pillars of Islam and thus obligatory.

64. The Mejelle, 131.
65. Al-Mawsūʿah al-Fiqhīyyah, vol. 42, p. 121.
66. Al-Bahūtī, Manṣūr bin Yūnus, *Al-Rawḍ al-Murbiʿ*, vol. 4, p. 9.

5.1 QUESTIONS

1. What is the importance of *ṣadaqah* in poverty alleviation?

2. Mention five *aḥādīth* that talk about the importance of *ṣadaqah*.

3. Mark as TRUE or FALSE:
   a. *Ṣadaqah* does not decrease wealth but increases it.
   b. Allāh (Exalted be He) multiplies the reward of *ṣadaqah* up to 700 times and more for some people based on their intention and circumstances.

4. Write an essay discussing the lessons that can be extracted from Sūrah al-Baqarah (Q2:261–9).

FURTHER READING MATERIALS

1. Al-Qaraḍāwī, Yūsuf. *Fiqh al-Zakāh*. 2 vols. Beirut: Muʾassasah al-Risālah, 1973.
2. Sayyid Sābiq. *Fiqh al-Sunnah*. Cairo: Al-Fatḥ li al-Iʿlām al-ʿArabī, 2004.
3. Al-Bahūtī, Manṣūr bin Yūnus. *Al-Rawḍ al-Murbiʿ*. 9 vols. Riyadh: Madār al-Waṭan, 2005.

CHAPTER SIX:
HIBAH

LEARNING OUTCOMES

By the end of this section, the students should be able to:
1. Know the meaning of *hiba*, its legality , pillars and conditions.
2. Identify the types of *hiba*.
3. Learn more about the revocation of *hiba*.

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ عَنِ النَّبِيِّ ﷺ يَقُولُ «تَهَادُوا تَحَابُوا».

Narrated Abū Hurayrah (May Allāh be pleased with him) that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «Give gifts and you will love one another.»[67]

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ عَنِ النَّبِيِّ ﷺ قَالَ «يَا نِسَاءَ المُسْلِمَاتِ، لاَ تَحْقِرَنَّ جَارَةٌ لِجَارَتِهَا، وَلَوْ فِرْسِنَ شَاةٍ».

Narrated Abū Hurayrah (May Allāh be pleased with him) that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «O Muslim women! None of you should look down upon the gift sent by her female neighbor even if it were the trotters of sheep.»[68]

6.1 DEFINITION

Hibah means "to give the ownership of property to another, without compensation."[69] It has also been defined by some scholars as "the transfer of ownership of wealth without any sort of expectation and delay."[70] The difference between *hadīyyah* and *hibah* is subtle. Most scholars hold that *hibah* requires acceptance in order for it to be valid.[71] Some scholars assert that acceptance is not a requisite in the context of *hadīyyah*. The *hibah* contract is binding solely upon the donor and is typically executed without expectation, representing a purely gratuitous act. A *hibah* that entails expectation is referred to as *hibah bi al-ʿiwaḍ*, which will be addressed in a subsequent subsection. It is imperative that *hibah* be granted during the donor's lifetime; otherwise, it transforms into *waṣīyyah* and it has different legal implications.

Hibah is distinct from *ṣadaqah* in terms of revocation, intent, and eligible recipients. The revocation of *hibah* is considered *makrūh* (reprehensible), whereas the revocation of *ṣadaqah* is deemed *ḥarām* (prohibited), irrespective of whether it is given to an heir or a non-heir, Muslim or non-Muslim. This distinction arises because *ṣadaqah* is intended to seek the pleasure and reward of Allāh (Exalted be He). Conversely, the purpose of *hibah* is to express affection and benevolence toward the receiver or to establish one's own generosity and respect in their eyes. In terms of recipients, *hibah* may be bestowed upon both those in need and those who are financially stable, whereas *ṣadaqah* is reserved exclusively for those in need, even if they are relatives.

67. Muḥammad bin Ismāʿīl al-Bukhārī, *Al-Adab al-Mufrad*, no. 594.
68. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 6017.
69. The Mejelle, 131.
70. Al-Mawsūʿah al-Fiqhīyyah, vol. 42, p. 120.
71. Ibid., p. 120.

The execution of *hibah* contracts occurs through two mechanisms: transfer of ownership (*tamlīk*) and cancellation or discharge (*isqāṭ*). The former is well recognized and aligns with the common understanding of gift-giving. An illustration of the latter would be the act of gifting a debt to one's debtor.

6.2 LEGALITY

وَءَاتُواْ ٱلنِّسَآءَ صَدُقَٰتِهِنَّ نِحْلَةٗۚ فَإِن طِبْنَ لَكُمْ عَن شَيْءٖ مِّنْهُ نَفْسٗا فَكُلُوهُ هَنِيٓـٔٗا مَّرِيٓـٔٗا

«And give to the women (whom you marry) their mahr (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart; but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allāh has made it lawful).»

(Al-Nisāʾ, Q4:4)

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ عَنِ النَّبِيِّ ﷺ قَالَ «يَا نِسَاءَ المُسْلِمَاتِ، لاَ تَحْقِرَنَّ جَارَةٌ لِجَارَتِهَا، وَلَوْ فِرْسِنَ شَاةٍ.»

Narrated Abū Hurayrah (May Allāh be pleased with him) that the Prophet (Peace and Blessings of Allāh be upon him) said, «O Muslim women! None of you should scorn gifts sent by her female neighbor even if they were the trotters of sheep.»[72]

Some important points regarding the legal ruling of giving *hibah*:

1. Giving *hibah* is generally permissible (ḥalāl) by consensus of all scholars.
2. Giving *hibah* becomes prohibited (*ḥarām*) if sin or cooperation in sin is intended. This includes bribing government officials and employers.
3. Giving *hibah* becomes reprehensible (*makrūh*) if showing off is intended.

6.3 PILLARS

Most scholars define the pillars of *hibah* as three (3):[73]

1. The two contracting parties: donor (*wāhib*) and donee (*mawhūb lahu*).
2. The intended *hibah* object (*mawhūb*), i.e. the gift.
3. The expression (*ṣīghah*) of the contract.

72. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 2566.
73. Al-Jazīrī, *Kitāb al-Fiqh ʿalā al-Madhāhib al-Arbaʿah*, vol. 3, p. 257; Al-Mawsūʿah al-Fiqhīyyah, vol. 42, p. 122.

According to the Ḥanafīs, *hibah* has just one pillar: the expression (*ṣīghah*).[74] The expression consists of two parts: offer (*ijāb*) and acceptance (*qabūl*). Some scholars such as Abū Ḥanīfah, al-Shāfiʿī, and al-Thawrī added possession (*qabḍ*) as a condition.[75]

6.4 CONDITIONS

6.4.1 Donor and Donee

The donor (*wāhib*) has to be of sound mind, mature, prudent with respect to spending, and the complete owner of the gift object.[76]

With regard to the donee (*mawhūb lahu*), scholars state that they must be able to own the gift object, i.e., they must also be of sound mind and mature so as to enable transfer of possession. If they are unable to take possession of the gift object, the *hibah* contract is not rendered invalid; another person who is able, such as a guardian (*walī*) in the case of orphans, may take possession of the gift object on their behalf.

Most *madh'habs* stipulate that possession or receipt of the gift by the donee should be with the permission of the donor. They argue that unlike a sale, a gift is a matter of benefaction. The donor is not under obligation, as in the case of sale to transfer the possession of the property to the donee. A gift is a matter of benefaction, and the donor cannot be compelled to deliver the possession of the property as the donee has no right against the donor until possession is transferred. The property given as a gift is the property of the donor and no one has the right to take possession of the property belonging to another without his permission. If the property to be given as a gift is not present at the place of contracting the gift and the donee has taken its possession after the donor and the donee have separated, the donee does not become its owner without the permission of the donor. The Mālikīs, on the other hand, say that possession is valid even without permission from the owner.[77]

Parents giving *hibah* to their children is valid. Most scholars consider it desirable (*mustaḥabb*) to be equal in giving *hibah* to one's children. Accordingly, favoritism is disliked (*makrūh*). Other scholars consider equality between children obligatory (*wājib*). This is discussed in detail in the subsequent subsection.

74. Al-Mawsūʿah al-Fiqhīyyah, vol. 42, p. 122.
75. Sayyid Sābiq, *Fiqh al-Sunnah*, 1078.
76. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 4, p. 684; Ibn Rushd, Abū al-Walīd Muḥammad bin Aḥmad, Bid*āyah* al-Mujtahid wa Nih*āyah* al-Muqtaṣid, vol. 4, p. 1533.
77. For more details, see Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 4, pp. 692–7.

6.4.1.1 Gifts to Heirs

Parents should observe equality when giving gifts to their children, be they male or female. The following *ḥadīth* has been reported regarding equality in gifts by parents:

عَنِ النُّعْمَان بْنِ بَشِيرٍ رَضِيَ اللهُ عَنْهُمَا، قَالَ: أَنْحَلَنِي أَبِي نُحْلًا، قَالَ إِسْمَاعِيلُ بْنُ سَالِمٍ مِنْ بين القوم: نِحْلَةً، غُلامًا له، قَالَ: فَقَالَتْ لَهُ أُمِّي [عَمْرَة] بِنْتُ رَوَاحَةَ رَضِيَ اللهُ عَنْهَا: إِئْتِ رَسُول الله ﷺ فَأشْهِدْهُ، فَأَتَى النَّبِي ﷺ [فَأشهده] فذكر ذلك له، فقال [له]: إني نحلْتُ ابني النعمان نُحْلًا وَإن عَمرَة سألتني أن أشهدك على ذلك، قَالَ: فَقَالَ: «أَلَكَ وَلَدٌ سوَاهُ؟» قَالَ: قُلْتُ: نَعَمْ، قَالَ: «فَكُلَّهُمْ أَعْطَيْتَ مِثْلَ مَا أَعْطَيْتَ النُّعْمَانَ؟» قَالَ: لا.

قَالَ: فَقَالَ بَعْضُ هؤلاء المحدثين: (هذا جَوْرٌ) وَقَالَ بَعْضُهُمْ: «هذا تَلْجِئَةٌ فَأَشْهِدْ عَلَىٰ هٰذَا غَيْرِي.»

قَالَ مُغِيرَةُ فِي حَدِيثِهِ: «أَلَيْسَ يَسُرُّكَ أَنْ يَكُونُواْ لَكَ فِي البِرِّ واللطفِ سوَاء؟» قَالَ: نَعَمْ، قَالَ «فَأَشْهِدْ عَلَىٰ هٰذَا غَيْرِي.»

وَذَكَرَ مجالد في حديثه: «إِنَّ لَهُمْ عَلَيْكَ مِنَ الحَقِّ أَنْ تَعْدِلَ بَيْنَهُمْ، كَمَا أن لَكَ عَلَيْهِمْ مِنَ الحَقِّ أن يَبروكَ.»

قَالَ أبو داود في حديث الزهري: قال بعضهم: «أكلَّ بنيك؟» وقال بعضهم «وَلَدِكَ...؟»

وقال ابن أبي خالد عن الشعبي فيه: «أَلَكَ بَنُونَ سواه؟» وقال أبو الضحى عن النعمان بن بشير: «أَلَكَ وَلَدٌ غَيْرُهُ؟»

Narrated al-Nuʿmān bin Bashīr (May Allāh be pleased with them both): My father gave me a gift. [The narrator, Ismāʾīl bin Sālim, said, "(He gave me) his slave as a gift."] My mother, ʿAmrah bint Rawāḥah (May Allāh be pleased with her) said, "Go to the Messenger of Allāh (Peace and Blessings of Allāh be upon him) and call him as witness." He then came to the Prophet (Peace and Blessings of Allāh be upon him) and mentioned it to him. He said to him, "I have given my son, al-Nuʿmān, a gift and ʿAmrah has asked me to call you as witness to it." He (Peace and Blessings of Allāh be upon him) asked him, «Have you children other than him?» He said, "I replied: Yes." He (Peace and Blessings of Allāh be upon him) asked again, «Have you given the rest of them the same as you have given al-Nuʿmān?» He said, "No."

Some narrators said in their version (that the Prophet [Peace and Blessings of Allāh be upon him] said,) «This is injustice.» Others said in their version (that the Prophet (Peace and Blessings of Allāh be upon him) said,) «This is under force. So call some other person than me as witness to it.»

Mughīrah said in his version, (The Prophet (Peace and Blessings of Allāh be upon him) asked,) «Are you not pleased with the fact that all of them may be equal in virtue and grace?» He replied, "Yes." He (Peace and Blessings of Allāh be upon him) said, «Then call some other person than me as witness to it.»

Mujālid mentioned in his version, «They have right to you that you should do justice to them, as you have right to them that they should do good to you.»

Abū Dāwūd said, "In the version of al-Zuhrī, some (narrators) said, «(Have you given) to all your sons?» and some (narrators) said, «Your children.»"

Ibn Abī Khālid narrated from al-Shaʿbī in his version, «Have you sons other than him?» Abū al-Ḍuhā narrated on the authority of al-Nuʿmān bin Bashīr, «Have you children other than him?»[78]

Most scholars opine that equality in giving gifts to one's children is commendable (*mustaḥabb*) but not obligatory (*wājib*). They interpret the command of equality by the Prophet (Peace and Blessings of Allāh be upon him) as a recommendation.[79] Accordingly, if a person prefers some of his children over others, the act is valid (*ṣaḥīḥ*) but reprehensible (*makrūh*).[80] A preferential gift refers to a gift given by a parent to one or more of their children that completely excludes or inadequately compensates the other children. Most scholars agree that an individual, while in good health and during their lifetime, possesses the right to gift all or part of their property to whomever they choose. However, if such a gift results in one heir receiving preferential treatment over others, it is considered morally objectionable. Thus, while an individual may legally gift their property to a non-relative, which is regarded as valid (*ṣaḥīḥ*), this action may not be seen as virtuous and is ultimately deemed sinful..[81] Consequently, it is desirable for a father to maintain equality between all his heirs.

The Ẓahirīs opine, based on the aforementioned narration of al-Nuʿmān bin Bashīr (May Allāh be pleased with him), that preferential gifts are impermissible.[82] Other jurists such as Aḥmad bin Ḥanbal, Sufyān al-Thawrī, Ṭāwūs, and Isḥāq, obligate (make *wājib*) equality between children. They argue that if equality is not observed, the gift is void.[83] Abū Yūsuf of the Ḥanafīs opined that preferential gifts by a father to a child with the intention to harm his other children are impermissible.[84]

78. Abū Dāwūd Sulaymān bin al-Ashʿath, *Sunan Abī Dāwūd*, no. 3542.
79. For more details, see Sayyid Sābiq, *Fiqh al-Sunnah*, 1079–81.
80. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 4, p. 704.
81. Ibn Rushd, Abū al-Walīd Muḥammad bin Aḥmad, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, vol. 4, p. 1534.
82. Ibn Ḥazm, ʿAlī bin Aḥmad bin Saʿīd, Al-Muḥallā, vol. 8, p. 95, no. 1634; Ibn Rushd, Abū al-Walīd Muḥammad bin Aḥmad, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, vol. 4, p. 1534.
83. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 4, p. 705.
84. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, vol. 5, p. 263.

Imam Aḥmad bin Ḥanbal is quoted to be of the opinion that a preferential gift is void except for special reasons. For instance, if the heir is crippled, or indebted, or suffers from sickness that prevents him from earning, or is in a greater need than others, or has a big family, or is studying Islamic knowledge.[85]

The scholars also differ on the meaning of equality that is commanded. To the Mālikīs, Shāfiʿīs, and Abū Yūsuf of the Ḥanafīs, it is commendable (*mustaḥabb*) that a father should observe absolute equality among his children whether sons or daughters when giving gifts.[86] According to the views held by the Ḥanbalīs and the interpretation of Muḥammad (al-Shaybānī) from the Ḥanafī school, it is advisable for a father to allocate gifts to his children in a manner that reflects the distribution of an estate according to the laws of inheritance. Specifically, this entails assigning a son a portion equivalent to that of two daughters. The rationale behind this perspective is that, through the act of gifting property to one's children, an individual effectively seeks to preemptively arrange the distribution of their estate, which conventionally occurs posthumously. Therefore, it is posited that an individual who distributes their assets while still living should adhere to the inheritance laws as ordained by Allāh (Exalted be He).[87]

Al-Azhar's Department of Fatwa had the following to say on the matter,

> First, it is obligatory on parents to observe equality between children while giving gifts or spending on them as much as possible. It is not permissible to violate this principle as equality is commanded by the *aḥādīth* of the Prophet (Peace and Blessings of Allāh be upon him).
>
> Second, if a father spends a significant amount on one of his children by paying, for example, for his dowry or his education which enables him to get a good job or buys expensive gifts or furniture for his marrying daughter, he should also compensate his other children by giving them an equal amount.
>
> Third, it is permissible to prefer some of the children over others in giving gifts for valid reasons. These include for instance, having a handicap that affects the child's earning ability, blindness, paralysis or other impediments to earning a living. A preferential gift is also allowed in favor of a child who is totally devoted to the learning of religious knowledge.[88]

It is also preferable to observe equality while giving gifts to one's parents. However, it is permissible to show more generosity towards the mother. Similarly, equality is preferable while giving gifts to one's siblings, provided they are equally well-off or in need.

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85. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 4, p. 706.
86. Ibid., p. 704.
87. Ibid., p. 705.
88. Majallah al-Azhar, 3rd ser., 14, as referenced in ibid., p. 706.

6.4.2 Gift Object

With regard to the gift object (*mawhūb*), the following conditions need to be considered:[89]

1. The intended gift object must independently exist at the time of contract. It must also be considered wealth (*māl*) according to the *Sharīʿah*. Therefore, anything which can be owned and possessed can be gifted. The donor must have physical possession (*qabḍ*) of the gift object and it must be deliverable. Examples of invalid gift objects are ungrown fruit and the fetus of cows. The latter is in existence but cannot be separated from the mother and thus does not exist by itself. If the fetus is separated, it may be given as gift, i.e. when it becomes a calf. However, a cow along with her fetus is a valid gift object.
2. The gift object must be known and specified. If the object is divisible, it must be divided and distinguished from, and not joined to, or occupied with anything else that is not given. This is because possession is impossible except if the whole is included. For instance, if one says, "I give one of these two houses as a gift," the gift contract is invalid (*bāṭil*) since we don't know which house is intended.
3. The donor must have private ownership over the gift object; it cannot be public property. Pledged and usurped properties cannot be gifted as ownership is incomplete; the donor does not have (valid) possession.
4. The gift should come into the possession (*qabḍ*) of the donee. The ownership of the donee is not established unless he receives and possesses the gift. *Hibah* is not permissible without possession. Imams Sufyān al-Thawri, al-Shāfiʿī, and Abū Ḥanīfah argue that reception is a condition that binds the contract of *hibah*. If either the donor or the donee dies before the receipt, the gift is void. This is because the gift contract can only be completed by the delivery or possession of the subject matter, therefore the death of either the donor or the donee before the delivery of the property renders the gift void. If the donor dies before it is collected, then it becomes part of his estate, unless that gift was made during his final illness. Then it is paid out of the disposable third as long as it is meant for other than an heir. The Mālikīs, however do not insist on *qabḍ*. They say possession is not a condition for the validity of *hibah* or for it to be binding. To them a donee becomes the owner of the gift by the contract of gift. However, the other *madh'habs* argue that a donee becomes the owner only when he obtains possession of the property.

89. For more details, see Sayyid Sābiq, *Fiqh al-Sunnah*, 1077–8; Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 4, pp. 684–97; and Al-Jazīrī, *Kitāb al-Fiqh ʿalā al-Madhāhib al-Arbaʿah*, vol. 3, pp. 257–64.

A gift is not like a sale contract which is concluded even if the purchaser does not take possession of the sold item. Unlike a sale where a purchaser has the right to claim the sold item from the seller, the receiver in a gift contract has no right over the property gifted until he obtains possession over it. Prior to possession, the right of the donor is stronger than the right of the donee in whose favor the gift is made. The right of the donee is weak until it obtains the attribute which makes it stronger. In *hibah*, this attribute is the possession of the gift by the donee which establishes his ownership over the gifted property.[90]

6.4.2.1 *Mushāʿ*

The word *mushāʿ* is derived from *shuyūʿ* which literally means confusion. It refers to an undivided property jointly owned by several persons, where none of them can predicate that his interest is attached to any specific portion of the property. In juridical terminology, *mushāʿ* refers to a joint share in undivided property. It is thus defined as every joint undivided property subject to the rights of more than one individual. If a joint property share is divisible its gift is not valid.[91] If it is indivisible its gift is valid.[92] A property is divisible if the donee, after its division, may make use of it in the same manner as it was possible prior to its division. If it is not possible to use the property in the same manner as it was possible prior to its division then the property is indivisible, for instance a horse, car, machineries, etc.

If a property is divisible, its gift is voidable or irregular (*fāsid*) to the Ḥanafīs. It means that although a gift is made, the donee's proprietary rights over the property are not established until the property is divided and his share is separated. For instance, if Ibrahim and Khalid jointly own a house and Ibrahim wants to give his share as a gift to Zahid. This gift is voidable which means Zahid does not have proprietary rights over the portion of the undivided house until Ibrahim's share is separated and he then transfers its possession to Zahid. But a gift of a part of the property which is indivisible is valid. This is because the property is indivisible and thus its delivery of possession of a part of it is impossible. Accordingly, incomplete possession is sufficient.[93]

90. For more details, see Ibn Rushd, Abū al-Walīd Muḥammad bin Aḥmad, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, vol. 4, pp. 1536–8.
91. Al-Jazīrī, *Kitāb al-Fiqh ʿalā al-Madhāhib al-Arbaʿah*, vol. 3, p. 260.
92. Sayyid Sābiq, *Fiqh al-Sunnah*, 1078.
93. For more details, see Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 4, pp. 686–8.

6.4.3 Expression

An offer for the gift can be made explicitly or implicitly.[94] Examples of explicit expressions include phrases such as "I gift this thing to you", "You are now the owner of it", "I made it for you", "This is for you", "I bestow this to you", etc. An example of an implicit expression is when a husband buys a pair of earrings for his wife.

6.4.3.1 *Hibah Bi al-ʿIwaḍ*

Hibah bi al-ʿiwaḍ means a gift with consideration (i.e. expectation of something in return). Consideration (*ʿiwaḍ*) is of two types; one which is subsequent to the contract of gift, and the other which is placed as a condition. When the consideration is explicitly stipulated in the contract, and once it is received the transaction acquires the legal character of sale. The following two conditions should be observed:

1. Actual passing of the consideration on behalf of the donee.
2. Donor's divesting himself, with bona fide intention, of the property at once and declaring the conferring of it upon the donee.

As this situation falls within the category of a sale, it is subject to rescission on the grounds of exercising certain options, such as the option of inspection and the option of defect. This includes gifts made in exchange for services, as there is an exchange of value. A gift conditioned upon an exchange is equivalent to a sale. If an individual grants a gift to another party with the stipulation that compensation is to be provided by a specified date, and both parties agree to this arrangement, if one party subsequently refuses to provide the agreed compensation, the initial party may retract the gift. However, if gifts are exchanged bidirectionally, the contract of gift would be fully executed and cannot be revoked.[95]

6.5 SPECIAL CIRCUMSTANCES

6.5.1 Abstract Gifts

A gift of a debt to a person other than a debtor is valid because, although it is abstract in the present, it is capable of materializing in the future.[96] Similarly, the gift of all valuable properties, usufruct, negotiable instruments, proprietary rights, and landlord's rights are valid.[97] By default, if no time period is specified, the gift exists until the death of the donor (this is also called *ʿumrā*. This is because the

94. Sayyid Sābiq, *Fiqh al-Sunnah*, 1077.
95. For more details, see Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 4, pp. 699–702; Sayyid Sābiq, *Fiqh al-Sunnah*, 1078–9; and Ibn Rushd, Abū al-Walīd Muḥammad bin Aḥmad, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, vol. 4, pp. 1539–40.
96. For more details, see Al-Jazīrī, *Kitāb al-Fiqh ʿalā al-Madhāhib al-Arbaʿah*, vol. 3, pp. 265–6.
97. Ibn Rushd, Abū al-Walīd Muḥammad bin Aḥmad, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaṣid*, vol. 4, p. 1536.

object is owned by the donor, and the donee only benefits from the usufruct of the said object; after the donor's death, his heirs inherit the object and thus ownership is transferred to them, thus terminating the gift of its usufruct.[98]

6.5.2 Bankruptcy

An individual who is insolvent is subject to legal restrictions (*ḥajr*) regarding any transactions of a gratuitous nature involving their property. According to the Mālikī school of thought, such a gift is deemed inoperative. Conversely, the Ḥanafī perspective does not recognize such an incapacitation; however, it does allow for the *Qādī* to annul the transaction at the request of creditors if it is determined that the gift was intended to defraud them.[99] The insolvent individual is acting in a manner that undermines legitimate claims asserted against him.

6.5.3 Gift of Joint Share in Favor of Heirs

When a joint owner of an undivided property intends to make a gift of his share to an unrelated party, there exists a potential for disputes and the mismanagement of the property. Conversely, if a partner or joint owner gifts his share to another partner, the likelihood of conflict or misappropriation of the property is significantly reduced. According to the Ḥanafī school of thought, the act of gifting property, whether divisible or indivisible, to an heir is deemed valid but may be voidable when directed toward a stranger, provided the property is divisible. In contrast, all other legal schools maintain that a gift is valid regardless of whether the property is divisible or indivisible, and whether it is granted to a partner or a third party.[100]

6.6 REVOCATION

The Prophet (Peace and Blessings of Allāh be upon him) has abhorred revocation of gifts.

عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللهُ عَنْهُمَا قَالَ: قَالَ النَّبِيُّ ﷺ «لَيْسَ لَنَا مَثَلُ السَّوْءِ، الَّذِي يَعُودُ فِي هِبَتِهِ كَالكَلْبِ يَرْجِعُ فِي قَيْئِهِ.»

Narrated Ibn al-ʿAbbās (May Allāh be pleased with them both) that the Prophet (Peace and Blessings of Allāh be upon him) said, «The bad example is not for us. He who takes back his present is like a dog that swallows back its vomit.»[101]

98. For more details, see ibid., pp. 1540–1.
99. Tanzil-ur-Rahman, *A Code of Muslim Personal Law*, 51.
100. Ibid., vol. 2, p. 27.
101. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 2622.

According to various scholars, the revocation of gifts is considered *ḥarām* due to its comparison to a dog consuming its vomit, an act deemed repulsive by the Prophet (Peace and Blessings of Allāh be upon him). It is further argued that the act of gifting entails a transfer of ownership, which must be absolute upon completion of the contract. The positions of the three *Imam*s—Mālik, al-Shāfiʿī, and Aḥmad bin Ḥanbal—indicate that it is unlawful to revoke a gift once the possession of the property has been transferred to the donee. The donor retains the right to revoke the gift at any point prior to the transfer of possession. In the event that the donor passes away after the gift has been made but before the possession is transferred, the gift property is to be incorporated into the donor's legacy.

Conversely, the Ḥanafī school maintains that a donor may revoke a gift even after transferring possession, with specific exceptions that include:

1. Situations in which the donor is the husband and the donee is the wife, or vice versa.
2. Instances where the donee is a blood relation within a prohibited degree.
3. Cases in which the donee is deceased.
4. Scenarios where the gift property ceases to be in the possession and ownership of the donee due to sale, gifting, or other forms of transfer.
5. Circumstances in which the gift property is lost or damaged.
6. Changes that alter the fundamental nature of the gift property.
7. Instances where another item has been mixed with the gift property to the extent that separation is impractical.
8. Situations where the gift includes an exchange.

It is imperative to secure a court decree in order to facilitate the revocation of the gift subsequent to the transfer of possession.

6.7 *HADĪYYAH*

Hadīyyah, according to the Ḥanafīs, refers to "property brought or sent as a gift to someone" [for free].[102] The Mālikī school defines the concept as the transfer of ownership by the proprietor of an object, executed without any expectation of return from the eligible recipient, or through any means that signifies the transfer of ownership. In contrast, the Shāfiʿī school characterizes it as the act of bestowing an object without the expectation of reciprocity, accompanied by the physical transfer of the object to the recipient, as a means of honoring that individual. The Ḥanbalī school similarly defines this act as the donation of an object during one's lifetime, also without the anticipation of any return.[103]

102. The Mejelle, 131; Al-Mawsūʿah al-Fiqhīyyah, vol. 42, p. 252.
103. Al-Mawsūʿah al-Fiqhīyyah, vol. 42, p. 252.

6.8 QUESTIONS

1. What are the literal and technical meanings of *hibah*?

2. Discuss whether *hibah bi al-ʿiwaḍ* is acceptable in Islam.

3. Discuss the importance of *hibah* in Islam.

4. What is bankruptcy in Islam?

5. Mark as TRUE or FALSE:
   a. Retraction of *hibah* after the possession is prohibited in Islam.
   b. When giving *hibah* to one's children, equality must be observed.

6. A father is the only one who can retract his gift from his child even after possession (*qabḍ*).

7. Write an essay discussing the concept of *hibah* as applied by Islamic banks.

8. Write an essay discussing the importance of *hibah* in uniting the Muslim Ummah.

FURTHER READING MATERIALS

1. *Al-Mawsūʿah al-Fiqhīyyah al-Kuwaytīyyah*. Kuwait: Ministry of Awqaf and Islamic Affairs, 1983
2. Sayyid Sābiq. *Fiqh al-Sunnah*. Cairo: Al-Fatḥ li al-Iʿlām al-ʿArabī, 2004.
3. Ibn Ḥajar, Aḥmad bin ʿAlī. *Bulūgh al-Marām*. Riyadh: Dār al-Salām, 2004.

CHAPTER SEVEN:
WAQF

LEARNING OUTCOMES

By the end of this section, the students should be able to:

1 Know the meaning of *Waqf*, its legality, purpose, conditions and pillars.
2. Be well-informed of *Waqf* administrations.
3. Understand the means to develop *Waqf*.

Waqf plays a crucial role in the provision of social security and welfare. Its impacts extend beyond charitable work; it significantly contributes to the financial independence and self-sufficiency of Muslim educational institutions. The economic and educational upliftment of Muslim communities can be more effectively attained through the utilization and development of *waqf* properties. There exist various *awqāf* specifically established to support students, scholars, educational institutions, and the education of women and girls. For example, throughout its extensive history, Al-Azhar University has depended on the *waqf* system to sustain its financial activities, ensure the remuneration of its staff, and facilitate the education of its students.

Furthermore, *waqf* is one of the means that Allah provides as a source of *rizq* for His creation. *Awqāf* established for the purposes of assisting the impoverished or providing education to disadvantaged individuals, effectively channel resources toward these communities, yielding substantial benefits. Additionally, *waqf* plays a crucial role in safeguarding the wealth of Muslim nations through the prohibition of the sale or pledge of such assets. As a result, *waqf* properties remain within the possession of the Muslim community, enabling their utilization for communal welfare. Moreover, *waqf* serves to protect such properties from mismanagement by heirs who may otherwise squander their inherited wealth.

7.1 DEFINITION

The term *waqf* literally means to prevent (*ḥabs*) or restrain. In legal terms, it means to protect a thing or to prevent it from becoming the property of others.[104] *Waqf* can be defined as the permanent dedication by a Muslim of a valuable property's corpus to the ownership of Allāh (Exalted be He), accompanied by a declaration to dedicate its usufruct for eternal religious, charitable, or pious purposes as recognized by *Sharīʿah*. This definition is likely derived from the narration in which ʿUmar bin al-Khaṭṭāb (May Allāh be pleased with him) sought guidance from the Prophet (Peace and Blessings of Allāh be upon him) regarding his land in Khaybar:[105]

...فَقَالَ النَّبِيُّ ﷺ «احْبِسْ أَصْلَهَا وسَبِّلْ ثَمَرَتَهَا.»

...to which the Prophet (Peace and Blessings of Allāh be upon him) said, «Make it an endowment and give its usufruct in the cause of Allāh (Exalted be He).» (Literally: Freeze [or contain] its corpus and donate its fruits.)[106]

104. Sayyid Sābiq, *Fiqh al-Sunnah*, 1069.
105. Dr. Nāẓim Sulṭān Misbāḥ, *Mabāḥith fī Aḥkām al-Waqf*, 9.
106. Al-Nisāʾī, *Kitāb al-Mujtabā*, no. 3629. A version of this narration is mentioned in full in §Legality.

Waqf is characterized by its inalienability and is established in perpetuity. Once the dedication is executed, it becomes irrevocable, resulting in the transfer of all property rights from the founder (*wāqif*) to Allāh (Exalted be He). Consequently, the principal assets of the *waqf* property cannot be sold, donated, or inherited.[107] The proprietor relinquishes his power of disposal over a specified property with the condition that its usufruct is allocated for charitable, religious, or pious purposes. When a *waqf* is established with the stipulation that it shall become effective only after the founder's death, it is referred to as a *waqf* by will (*waqf bi al-waṣiyyah*). It is essential to distinguish between traditional *ṣadaqah* and *waqf*, as the latter involves the preservation of the principal. In standard *ṣadaqah*, the principal may be utilized entirely, whereas, in *waqf*, only the usufruct may be utilized.

7.2 LEGALITY

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُوٓاْ أَنفِقُواْ مِن طَيِّبَٰتِ مَا كَسَبْتُمْ وَمِمَّآ أَخْرَجْنَا لَكُم مِّنَ ٱلْأَرْضِ

«O you who believe! Spend of the good things which you have (legally) earned, and of that which We have produced from the earth for you…»

(Al-Baqarah, Q2:267)

لَن تَنَالُواْ ٱلْبِرَّ حَتَّىٰ تُنفِقُواْ مِمَّا تُحِبُّونَ ۚ وَمَا تُنفِقُواْ مِن شَيْءٍ فَإِنَّ ٱللَّهَ بِهِۦ عَلِيمٌ

«By no means shall you attain Al-Birr (piety, righteousness – here, it means Allāh's reward, i.e. Paradise), unless you spend (in Allāh's Cause) of that which you love; and whatever of good you spend, Allāh knows it well.»

(Āl Imrān, Q3:92)

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ أَنَّ رَسُولَ اللهِ ﷺ قَالَ «إِذَا مَاتَ الإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ: إِلَّا مِنْ صَدَقَةٍ جَارِيَةٍ أَوْ عِلْمٍ يُنْتَفَعُ بِهِ أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ».

Abū Hurayrah (May Allāh be pleased with him) narrated that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «When a man dies, his deeds come to an end except for three (things): ceaseless charity (ṣadaqah jāriyah); knowledge that benefits, or a virtuous descendant who prays for him (i.e. for the deceased).» [108]

107. Al-Bahūtī, Manṣūr bin Yūnus, *Al-Rawḍ al-Murbiʿ*, vol. 7, p. 432.
108. Muslim bin al-Ḥajjāj, *Ṣaḥīḥ Muslim*, no. 4223.

The concept of *ṣadaqah jāriyah* referenced in the previously mentioned narration pertains to *waqf*, as such properties provide benefits to the deceased both during their lifetime and after death. The earliest recorded instance of *waqf* from the era of the Prophet Muhammad (Peace and Blessings of Allāh be upon him) features ʿUmar bin al-Khaṭṭāb (May Allāh be pleased with him). In addition to affirming its legality, the Prophet (Peace and Blessings of Allāh be upon him) established certain regulations governing this practice:

عَنِ ابْنِ عُمَرَ رَضِيَ اللهُ عَنْهُمَا قَالَ: أَنَّ عُمَرَ بْنَ الخَطَّابِ أَصَابَ أَرْضًا بِخَيْبَرَ، فَأَتَى النَّبِيَّ ﷺ، يَسْتَأْمِرُهُ فِيهَا فَقَالَ: يَا رَسُولَ اللهِ، إِنِّي أَصَبْتُ أَرْضًا بِخَيْبَرَ لَمْ أُصِبْ مَالًا قَطُّ أَنْفَسَ عِنْدِي مِنْهُ، فَمَا تَأْمُرُ بِهِ؟ قَالَ «إِنْ شِئْتَ حَبَسْتَ أَصْلَهَا، وَتَصَدَّقْتَ بِهَا.» قَالَ: فَتَصَدَّقَ بِهَا عُمَرُ أَنَّهُ لا يُبَاعُ وَلَا يُوهَبُ، وَلا يُورَثُ. وَتَصَدَّقَ بِهَا فِي الفُقَرَاءِ وَفِي القُرْبَىٰ، وَفِي الرِّقَابِ وَفِي سَبِيلِ اللهِ وَابْنِ السَّبِيلِ وَالضَّيْفِ، وَلَا جُنَاحَ عَلَىٰ مَنْ وَلِيَهَا أَنْ يَأْكُلَ مِنْهَا بِالْمَعْرُوفِ، وَيُطْعِمَ غَيْرَ مُتَمَوِّلٍ.

Narrated Ibn ʿUmar (May Allāh be pleased with them both) that (his father,) ʿUmar acquired some land at Khaybar. He came to the Prophet (Peace and Blessings of Allāh be upon him) and consulted him about that. He (Peace and Blessings of Allāh be upon him) said, «If you wish, you may 'freeze' it and give it in charity.» So, he 'froze' it, stipulating that it should not be sold, given as a gift, or inherited, and he gave it in charity to the poor, relatives, slaves, the needy, wayfarers, and guests. There is no sin on the administrator if he eats from it on a reasonable basis or feeds a friend with no intention of becoming wealthy from it.[109]

Waqf is also proven from the Prophet (Peace and Blessings of Allāh be upon him) himself, ʿUthmān bin ʿAffān, ʿAlī, Talḥah, Zubayr, Zayd bin Thābit, ʿAbd Allāh bin ʿUmar, Anas, and ʿAmr bin ʿĀṣ (May Allāh be pleased with them).[110] Some other narrations related to *waqf* are as follows:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ أَنَّ رَسُولَ اللهِ ﷺ قَالَ «إِذَا مَاتَ الإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ: إِلَّا مِنْ صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ.»

Narrated Abū Hurayrah (May Allāh be pleased with him) that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «When man dies, his deeds come to an end except for three (things): ṣadaqah jāriyah (ceaseless charity); knowledge that benefits, and a virtuous descendant who prays for him (i.e. the deceased).»

109. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 2737.

110. Ibn Rushd al-Jadd, Abū al-Walīd Muḥammad bin Aḥmad, Al-Muqaddimāt wa al-Mumahhidāt, vol. 2, p. 417; Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, vol. 5, p. 496.

قَالَ أَنَسُ بْنُ مَالِكٍ رَضِيَ اللهُ عَنْهُ: لَمَّا قَدِمَ رَسُولُ اللهِ ﷺ المَدِيْنَةَ وَأَمَرَ بِبِنَاءِ المَسْجِدِ وَقَالَ «يَا بَنِي النَّجَارِ ثَامِنُونِي حَائِطَكُمْ هذَا،» فَقَالُوا: لا والله لا نَطْلُبُ ثَمَنَهُ إِلَّا إِلَى اللهِ.

Narrated Anas bin Mālik (May Allāh be pleased with him) that when Allāh's Messenger (Peace and Blessings of Allāh be upon him) came to Madīnah, he ordered that a masjid be built. He (Peace and Blessings of Allāh be upon him) said, "O Tribe of Najjār! Suggest me a price for your gardens." They replied, "By Allāh, we will not ask its price except from Allāh."[111]

عَنْ عُثْمَانَ رَضِيَ اللهُ عَنْهُ أَنَّ رَسُولَ اللهِ ﷺ قَالَ «مَنْ حَفرَ رُومَةَ فَلَهُ الجَنَّة...»

Narrated ʿUthmān bin ʿAffān (May Allāh be pleased with him) that the Prophet (Peace and Blessings of Allāh be upon him) said, «Whoever digs the well of Rūmah will be granted Paradise…»[112]

عَنْ سَعْدِ بْنِ عُبَادَةَ رَضِيَ اللهُ عَنْهُ أَنَّهُ قَالَ يَا رَسُولَ اللهِ إِنَّ أُمَّ سَعْدٍ مَاتَتْ، فَأَيُّ الصَّدَقَةِ أَفْضَلُ؟ قَالَ «المَاءُ،» قَالَ: فَحَفَرَ بِئْرًا، وَقَالَ: هَذِهِ لِأُمِّ سَعْدٍ.

Narrated Saʿd bin ʿUbādah (May Allāh be pleased with him) who said, "O Messenger of Allāh, Umm Saʿd has died. What form of ṣadaqah is best?" He (Peace and Blessings of Allāh be upon him) replied, «Water.» (Thus,) he dug a well and said, "This is for Umm Saʿd."[113]

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ أَنَّ النَّبِيَّ ﷺ قَالَ «مَنِ احتَبَسَ فَرْسًا فِي سَبِيلِ اللهِ، إِيمَانًا بِاللهِ وَتَصْدِيقًا بِوَعْدِهِ، فَإِنَّ شِبَعَهُ وَرِيَّهُ وَرَوثَهُ وَبَولَهُ فِي مِيزَانِهِ يَومَ القِيَامَةِ.»

Abū Hurayrah (May Allāh be pleased with him) narrated that the Prophet (Peace and Blessings of Allāh be upon him) said, «He who keeps a horse for Jihād, having faith in Allāh and relying on His Promise, will find that its fodder, drink, dung, and urine will all be credited to him in his Scales (of good deeds) on the Day of Resurrection.»[114]

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ أَنَّ رَسُولَ اللهِ ﷺ قَالَ «...أَمَّا خَالِدٌ...قَدِ احْتَبَسَ أَدْرَاعَهُ وَأَعْتَادَهُ فِي سَبِيلِ اللهِ...»

Narrated Abū Hurayrah (May Allāh be pleased with him) that the Prophet (Peace and Blessings of Allāh be upon him) said, «…as for Khālid…he has endowed his armor and weapons for the sake of Allāh…»[115]

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111. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 2774.
112. Ibid., no. 2778.
113. Abū Dāwūd Sulaymān bin al-Ashʿath, *Sunan Abī Dāwūd*, no. 1681; Ibn Mājah, *Al-Sunan*, no. 3709.
114. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 2853.
115. Muslim bin al-Ḥajjāj, *Ṣaḥīḥ Muslim*, no. 2277.

7.3 PURPOSE

Waqf should be established for charitable purposes that are recognized by *Sharīʿah*. The scope of charitable purposes is extensive and may encompass *waqf* for *masājid*, educational institutions, healthcare facilities, universities, and other entities that serve the public good and contribute to community welfare, particularly for individuals in need. Furthermore, Islamic teachings emphasize the importance of fulfilling one's obligations to family members. The Qur'an articulates this duty clearly:

لَّيْسَ ٱلْبِرَّ أَن تُوَلُّوا۟ وُجُوهَكُمْ قِبَلَ ٱلْمَشْرِقِ وَٱلْمَغْرِبِ وَلَـٰكِنَّ ٱلْبِرَّ مَنْ ءَامَنَ بِٱللَّهِ وَٱلْيَوْمِ ٱلْـَٔاخِرِ وَٱلْمَلَـٰٓئِكَةِ ۞
وَٱلْكِتَـٰبِ وَٱلنَّبِيِّـۧنَ وَءَاتَى ٱلْمَالَ عَلَىٰ حُبِّهِۦ ذَوِى ٱلْقُرْبَىٰ وَٱلْيَتَـٰمَىٰ وَٱلْمَسَـٰكِينَ وَٱبْنَ ٱلسَّبِيلِ وَٱلسَّآئِلِينَ وَفِى ٱلرِّقَابِ
وَأَقَامَ ٱلصَّلَوٰةَ وَءَاتَى ٱلزَّكَوٰةَ وَٱلْمُوفُونَ بِعَهْدِهِمْ إِذَا عَـٰهَدُوا۟ ۖ وَٱلصَّـٰبِرِينَ فِى ٱلْبَأْسَآءِ وَٱلضَّرَّآءِ وَحِينَ ٱلْبَأْسِ ۗ
أُو۟لَـٰٓئِكَ ٱلَّذِينَ صَدَقُوا۟ ۖ وَأُو۟لَـٰٓئِكَ هُمُ ٱلْمُتَّقُونَ

«It is not al-Birr (piety, righteousness, and each and every act of obedience to Allāh, etc.) that you turn your faces toward east and (or) west (in prayers); but al-Birr is (the quality of) the one who believes in Allāh, the Last day, the angels, the Book, the Prophets and gives his wealth, in spite of love for it, to the kinsfolk, to the orphans, and to al-Masākīn (the poor), and to the wayfarer, and to those who ask, and to set slaves free, performs al-Ṣalāh (Iqāmah al-Ṣalāh), and gives the zakāh, and who fulfill their covenant when they make it, and who are al-Ṣābirīn (the patient ones, etc.) in extreme poverty and ailment (disease) and at the time of fighting (during the battles). Such are the people of the Truth and they are al-Muttaqūn.»

(Al-Baqarah, Q2:177)

According to the previously mentioned *āyah*, a *waqf* may be established to provide for the support of the founder's immediate descendants, which can be allocated for one or two generations or in perpetuity until their lineage ceases, at which point the *waqf* would revert to support the needy. It is important to note that a Muslim is prohibited from creating a *waqf* for the benefit of a church or synagogue. A *waqf* constitutes a form of *ṣadaqah* and is not to be utilized for purposes that are displeasing to Allāh (Exalted be He). Should such a *waqf* be established for inappropriate purposes, it will become null and void, and the ownership rights to the *waqf* property will revert to the founder.

وَتَعَاوَنُوا۟ عَلَى ٱلْبِرِّ وَٱلتَّقْوَىٰ ۖ وَلَا تَعَاوَنُوا۟ عَلَى ٱلْإِثْمِ وَٱلْعُدْوَٰنِ ۚ وَٱتَّقُوا۟ ٱللَّهَ ۖ إِنَّ ٱللَّهَ شَدِيدُ ٱلْعِقَابِ

«…help you one another in al-Birr and al-Taqwā (virtue, righteousness, and piety); but do not help one another in sin and transgression. And fear Allāh. Verily, Allāh is Severe in punishment.»

(Al-Māʾidah, Q5:2)

If the objective of the *waqf* is religious and charitable, yet it becomes impractical or ceases to exist, the *waqf* itself shall not diminish. The principle of perpetuity remains intact, as there exists an implied provision within the *waqf* to assist the poor in the event that the primary purpose is unachievable. In such circumstances, the income generated from the *waqf* property may be utilized, subject to the court's approval, for the restoration of any *waqf* property, for purposes similar to the original intent, or for the general benefit of the impoverished. Additionally, it may be allocated for the advancement of knowledge and education among Muslims. For instance, if a *waqf* is designated for a religious or charitable institution that, over time, becomes defunct, the *waqf* property will not revert to the founder (*wāqif*) or their heirs; instead, it shall be directed toward other analogous religious institutions or any initiative that serves to benefit humanity.[116]

7.4 PILLARS AND CONDITIONS

Most scholars define the pillars of *waqf* as four (4):[117]

1. The founder or creator of the *waqf* (*wāqif*).
2. The *waqf* property (*mawqūf*).
3. The beneficiaries (*mawqūf ʿalayhi*) who could be a person or a group of persons for whose benefit the *waqf* is created.
4. Expression (*ṣīghah*) which includes offer and acceptance.

According to the Ḥanafī school of thought, *waqf* is established upon a singular foundational principle: the offer made by the founder (*wāqif*). This school views *waqf* as a unilateral contract, which is finalized through the explicit declaration issued by the founder.

7.4.1 Founder

The following are the conditions for the founder (*wāqif*):

1. He should be a Muslim.
2. He must own the property which is the subject of *waqf*. Subsequent acquisition of property does not validate the *waqf*.
3. The founder must have complete legal capacity. A *waqf* created by an insane, minor, bankrupt, or prodigal person is not valid. Most *madh'habs* agree that if the debt of a person covers his entire property, he shall be barred from dealing with his property, including gift-giving and creating *waqf*. In such circumstances, the court shall have the power to order the annulment of such settlement of property by the debtor.[118]

116. For more details, see Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 217–26.
117. For more details, see ibid., pp. 157–8.
118. Tanzil-ur-Rahman, *A Code of Muslim Personal Law*, 143.

4. He must declare the property as *waqf* voluntarily, without coercion.
5. The establishment of a *waqf* must be executed in good faith. A *waqf* created with the intent to harm creditors or heirs, or to deny any individual their rightful claim, is deemed impermissible. If a debtor converts a property into a *waqf* with the purpose of depriving a creditor of their right to recover a debt, this action may invalidate the *waqf*, particularly when the debt encompasses the entirety of the founder's property. Similarly, a *waqf* established by a debtor for the benefit of their children, intended to evade financial obligations, is considered null and void. In such circumstances, the formation of a *waqf* constitutes a transgression, while abstaining from such actions is regarded as virtuous.

7.4.2 *Waqf* Property

The following are the conditions for the *waqf* property (*mawqūf*):[119]

1. The property designated for *waqf* must hold intrinsic value according to *Sharīʿah* and must be capable of generating benefits without being depleted. It is required to be classified as wealth (*māl*) and must possess a tangible nature (*ʿayn*); the establishment of *waqf* for usufruct is prohibited. Acceptable forms of property include immovable assets such as land and buildings, as well as movable assets for which dedication practices are commonly recognized.
2. The property should be in existence, known, and specified. For instance, the *waqf* of a loan or a profit receivable in the future is invalid.

7.4.3 Beneficiary

Beneficiary (*mawqūf ʿalayhi*) can be specified (*muʿayyan*) or unspecified (*ghayr muʿayyan*).[120] *Waqf* can be established for one or multiple persons as specified; alternatively, it may remain unspecified and categorized under broader groups such as disadvantaged individuals, scholars in specific academic fields, students who have memorized the Qur'an or other students of knowledge, *dāʿīs*, *mujāhidīn*, *masājid*, schools, and similar entities. Additionally, *waqf* may be directed toward institutions, such as when copies of the Qur'an are designated for the benefit of *masājid*. It can also be established in favor of relatives, provided that the ultimate purpose of the *waqf* aligns with charitable objectives or benefits the poor.

119. For more details, see Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 183–7.
120. Ibid., p. 187.

The creation of *waqf* for a *dhimmī* is permissible; however, it is crucial to note that *waqf* intended for churches or synagogues is invalid. Furthermore, *waqf* cannot be established for animals, with the exception of horses designated for *jihād*.

When a beneficiary is identified, it is essential that the individual is known, existent (mawjūd), and capable of acquiring ownership of the benefit conferred. In instances where beneficiaries are not specified, it is sufficient for them to be identifiable, and the *waqf* must be established for a charitable purpose.

7.4.4 Expression

The following are the conditions for the expression (*ṣīghah*):[121]

1. For the establishment of a *waqf*, it is not necessary to use particular words. However, the words used should indicate the creation of *waqf*. Intentions to create *waqf* and the appointment of an administrator (*mutawallī*) are sufficient for the creation of *waqf*. To the Ḥanafīs and most Ḥanbalīs, acceptance by the *mawqūf ʿalayhi* is not one of the pillars of *waqf*, whether specified or not. To the Mālikīs, Shāfiʿīs, and some Ḥanbalīs, acceptance becomes a pillar of the *waqf* if made in favor of a specific person. If the person is competent, he may accept the offer. Otherwise, his guardian may accept the *waqf* on his behalf. If a *waqf* is made in favor of institutions such as a university, acceptance by a person who legally represents the university becomes a condition.
2. The words used should indicate perpetuity. A *waqf* for a certain period is not allowed. This is the opinion of most *madh'habs*. According to the Shāfiʿīs, Ḥanbalīs, and Abū Yūsuf and Muḥammad al-Shaybānī of the Ḥanafīs, the declaration of *waqf* by the founder (*wāqif*) is irrevocable as soon as the dedication is pronounced. The founder cannot reserve for himself the power of revocation. Mālikī jurists and *Imam* Abū Ḥanīfah (which represents a minority opinion within the Ḥanafī *madh'hab*) are of the opinion that a *waqf* can be revoked at any time before registration or confirmation by a *qāḍī*.
3. A *waqf* should immediately take effect and should not depend on an uncertain incident. Once made, a *waqf* should immediately come into operation. A *waqf* must not be made to depend on such an eventuality which has equal chances of occurring and not occurring.[122] For example, it is invalid if a person says that if his son graduates or returns from a journey, that a house will be turned into *waqf*. Similarly, when the creation and validity of a *waqf* are subjected to a contingency, it becomes void. For example, if the *waqf* is made contingent on the death of a person without leaving children, it will be void. However, a suspended *waqf* that will come into operation after the death of the founder

121. For more details, see ibid., pp. 201–8.
122. Tanzil-ur-Rahman, *A Code of Muslim Personal Law*, 133.

is valid. *Waqf* created by wills operate after the death of the founder. It may be cancelled before the death of the founder. The *waqf* which is created through a will should not apply to more than one-third of the estate except with the consent of the heirs.
4. Once *waqf* is created, it is binding and cannot be cancelled.
5. Invalid conditions should not be stipulated, such as "My ownership must be retained," or "I reserve the right to cancel the *waqf*," or that an administrator (*mutawallī*) designated by the founder or their descendants should not be dismissed. In such instances, the stipulated conditions are rendered void; however, the *waqf* itself remains valid.
6. The founder should also mention the beneficiaries in whose favor the *waqf* is made.

7.5 TYPES

Waqf is of two types:[123]

1. *Waqf khayrī* is created from the very beginning for a virtuous charitable purpose for the sake of Allāh (Exalted be He). It is subdivided into two types:
   a. Public *waqf* – *Waqf* made for public benefit. For instance, a bridge constructed by a private individual and dedicated to the public without any restriction, or a cemetery or a masjid. This type of *waqf* is created for the general public whether rich or poor and it comes under the direct control or supervision of the state.
   b. Quasi-public *waqf* – *Waqf* made to provide for a general pious purpose for the benefit of a particular group of individuals. For instance, a *waqf* created specifically for scholars or students of religious knowledge.
2. *Waqf dhurrī*, also known as *waqf ahlī* or *waqf ʿalā al-awlād*, refers to a specific type of *waqf* established primarily for the benefit of an individual's children and their descendants, with the ultimate aim of serving a charitable or religious purpose. This type of *waqf* is established specifically for the benefit of one's family members, reflecting the Islamic principle that one must first ensure the maintenance of those for whom they are responsible.

While beneficiaries of a *waqf* do not obtain ownership of the *waqf* asset, they are entitled to derive benefits from it. Importantly, the ultimate advantage of the *waqf* must be reserved for a defined charitable, pious, or religious purpose, which should be explicitly stated or clearly implied in the *waqf* deed. In cases where the *waqf* is designated for heirs across generations without specified shares, all

123. Dr. Nāẓim Sulṭān Misbāḥ, *Mabāḥith fī Aḥkām al-Waqf*, 27–32; For more details, see Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 159–66.

individuals designated as beneficiaries, along with their heirs, are entitled to equal portions of the *waqf*'s income. It is noteworthy that the principle of inheritance law, which dictates that males receive twice the share of females, does not apply within the framework of *waqf* regulations.

7.6 THE ADMINISTRATOR

Waqf property is considered a juristic entity. It is represented by the administrator (*mutawallī*) who is merely a manager of the *waqf* and not its owner. The administrator represents the *waqf* both as a plaintiff and as a defendant.

7.6.1 Responsibilities

The responsibilities of the administrator, known as the *mutawallī*, encompass all necessary and appropriate actions required for the safeguarding and management of *waqf* property. This individual serves as an aide to the founder, referred to as the *wāqif*, and is appointed to oversee the administration of the *waqf* for the benefit of the designated beneficiaries. Additionally, the administrator bears the responsibility for the equitable distribution of the *waqf*'s proceeds among these beneficiaries.

The founder has the authority to designate himself as the initial administrator, or alternatively, appoint another individual to that role. Throughout his lifetime, the founder retains the rights to appoint, remove, and exercise control over the administrator. Moreover, the founder may specify within the *waqf* deed the manner, conditions, and duration for which a person or a group of individuals shall be appointed as the administrator(s). He may also identify individuals or groups authorized to appoint administrators in his stead. Furthermore, the founder possesses the power to designate a successor to the administrator. In the absence of such designations, a *qāḍī* may appoint an administrator.

The administration of *waqf* property can also be entrusted to a committee. An administrator is not permitted to relinquish his position without securing permission from the founder or the court.

The founder may authorize the administrator and any subsequent successors to receive a fixed remuneration derived from the income generated by the *waqf* property. Should the *waqf* deed not indicate a predetermined remuneration, the court may, upon the administrator's application, establish the remuneration and permit its collection from the *waqf* income.

7.6.2 Limitations

An administrator (*mutawallī*) can do everything which is necessary and reasonable for the protection and administration of the *waqf* property. He has the power to manage and administer the *waqf* property. However, the following limitations are imposed on him:[124]

1. He cannot sell, mortgage, or change the ownership of *waqf* property without the permission of the court.
2. He cannot transfer his duties, functions, and powers to anybody else and make him the trustee, unless authorized by the *waqf* deed, court, or custom.
3. He cannot borrow money for spending on the beneficiaries but may borrow with the permission of the court to spend on repairing the *waqf* property.
4. He cannot grant a lease of *waqf* property for a term longer than customarily allowed except with the permission of the court.

7.6.3 Removal

If an administrator (*mutawallī*) is negligent and in breach of his duty, the court may remove him, even if he is the founder (*wāqif*).[125] A founder may also remove the administrator even if he has not expressly reserved this right for himself in the *waqf* deed.

7.7 MAINTENANCE OF *WAQF* PROPERTY

It is the responsibility of the administrator (*mutawallī*) to ensure the proper maintenance and condition of the *waqf* property. Should renovations be necessary and require incurring debt, the administrator may seek court approval to borrow funds for such purposes. The repayment of any such debt must be facilitated from the income generated by the *waqf* property. It is imperative to note that an administrator is prohibited from incurring debt independently and may only do so with the express permission of the court. For example, if agricultural land is designated as *waqf* and it is subsequently determined that constructing houses on this land could yield greater income, the administrator is authorized, with court permission and the agreement of the beneficiaries, to proceed with the construction of said houses and to finance the project accordingly.

124. For more details, see Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 230–7.
125. Ibid., p. 236.

Furthermore, the administrator is not permitted to lease the *waqf* property to himself or to close relatives unless specifically authorized by the court. The administrator retains the right to lease the *waqf*'s shops, gardens, houses, or other properties, as well as to cultivate *waqf* lands, in accordance with the stipulations established by the founder (*wāqif*). The administrator holds the exclusive right to collect rent or any other income generated from the *waqf* property. The beneficiaries' entitlement is limited to the net income derived from the *waqf* after all necessary expenses have been accounted for, including the *ʿushr*, *kharāj*, and maintenance costs of the property.

Any surplus from the income of a particular *waqf* property may be utilized to acquire additional properties. These newly acquired properties will also be designated as *waqf*, and the same regulations will apply. In cases where a *waqf* is established for charitable purposes, any excess income that accumulates after fulfilling its intended purpose may be utilized by the administrator for similar welfare activities, benefiting other groups in need, such as additional impoverished individuals.

7.8 DEVELOPMENT

Development of *waqf* means "every kind of construction activity undertaken to expand and enlarge, rebuild, or improvise an existing *waqf* property, so as to generate additional revenue for the socio-economic and educational betterment of the Muslim community."[126] Development activities may encompass the construction of commercial entities, such as shopping centers, wedding halls, hostels, and residential complexes, with the objective of generating supplementary revenue. *Waqf* institutions may require access to technical expertise to effectively develop *waqf* properties. Conducting a feasibility study is essential to assess the viability of such projects, including the preparation of cost estimations, profit analysis, and investment ratios.

The development of *waqf* properties can be financed through *waqf* funds or alternative financing. It is imperative that any financing methods employed adhere to *Sharīʿah* principles, ensuring the absence of *ribā* (usury), *gharar* (uncertainty), and any other prohibitions outlined by *Sharīʿah*. Ownership of *waqf* properties is exclusively vested in Allāh (Exalted be He), thus precluding any individual from obtaining ownership of *waqf* property. Therefore, any financing model used should not conflict with this principle.

126. Khalid Rashid, 'Islamic Financing Techniques for the Development of *Waqf*, with Special Reference to India', 180.

Historically, *mursad* and *ḥukr* transactions have been utilized for the enhancement of *waqf* properties. A *mursad* represents a loan arrangement between the lender and the administrator (*mutawallī*), who seeks funding for the refurbishment or reconstruction of a dilapidated *waqf* property. In this case, the administrator is usually required to obtain consent from a *qāḍī*. Following the completion of the renovations, the refurbished *waqf* property is usually leased to the lender for a sufficiently extended term, at a rental rate deemed adequate for loan repayment. Upon conclusion of the lease period, the lender has to handover the developed *waqf* property to the administrator. Alternatively, the lender may receive a predetermined percentage of the income generated by the developed *waqf* until the loan has been fully repaid.[127]

Ḥukr refers to a long-term lease of *waqf* property in which, rather than providing a loan, a prospective tenant pays rent in advance. This rent is allocated for the maintenance and improvement of the property, with a nominal portion due annually. In both the *mursad* loan and *ḥukr* agreements, the *waqf* property is leased for an exceptionally extended period, primarily aimed at preserving and maintaining the property rather than maximizing its income. It is important to note that *mursad* and *ḥukr* arrangements have been abolished in several Arab countries due to their exploitation for the conversion of *waqf* properties into private ownership.[128] A meticulous examination of the two methodologies for the development of *waqf*, namely *mursad* and *ḥukr*, reveals the inherent difficulty in circumventing the pitfalls of *ribā*. In both scenarios, the lender derives an additional benefit beyond the principal loan extended to the borrower, which contravenes the *Sharīʿah* principle stipulating that any extra benefit accruing to the lender in a loan agreement constitutes *ribā*. Consequently, these practices should be deemed unacceptable.

7.9 *ISTIṢNĀʿ*

The contract of *Istiṣnāʿ* can be effectively utilized in the development of *waqf* properties. In this context, a company may enter into an *Istiṣnāʿ* agreement with a *waqf* institution, wherein the company assumes responsibility for the development of a *waqf* property. To execute this plan, the company may engage a specialized developer to conduct the necessary work, which serves as an example of parallel *Istiṣnāʿ*. For instance, the company might commit to constructing a building on *waqf* land. Subsequently, the company may subcontract the actual construction tasks to a construction company through a separate *Istiṣnāʿ* contract.[129]

127. Ibid., 187–92.
128. Ibid. Therefore it is better for a Muslim to be on the safe side, especially in sensitive issues such as *waqf*, and always go with the agreed upon issues as much as possible.
129. Ibid., 192–3.

7.10 MUSHĀRAKAH MUTANĀQIṢAH

A company and the *mutawallī* (administrator) can agree to engage in a mushārakah mutanāqiṣah (decreasing partnership) contract to establish a *waqf*. The respective shares of the partners are clearly defined within the context of the mushārakah capital, as well as in terms of profit and loss distribution. Both the company and the *waqf* project will receive their designated share of profits as stipulated. Upon the project's completion, the company's equity share will be incrementally reduced. To facilitate this process, the company will divest its share to the *waqf* through a distinct sale agreement. Consequently, the company's share of the profits will also diminish. Ultimately, this arrangement culminates in the *waqf* achieving full ownership of the project.[130]

7.11 CASE STUDY: ZAM-ZAM TOWER AND TIMESHARE BOND

The following extract is taken from Arab News.[131]

LONDON, 16 February 2004 — Construction of the Zam-Zam Tower Complex on land adjacent to the Holy Mosque in Makkah is progressing according to plan by the developers, the Binladin Construction Group. The timeshare financing of the building and its future use is a first for the Kingdom and the region. Owners of a timeshare will own the lease of an apartment, ranging from royal suite to studio for a period of one or two weeks for the next 24 years. A studio apartment, in off peak season, for one week will cost $5,000 for the 24-year period, whereas the price for the same apartment increases to $22,000 if it is during the first three weeks of Ramadan; or to $80,000 if it is during the last ten days of Ramadan. The same formula applies for all the other categories. The project has the support of the Saudi Council of Ministers and the *Shūrā* Council. All contracts and agreements come under Saudi law and have been scrutinized by both Saudi and international law firms. The investment risk as such, say promoters, is mitigated by the support of the Saudi government.

The project is funded by *Sharīʿah*-compliant finance based both on an Islamic bond — *ṣukūk al-ijārah*, which itself is a forward lease and on a *Ṣukūk Al-Intifāʿ* (a timeshare bond.) Bondholders may trade their *ṣukūks* via the Internet on a global basis. The above structure has attracted such interest from investors that the promoters are already planning to develop similar projects in Madīnah and other regions in the Kingdom. The King ʿAbd al-ʿAzīz *Waqf* for the two Holy

130. Ibid., 199–202.
131. Parker, 'Zam Zam Tower and Timeshare Bond'.

Mosques owns the land adjacent to the *Ḥaramayn*. The *waqf* has leased the land to the Binladin Group on a Build-Operate-Transfer agreement for 28 years. Under this agreement, the Binladin Group will build a shopping complex, four towers and a hotel. The Binladin Group in turn has leased the Zam-Zam Tower project to the Kuwait-based Munshaʾāt Real Estate Projects KSC. Munshaʾāt will finance the construction of the project, operate it and then transfer it back to the *waqf* at the end of the 28-year lease period.

To finance the development of the project, Munshaʾāt in December 2003 issued a $390 million ṣukūk, which, according to Munshaʾāt CEO and Managing Director Meshal Al-Ameri was oversubscribed by 135 percent in the first two weeks. Munshaʾāt is projecting an internal rate of return on the investment of 26 percent per annum. The investors are big names in Saudi Arabia and the Gulf but did not market to the wider Muslim world. However, Munshaʾāt are in contact with investors in Southeast Asia, for instance, regarding the other projects being mooted. To make the distribution of the units more equitable, MAS is selling the *ṣukūks al-intifāʿ* on a quota basis for various Muslim countries. Munshaʾāt has also signed a management agreement with a five-star hotel group that will manage and run the hotel to international standards. (Copyright: Arab News © 2003. All rights reserved)

7.12 QUESTIONS

1. What are the literal and technical meanings of *waqf*?

2. Discuss the importance of *waqf* in poverty alleviation and in providing social security in Muslim societies.

3. Discuss the evidence of *waqf* from the Sunnah of the Prophet (Peace and Blessings of Allāh be upon him).

4. Briefly explain the types of *waqf* in Islam.

5. Which *ḥadīth* indicates that *waqf* cannot be revoked?

6. Mark as TRUE or FALSE:
a. The *waqf* of ʿUmar bin al-Khaṭṭāb was the first *waqf* in Islam.
b. A Muslim is not allowed to make *waqf* for the benefit of his family members.
c. *Mutawallī* is the one who looks after a *waqf* property.
d. A *mutawallī* has the right to quit his job without informing the founder.
e. It is impermissible to borrow money to fix *waqf* property in disrepair, even with the permission of the court.
f. Cash *waqf* is impermissible in Islam even if the cash is to be converted to a non-perishable property.

7. Write an essay discussing issue of *istibdāl* and the sale of *waqf* when its benefit(s) no longer exist.

8. Write an essay about the lessons that can be extracted from the *ḥadīth* of the Prophet (Peace and Blessings of Allāh be upon him), «When a man dies, his deeds come to an end except for three (things): ceaseless charity (*ṣadaqah* jāriyah); knowledge that benefits, or a virtuous descendant who prays for him (i.e. for the deceased).»[132]

FURTHER READING MATERIALS

1. *Al-Mawsūʿah al-Fiqhīyyah al-Kuwaytīyyah*. Kuwait: Ministry of Awqaf and Islamic Affairs, 1983
2. Sayyid Sābiq. *Fiqh al-Sunnah*. Cairo: Al-Fatḥ li al-Iʿlām al-ʿArabī, 2004.
3. Ibn Qudāmah, ʿAbd Allāh bin Aḥmad. *Al-Mughnī. Riyadh*: Dar ʿĀlam al-Kutub, 1997.

132. Muslim bin al-Ḥajjāj, *Ṣaḥīḥ Muslim*, no. 4223.

CHAPTER EIGHT:
WAṢĪYYAH

LEARNING OUTCOMES

By the end of this section, the students should be able to:

1. Know the meaning of *waṣīyyah*, its legality, significance, pillars, and conditions.
2. Identify the types of *waṣīyyah*.
3. Understand the revocation of *waṣīyyah*.

The blessings granted by Allāh (Exalted be He) to humanity, and particularly to Muslims, include the enhancement of opportunities to engage in good deeds and the provision of mechanisms to fulfill responsibilities toward others prior to death. One notable method established by Allāh (Exalted be He) is the *waṣīyyah*. This system has been prescribed across various nations and cultures, culminating in its significance within the community of Prophet Muḥammad (Peace and Blessings of Allāh be upon him).

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ قَالَ: قَالَ رَسُولُ اللهِ ﷺ «إِنَّ اللهَ تَصَدَّقَ عَلَيْكُمْ عِنْدَ وَفَاتِكُمْ بِثُلُثِ أَمْوَالِكُمْ زِيَادَةً لَكُمْ فِي أَعْمَالِكُمْ.»

Narrated Abū Hurayrah (May Allāh be pleased with him) that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «Allāh (Exalted be He) has been charitable with you over the disposal of one-third of your wealth at the time of your death, so that you may be able to add to the record of your good deeds.»[133]

One of the oldest *waṣīyyah* recorded is that of Prophet Nūḥ (Peace be upon him) to his son:

عَنْ عَبْدِ اللهِ بْنِ عَمْرٍو رَضِيَ اللهُ عَنْهُمَا قَالَ: كُنَّا جُلُوساً عِنْدَ رَسُولِ اللهِ ﷺ فَجَاءَ رَجُلٌ مِنْ أَهْلِ الْبَادِيَةِ، عَلَيْهِ جُبَّةُ سِيجَانٍ، حَتَّى قَامَ عَلَى رَأْسِ النَّبِيِّ ﷺ فَقَالَ: إِنَّ صَاحِبَكُمْ قَدْ وَضَعَ كُلَّ فَارِسٍ (أَوْ قَالَ: يُرِيدُ أَنْ يَضَعَ كُلَّ فَارِسٍ) وَيَرْفَعَ كُلَّ رَاعٍ، فَأَخَذَ النَّبِيُّ ﷺ بِمَجَامِعِ جُبَّتِهِ فَقَالَ «أَلَا أَرَى عَلَيْكَ لِبَاسَ مَنْ لا يَعْقِلُ» ثُمَّ قَالَ «إِنَّ نَبِيَّ اللهِ نُوحاً ﷺ لَمَّا حَضَرَتْهُ الْوَفَاةُ قَالَ لِابْنِهِ: إِنِّي قَاصٌّ عَلَيْكَ الْوَصِيَّةَ، آمُرُكَ بِاثْنَتَيْنِ، وَأَنْهَاكَ عَنِ اثْنَتَيْنِ. آمُرُكَ بِلَا إِلَهَ إِلَّا اللهُ، فَإِنَّ السَّمَاوَاتِ السَّبْعَ وَالْأَرَضِينَ السَّبْعَ، لَوْ وُضِعْنَ فِي كِفَّةٍ وَوُضِعَتْ لَا إِلَهَ إِلَّا اللهُ فِي كِفَّةٍ لَرَجَحَتْ بِهِنَّ، وَلَوْ أَنَّ السَّمَاوَاتِ السَّبْعَ وَالْأَرَضِينَ السَّبْعَ كُنَّ حَلْقَةً مُبْهَمَةً لَقَصَمَتْهُنَّ لا إِلَهَ إِلَّا اللهُ، وَسُبْحَانَ اللهِ وَبِحَمْدِهِ، فَإِنَّهَا صَلَاةُ كُلِّ شَيْءٍ، وَبِهَا يُرْزَقُ كُلُّ شَيْءٍ، وَأَنْهَاكَ عَنِ الشِّرْكِ وَالْكِبْرِ...»

Narrated ʿAbd Allāh bin ʿAmr (May Allāh be pleased with them both): We were sitting with the Messenger of Allāh (Peace and Blessings of Allāh be upon him) when a Bedouin man wearing a robe with a border approached him until he stood before the Messenger of Allāh (Peace and Blessings of Allāh be upon him). The man said, "Your companion (pointing at the Prophet [Peace and Blessings of Allāh be upon him]) has debased every horseman and elevates every shepherd." The Prophet (Peace and Blessings of Allāh be upon him) took hold of the folds of his robe and said, «I see that you are wearing the clothes of someone who is without intelligence.» Then he went on, «When death approached Prophet Nūḥ (Peace be upon him) he told his son, "I will read my waṣīyyah to you: I give you some instructions. I command you with two things and I forbid you two things. I command you to say, 'There is no deity worthy of worship except Allāh.' If the seven heavens and the seven earths were to be placed in one hand of the scale and 'There is no deity worthy of worship except Allāh,' on the other hand it would outweigh

133. Ibn Mājah, *Al-Sunan*, no. 2719.

them. And if the seven heavens and the seven earths were a dark ring, they would be cut by 'There is no deity worthy of worship except Allāh.' And I command you to say, 'Glory be to Allāh and by His praise,' for it is the prayer of everything and by it everything has its provision. And I forbid you to associate others with Allāh and to be arrogant…"»[134]

This *ḥadīth* serves as evidence that previous Prophets utilized *waṣīyyah* as a means to preserve the knowledge they conveyed. It underscores the significant status of *waṣīyyah* within Islam, not only in the *Sharīʿah* of Prophet Muḥammad (Peace and Blessings of Allāh be upon him) but also in the earlier *Sharīʿah*s. The existence of recorded *waṣīyyah* from certain Prophets of Allāh (Peace be upon them) is a clear indication of the importance and value that the *Sharīʿah* attributes to this practice..

8.1 DEFINITION

Waṣīyyah is an Arabic word which linguistically means a command. Allāh (Exalted be He) says:

وَوَصَّىٰ بِهَآ إِبْرَٰهِـۧمُ بَنِيهِ وَيَعْقُوبُ

«And this (submission to Allāh, Islam) was enjoined by Ibrāhīm upon his sons and by Yaʿqūb.»

(Al-Baqarah, Q2:132)

ذَٰلِكُمْ وَصَّىٰكُم بِهِۦ لَعَلَّكُمْ تَعْقِلُونَ

«This He has commanded you that you may understand.»

(Al-Anʿām, Q6:151)

وَمِنْهُ قَوْلُ الْخَطِيبِ: أُوصِيكُمْ بِتَقْوَى اللهِ وَطَاعَتِهِ.

It is also part of the saying of the khaṭīb on Friday, "I command you to fear and obey Allāh."

Technically, *waṣīyyah* is a specified form of command, whereby wiṣ*āyah* is "an instruction (or command) that is supposed to be executed after the death of the testator."[135] *Waṣīyyah* refers to instructions for wealth distribution after the testator's death.[136] It is also defined as "a gift of a property or its benefit, or collection of debt that takes effect right after the death of the testator."[137]

134. Muḥammad bin Ismāʿīl al-Bukhārī, *Al-Adab al-Mufrad*, no. 548.
135. Al-Mawsūʿah al-Fiqhīyyah, vol. 43, p. 167.
136. Ibid., p. 221.
137. Sayyid Sābiq, *Fiqh al-Sunnah*, 1093; Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, p. 17.

Waṣīyyah is thus a gratuitous non-profit transaction that comes into operation after the testator's death. It is a disposition (*taṣarruf*) by a person in their property that takes effect after death. Such dispositions could be regarding property, usufruct or debt, giving a loan to another, or releasing a guarantor from the guarantee. It can also be concerning a right, such as a will made to defer the payment of a debt, a will made to sell the testator's house or land to a particular individual, or one concerning intellectual property such as copyright.

8.2 LEGALITY

Making *waṣīyyah* is recommended (*mustaḥabb*). The Qur'an states:

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ ٱلْمَوْتُ إِن تَرَكَ خَيْرًا ٱلْوَصِيَّةُ لِلْوَٰلِدَيْنِ وَٱلْأَقْرَبِينَ بِٱلْمَعْرُوفِ ۖ حَقًّا عَلَى ٱلْمُتَّقِينَ

«It is prescribed for you, when death approaches any of you, if he leaves wealth, that he makes a bequest to parents and next of kin, according to reasonable manners. (This is) a duty upon al-Muttaqūn.»

(Al-Baqarah, Q2:180)

مِنۢ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَآ أَوْ دَيْنٍ غَيْرَ مُضَآرٍّ ۚ وَصِيَّةً مِّنَ ٱللَّهِ ۗ وَٱللَّهُ عَلِيمٌ حَلِيمٌ

«After payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allāh; and Allāh is ever All-Knowing, Most-Forbearing.»

(Al-Nisāʾ, Q4:12)

In the preceding *āyah*, the allocation of the estate to the heirs is contingent upon the execution of the *waṣīyyah* and the resolution of outstanding debts. It is important to note that the settlement of debts is prioritized over the *waṣīyyah*, as indicated by the following narration:

عَنْ عَلِيٍّ رَضِيَ اللهُ عَنْهُ أَنَّهُ قَالَ: إِنَّكُمْ تَقْرَءُونَ هَذِهِ الآيَةَ: (...مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ...) [النساء:12] وَإِنَّ رَسُولَ اللهِ ﷺ قَضَىٰ بِالدَّيْنِ قَبْلَ الْوَصِيَّةِ، وَإِنَّ أَعْيَانَ بَنِي الأُمِّ يَرِثُونَ دُونَ بَنِي الْعَلاَّتِ، الرَّجُلُ يَرِثُ أَخَاهُ لِأَبِيهِ وَأُمِّهِ دُونَ أَخِيهِ لِأَبِيهِ.

Narrated ʿAlī (May Allāh be pleased with him): You recite this āyah, (...after payment of legacies he (or she) may have bequeathed or debts...) [Al-Nisāʾ, Q4:12] And indeed, the Messenger of Allāh (Peace and Blessings of Allāh be upon him) paid the debt before the waṣīyyah and [judged] that the full siblings (from the same mother and father) inherit, not the consanguine siblings (siblings from different mothers). The man inherits from his brother from his father and his mother [i.e. full brother], not his brother from his father [i.e. half-brother].[138]

138. Al-Tirmidhī, *Sunan al-Tirmidhī*, no. 2237.

Waṣīyyah is to be executed subsequent to the settlement of funeral expenses and any outstanding debts. The prevailing scholarly opinion asserts that debts owed to Allah (Exalted be He), such as *zakāh* and obligatory expiation, must be addressed regardless of whether they are specifically outlined in the *waṣīyyah*. In contrast, the Ḥanafī school posits that these obligations may only be fulfilled if they are explicitly stated in the *waṣīyyah*. The following *ḥadīth* provides clear support for the majority view, which is considered to align most closely with the truth:

عَنِ ابْنِ عَبَّاسٍ رَضِيَ اللهُ عَنْهُمَا أَنَّ امْرَأَةً أَتَتْ رَسُولَ اللهِ ﷺ فَقَالَتْ: إِنَّ أُمِّي مَاتَتْ وَعَلَيْهَا صَوْمُ شَهْرٍ. فَقَالَ «أَرَأَيْتِ لَوْ كَانَ عَلَيْهَا دَيْنٌ، أَكُنْتِ تَقْضِينَهُ؟» قَالَتْ: نَعَمْ. قَالَ «فَدَيْنُ اللهِ أَحَقُّ بِالْقَضَاءِ.»

Narrated Ibn ʿAbbās (May Allāh be pleased with them both): A woman came to the Messenger of Allāh (Peace and Blessings of Allāh be upon him) and said, "My mother has died, and fasts of a month are due from her." Thereupon he (Peace and Blessings of Allāh be upon him) said, «Don't you see that if debt was due from her, would you not pay it?» She said, "Yes (I would pay on her behalf)." Thereupon he (Peace and Blessings of Allāh be upon him) said, «The debt of Allāh is more deserving of payment (than the payment of anyone else).»[139]

The basis of the law of *waṣīyyah*, by consensus (*ijmāʿ*), is to be found in the following narration:

عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَّاصٍ رَحِمَهُ اللهُ عَنْ أَبِيهِ رَضِيَ اللهُ عَنْهُ قَالَ: كَانَ رَسُولُ اللهِ ﷺ يَعُودُنِي عَامَ حَجَّةِ الْوَدَاعِ مِنْ وَجَعٍ اشْتَدَّ بِي، فَقُلْتُ: إِنِّي قَدْ بَلَغَ بِي مِنَ الْوَجَعِ، وَأَنَا ذُو مَالٍ، وَلا يَرِثُنِي إِلاَّ ابْنَةٌ، أَفَأَتَصَدَّقُ بِثُلُثَيْ مَالِي؟ قَالَ «لا.» فَقُلْتُ: بِالشَّطْرِ؟ فَقَالَ «لا.» ثُمَّ قَالَ «الثُّلُثُ وَالثُّلُثُ كَبِيرٌ (أَوْ كَثِيرٌ) إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ، وَإِنَّكَ لَنْ تُنْفِقَ نَفَقَةً تَبْتَغِي بِهَا وَجْهَ اللهِ إِلَّا أُجِرْتَ بِهَا، حَتَّىٰ مَا تَجْعَلُ فِي فِي امْرَأَتِكَ.» فَقُلْتُ: يَا رَسُولَ اللهِ، أُخَلَّفُ بَعْدَ أَصْحَابِي؟ قَالَ «إِنَّكَ لَنْ تُخَلَّفَ فَتَعْمَلَ عَمَلاً صَالِحًا إِلَّا ازْدَدْتَ بِهِ دَرَجَةً وَرِفْعَةً، ثُمَّ لَعَلَّكَ أَنْ تُخَلَّفَ حَتَّىٰ يَنْتَفِعَ بِكَ أَقْوَامٌ وَيُضَرَّ بِكَ آخَرُونَ، اللَّهُمَّ أَمْضِ لِأَصْحَابِي هِجْرَتَهُمْ، وَلَا تَرُدَّهُمْ عَلَىٰ أَعْقَابِهِمْ، لَٰكِنِ الْبَائِسَ سَعْدُ ابْنُ خَوْلَةَ، يَرْثِي لَهُ رَسُولُ اللهِ ﷺ أَنْ مَاتَ بِمَكَّةَ.»

Narrated ʿĀmir bin Saʿd bin Abī Waqqāṣ (May Allāh be pleased with him) that his father (May Allāh be pleased with him) said, "In the year of the last Ḥajj of the Prophet (Peace and Blessings of Allāh be upon him) I became seriously ill and the Prophet (Peace and Blessings of Allāh be upon him) used to visit me inquiring about my health. I told him, 'I am reduced to this state because of illness and I am wealthy and have no inheritors except a daughter.[140] *Should I give two-thirds of my property in charity?' He said, «No.» I asked, 'Half?' He said, «No,» then he added, «One-third, and even one-third is much. You'd better leave your inheritors wealthy rather than leaving them poor, begging others. You will get a reward for whatever you spend for Allāh's sake, even for what you put in your wife's mouth.» I said, 'O Allāh's Messenger! Will I be left alone after my companions have gone?'*

139. Muslim bin al-Ḥajjāj, *Ṣaḥīḥ Muslim*, no. 2693.

He said, «If you are left behind, whatever good deeds you will do will upgrade you and raise you high. And perhaps you will have a long life so that some people will be benefited by you while others will be harmed by you. O Allāh! Complete the emigration of my Companions and do not turn them into renegades.» But Allāh's Messenger felt sorry for poor Saʿd bin Khawlah[141] *as he died in Makkah."*[142]

Another related narration is as follows:

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللهُ عَنْهُ قَالَ: قَالَ رَسُولُ اللهِ ﷺ «إِنَّ اللهَ تَصَدَّقَ عَلَيْكُمْ عِنْدَ وَفَاتِكُمْ بِثُلُثِ أَمْوَالِكُمْ زِيَادَةً لَكُمْ فِي أَعْمَالِكُمْ.»

Narrated Abū Hurayrah (May Allāh be pleased with him) that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «Allāh (Exalted be He) has been charitable with you over the disposal of one-third of your wealth at the time of your death, so that you may be able to add to the record of your good deeds.»[143]

Waṣīyyah is valid whether made in a state of health or terminal illness. Although the deceased is no longer the owner of his property, his right to dispose the property after his death endures out of necessity, and in the same manner as with respect to funeral expenses or discharging the debts of the deceased.[144]

8.3 SIGNIFICANCE

Human beings have inherent deficiencies and limitations. As individuals approach the end of their lives, they may seek to address these shortcomings through the distribution of their assets. The concept of *waṣīyyah* allows individuals to designate a portion of their estate to relatives who would not typically inherit, such as orphaned grandchildren or widows of different faiths, as well as to recognize the contributions of non-relatives who provided care during their final moments.

140. This narration proves that the first child of Saʿd bin Abī Waqqāṣ (May Allāh be pleased with him) was a daughter. There is nothing in the narration that alludes to the daughter being present during his conversation with the Prophet (Peace and Blessings of Allāh be upon him); it is not necessary that she had to narrate it. Saʿd bin Abī Waqqāṣ (May Allāh be pleased with him) later narrated this *ḥadīth* to his other children (May Allāh be pleased with them). At the time of his death, Saʿd bin Abī Waqqāṣ (May Allāh be pleased with him) had married thirteen (13) women and sired thirty-nine (39) children. For details about this great Companion, see Ibn Mibrad, Ibn ʿAbd al-Hādī al-Maqdisī, *Maḥḍ al-Khalāṣ fī Manāqib Saʿd bin Abī Waqāṣ*.

141. The Prophet (Peace and Blessings of Allāh be upon him) felt sorry for Saʿd bin Khawlāh (May Allāh be pleased with him) since he had migrated to Madīnah but he died when he returned to Makkah. It is not recommended to return to the place from which one migrated. Saʿd bin Khawlāh (May Allāh be pleased with him) passed away in AH 10. For more details, see his entry in Ibn Athīr, Abū al-Ḥasan ʿAlī bin Muḥammad, *Asad al-Ghābah fī Maʿrifah al-Ṣaḥābah*, 461.

142. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 1295; For different versions of the narration, see Muslim bin al-Ḥajjāj, *Ṣaḥīḥ Muslim*, nos. 4209–18; and Ibn Saʿd, *Kitāb al-Ṭabaqāt al-Kabīr*, 134–5.

143. Ibn Mājah, *Al-Sunan*, no. 2719.

144. Fyzee, *Outlines of Muhammadan Law*, 351.

It is essential to note that, according to the teachings of Prophet Muhammad (Peace and Blessings of Allāh be upon him), the exercise of this authority should not result in harm to lawful heirs or other rightful claimants.

As previously mentioned, the practice of creating *waṣīyyah* is encouraged. It is particularly preferable to allocate such provisions to impoverished relatives who would otherwise not benefit from the inheritance. Charitable actions toward financially struggling relatives during one's lifetime are regarded as commendable, thus extending this practice through *waṣīyyah* is similarly valued. The Qur'an underscores this principle:

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ ٱلْمَوْتُ إِن تَرَكَ خَيْرًا ٱلْوَصِيَّةُ لِلْوَٰلِدَيْنِ وَٱلْأَقْرَبِينَ بِٱلْمَعْرُوفِ ۖ حَقًّا عَلَى ٱلْمُتَّقِينَ

«It is prescribed for you, when death approaches any of you, if he leaves wealth, that he make a bequests to parents and next of kin, according to reasonable manners. (This is) a duty upon al-Muttaqūn.»

(Al-Baqarah, Q2:180)

A related *ḥadīth* is as follows:

عَنِ عَبْدِ اللهِ بْنِ عُمَرَ رَضِيَ اللهُ عَنْهُمَا أَنَّ رَسُولَ اللهِ ﷺ قَالَ «مَا حَقُّ امْرِىءٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلَّا وَوَصِيَّةٌ مَكْتُوبَةٌ عِنْدَهُ».

Narrated ʿAbd Allāh bin ʿUmar (May Allāh be pleased with them both) that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «It is the duty of a Muslim who has anything to bequest not to let two nights pass without writing a will (waṣīyyah) about it.»[145]

The *waṣīyyah* serves as an important instrument for articulating the intentions of the testator regarding debts and other financial rights and obligations. It may also be utilized to designate a guardian for minor children. In jurisdictions where intestate succession laws diverge from Islamic law, the establishment of a *waṣīyyah* becomes imperative. It is essential that the *waṣīyyah* adheres to the principles of *Sharīʿah*; for example, provisions that involve bequests to a mistress, endorse sinful actions, or allocate assets contrary to Islamic values are not permissible.

وَتَعَاوَنُوا۟ عَلَى ٱلْبِرِّ وَٱلتَّقْوَىٰ ۖ وَلَا تَعَاوَنُوا۟ عَلَى ٱلْإِثْمِ وَٱلْعُدْوَٰنِ ۚ وَٱتَّقُوا۟ ٱللَّهَ ۖ إِنَّ ٱللَّهَ شَدِيدُ ٱلْعِقَابِ

«Help you one another in al-Birr and al-Taqwā (virtue, righteousness, and piety); but do not help one another in sin and transgression. And fear Allāh. Verily, Allāh is Severe in punishment.»

(Al-Māʾidah, Q5:2)

145. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 2738.

It is generally considered undesirable (*makrūh*) for an individual in financial hardship to establish a will (*waṣīyyah*) if their heirs are also experiencing financial difficulties. This perspective is supported by teachings of the Prophet (Peace and Blessings of Allāh be upon him):

«...إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ...»

«...You'd better leave your inheritors wealthy rather than leaving them poor, begging others...»[146]

8.4 PILLARS AND CONDITIONS

According to most scholars, *waṣīyyah* has four pillars:[147]

1. Expression or declaration (*ṣīghah*)
2. Testator (*mūṣī*)
3. Legatee, i.e. the beneficiaries (*mūṣā lahu*)
4. Legacy, i.e. the bequeathed property (*mūṣā bihi*)

8.4.1 Expression

A *waṣīyyah* can be established through spoken words, written documentation, or gestures that are clearly understood. Consequently, a *waṣīyyah* made by an individual who is mute or a person on their deathbed who lacks the ability to speak is considered valid if they are able to communicate through gestures. However, if an individual is capable of writing, the use of gestures is not permissible. There is no requirement for specific phrasing when creating a *waṣīyyah*; rather, it is essential that the intention of the testator (*mūṣī*) is unequivocally conveyed, indicating that the *waṣīyyah* is intended to be enacted after their death. Any expression that effectively communicates the testator's intention suffices for the purpose of establishing a bequest. Additionally, the declaration of the *waṣīyyah* must be witnessed by two individuals. A *waṣīyyah* that is documented in writing remains valid even in the absence of witnesses to an oral declaration, provided it is written in the recognizable handwriting of the testator or includes their signature.[148]

According to the Ḥanafī school of thought, a *waṣīyyah* is established solely through an offer, with the acceptance of the legatee (*mūṣā lahu*) deemed unnecessary. In this context, the lack of rejection or silence is interpreted as acceptance. Conversely, the Shāfiʿī and Mālikī schools maintain that the legatee must accept the

146. Ibid., no. 1295, as previously mentioned in full.
147. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 22–4.
148. For more details, see ibid., pp. 24–6.

bequest following the death of the testator (*mūṣī*), and such acceptance must occur within a reasonable timeframe. All Islamic legal schools concur that if a legatee predeceases the testator, the *waṣīyyah* becomes void, as it would then represent a gift to a deceased individual, which is invalid under Islamic law. Furthermore, if the *waṣīyyah* is directed toward institutions, acceptance may be conducted by representatives of those institutions rather than by the beneficiaries themselves. In these instances, all schools agree that the *waṣīyyah* can be executed even in the absence of acceptance.

8.4.2 Testator

The following are the conditions for the testator (*mūṣī*):[150]

1. The testator should have complete legal capacity. Thus, he has to be sane, mature, free from any form of slavery, and a person of sound intellect.[151] A *kāfir* may make *waṣīyyah* in favor of a Muslim as long as the legacy (mūṣā bihi) is considered wealth (*māl*) according to the *Sharīʿah*. Thus, *waṣīyyah* of wine or pigs is invalid irrespective of whether the legatee (*mūṣā lahu*) is Muslim or *kāfir*.[152] Similarly, a Muslim can make *waṣīyyah* in favor of a *kāfir*.
2. The testator must have made *waṣīyyah* voluntarily and as a result of his free consent.[153]

8.4.3 Legatee

The following are the conditions for the legatee (*mūṣā lahū*):[154]

1. He should be in existence. *Waṣīyyah* cannot be made in favor of a fetus unless it is known to exist at the time of making *waṣīyyah* and is born alive later. Children born more than six months after the death of the testator are not entitled to the bequest (mūṣā bihī).
2. The legatee should be known.
3. The legatee should be capable of ownership.
4. The legatee should not be a murderer.
5. The legatee should not be an enemy or a means of disobedience to Allāh (Exalted be He).
6. He should not be an heir. *Waṣīyyah* made in favor of an heir is not valid unless permitted by other heirs. This is because it may create jealousy and enmity among them and, thus, result in severance of relationship.

149. For more details, see ibid., pp. 26–31.
150. For more details, see ibid., pp. 33–6.
151. Sayyid Sābiq, *Fiqh al-Sunnah*, 1096.
152. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, p. 35.
153. Sayyid Sābiq, *Fiqh al-Sunnah*, 1096; Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, p. 35.
154. For more details, see Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 36–50.

عن أَبِي أُمَامَةَ رَضِيَ اللهُ عَنْهُ قَالَ: سَمِعْتُ رَسُولَ اللهِ ﷺ يَقُولُ فِي خُطْبَتِهِ عَامَ حَجَّةِ الْوَدَاعِ «إِنَّ اللهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لِوَارِثٍ.»

Narrated Abū Umāmah (May Allāh be pleased with him): I heard the Messenger of Allāh (Peace and Blessings of Allāh be upon him), during the sermon of the Farewell Ḥajj, say, «Allāh has appointed for everyone who has a right what is due to him, and no bequest must be made to an heir.»[155]

7. If the legatee dies before the testator (*mūṣī*), the bequest (mūṣā bihī) is invalid since a bequest can only be accepted after the death of the testator. If the testator and legatee die together, such as in an airplane crash, and it is not certain who died first, the bequest becomes void.[156]

8.4.4 Legacy

The following are the conditions for the legacy (mūṣā bihī):[157]

1. The property should be valuable; the bequest of impermissible (*ḥarām*) property is invalid.
2. The bequest is limited to one-third of the property left after settlement of funeral expenses and debts.
3. A bequest may also be made for the usufruct whether for life or for a definite period.[158]

8.5 TYPES

A *waṣīyyah* may be classified as either absolute (*muṭlaqah*) or conditional (*muqayyadah*). Conditional *waṣīyyah* examples include situations in which a testator bequeaths property to a designated legatee, contingent upon the stipulation that the testator does not survive a specific illness, passes away in a particular location, or during a designated journey. The validity of the *waṣīyyah* is contingent upon the fulfillment of these conditions; failure to meet the stipulated requirements renders the bequest void.[159]

Waṣīyyah can also be made dependent on a certain condition, provided that it is in the interest of the testator (*mūṣī*), the legatee (mūṣā lāhū), or other persons, or that it is not against the objectives of the *Sharīʿah*.[160] A testator may specify in

155. Abū Dāwūd Sulaymān bin al-Ashʿath, *Sunan Abī Dāwūd*, no. 2870.
156. Sayyid Sābiq, *Fiqh al-Sunnah*, 1098.
157. For more details, see Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 50–8.
158. Sayyid Sābiq, *Fiqh al-Sunnah*, 1097.
159. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 17–8.
160. Sayyid Sābiq, *Fiqh al-Sunnah*, 1096.

their will that the legatee is responsible for various obligations, such as the payment of all applicable taxes, the care and education of minor children, or the settlement of atonement for any missed fasting. Furthermore, when a testator bequeaths land or a house to a legatee with the condition that the renovation expenses, as well as the costs associated with the transfer of title or registration, are to be borne by the legatee, the bequest is valid. Additionally, the bequest remains valid if the testator stipulates that a legatee who receives land must permit neighbors access to the water sourced from a canal situated on that land.

Furthermore, *waṣīyyah* can be classified into five categories based on the five legal rulings:[161]

1. *Wājib*ah (obligatory): like the *waṣīyyah* to return the rights of others to them.
2. *Mustaḥabb*ah (recommended): *waṣīyyah* to relatives.
3. Mubāḥah (permissible): *waṣīyyah* to a rich relative.
4. *Makrūh*ah (disliked): like the *waṣīyyah* of a poor person who has needy heirs.
5. Muḥarramah (prohibited): like *waṣīyyah* to build a church or any other *ḥarām* thing.

The differences between *hibah* and *waṣīyyah*:

1. *Hibah* is an immediate transfer of a property whereas *waṣīyyah* takes effect after the death of the testator (*mūṣī*).
2. Delivery and possession are necessary in *hibah* while in *waṣīyyah*, they are not.
3. In *hibah*, the donor has unrestricted right as to the amount of the property given to the donee. On the other hand, the right of the testator (*mūṣī*) is restricted to a third of the property and *waṣīyyah* cannot be made in favor of an heir.
4. Once a contract of *hibah* is completed, it cannot be revoked, whereas *waṣīyyah* can be revoked.

8.6 REVOCATION

Waṣīyyah is not binding, neither on the testator (*mūṣī*) nor on the legatee (*mūṣā lahū*). A testator (*mūṣī*) may revoke the *waṣīyyah* either by words or by action, such as by consuming or selling the property he has bequeathed. Revocation by action may also include tearing or burning the *waṣīyyah* document or a subsequent bequest of the same property to another person. Revocation of a bequest occurs

161. Ibid., 1095; Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, p. 21.

when the testator transfers the same property as a *hibah* to another individual or alters its form. For example, if a house is constructed on a plot of land that was previously bequeathed, the *waṣīyyah* is considered revoked.

The acceptance or rejection of a bequest by the legatee (*mūṣā lahū*) is considered relevant only after the death of the testator (*mūṣī*) and not prior to that event. Once a legatee has formally accepted or rejected a bequest, the decision is irrevocable. In instances where the legatee passes away without having expressed acceptance or rejection of the bequest, the Ḥanafī school of thought maintains that the bequest automatically becomes part of the legatee's estate, as non-rejection is interpreted as acceptance. Conversely, the other three *madh'habs* hold that the right to accept or reject the bequest transfers to the heirs of the legatee.

There exists a divergence of opinion regarding the moment at which ownership of a bequest is conferred from the testator (*mūṣī*) or his heirs to the legatee (*mūṣā lahū*). The Ḥanafī and Shāfiʿī schools assert that ownership is transferred at the point of the testator's death, whereas the Mālikī and Ḥanbalī schools contend that ownership is only established upon the acceptance of the bequest.[162]

8.7 ADMINISTRATION OF THE ESTATE

Upon the demise of an individual, one of the principal considerations is the management of their estate, commonly referred to as *tarikah*. The administration of estates entails the systematic management of the deceased's assets for a defined period. It is essential to address any debts incurred by the deceased and to ascertain whether they had outstanding loans issued to others, or if their own properties were collateral. Additionally, the deceased may have enacted a *waṣīyyah* or may be survived by heirs belonging to various categories.

Following the individual's death, it becomes imperative to settle outstanding debts and to facilitate the collection of any loans owed to the deceased. Furthermore, proper distribution of shares to the legatees (*mūṣā lahū*) and heirs must be executed. In instances where certain heirs are minors, diligent management of their respective properties is necessary. The execution of these responsibilities constitutes the administration of the estate, which commences promptly after the individual's passing.

162. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 30–1.

8.8 EXECUTOR OR ADMINISTRATOR

Guardianship (*walāyah*) pertains to a minor's needs and is established from b*irth* until the child attains the age of maturity. This guardianship can take two forms: guardianship over a person and guardianship over property. Guardianship over a person involves responsibilities related to the ward's upbringing, education, medical care, and marriage, whereas guardianship over property focuses on the protection, management, and investment of the ward's assets.

According to the *Sharīʿah*, a father is designated as the natural guardian endowed with authority over his minor children and their properties. This guardianship is a duty mandated by *Sharīʿah*, from which the father cannot absolve himself. In instances where the father is not present, legal guardianship over the minor children is transferred to the father's executor, the paternal grandfather, an executor appointed by the paternal grandfather, a *qāḍī*, or an executor appointed by the judge.

The various Islamic legal schools (*madh'habs*) diverge regarding the assignment of guardianship following the father's absence. The Ḥanafī school prioritizes the father's executor (*waṣī*) over the paternal grandfather, positing that the father would appoint an executor only for significant reasons if the grandfather were to serve in the child's best interest. Conversely, the Shāfiʿī school prefers the paternal grandfather as the guardian over an executor appointed by the father. The Mālikī and Ḥanbalī schools assert that while the guardianship resides with the father, it subsequently devolves first to his executor, followed by a *qāḍī*, and then to an executor appointed by the judge.

An executor (*waṣī*) is designated by a father who prioritizes the welfare of his children and possesses a comprehensive understanding of how to safeguard their interests. This individual may be someone the father trusts to oversee the well-being of his children and the management of his property following his death. An executor can be either an heir or a non-heir, and may be of any gender, including relatives or non-relatives. The appointment of a *waṣī* may be general, wherein the father designates an executor to manage all of his property and care for all of his children. Alternatively, the appointment may be specific, with the father assigning an executor to oversee particular property for the benefit of his children, or to exclusively attend to the needs of one child while excluding others. Furthermore, a father has the option to appoint multiple executors.

The role of an executor (*waṣī*) encompasses the management of the estate of a deceased individual, which includes tasks such as collecting outstanding debts, settling liabilities, executing the *waṣīyyah*, and ensuring the maintenance of the deceased's children, among other related responsibilities. The person entrusted with these duties is referred to as the executor or administrator of the estate. Should the deceased have specifically appointed someone for these responsibilities, that individual is recognized as the executor (*waṣī*). It is essential that the powers granted to the executor are clearly defined. A testator (*mūṣī*) may choose to appoint multiple executors, regardless of gender, and must clarify whether each executor has the authority to act independently of the others. In instances where an administrator is appointed by a *qāḍī*, the individual is referred to as the administrator. The necessity for appointing an executor or administrator may be obviated when all heirs are of legal age, as they will be capable of executing the *waṣīyyah*, addressing creditors, and managing the estate independently.

The conditions for the guardianship are as follows:

1. A guardian should have complete capacity to perform his role.
2. A guardian must be Muslim. A *kāfir* cannot be the guardian for a Muslim ward because he cannot be trusted in safeguarding the religion of the ward. However, guardianship of a *dhimmī* by a Muslim, or another *dhimmī*, if trustworthy, is valid.
3. A guardian must be just and eager to safeguard the interests of the ward. He must be a pious and practicing Muslim and have good character. A person who violates the rules of *Sharīʿah* cannot be trusted with the protection of a ward's property.
4. A guardian should specifically be appointed and granted the authority to make decisions required by the guardianship. He should protect, manage, and invest in the property of the ward. A guardian should spend from the ward's property on the maintenance of the ward with moderation, in accordance with his social status and wealth. He may spend from the property to buy things which are essential for the ward and on necessities. If needed, he may sell a ward's movable properties. However, selling a ward's immovable property is not allowed except for his essential needs.
5. A guardian should always ensure that the interest of the ward is protected when making financial dispositions. He is not permitted to use his authority in a way that would cause loss to the property of the ward. For instance, he cannot make *hibah* of the ward's property or give it away in charity. However, an act of a guardian that is beneficial to the ward is acceptable. For instance, a guardian may accept *hibah*, or a *waṣīyyah*, or an offer of guarantee made for the debt of the ward. Similarly, a guardian may conclude transactions where the possibility of profit and loss is equally present, such as sale, purchase,

and partnership. A guardian cannot become one of the parties to a contract with the ward. He can neither sell or rent his property to the ward, nor can he buy or rent the ward's property.

A guardian is entrusted with the duty to hold, invest, and utilize the assets for the benefit of minors. This obligation is comparable to a guardian expending personal funds on behalf of a child, wherein such expenditures are regarded as a liability to the child's estate. Should a guardian breach any of these stipulations, the presiding judge may take the necessary steps to remove the guardian or may appoint an additional guardian to collaboratively manage the ward's property alongside the original guardian.

8.9 ADMINISTRATION OF ESTATE IN MALAYSIA

In Malaysia, estates are categorized into small and non-small estates. Small estates refer to those whose total value does not exceed RM 600,000. The distribution of small estates falls under the jurisdiction of land administrators. To initiate the process, an application is submitted to the land administrator, who subsequently refers the matter to the *Sharīʿah* court for the issuance of the Sijil *Farāʾiḍ*. The *Sharīʿah* court is responsible for determining the respective shares of the estate for each heir, and the land administrator then issues the distribution order accordingly. Land administrators possess comprehensive information regarding land matters and can verify the register of titles without impediments.

The administration and distribution of non-small estates, in contrast, are governed by the High Court. An initial application is made to the High Court to obtain a letter of administration, followed by a request for a vesting order. Prior to the issuance of the vesting order, the applicant is required to submit a Sijil *Farāʾiḍ*. The distribution order will be executed in accordance with the Sijil *Farāʾiḍ*. It is imperative to secure a Letter of Administration, which empowers the appointed individual to act as the administrator of the estate of the deceased.

8.10 ESTATE PLANNING

Estate planning represents a comprehensive, ongoing process that involves the careful assessment of one's financial status and objectives. This process focuses on the accumulation, preservation, and distribution of assets to ensure that they are allocated to beneficiaries in accordance with designated proportions. The principal components of estate planning include the protection of assets, the maximization of the inheritance for heirs, and the mitigation of estate erosion.

The ultimate goal of estate planning is to maximize the wealth passed on to heirs while minimizing the financial obligations to governmental entities, such as taxes and administrative fees. Through effective planning, individuals can secure investments with minimal risk, ensuring that the intrinsic value of the assets is maintained. Such planning fosters continuous growth, enhancing both profitability and liquidity. The outcomes include a well-structured retirement and adequate provisions for beneficiaries.

In the context of Islamic law, the primary instruments for estate planning include *hibah* (gifts), *waqf* (trusts), and *waṣīyyah* (wills).

8.11 DEVELOPING A SOUND ESTATE PLAN

1. Ascertain the value of the assets you own. Itemize your assets (liquid assets, financial assets, real properties, and personal properties) and determine the portions of ownership in each asset.
2. Find out how your asset would be distributed after your death. List all the individuals who would inherit from you and their respective portions.
3. Decide whether you need to use the instruments of *hibah* or *waṣīyyah* to assign shares to non-heirs during your lifetime. You do not have to pay estate duty on assets that you gift to others. With *hibah*, you will also see the recipients enjoy their gifts during your lifetime.
4. If you have minor children, you should appoint a guardian for them.
5. Review your estate plan annually. It is because circumstances and property value change from time to time. Your scheme for the distribution of gift or *waṣīyyah* may also change accordingly. A family member may die, and a new family member may be added.

8.12 QUESTIONS

1. What are the literal and technical meanings of *waṣīyyah*?

2. Discuss the importance of *waṣīyyah* in the life of a Muslim.

3. Discuss the legality of *waṣīyyah* from the Qur'an and Sunnah.

4. Mark as TRUE or FALSE:
   a. The maximum a Muslim can make as *waṣīyyah* is one-third of his estate.
   b. *Waṣīyyah* cannot be made for the benefit of an heir.
   c. The earliest *waṣīyyah* known from the Sunnah is that of Nūḥ (Peace be upon him).
   d. Gifts made by a Muslim during his mortal illness are subject to the law of *waṣīyyah*.

5. Write an essay discussing the differences of the scholars concerning *waṣīyyah* to an heir and *waṣīyyah* with more than a third of the estate.

FURTHER READING MATERIALS

1. *Al-Mawsūʿah al-Fiqhīyyah al-Kuwaytīyyah*. Kuwait: Ministry of Awqaf and Islamic Affairs, 1983
2. Sayyid Sābiq. *Fiqh al-Sunnah*. Cairo: Al-Fatḥ li al-Iʿlām al-ʿArabī, 2004.
3. Ibn Qudāmah, ʿAbd Allāh bin Aḥmad. *Al-Mughnī. Riyadh*: Dar ʿĀlam al-Kutub, 1997.

CHAPTER NINE:
INHERITANCE

LEARNING OUTCOMES

By the end of this section, the students should be able to:

1. Know the meaning of *inheritance*, its objectives and a bit of its history before Islam.
2. Know more about the different types of inheritance and who among the heirs inherit either one of them.
3. Learn more about the special cases in inheritance.
4. Learn more about the method used in distributing the estate.

In pre-Islamic Arabian customary law, the system of inheritance was designed to preserve property within the individual tribe and the family.[163] The right of succession depended on a person's capability of defending the honor of the family and tribe.[164] Thus, the property of a deceased Arab mostly devolved on his male agnates capable of carrying arms, consequently excluding from succession all females, minors, infirm relatives, and elders incapable of offering such necessary protection.[165] Additionally, daughters and sisters were excluded because they ceased, upon their marriage, to be members of their natural, paternal family. For similar reasons, maternal and uterine relations were usually excluded.[166] Certainly, with the absence of firm guidelines to manage wealth distribution, an individual could bequeath all his wealth to one of his heirs or even to a stranger.[167]

In Medieval England, inheritance customs mandated that the right of inheritance be granted exclusively to descendants, thereby excluding ascendants and collateral relatives. Consequently, even the deceased's parents were not permitted to inherit alongside their children. The principle of partible inheritance, which favored male offspring over their female counterparts, was predominantly observed, particularly during the early Anglo-Saxon period, in which property was distributed equally among sons. Customary laws in the later Middle Ages upheld this practice of patrilineal succession; however, the system of primogeniture gained wider recognition, wherein the eldest son was prioritized and received the entirety of the inheritance. Conversely, during the same time frame, certain communities implemented a system of ultimogeniture, referred to as Borough English, granting heirship solely to the youngest son.[168]

In Jewish law, as delineated in the scriptures, the rights to inheritance were exclusively granted to sons, with the first-born son receiving a preferential double portion relative to his siblings. Parents and spouses were excluded from the order of succession. Subsequent rabbinical legislation established the husband's right to inherit from his wife; however, this right did not extend reciprocally to wives inheriting from their husbands.[169] Furthermore, widows were considered as part of the property left by their deceased husbands and were passed on to the heirs through a levirate[170] marriage. Some other laws overemphasized the right of the spouse.[171]

163. Al-Ṭaʿīmāt, *Fiqh al-Aḥwāl al-Shakhṣīyyah fī al-Mīrāth wa al-Waṣīyyah*, 30–32.
164. Al-Jundī, *Al-Mīrāth fī Sharīʿah al-Islāmīyyah*, 5.
165. Ibid.; Al-Mawsūʿah al-Fiqhīyyah, vol. 3, p. 18.
166. Al-Ṭaʿīmāt, *Fiqh al-Aḥwāl al-Shakhṣīyyah fī al-Mīrāth wa al-Waṣīyyah*, 30–32.
167. Al-Imām, *Iʿlām al-Nubalāʾ bi Aḥkām Mīrāth al-Nisāʾ*, 14.
168. Faith, 'Peasant Families and Inheritance Customs in Medieval England'.
169. Wigoder, *The New Encyclopedia of Judaism*, 390–1; Singer, *The Jewish Encyclopedia*, vol. 6, pp. 583–5, under Inheritance.
170. The custom among the Jews and some other nations, by which the brother or next of kin to a deceased man was bound under certain circumstances to marry the widow. *Oxford English Dictionary*, 2nd Ed.

Although Christianity shares the same biblical laws of inheritance as Judaism, found in the Old Testament,[172] the Church's canon law does not take them into consideration. In fact, only very little concerning inheritance is documented in the canon law. This gives the civil law precedence in dealing with such matters.[173]

Islam has laid down a set of equitable principles of inheritance which entitled parents, grandparents, daughters, sisters, widows, and many other relatives – who were previously excluded – to the right of inheritance. These principles also restricted the testamentary[174] powers of a Muslim to dispose his whole property by way of *waṣīyyah*.

9.1 INDULGING IN ISSUES OF INHERITANCE WITHOUT KNOWLEDGE

One of the primary objectives of *Sharīʿah* is to establish peace within society. Consequently, *Sharīʿah* aims to mitigate and resolve conflict by recognizing and safeguarding the rights of both individuals and the community as a whole. Among these rights is the entitlement of heirs following the death of a relative, such as a father, son, or brother. This area is particularly susceptible to injustices, necessitating vigilant protection and enforcement of these rights.[175] Consequently, it is fitting that *Sharīʿah* establishes stringent regulations concerning this issue. Allāh (Exalted be He) says:

وَلْيَخْشَ ٱلَّذِينَ لَوْ تَرَكُوا۟ مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَـٰفًا خَافُوا۟ عَلَيْهِمْ فَلْيَتَّقُوا۟ ٱللَّهَ وَلْيَقُولُوا۟ قَوْلًا سَدِيدًا
إِنَّ ٱلَّذِينَ يَأْكُلُونَ أَمْوَٰلَ ٱلْيَتَـٰمَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِى بُطُونِهِمْ نَارًا ۖ وَسَيَصْلَوْنَ سَعِيرًا

«And let those (executors and guardians) have the same fear in their minds as they would have for their own if they had left weak offspring behind. So let them fear Allāh and speak right words. Verily, those who unjustly eat up the property of orphans, they eat up only fire into their bellies, and they will be burned in the blazing Fire!»

(Al-Nisāʾ, Q4:9–10)

171. Singer, *The Jewish Encyclopedia*, vol. 6, pp. 583–5, under Inheritance and vol. 4, pp. 645–6 under Dowry.
172. Halfmann, *The New Catholic Encyclopedia*, vol. 7, pp. 463–4.
173. Blackstone, *Law Tracts*, 36–37.
174. Of, pertaining to, or having relation to a testament or will; of the nature of a will. *Oxford English Dictionary*, 2nd Ed.
175. Al-Imām, *Iʿlām al-Nubalāʾ bi Aḥkām Mīrāth al-Nisāʾ*, 10–11.

The Qur'an delineates the principles of inheritance in three primary passages. The first of these passages is:

يُوصِيكُمُ ٱللَّهُ فِىٓ أَوْلَـٰدِكُمْ ۖ لِلذَّكَرِ مِثْلُ حَظِّ ٱلْأُنثَيَيْنِ ۚ فَإِن كُنَّ نِسَآءً فَوْقَ ٱثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۖ وَإِن كَانَتْ وَٰحِدَةً
فَلَهَا ٱلنِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُۥ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَّهُۥ وَلَدٌ وَوَرِثَهُۥٓ أَبَوَاهُ فَلِأُمِّهِ
ٱلثُّلُثُ ۚ فَإِن كَانَ لَهُۥٓ إِخْوَةٌ فَلِأُمِّهِ ٱلسُّدُسُ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصِى بِهَآ أَوْ دَيْنٍ ۗ ءَابَآؤُكُمْ وَأَبْنَآؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ
لَكُمْ نَفْعًا ۚ فَرِيضَةً مِّنَ ٱللَّهِ ۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا حَكِيمًا

*«Allāh commands you as regards your children's (*inheritance*): to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the* inheritance*; if only one, her share is a half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by Allāh. And Allāh is Ever All-Knower, All-Wise.»*

(Al-Nisāʾ, Q4:11)

A significant advantage is that Allah (Exalted be He) concludes this verse by stating:

ءَابَآؤُكُمْ وَأَبْنَآؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا ۚ فَرِيضَةً مِّنَ ٱللَّهِ ۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا حَكِيمًا…

«…You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by Allāh. And Allāh is Ever All-Knower, All-Wise.»

(Al-Nisāʾ, Q4:11)

It is imperative that we refrain from using our intellect to influence or form opinions regarding the distribution of an estate in ways that diverge from what has been prescribed by Allah (Exalted be He). Engaging in such actions constitutes a transgression of the limits established by Allah (Exalted be He) and leads one down a perilous path. The verse also illustrates that the One who prescribes this distribution is All-Knowing, possessing an awareness of all that benefits humanity, knowledge that individuals may be unaware of and lack the intellectual capacity to comprehend. The subsequent reference will originate from the same Sūrah:

۞ وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَٰجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ ۚ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ ٱلرُّبُعُ مِمَّا تَرَكْنَ ۚ مِنۢ بَعْدِ وَصِيَّةٍ
يُوصِينَ بِهَآ أَوْ دَيْنٍ ۚ وَلَهُنَّ ٱلرُّبُعُ مِمَّا تَرَكْتُمْ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ ۚ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ ٱلثُّمُنُ مِمَّا تَرَكْتُم ۚ مِّنۢ بَعْدِ
وَصِيَّةٍ تُوصُونَ بِهَآ أَوْ دَيْنٍ ۗ وَإِن كَانَ رَجُلٌ يُورَثُ كَلَٰلَةً أَوِ ٱمْرَأَةٌ وَلَهُۥٓ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ ۚ فَإِن
كَانُوٓا۟ أَكْثَرَ مِن ذَٰلِكَ فَهُمْ شُرَكَآءُ فِى ٱلثُّلُثِ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَآ أَوْ دَيْنٍ غَيْرَ مُضَآرٍّ ۚ وَصِيَّةً مِّنَ ٱللَّهِ ۗ وَٱللَّهُ
عَلِيمٌ حَلِيمٌ

«In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance *is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third, after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allāh; and Allāh is Ever All-Knowing, Most-Forbearing.»*
(Al-Nisāʾ, Q4:12)

تِلْكَ حُدُودُ ٱللَّهِ ۚ وَمَن يُطِعِ ٱللَّهَ وَرَسُولَهُۥ يُدْخِلْهُ جَنَّٰتٍ تَجْرِى مِن تَحْتِهَا ٱلْأَنْهَٰرُ خَٰلِدِينَ فِيهَا ۚ وَذَٰلِكَ ٱلْفَوْزُ ٱلْعَظِيمُ

«These are limits (set by) Allāh (or ordainments as regards laws of inheritance*), and whosoever obeys Allāh and His Messenger (Muḥammad [Peace and Blessings of Allāh be upon him]) will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success.»*
(Al-Nisāʾ, Q4:13)

وَمَن يَعْصِ ٱللَّهَ وَرَسُولَهُۥ وَيَتَعَدَّ حُدُودَهُۥ يُدْخِلْهُ نَارًا خَٰلِدًا فِيهَا وَلَهُۥ عَذَابٌ مُّهِينٌ

«And whosoever disobeys Allāh and His Messenger (Muḥammad [Peace and Blessings of Allāh be upon him]), and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment.»
(Al-Nisāʾ, Q4:14)

In the aforementioned verse, there exists a clear and stern warning from Allah (Exalted be He) regarding any transgressions of the limits He has established concerning this matter. This serves to reinforce the message conveyed in the preceding verse, highlighting that the distribution of inheritance is one of the rights granted by Allah (Exalted be He). Consequently, no individual or entity has the authority to transgress or alter His divine law, even in the slightest manner. Furthermore, in the final verse of the same Sūrah, Allah (Exalted be He) articulates:

يُبَيِّنُ ٱللَّهُ لَكُمْ أَن تَضِلُّوا۟ ۗ وَٱللَّهُ بِكُلِّ شَىْءٍ عَلِيمٌۢ...

«...(Thus) does Allāh make clear to you (His Law) lest you go astray. And Allāh the All-Knower of everything.»

(Al-Nisāʾ, Q4:176)

The key lesson to be derived is that the neglect of the laws established by Allāh (Exalted be He) constitutes a significant deviation that often results in misguidance, potentially leading to divine repercussions in the hereafter. Regrettably, despite the critical importance and sensitivity of this subject matter, there exists a marked deficiency in English-language contributions by contemporary scholars regarding the field of inheritance. The volume of such works is substantially lower than that available in Arabic. This gap in knowledge serves as a contributing factor to the growing prevalence of individuals lacking expertise who express opinions without sufficient understanding of the admonitions articulated by Allāh (Exalted be He) in the Qur'an regarding this detrimental attitude:

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِۦ عِلْمٌ ۚ إِنَّ ٱلسَّمْعَ وَٱلْبَصَرَ وَٱلْفُؤَادَ كُلُّ أُو۟لَـٰٓئِكَ كَانَ عَنْهُ مَسْـُٔولًا

«And follow not (O man, i.e. say not, or do not, or witness not) that of which you have no knowledge. Verily! The hearing, and the sight, and the heart, of each of those one will be questioned (by Allāh).»

(Al-Isrāʾ, Q17:36)

In another place, it is mentioned:

قُلْ إِنَّمَا حَرَّمَ رَبِّىَ ٱلْفَوَٰحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَنَ وَٱلْإِثْمَ وَٱلْبَغْىَ بِغَيْرِ ٱلْحَقِّ وَأَن تُشْرِكُوا۟ بِٱللَّهِ مَا لَمْ يُنَزِّلْ بِهِۦ
سُلْطَـٰنًا وَأَن تَقُولُوا۟ عَلَى ٱللَّهِ مَا لَا تَعْلَمُونَ

«Say (O Muḥammad [Peace and Blessings of Allāh be upon him]): "(But) the things that my Lord has indeed forbidden are al-Fawāḥish (great evil sins and every kind of unlawful sexual intercourse) whether committed openly or secretly, sins (of all kinds), unrighteous oppression, joining partners (in worship) with Allāh for which He has given no authority, and saying things about Allāh of which you have no knowledge."»

(Al-Aʿrāf, Q7:33)

9.2 THE MEANING OF *IRTH* OR *FARĀʾIḌ*

Irth in all of its derivatives, literally means to transfer something.[176] It refers to a situation where a person survives another in a way that the survivor takes the property of the deceased. It also means whatever is left by the deceased of properties and rights that devolves into legal heirs.[177]

In a technical context, *irth* is defined as a monetary entitlement granted to an individual who is considered deserving following the death of a person to whom they are related, either through marriage, a close personal relationship, or *walāʾ*.[178]

The term is also referred to as *farāʾiḍ*. It originates from a verse in the Qur'an:

… فَرِيضَةً مِّنَ ٱللَّهِ…

«…(these fixed shares) are ordained by Allāh…»

(Al-Nisāʾ, Q4:11)

The term "*Farāʾiḍ*" serves as the plural form of "*farīḍah*," which is understood to denote the concepts of ordaining or measurement (*taqdīr*). In this context, it specifically refers to designated shares that have been established.[179]

9.3 AUTHORITATIVE EVIDENCE FOR INHERITANCE

Inheritance represents a mandatory transfer of property whereby the estate of a deceased individual is conveyed to their heirs. In contrast, a voluntary transfer of property without consideration during an individual's lifetime is referred to as *hibah*. Moreover, the voluntary transfer of property without consideration that takes place after an individual's death is known as a will (*waṣīyyah*). It is important to note that inheritance entails an automatic transfer of property from the deceased to their heirs, a process that does not necessitate offer and acceptance.

The legal basis for the law of inheritance is found in the following *āyah*:

يُوصِيكُمُ ٱللَّهُ فِيٓ أَوۡلَٰدِكُمۡۖ لِلذَّكَرِ مِثۡلُ حَظِّ ٱلۡأُنثَيَيۡنِۚ فَإِن كُنَّ نِسَآءٗ فَوۡقَ ٱثۡنَتَيۡنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَۖ وَإِن كَانَتۡ وَٰحِدَةٗ
فَلَهَا ٱلنِّصۡفُۚ وَلِأَبَوَيۡهِ لِكُلِّ وَٰحِدٖ مِّنۡهُمَا ٱلسُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُۥ وَلَدٞۚ فَإِن لَّمۡ يَكُن لَّهُۥ وَلَدٞ وَوَرِثَهُۥٓ أَبَوَاهُ فَلِأُمِّهِ
ٱلثُّلُثُۚ فَإِن كَانَ لَهُۥٓ إِخۡوَةٞ فَلِأُمِّهِ ٱلسُّدُسُۚ مِنۢ بَعۡدِ وَصِيَّةٖ يُوصِي بِهَآ أَوۡ دَيۡنٍۗ ءَابَآؤُكُمۡ وَأَبۡنَآؤُكُمۡ لَا تَدۡرُونَ أَيُّهُمۡ أَقۡرَبُ
لَكُمۡ نَفۡعٗاۚ فَرِيضَةٗ مِّنَ ٱللَّهِۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا حَكِيمٗا

176. Al-Mawsūʿah al-Fiqhīyyah, vol. 3, p. 17.
177. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, p. 241.
178. Al-Mawsūʿah al-Fiqhīyyah, vol. 3, p. 17; Sayyid Sābiq, *Fiqh al-Sunnah*, 1100–1101.
179. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, p. 241.

*«Allāh commands you as regards your children's (*inheritance*): to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the* inheritance*; if only one, her share is a half. For parents, a sixth share of* inheritance *to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by Allāh. And Allāh is Ever All-Knower, All-Wise.»*

(Al-Nisāʾ, Q4:11)

۞ وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَٰجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ ۚ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ ٱلرُّبُعُ مِمَّا تَرَكْنَ ۚ مِنۢ بَعْدِ وَصِيَّةٍ
يُوصِينَ بِهَآ أَوْ دَيْنٍ ۚ وَلَهُنَّ ٱلرُّبُعُ مِمَّا تَرَكْتُمْ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ ۚ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ ٱلثُّمُنُ مِمَّا تَرَكْتُم ۚ مِّنۢ بَعْدِ
وَصِيَّةٍ تُوصُونَ بِهَآ أَوْ دَيْنٍ ۗ وَإِن كَانَ رَجُلٌ يُورَثُ كَلَـٰلَةً أَوِ ٱمْرَأَةٌ وَلَهُۥٓ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ ۚ فَإِن
كَانُوٓا۟ أَكْثَرَ مِن ذَٰلِكَ فَهُمْ شُرَكَآءُ فِى ٱلثُّلُثِ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَآ أَوْ دَيْنٍ غَيْرَ مُضَآرٍّ ۚ وَصِيَّةً مِّنَ ٱللَّهِ ۗ وَٱللَّهُ
عَلِيمٌ حَلِيمٌ

«In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance *is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one* of the two *gets a sixth; but if more than two, they share in a third, after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allāh; and Allāh is Ever All-Knowing, Most-Forbearing.»*

(Al-Nisāʾ, Q4:12)

يَسْتَفْتُونَكَ قُلِ ٱللَّهُ يُفْتِيكُمْ فِى ٱلْكَلَـٰلَةِ ۚ إِنِ ٱمْرُؤٌا۟ هَلَكَ لَيْسَ لَهُۥ وَلَدٌ وَلَهُۥٓ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَآ إِن لَّمْ
يَكُن لَّهَا وَلَدٌ ۚ فَإِن كَانَتَا ٱثْنَتَيْنِ فَلَهُمَا ٱلثُّلُثَانِ مِمَّا تَرَكَ ۚ وَإِن كَانُوٓا۟ إِخْوَةً رِّجَالًا وَنِسَآءً فَلِلذَّكَرِ مِثْلُ حَظِّ ٱلْأُنثَيَيْنِ ۗ يُبَيِّنُ
ٱللَّهُ لَكُمْ أَن تَضِلُّوا۟ ۗ وَٱللَّهُ بِكُلِّ شَىْءٍ عَلِيمٌۢ

«They ask you for a legal verdict. Say, "Allāh directs (thus) about al-Kalālah (those who leave neither descendants nor ascendants as heirs). If it is a man that dies leaving a sister, but no child, she shall have half the inheritance*. If (such a deceased was) a woman, who left no child, her brother takes her* inheritance*. If there are two sisters, they shall have two-thirds of the* inheritance*; if there are brothers and sisters, the male will have twice the share of the female. (Thus) does Allāh make clear to you (His Law) lest you go astray. And Allāh is the All-Knower of everything."»*

(Al-Nisāʾ, Q4:176)

وَأُوْلُوا۟ ٱلْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِى كِتَـٰبِ ٱللَّهِ ۗ إِنَّ ٱللَّهَ بِكُلِّ شَىْءٍ عَلِيمٌۢ...

«…But kindred by blood are nearer to one another (regarding inheritance*) in the decree ordained by Allāh. Verily, Allāh is the All-Knower of everything.» (Al-Anfāl, Q8:75)*

Besides these āyāt, there are many traditions of the Prophet (Peace and Blessings of Allāh be upon him) on the topic.

عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ قَالَ «أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَهُوَ لأَوْلَى رَجُلٍ ذَكَرٍ.»

Narrated Ibn ʿAbbās (May Allāh be pleased with him) that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «Give the shares of inheritance *to those who are entitled to them. As for what remains, then it is for the closest male relative.»*[180]

9.4 PILLARS OF INHERITANCE

The law of inheritance is founded upon three fundamental pillars; the absence of any one of these pillars precludes the operation of this legal framework. These pillars are essential for the law to be effectively applied and enforced:

1. The deceased (*muwarrith*)
2. The heir(s) (*wārith*)
3. The estate of the deceased (*tarikah* or *mawrūth*)

9.4.1 Deceased

The entitlement to inherit a person's property is established upon the confirmation of their death (*ḥaqīqī*). In situations where an individual's status as living or deceased is uncertain, a court may issue a decree declaring the individual deceased (*ḥukmī*). Consequently, the right to inherit the property of a missing person is activated only from the date on which the court determines their presumed death. The heirs of the individual will be ascertained based on that date rather than the date of their disappearance. Furthermore, an apostate is regarded as deceased by decree, as inheritance is not permissible from such individuals.

180. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 6732.

9.4.2 Heirs

In the context of Islamic law, the term "*Wārith*" refers to an individual who is designated as an heir entitled to inherit from the deceased. It is important to note that the heir may not necessarily be a relative; for instance, a *muʿtiq* can also qualify as an heir. The subsequent section will provide a comprehensive list of all male individuals who are eligible to inherit:[181]

1. Son (S)
2. Son's Son (SS), i.e. Grandson, no matter how much he descends
3. Father (F)
4. Father's Father (FF → GF), i.e. Grandfather, no matter how much he ascends
5. Full Brother (FB)
6. Consanguine Brother (CB)
7. Uterine Brother (UB)
8. Full Brother's Son (FBS)
9. Consanguine Brother's Son (CBS)
10. Father's Full Brother, i.e. Full Uncle (FU)
11. Father's Consanguine Brother, i.e. Paternal Uncle (PU)
12. Father's Full Brother's Son, i.e. Full Uncle's Son (FUS)
13. Father's Consanguine Brother's Son, i.e. Paternal Uncle's Son (PUS)
14. Husband (H)
15. *Muʿtiq* or *Mawlā*[182] (MQ)

Similarly, the following is the list of all females that may inherit:[183]

1. Daughter (D)
2. Son's Daughter (SD) no matter how much she descends through her father
3. Mother (M)
4. Mother's Mother (MM → GM)
5. Father's Mother (FM → GM)
6. Full Sister (FS)
7. Consanguine Sister (CS)
8. Uterine Sister (US)
9. Wife (W)
10. *Muʿtiqah*[184] (MQ)

181. Al-Fawzān, Ṣāliḥ bin Fawzān bin ʿAbd Allāh, Al-Taḥqīqāt al-Marḍīyyah fī al-Mabāḥith al-Farḍīyyah, 65–67.
182. A man who frees a slave, thus becoming their guardian.
183. Ibid., 68.
184. A woman who frees a slave, thus becoming their guardian.

Scholars have divided eligible heirs by lineage (*nasab*) into three categories:[185]

1. *Uṣūl* (Roots): these are the father, mother, grandfather, and grandmother no matter how far they ascend.
2. *Furūʿ* (Branches): the son, daughter, son's son and son's daughter, no matter how far they descend.
3. *Hawāshī* (Collaterals): anyone other than those mentioned in *uṣūl* and *furūʿ*.

In addition, an heir must outlive the deceased or be regarded as having outlived the deceased. A child who is in utero and is subsequently born alive is deemed to have been born on the date of conception.[186]

Consequently, an unborn child is recognized as existing at the time of the deceased's passing, from whom the inheritance is derived. The remaining heirs are permitted to allocate the estate among themselves, provided they reserve a designated portion for the unborn child. This reserved share may correspond to that of one son or one daughter, depending on which portion is larger.[187]

A fetus is recognized as a living individual, contingent upon being born alive. According to the Shāfiʿī legal tradition, a person who is missing is presumed to be alive and possesses the right to inherit. In contrast, the Ḥanafī perspective acknowledges the individual as alive; however, such a person is not entitled to inherit or be inherited from.[188]

In instances where heirs die simultaneously—such as due to an earthquake, fire, or aviation accident—there is uncertainty regarding the order of death, which prevents inheritance between them. Consequently, the property will be allocated among the surviving heirs as if the deceased heirs were not present in the lineage.

9.4.3 Estate

The term "*Tarikah*" is derived from the root word "ta-ra-ka," which is also the foundation for the terms "*yatruku*" and "*matrūk*." This lexicon signifies a property designated as left behind by a person following their death. Within the context of Islamic tradition, when an individual passes away, they may leave behind certain assets, collectively referred to as an estate. An estate encompasses the following elements: the tangible property that the deceased owned prior to their death, any outstanding debts, and any financial entitlements. Rights may include options,[189]

185. Al-Kātib, ʿAbd al-Ṣamad bin Muḥammad, Kitāb al-*Farāʾiḍ*, 18–19.
186. Al-Mawsūʿah al-Fiqhīyyah, vol. 3, pp. 65–6.
187. Ibid., p. 67.
188. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 411–2.
189. These refer to rights one has after concluding a transaction. For example, the right to return goods if a deficiency is found.

the right of pre-emption, and the right of retaliation (*qiṣāṣ*) for murder or injury which also includes the right to ask for blood money (*diyah*), the right over the mortgaged property, and usufruct. The Ḥanafīs, however, do not consider some categories of right and usufruct as forms of property.[190] Estate also includes those properties that may not have come to a person's possession until his death.[191] For example, if an individual passes away after establishing a trap that subsequently catches prey, that prey becomes part of the estate. Likewise, any dividends arising from shares in a company that are received posthumously are also considered part of the estate.

9.4.3.1 The Inclusion or Exclusion of Rights in The Estate

عَنِ الْمِقْدَامِ قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ «مَنْ تَرَكَ كَلاًّ فَإِلَيَّ...» وَرُبَّمَا قَالَ «إِلَى اللَّهِ وَإِلَى رَسُولِهِ...» «...وَمَنْ تَرَكَ مَالاً فَلِوَرَثَتِهِ، وَأَنَا وَارِثُ مَنْ لاَ وَارِثَ لَهُ، أَعْقِلُ لَهُ، وَأَرِثُهُ وَالْخَالُ وَارِثُ مَنْ لاَ وَارِثَ لَهُ، يَعْقِلُ عَنْهُ وَيَرِثُهُ.»

Narrated al-Miqdām al-Kindī that the Prophet (Peace and Blessings of Allāh be upon him) said, «If anyone leaves a debt or a helpless family, I shall be responsible…»—or the narrator said—«…Allāh and His Messenger will be responsible but if anyone leaves property, it goes to his heirs. I am the heir of him who has none, paying blood-wit for him, and inheriting from him; and a maternal uncle is the heir of him who has none, paying blood-wit for him, and inheriting from him.» [192]

The majority of scholars adhere to the *ḥadīth* and assert that rights are encompassed within the estate. Conversely, the Ḥanafī school contends that the *ḥadīth* available to them does not explicitly include the term "rights".[193] This perspective held by the majority can be substantiated by references found within the Qur'an:

... فَلَهُنَّ ثُلُثَا مَا تَرَكَ...

«…their share is two-thirds of the inheritance*…»*

(Al-Nisāʾ, Q4:11)

This statement is broadly encompassing, incorporating all assets and entitlements left by the deceased, which may include monetary funds, rights, properties, and other possessions.

190. Sayyid Sābiq, *Fiqh al-Sunnah*, 1100.
191. Al-Kātib, ʿAbd al-Ṣamad bin Muḥammad, Kitāb al-*Farāʾiḍ*, 17.
192. Abū Dāwūd Sulaymān bin al-Ashʿath, *Sunan Abī Dāwūd*, no. 2899.
193. Al-Mawsūʿah al-Fiqhīyyah, vol. 11, pp. 208–9.

9.4.3.2 The Types of Rights

1. Right in rem: This is of 2 types:
   i. Refers to the right of ownership.
   ii. Rights which are not property but are dependent on or subservient to property. For instance, the right of way, the right of the passage of water, the right to climb the stairs, the right of option of defect, option of selection which are not inheritable according to the Ḥanafīs as well.[194]
2. Right in personam: It is the right which concerns merely the person of an individual and wherein no element of property is involved. The majority includes them while the Ḥanafīs do not.[195]

9.4.3.3 Conditions

1. The property left should be property in the eyes of the *Sharīʿah*.
2. Illegitimate or unlawfully obtained assets, as well as properties acquired by the deceased through deceitful or dishonest means, are not considered part of the deceased's estate under *Sharīʿah* law. The deceased is regarded as not being the rightful owner of such property and will be accountable to Allāh (Exalted be He) for the wrongful acquisition. Additionally, heirs engage in sin by distributing assets that rightfully belong to others. In cases where the genuine owner is identifiable, the property should be returned to them; if the owner is not known, it should be distributed as charitable contributions on their behalf.
3. In the event that a property owned by the deceased is *marhūn* (collateral), it is imperative that the collateral be discharged prior to the distribution of assets among the heirs. Should the deceased possess no other assets to facilitate the release of the collateral property, the collateral property must remain excluded from the estate. In such cases, the property should be sold, and upon satisfying the debt, any remaining proceeds, if applicable, should subsequently be incorporated into the estate.
4. The pension and gratuity of the deceased is included in the estate.
5. Compensation provided by an employer to the family of an employee who has died while on duty, compensation awarded to the family of an individual who has perished in an aviation accident due to airline negligence, or compensation granted to the victims of a fatality caused by a negligent and reckless driver may be incorporated into the estate or distributed among the heirs in accordance with the principles of diyāt in Islamic law.

194. Ibid., vol. 3, pp. 65–6.
195. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 268–9.

9.5 CAUSES OF INHERITANCE

The right to inheritance arises from one of the following four causes:

1. Relationship by blood. This can be classified into sharers (*aṣḥāb al-furūḍ*) excluding spouses, residuary heirs (*ʿaṣabah*) excluding *muʿtiq* and *muʿtiqah*, and distant kindred (*dhawī al-arḥām*). Relationship by adoption does not entitle a person to inheritance.
2. Relationship by a valid marriage. Only a husband and wife inherit from each other in case one of them survives the other. In-laws are not entitled.
3. *Walāʾ* (the right to guardianship of one's freed slave).
4. *Bayt al-māl*. In the case of those who have no heir or any of the above three causes.

9.6 PRECLUSION FROM INHERITANCE

Several factors may prevent an individual from inheriting. Scholars widely recognize three primary factors: differences in religion, murder, and slavery. In addition to clear evidence from the Sunnah, these factors have also been derived by scholars from the Book of Allāh (Exalted be He). The following is a brief explanation along with details regarding the extraction of these factors from the Qur'an as interpreted by scholars.

DIFFERENCE IN RELIGION. Individuals belonging to different religions do not inherit from one another. For instance, a Muslim husband is not entitled to inherit from his deceased Christian wife, nor is a Christian wife entitled to inherit from her Muslim husband.

عَنْ أُسَامَةَ بْنِ زَيْدٍ أَنَّهُ قَالَ زَمَنَ الْفَتْحِ: يَا رَسُولَ اللَّهِ، أَيْنَ تَنْزِلُ غَدًا؟ قَالَ النَّبِيُّ ﷺ «وَهَلْ تَرَكَ لَنَا عَقِيلٌ مِنْ مَنْزِلٍ.» ثُمَّ قَالَ «لاَ يَرِثُ الْمُؤْمِنُ الْكَافِرَ، وَلاَ الْكَافِرُ الْمُؤْمِنَ.» قِيلَ لِلزُّهْرِيِّ: وَمَنْ وَرِثَ أَبَا طَالِبٍ؟ قَالَ: وَرِثَهُ عَقِيلٌ وَطَالِبٌ. وقَالَ مَعْمَرٌ عَنِ الزُّهْرِيِّ: أَيْنَ نُنْزِلُ غَدًا؟ فِي حَجَّتِهِ. وَلَمْ يَقُلْ يُونُسُ: حَجَّتِهِ وَلاَ زَمَنَ الفَتْحِ.

Narrated Usāmah bin Zayd (May Allāh be pleased with them) who said during the Conquest (of Makkah), "O Messenger of Allāh! Where will we encamp tomorrow?" The Prophet (Peace and Blessings of Allāh be upon him) said, «But has ʿAqīl left for us any house to lodge in?» He (Peace and Blessings of Allāh be upon him) then added, «No believer will inherit a kāfir's property, and no kāfir will inherit the property of a believer.» Al-Zuhrī was asked, "Who inherited Abū Ṭālib?" Al-Zuhrī replied, "ʿAqīl and Ṭālib inherited him." Maʿmar transmits from al-Zuhrī, "Where will we encamp tomorrow?" He said this during the farewell Ḥajj. However, Yūnus does not mention the farewell Ḥajj nor the Conquest of Makkah.[196]

196. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, nos. 4282–3.

From the Qur'an, this is inferred from the following *āyah*:

… وَأُوْلُواْ ٱلْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِى كِتَـٰبِ ٱللَّهِ…

«…But kindred by blood are nearer to one another (regarding inheritance*) in the decree ordained by Allāh…»*

(Al-Anfāl, Q8:75)

This verse may initially appear to contradict the previously mentioned hadith; however, this interpretation is not accurate. The Qur'an establishes that the rights of Muslims toward one another take precedence over their rights in relation to non-Muslims. In this context, religious affiliations supersede familial bonds. Upon the death of a Muslim, his rights are automatically transferred to those who are nearest to him, specifically fellow Muslims. In this regard, Ibn al-Qayyim has articulated this principle:

> Pay attention to this deep meaning contained in the *āyah* of *mawārīth* (inheritance); Allāh (Exalted be He) based the inheritance of the spouse upon a legal marital relation, He used the word *al-Zawj* (wife) instead of using the word *al-Marʾah* (woman). This is obvious from the following *āyah*, (وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَٰجُكُمْ) (In that which your wives leave, your share is a half if they have no child…) [al-Nisāʾ, Q4:12]. This is a clear indication that the basis of inheritance among the spouses is nothing but the fact of marital relationship which makes both spouses to be compatible to each other and look alike, whereas this type of tie does not exist in the case of a Muslim and a *kāfir*, there is no compatibility, similarity, and appropriation between a Muslim and a *kāfir*. Thus, there cannot be inheritance between them. The amazing secrets of the Qur'an are always beyond the comprehension of the creation."[197]

MURDER. A person who causes the death of another, who he would normally inherit from, is precluded from inheritance. All *madh'habs* agree that if the death of the victim was caused by deliberate, *premeditated action*, the murderer cannot inherit from the victim. The evidence for this is the following narration:

عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ ﷺ قَالَ «الْقَاتِلُ لاَ يَرِثُ.»

Narrated Abū Hurayrah (May Allāh be pleased with him) that the Prophet (Peace and Blessings of Allāh be upon him) said, «The murderer will not inherit.»[198]

197. Ibn al-Qayyim, Muḥammad bin Abī Bakr, *Jalāʾ al-Afhām fī Faḍl al-ṣalāh ʿalā Muḥammad khayr al-Anām*, 347.
198. Ibn Mājah, *Al-Sunan*, no. 2744.

Therefore, intentional (*ʿamd*) or quasi-intentional (*shibh al-ʿamd*) murder precludes the culprit from inheriting. The Shāfiʿīs ruled that any involvement in the resulting death deprives the involved person from inheritance, regardless of his intention.[199] They did not exempt anyone from this ruling except a *rāwī* (narrator) and a *muftī* (the one who gives *fatwā* in that court case). The Mālikīs and Ḥanafīs, on the other hand, allow a person to inherit from the deceased if the death was unintentional. This preclusion is also inferred from the saying of Allāh (Exalted be He):

...ءَابَآؤُكُمْ وَأَبْنَآؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا...

«...You know not which of them, whether your parents or your children, are nearest to you in benefit...»

(Al-Nisāʾ, Q4:11)

Obviously, the murderer did not seek to benefit the deceased; he brought great harm by killing him. Due to his evil illegal act, the murderer loses the quality that would have enabled him to inherit, i.e. the familial bond. According to the law of inheritance, such ties have to exist for a person to be entitled to inheritance. The Qur'an says:

... وَأُوْلُوا۟ ٱلْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِى كِتَـٰبِ ٱللَّهِ...

«...But kindred by blood are nearer to one another (regarding inheritance*) in the decree ordained by Allāh...»*

(Al-Anfāl, Q8:75)

This verse illustrates that robust familial relationships are essential for an individual to qualify for inheritance. Consequently, scholars assert that murder is the primary reason for disqualification from inheritance rights.

SLAVERY. Individuals in slavery do not possess estates that can be passed down, as any earnings acquired by them exclusively belong to their master. Although the practice of slavery has been abolished, the interpretations of the *Sharīʿah* regarding this matter have not changed. Upon the death of a slave, there is no estate from which to inherit, given that the slave does not truly possess ownership of any assets. The master retains ownership of both the individual and any items that the slave may appear to own. Consequently, if a potential heir were to claim inheritance from a deceased slave, they would be acquiring possessions that do not rightfully belong to the deceased, which is inconsistent with *Sharīʿah* principles.

199. Al-Kātib, ʿAbd al-Ṣamad bin Muḥammad, Kitāb al-*Farāʾiḍ*, 25.

In a similar fashion, individuals who are enslaved are not entitled to inheritance due to their lack of ownership rights. The Qur'an assigns specific portions of an estate to heirs, provided that they possess the capacity for ownership:

...يُوصِيكُمُ ٱللَّهُ فِىٓ أَوْلَـٰدِكُمْ ۖ لِلذَّكَرِ مِثْلُ حَظِّ ٱلْأُنثَيَيْنِ

*«Allāh commands you as regards your children's (*inheritance*): to the male, a portion equal to that of two females...»*

(Al-Nisāʾ, Q4:11)

Thus, giving a share of the estate to a slave equates to giving it to the master. Nevertheless, the master is not an heir to the deceased.

There are other depriving factors mentioned by some scholars. These include apostasy, *liʿān*[200], *zinā, dār al-ḥarb*[201], etc... However careful observation shows that all of these are either included in the aforementioned factors or they do not arise at all. Apostasy is a form of disbelief which should be categorized under difference of religion, and this is exactly what the Ḥanbalīs, Shāfiʿīs, and Mālikīs stated.[202] As for *liʿān*, it is of two types: (1) based on the rejection of a child's paternity and (2) based on the accusation of zinā against the wife. The second type of *liʿān* does not prevent the child from inheriting either of the parents or vice versa because lineage is established. As for the first type, there is no cause for inheritance between them. This is because an illegitimate child is not attributed to the biological father according to the *Sharīʿah*, and thus the case does not even arise. This is what should be said with regard to zinā being a preventer. With regard to the person in *dār al-ḥarb*, he is either a Muslim or not. If he is a Muslim, he has an absolute right to inherit from his Muslim relative if he dies. If he is not a Muslim, then being in *dār al-ḥarb* did not prevent him from inheritance; difference in religion did. Allāh (Exalted be He) knows best.

200. The Arabic word, *liʿān*, is derived from the infinitive laʿn. It means preventing and excluding from goodness. Being cursed by Allāh (Exalted be He) means preventing or excluding [mankind] of His Mercy. Whereas being cursed by the creation means invoking curses and calling each other names. *Liʿān* is a shared act between two parties as in fights and disputations. A *qāḍī* performs *liʿān* between a married couple when he rules that they should resort to *liʿān* according to the legal way.
Legally, *liʿān* has many definitions according to scholars. These include:
1. Specific words used by a husband forced to defame his wife who blemishes his honour or to deny paternity of a child.
2. Testimonies affirmed by oaths by a married couple. This consists of cursing by the husband and supplication for inflicting wrath by the wife which stands equal to the punishment of defamation on the part of the husband and the punishment of adultery on the part of the wife. (Al-Suwaylim, 'Al-Baṣmah al-Wirāthīyyah wa Atharuhā fī al-*Nasab*', pp. 132–3)

201. *Dār al-ḥarb* is any land where non-Islamic rulings prevail. Al-Mawsūʿah al-Fiqhīyyah, vol. 20, p. 206.

202. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, p. 264.

9.7 DEDUCTION FROM THE ESTATE

Upon the death of an individual, four rights are associated with the deceased's estate, and it is imperative to adhere to a specified order when addressing these rights. These rights encompass the funeral expenses incurred by the deceased, the settlement of any outstanding debts, the execution of the *waṣīyyah*, and the distribution of the remaining estate shares among the heirs. The concept of *waṣīyyah* was elaborated upon in an earlier chapter, while the division of shares among the heirs will be addressed in the subsequent section. The first two rights are succinctly outlined as follows.[203]

FUNERAL EXPENSES. The priority of expenditures in the estate of a deceased individual is allocated to funeral and burial expenses. It is essential that these arrangements are conducted in a manner that is both moderate and respectful, avoiding both extravagance and deficiencies.

SETTLEMENT OF DEBTS. The settlement of debts occurs subsequent to the payment of funeral expenses. The significance of debt settlement within the context of Islam can be ascertained by examining the Qur'an and the traditions of the Prophet Muhammad (Peace and Blessings of Allāh be upon him). The considerable emphasis placed on the repayment of loans by the Prophet (Peace and Blessings of Allāh be upon him) is evident in his refusal to offer prayers for individuals who passed away in debt, unless they had provided means for settling their obligations. In instances where debt repayment was not arranged, the Prophet would personally take measures to ensure creditors' claims were satisfied prior to performing the prayer.

سَمِعْتُ عَبْدَ اللَّهِ بْنَ أَبِي قَتَادَةَ يُحَدِّثُ عَنْ أَبِيهِ، أَنَّ النَّبِيَّ ﷺ أُتِيَ بِرَجُلٍ لِيُصَلِّيَ عَلَيْهِ، فَقَالَ النَّبِيُّ ﷺ «صَلُّوا عَلَىٰ صَاحِبِكُمْ؛ فَإِنَّ عَلَيْهِ دَيْنًا.» قَالَ أَبُو قَتَادَةَ: هُوَ عَلَيَّ، فَقَالَ رَسُولُ اللهِ ﷺ «بِالْوَفَاءِ؟» قَالَ: بِالْوَفَاءِ، فَصَلَّىٰ عَلَيْهِ.

ʿAbd Allāh bin Abī Qatādah (May Allāh be pleased with him) narrated from his father that the Prophet (Peace and Blessings of Allāh be upon him) was brought a (deceased) man to perform ṣalāh over. So the Prophet (Peace and Blessings of Allāh be upon him) said, «Pray for your companion; for indeed, he had a debt upon him.» Abū Qatādah (May Allāh be pleased with him) said, "It shall be upon me." So the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «To pay it off?» He replied, "To pay it off." So, he (Peace and Blessings of Allāh be upon him) performed the prayer for him.[204]

203. For more details, see ibid., pp. 269–75.
204. Al-Tirmidhī, *Sunan al-Tirmidhī*, no. 1098.

The Prophet (Peace and Blessings of Allāh be upon him) is reported to have remarked that even the act of martyrdom does not absolve an individual of outstanding debts that remain unpaid:

عَنْ أَبِي هُرَيْرَةَ، قَالَ جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ وَهُوَ يَخْطُبُ عَلَى الْمِنْبَرِ، فَقَالَ: أَرَأَيْتَ إِنْ قَاتَلْتُ فِي سَبِيلِ اللَّهِ صَابِرًا مُحْتَسِبًا مُقْبِلاً غَيْرَ مُدْبِرٍ أَيُكَفِّرُ اللَّهُ عَنِّي سَيِّئَاتِي؟ قَالَ «نَعَمْ.» ثُمَّ سَكَتَ سَاعَةً. قَالَ «أَيْنَ السَّائِلُ آنِفًا؟» فَقَالَ الرَّجُلُ: هَا أَنَا ذَا. قَالَ «مَا قُلْتَ؟» قَالَ: أَرَأَيْتَ إِنْ قُتِلْتُ فِي سَبِيلِ اللَّهِ صَابِرًا مُحْتَسِبًا مُقْبِلاً غَيْرَ مُدْبِرٍ أَيُكَفِّرُ اللَّهُ عَنِّي سَيِّئَاتِي؟ قَالَ «نَعَمْ إِلاَّ الدَّيْنَ سَارَّنِي بِهِ جِبْرِيلُ آنِفًا.»

Narrated Abū Hurayrah (May Allāh be pleased with him): A man came to the Prophet (Peace and Blessings of Allāh be upon him) while he was delivering a khuṭbah from the minbar, and he said, "If I fight in the cause of Allāh with patience and seeking reward, facing the enemy and not running away, do you think that Allāh will forgive my sins?" He (Peace and Blessings of Allāh be upon him) said, «Yes.» Then he fell silent for a while. Then he (Peace and Blessings of Allāh be upon him) said, «Where is the one who was asking just now?» The man said, "Here I am." He (Peace and Blessings of Allāh be upon him) said, «What did you say?» He said, "If I fight in the cause of Allāh with patience and seeking reward, facing the enemy and not running away, do you think that Allāh will forgive my sins?" He (Peace and Blessings of Allāh be upon him) said, «Yes, except for debt. Jibrīl told me that just now.»[205]

Debts should be settled in the following order:[206]

1. All *madh'habs* agree that funeral expenses should be prioritized over debts payable from the estate. However, they differ in their approach to debts that are represented in the form of property. Such debts include the rights of a pledgee over property that the deceased pledged prior to death, unpaid prices for goods acquired by the deceased before death, and undelivered goods that the deceased had sold before passing away. The Ḥanafīs, Shāfʿīs, and Mālikīs assert that claims over the property take precedence over funeral expenses. Conversely, the Ḥanbalīs maintain that funeral expenses should take priority over all other claims. The latter viewpoint may be deemed the most applicable, particularly in instances involving individuals who are bankrupt. In these cases, an individual's assets are liquidated to satisfy debts, with the exception of necessities required for survival. This process occurs even when the individual possesses the physical capacity to seek necessary provisions, unlike a deceased person who is entirely powerless. Thus, it is more appropriate to apply the same reasoning in this context; prioritizing funeral expenses is essential, as these expenditures are necessary and the deceased is incapable of assisting themselves.

205. Al-Nisāʾī, *Kitāb al-Mujtabā*, no. 3179.
206. Al-Zuḥaylī, Al-Fiqh al-Islāmī, vol. 9, pp. 270–3.

2. Debts owed to Allāh (Exalted be He). They include unperformed Ḥajj, unpaid *zakāh*, atonement (*kaffārah*) for a broken oath, *nadhr*,[207] and missed obligatory fasting that was a result of *nadhr*. To the Ḥanafīs, these are abolished with the death of the person. They argue that debts – the payment of which is an obligation – are debts that concern the right of the people (*ḥaqq al-nās*). The heirs are not obliged to settle claims concerning the rights of Allāh (Exalted be He) except when the deceased has made a will that these should be settled from his estate. In this case, they are settled from 1⁄3 of the estate. According to most *madh'habs*, these debts should be fulfilled from the estate even if no will is made. They argue that these are equally binding obligations on the deceased. The Shāfʿīs give priority to the settlement of these debts over debts owed to the people. The following *ḥadīth* is used as evidence:

عَنِ ابْنِ عَبَّاسٍ قَالَ: جَاءَ رَجُلٌ إِلَى النَّبِيِّ ﷺ فَقَالَ يَا رَسُولَ اللَّهِ، إِنَّ أُمِّي مَاتَتْ وَعَلَيْهَا صَوْمُ شَهْرٍ، «أَفَأَقْضِيهِ عَنْهَا؟ قَالَ «نَعَمْ، فَدَيْنُ اللَّهِ أَحَقُّ أَنْ يُقْضَى.

Narrated Ibn ʿAbbās (May Allāh be pleased with them both): A man came to the Prophet (Peace and Blessings of Allāh be upon him) and said, "O Allāh's Messenger! My mother died and she ought to have fasted one month. Shall I fast on her behalf?" The Prophet (Peace and Blessings of Allāh be upon him) replied in the affirmative and said, «Allāh's debts have more right to be paid.»[208]

3. The third category is debts incurred by the deceased whether he was healthy or suffering from the death illness. They may include loans, *mahr*, or payment in return for a service, provided there is evidence.
4. Lastly, the debts acknowledged during the death illness. These are considered the weakest claims on the estate. They may in reality be gifts and are, therefore, subject to the rule of *waṣīyyah*. Such an acknowledgment however is not acceptable if it is in favor of one heir, unless other heirs consent.

Debts are prioritized for settlement using cash obtained from claims owed to the deceased, followed by available cash reserves, then proceeds from the sale of movable property. If these resources prove insufficient, any shortfall will be addressed through the sale of immovable property within the estate. In instances where the debts are equal to or exceed the value of the estate, distribution will occur among creditors in proportion to their respective claims. Heirs possess the option to settle all outstanding debts, thus releasing the estate for their benefit, a course of action to which creditors may not object. Furthermore, creditors retain

207. *Nadhr* is a verbal vow made by a free mukallaf (a competent person who is in full possession of his faculties) in dedication to Allāh (Exalted be He) to do something that the *Sharīʿah* did not originally impose on him. Al-Mawsūʿah al-Fiqhīyyah, vol. 40, p. 136.
208. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 1953.

the right to invalidate transactions—including sales, purchases, or gifts—carried out by the deceased during their terminal illness, provided such transactions impact the settlement of debts. It is important to note that heirs are not personally liable for the deceased's debts. Consequently, if the deceased has left no assets, the debts will remain unpaid, and if the assets are insufficient, repayment will be limited to the value of the available assets.

BEQUESTS. The subsequent priority pertains to the disbursement of the legacy, which shall be allocated from one-third of the remaining assets after the settlement of debts. Following the payment of debts and legacies, the heirs possess the authority to void any transaction that may adversely affect their designated shares. Such disadvantageous transactions may encompass *waqf*, gifts, and sales executed at a price lower than the property's fair market value, particularly if they occur during the period of terminal illness. These transactions are therefore subject to either nullification or the approval of the heirs, should they surpass the prescribed one-third limit.

ESTATE DEVOLVEMENT. Lastly the residue is distributed among his successors according to the Islamic law of inheritance (*farāʾiḍ*).

9.8 DEVOLVING ESTATE TO HEIRS

All schools of Islamic jurisprudence (*madh'habs*) concur that an estate is transferred to the heir immediately upon the death of the deceased, provided there are no outstanding debts or *waṣīyyah* (bequests). Furthermore, they agree that any remainder of the estate, after the settlement of debts and the fulfillment of *waṣīyyah*, is conferred to the heirs. However, there exists a divergence among the schools regarding the transfer of any portion of the estate that is subject to debt. The Ḥanafī school posits that the portion of the estate equivalent to the value of the debt does not become part of the heir's property. Consequently, the heirs are entitled solely to the residue remaining after the satisfaction of debts and the execution of the will (*waṣīyyah*). In instances where the entirety of the estate is encumbered by debt, the heirs shall inherit no assets.[209] They, however, have the right to free the estate from the creditors by paying them their claims on the estate.

According to the Shāfiʿīs and Ḥanbalīs, the property of the deceased Muslim vests in his heirs immediately after his death. The property, however, is received by each heir subject to his proportionate share of the debt.[210] Heirs become the owners of the indebted property, regardless of whether the debt encompasses the

209. Al-Mawsūʿah al-Fiqhīyyah, vol. 11, pp. 212–3.
210. Ibid., pp. 212–3.

entirety of the estate or only a portion of it. However, the debt pertains to the entire estate, which is therefore liable for its settlement. Heirs hold their shares subject to the obligation of paying debts in proportion to their respective interests in the estate and are also accountable for any *waṣīyyah* (bequest), up to one-third of the estate. Consequently, the existence of debts does not hinder the heirs from distributing the estate at any point. It is not mandatory for them to defer the estate's distribution until the debts are settled. Each heir remains liable for the deceased's debts in proportion to their share, even after the distribution of the estate, but shall not be liable for more than their respective share. Thus, if an heir passes away after the death of the deceased but prior to the distribution of the estate, their share will descend to their own heirs and will not revert to the general estate.

In situations where the estate of the deceased has not been distributed among the heirs, a creditor can execute a decree against the entire estate, irrespective of the extent of the liability of each heir. He may satisfy his claim out of the said property in priority to the creditors of any of the heirs. A creditor may also pursue legal action against the executor or the administrator of the estate; in the absence of such individuals, they may sue the heir or heirs of the deceased for recovery of the outstanding debts. He has the option to sue one or more of the heirs. However, if he chooses to sue one or some of the heirs but not all, then only such an heir or heirs are liable to discharge the debt proportionate to his share in the whole property. It is because one heir has no right to deal with the shares of other heirs. The debts of the deceased are given priority over the personal debts of the heirs.

Please note:

The best opinion is to follow the straightforwardness of the Qur'an and Sunnah that debt has to be settled before the distribution of the estate to their heirs even if that will consume all of the estate.

9.8.1 Qur'anic Heirs (*Aṣḥāb Al-Furūḍ*)

This group comprises twelve persons whose shares are specified in the Qur'an. They are also called Qur'anic heirs or sharers. They are:

Spouses: Husband and wife.
Descendants: Daughter, son's daughter (no matter how much she descends through the male children).
Ascendants: Father, mother, father's father, and grandmothers (from both father and mother).
Collaterals: Full sister, consanguine sister, uterine sisters, and uterine brother.

9.8.1.1 Spouses

The surviving spouse is a primary heir and, therefore, always inherits. The Qur'an specifically provides their entitlements in the following *āyah*:

وَلَكُمۡ نِصۡفُ مَا تَرَكَ أَزۡوَٰجُكُمۡ إِن لَّمۡ يَكُن لَّهُنَّ وَلَدٞۚ فَإِن كَانَ لَهُنَّ وَلَدٞ فَلَكُمُ ٱلرُّبُعُ مِمَّا تَرَكۡنَۚ مِنۢ بَعۡدِ وَصِيَّةٖ ۝
يُوصِينَ بِهَآ أَوۡ دَيۡنٖۚ وَلَهُنَّ ٱلرُّبُعُ مِمَّا تَرَكۡتُمۡ إِن لَّمۡ يَكُن لَّكُمۡ وَلَدٞۚ فَإِن كَانَ لَكُمۡ وَلَدٞ فَلَهُنَّ ٱلثُّمُنُ مِمَّا تَرَكۡتُمۚ مِّنۢ بَعۡدِ
وَصِيَّةٖ تُوصُونَ بِهَآ أَوۡ دَيۡنٖۗ وَإِن كَانَ رَجُلٞ يُورَثُ كَلَٰلَةً أَوِ ٱمۡرَأَةٞ وَلَهُۥٓ أَخٌ أَوۡ أُخۡتٞ فَلِكُلِّ وَٰحِدٖ مِّنۡهُمَا ٱلسُّدُسُۚ فَإِن
كَانُوٓاْ أَكۡثَرَ مِن ذَٰلِكَ فَهُمۡ شُرَكَآءُ فِي ٱلثُّلُثِۚ مِنۢ بَعۡدِ وَصِيَّةٖ يُوصَىٰ بِهَآ أَوۡ دَيۡنٍ غَيۡرَ مُضَآرّٖۚ وَصِيَّةٗ مِّنَ ٱللَّهِۗ وَٱللَّهُ
عَلِيمٌ حَلِيمٞ

«In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance *is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third, after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allāh; and Allāh is Ever All-Knowing, Most-Forbearing.»*
(Al-Nisāʾ, Q4:12)

A husband is entitled to a share of 1⁄2 of the property of his deceased wife provided that the deceased spouse does not leave behind any child or any other agnatic descendants such as a son or a daughter of a son whether from the claimant husband or from any previous husband. In the presence of a child, the husband gets 1⁄4 from the net property of the deceased wife.

The widow is entitled to a 1⁄4 share from the property of her deceased husband provided that the deceased does not leave behind any child or their descendants whether from the claimant wife or any other wife. In the presence of a child the widow gets 1⁄8 from the net property of her deceased husband. If there is more than one widow, they divide the share (whether 1⁄4 or 1⁄8) among themselves equally. There is no difference between a childless widow and a widow that has children.

9.8.1.2 Ascendants (Usūl)

The Qur’an assigns 1⁄6 to the father as his share if the deceased has a son. In the absence of the father, the grandfather (i.e. the father’s father) substitutes him. A father may inherit both as a sharer and residuary heir in the presence of only female agnatic descendants of his deceased son or daughter, for instance, when the deceased leaves behind a daughter. The father may inherit as a residuary heir when there is no agnatic male or female descendant, e.g. sons or daughters.

A mother is allotted 1⁄3 if the deceased has left no child, or agnatic descendants, or more than one brother or sister of any description (full, consanguine, or uterine). Otherwise, she would receive 1⁄6 of the estate of her deceased child. A grandmother is a substitute for the mother and is entitled to inherit only in her absence. The Qur’an says about the inheritance of Usūl:

يُوصِيكُمُ ٱللَّهُ فِىٓ أَوْلَـٰدِكُمْ ۖ لِلذَّكَرِ مِثْلُ حَظِّ ٱلْأُنثَيَيْنِ ۚ فَإِن كُنَّ نِسَآءً فَوْقَ ٱثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۖ وَإِن كَانَتْ وَٰحِدَةً
فَلَهَا ٱلنِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُۥ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَّهُۥ وَلَدٌ وَوَرِثَهُۥٓ أَبَوَاهُ فَلِأُمِّهِ
ٱلثُّلُثُ ۚ فَإِن كَانَ لَهُۥٓ إِخْوَةٌ فَلِأُمِّهِ ٱلسُّدُسُ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصِى بِهَآ أَوْ دَيْنٍ ۗ ءَابَآؤُكُمْ وَأَبْنَآؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ
لَكُمْ نَفْعًا ۚ فَرِيضَةً مِّنَ ٱللَّهِ ۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا حَكِيمًا

«For parents, a sixth share of inheritance *to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by Allāh. And Allāh is Ever All-Knower, All-Wise.»*

(Al-Nisāʾ, Q4:11)

وَلِأَبَوَيْهِ لِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُۥ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَّهُۥ وَلَدٌ وَوَرِثَهُۥٓ أَبَوَاهُ فَلِأُمِّهِ ٱلثُّلُثُ ۚ فَإِن...
كَانَ لَهُۥٓ إِخْوَةٌ فَلِأُمِّهِ ٱلسُّدُسُ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصِى بِهَآ أَوْ دَيْنٍ ۗ ءَابَآؤُكُمْ وَأَبْنَآؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا
ۚ فَرِيضَةً مِّنَ ٱللَّهِ ۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا حَكِيمًا

«…For parents, a sixth share of inheritance *to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by Allāh. And Allāh is Ever All-Knower, All-Wise.»*

(Al-Nisāʾ, Q4:11)

9.8.1.2.1 Grandfather

A grandfather, i.e. father's father, can only inherit when the father is dead (or excluded with *waṣf*). He inherits as follows:

1. If the deceased is survived by a son, the grandfather receives 1⁄6 as a Qur'anic sharer.
2. If the deceased is survived by a daughter, the grandfather gets 1⁄6 and is also entitled to receive the balance if there is any as a residuary heir.
3. If the deceased has no male or female child, the grandfather becomes a residuary heir (*ʿaṣabah*).
4. If the deceased is survived only by a grandfather and a grandmother and no other heir exists, the grandmother gets 1⁄6, and the grandfather becomes a residuary heir (*ʿaṣabah*), provided that both are of the same degree. A grandfather of a closer degree excludes a more remote paternal grandmother according to the view of the majority. This is based on the maxim:

كلُّ مَنْ أَدْلَى بِواسِطَةٍ حَجَبَتْهُ تِلْكَ الوَاسِطَةُ

"A person who is related to the deceased through another is excluded by the presence of the latter."

However, the Ḥanbalīs did not agree with this type of exclusion based on the fact that the grandmother is inheriting the portion of the mother not the father, and this is the sounder view. According to them, she is an exception to that maxim which is similar to the issue of uterine siblings inheriting in the presence of the mother.[211]

It is a consensus of the scholars that the grandfather (i.e. father's father) substitutes a father except in the following four situations:[212]

1. The case of *al-Gharrāwayn*, where the deceased is survived by the father, mother, and the husband. In this case the mother takes 1⁄3 of the balance after the share of the husband is given, and the father becomes a residuary heir (*ʿaṣabah*). However, if the deceased is survived by a mother and a grandfather, the mother receives 1⁄3 of the whole estate and the grandfather receives the balance.
2. The other case of *al-Gharrāwayn* is where the deceased is survived by the father, mother, and a wife. In this case, the mother takes 1⁄3 of the balance after the share of the wife is given, and the father becomes a residuary heir (*ʿaṣabah*). However, if the deceased is survived by the mother and the grandfather, then the mother receives 1⁄3 of the whole estate and the grandfather receives the balance.

211. Al-Kātib, ʿAbd al-Ṣamad bin Muḥammad, Kitāb al-*Farāʾiḍ*, 52.
212. Ibid., 52, 186–7.

3. The case of inheritance with *walāʾ*. In the case of *walāʾ*, the father excludes all siblings and their descendants by the consensus of all scholars. However, according to *Imam* Mālik and *Imam* al-Shāfiʿī, the grandfather does not replace the father in this regard, instead he will be excluded by siblings of the *muʿtiq*.
4. A father excludes all of the deceased's siblings, whether full, consanguine, or uterine. Similarly, according to *Imam* Abū Ḥanīfah, *Imam* Aḥmad in one of his opinions, a number of Ḥanbalī scholars, and the Shāfiʿīs, the grandfather also excludes full, consanguine, and uterine siblings of the deceased since a grandfather substitutes the father. In contrast, most madhabs and *Imam*s Abū Yūsuf and Muḥammad of the Ḥanafīs, are of the opinion that a grandfather cannot exclude full and consanguine siblings of the deceased, instead, they shall inherit with him.[213] However, in any such cases, the share of the grandfather should not be less than 1⁄6 of the estate.[214] All *madh'habs* agree that the grandfather excludes uterine siblings.[215] The first opinion is the most sound, Allah knows best.

9.8.1.2.2 Grandmother

In matters of inheritance, a grandmother, whether maternal or paternal, is entitled to inherit only in the absence of the mother. In the presence of a living mother, both maternal and paternal grandmothers are excluded from inheriting. According to an opinion, the paternal grandmother is also precluded from inheritance by the authority of the father.[216] A father cannot exclude the maternal grandmother. However, the Ḥanbalīs do not agree with this opinion. According to them, the grandmother is only excluded by the mother.[217] If a deceased is survived by two grandmothers, both of them receive 1⁄6 of the estate which they have to share equally. It is important to clarify that great grandmothers are eligible to inherit, provided that the generational line connecting them to the deceased remains unbroken. A paternal great grandmother is defined as one who is linked to the deceased exclusively through male lineage, specifically as the mother of a father's father, and so forth. Conversely, a maternal great grandmother is identified as someone linked through female lineage, namely as the mother of a mother's mother, and so on. However, in circumstances where all relevant grandmothers are living, the grandmothers will take precedence, thereby excluding the great grandmothers from inheritance considerations.

213. Ibn Qudāmah, ʿAbd Allāh bin Aḥmad, Al-Mughnī, vol. 9, pp. 66.
214. Ibid., p. 68.
215. Ibid., p. 65.
216. Al-Kātib, ʿAbd al-Ṣamad bin Muḥammad, Kitāb al-*Farāʾiḍ*, 73.
218. Ibid.

9.8.1.3 Descendants (*Furūʿ*)

Heirs within this category consist of both sons and daughters, as well as the descendants of sons, regardless of how distantly they may be related, provided that their connection to the deceased is through a male lineage. For instance, the child of a son is eligible to inherit, whereas the child of a daughter is not. For a single daughter, the Qur'an fixes 1⁄2 while for more than one daughter 2⁄3 is allotted in the estate of the deceased parent. The Qur'an declares:

يُوصِيكُمُ ٱللَّهُ فِىٓ أَوْلَٰدِكُمْ ۖ لِلذَّكَرِ مِثْلُ حَظِّ ٱلْأُنثَيَيْنِ ۚ فَإِن كُنَّ نِسَآءً فَوْقَ ٱثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۖ وَإِن كَانَتْ وَٰحِدَةً
فَلَهَا ٱلنِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُۥ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَّهُۥ وَلَدٌ وَوَرِثَهُۥٓ أَبَوَاهُ فَلِأُمِّهِ
ٱلثُّلُثُ ۚ فَإِن كَانَ لَهُۥٓ إِخْوَةٌ فَلِأُمِّهِ ٱلسُّدُسُ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصِى بِهَآ أَوْ دَيْنٍ ۗ ءَابَآؤُكُمْ وَأَبْنَآؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ
لَكُمْ نَفْعًا ۚ فَرِيضَةً مِّنَ ٱللَّهِ ۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا حَكِيمًا

*«Allāh commands you as regards your children's (*inheritance*): to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the* inheritance*; if only one, her share is a half. For parents, a sixth share of* inheritance *to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by Allāh. And Allāh is Ever All-Knower, All-Wise.»*

(Al-Nisāʾ, Q4:11)

If the claimants are more than one and are of equal degree, they divide equally the 2⁄3 quota among themselves. However, if they are not equal in degree, the superior daughters are first given their shares from the 2⁄3 quota and if there is residue left, it is given to the daughters of the inferior category. For example, if a person dies leaving behind a husband, a daughter, and a son's daughter. The husband gets 1⁄4 while the two daughters are assigned 2⁄3. However, out of this 2⁄3 the superior daughter gets the fixed portion given to her by the Qur'an which is 1⁄2. The remainder 1⁄6 goes to the inferior.

9.8.1.4 Collaterals

Among potential heirs, full and consanguine sisters, as well as uterine siblings, are recognized as Qur'anic heirs. Male descendants and ascendants of the deceased are authorized to inherit, thereby excluding brothers, sisters, and all other collateral relatives. It is important to note that consanguine siblings are excluded by full brothers; however, uterine siblings are not excluded by either full or consanguine siblings, thus allowing them to inherit alongside these relatives simultaneously.

وَإِن كَانَ رَجُلٌ يُورَثُ كَلَٰلَةً أَوِ ٱمْرَأَةٌ وَلَهُۥٓ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ ۚ فَإِن كَانُوٓا۟ أَكْثَرَ مِن ذَٰلِكَ فَهُمْ
شُرَكَآءُ فِى ٱلثُّلُثِ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَآ أَوْ دَيْنٍ غَيْرَ مُضَآرٍّ ۚ وَصِيَّةً مِّنَ ٱللَّهِ ۗ وَٱللَّهُ عَلِيمٌ حَلِيمٌ

«…If the man or woman whose inheritance *is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third, after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allāh; and Allāh is Ever All-Knowing, Most-Forbearing.»*

(Al-Nisāʾ, Q4:12)

If there is only one full or consanguine sister, she is entitled to 1⁄2 while a group of more than one sister of the said nature would be allotted 2⁄3 in the estate of the deceased. A sister, like daughters, becomes a residuary heir in the presence of her equal male counterparts such as a full sister in the presence of a full brother; and a consanguine sister in the presence of consanguine brothers.

يَسْتَفْتُونَكَ قُلِ ٱللَّهُ يُفْتِيكُمْ فِى ٱلْكَلَٰلَةِ ۚ إِنِ ٱمْرُؤٌا۟ هَلَكَ لَيْسَ لَهُۥ وَلَدٌ وَلَهُۥٓ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ ۚ وَهُوَ يَرِثُهَآ إِن لَّمْ
يَكُن لَّهَا وَلَدٌ ۚ فَإِن كَانَتَا ٱثْنَتَيْنِ فَلَهُمَا ٱلثُّلُثَانِ مِمَّا تَرَكَ ۚ وَإِن كَانُوٓا۟ إِخْوَةً رِّجَالًا وَنِسَآءً فَلِلذَّكَرِ مِثْلُ حَظِّ ٱلْأُنثَيَيْنِ ۗ يُبَيِّنُ
ٱللَّهُ لَكُمْ أَن تَضِلُّوا۟ ۗ وَٱللَّهُ بِكُلِّ شَىْءٍ عَلِيمٌۢ

«They ask you for a legal verdict. Say, "Allāh directs (thus) about al-Kalālah (those who leave neither descendants nor ascendants as heirs). If it is a man that dies leaving a sister, but no child, she shall have half the inheritance*. If (such a deceased was) a woman, who left no child, her brother takes her* inheritance*. If there are two sisters, they shall have two-thirds of the* inheritance*; if there are brothers and sisters, the male will have twice the share of the female. (Thus) does Allāh make clear to you (His Law) lest you go astray. And Allāh is the All-Knower of everything."»*

(Al-Nisāʾ, Q4:176)

Full sisters and consanguine sisters, akin to daughters and son's daughters, are categorized together within the framework of inheritance. The hierarchical relationship between a full sister and a consanguine sister parallels that of a daughter and a son's daughter. Consequently, a full sister is afforded precedence over a consanguine sister, similar to how a daughter is prioritized over a son's daughter. In matters of inheritance, a full brother (analogous to a son) designates his full sister (comparable to a daughter) as a residuary heir alongside himself, thereby entirely excluding any consanguine brothers or consanguine sisters, akin to how a son or higher son solely excludes the offspring of a son's daughters or lower sons.

As sharers, the class of the daughter holds superiority over that of the sister. Therefore, in scenarios where daughters or granddaughters exist without the presence of a son or a son's son, and they coexist with a full or consanguine sister, the latter's status transitions from receiving a fixed portion to inheriting through the principle of *taʿṣīb*. They are entitled to receive the residual share remaining after the designated sharers, provided that no nearer male residuary heir exists who would either share the inheritance with them or exclude them due to being closer in relation to the deceased.

Uterine siblings are classified as cognates. Similar to other collateral relatives, they serve as secondary heirs and are consequently excluded by agnatic descendants and ascendants. Nevertheless, uterine siblings are not subject to exclusion or limitation by full or consanguine siblings. Each uterine sibling is entitled to an equal share of the inheritance. If a single uterine sibling is present, that individual receives 1/6 of the estate. In instances where multiple uterine siblings exist, they collectively inherit 1/3, with all siblings sharing this portion equally. It is important to note that the principle of double shares for males does not apply to this category of heirs.

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَٰجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ ۚ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ ٱلرُّبُعُ مِمَّا تَرَكْنَ ۚ مِنۢ بَعْدِ وَصِيَّةٍ ۝
يُوصِينَ بِهَآ أَوْ دَيْنٍ ۚ وَلَهُنَّ ٱلرُّبُعُ مِمَّا تَرَكْتُمْ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ ۚ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ ٱلثُّمُنُ مِمَّا تَرَكْتُم ۚ مِّنۢ بَعْدِ
وَصِيَّةٍ تُوصُونَ بِهَآ أَوْ دَيْنٍ ۗ وَإِن كَانَ رَجُلٌ يُورَثُ كَلَٰلَةً أَوِ ٱمْرَأَةٌ وَلَهُۥٓ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَٰحِدٍ مِّنْهُمَا ٱلسُّدُسُ ۚ فَإِن
كَانُوٓا۟ أَكْثَرَ مِن ذَٰلِكَ فَهُمْ شُرَكَآءُ فِى ٱلثُّلُثِ ۚ مِنۢ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَآ أَوْ دَيْنٍ غَيْرَ مُضَآرٍّ ۚ وَصِيَّةً مِّنَ ٱللَّهِ ۗ وَٱللَّهُ
عَلِيمٌ حَلِيمٌ

«In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance *is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third, after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allāh; and Allāh is Ever All-Knowing, Most-Forbearing.»*
(Al-Nisāʾ, Q4:12)

		6	Explanation
1⁄2	D	3	She gets it because she is alone whereby the deceased did not leave any other child at the same degree as hers.
1⁄6	M	1	Partially excluded from 1⁄3 to 1⁄6 due to the existence of a child of the deceased.
1⁄6	SD	1	Gets 1⁄6 as a completion of the share allocated to the daughters.
ʿĀṣib	FB	1	He takes the remainder as an agnate.

A person died leaving behind his D, M, SD, and FB

		12	Explanation
1⁄4	W	3	She gets 1⁄4 because the deceased did not leave a child.
1⁄2	FS	6	She gets 1⁄2 because she is alone at this degree and the deceased has no ascendants or descendants.
1⁄6	CS	2	She takes 1⁄6 as a completion of the 2⁄3 allocated to sisters.
ʿĀṣib	FBS	1	He takes the remainder as an agnate.

A person died leaving behind his W, FS, CS, and FBS

		12	Explanation
1⁄4	H	3	Partially excluded from 1⁄2 to 1⁄4 due to the existence of a child of the deceased.
1⁄2	D	6	She takes because she is alone at that degree.
1⁄6	SD	2	She takes it as completion of the 2⁄3 allocated to daughters.
ʿĀṣib	CB	1	He takes the remainder as an agnate.

A person died leaving behind her H, D, SD, and CB

		6 (× 3 =)	18	
1⁄6	M	1	3	Partially excluded from 1⁄3 to 1⁄6 due to the existence of a grandchild.
1⁄2	SD	3	9	Takes 1⁄2 because she is alone at this degree.
1⁄6	3SSD	1	3	They get and share equally 1⁄6 as a completion of the 2⁄3 allocated to daughters.
ʿĀṣib	FU	1	3	He takes the remainder as an agnate.

A person died leaving behind his M, SD, 3SSD, and FU

		6 (× 4 =)	24	Explanation
1⁄6	GM	1	4	She takes 1⁄6 because the deceased did not leave his mother.
1⁄2	FS	3	12	She takes it because she is alone at this degree.
1⁄6	4CS	1	4	They take 1⁄6 which is a completion of the 2⁄3 allocated to sisters.
ʿĀṣib	CBS	1	4	He takes the remainder as an agnate.

A person died leaving behind his GM, FS, 4CS, and CBS

		6 (× 5 =)	30	Explanation
1⁄6	GF	1	5	He gets 1⁄6 which is the minimum he should get when replacing a father.
2⁄3	5D	4	20	They got it because they are more than one and the deceased has no male child at their degree.
1⁄6	GM	1	5	She takes it because there is no mother.

A person died leaving behind his GF, 5D, and GM

9.8.2 Agnatic Heirs (ʿ*Aṣabah* or Residuary Heirs)

The ʿ*Aṣabah* are entitled to receive any remaining assets after the claims of the designated sharers have been addressed. This entitlement is supported by the following evidence:

عَنِ ابْنِ عَبَّاسٍ عَنِ النَّبِيِّ ﷺ قَالَ «أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا فَمَا بَقِيَ فَهُوَ لأَوْلَى رَجُلٍ ذَكَرٍ.»

Ibn ʿAbbās (May Allāh be pleased with them both) narrated that the Messenger of Allāh (Peace and Blessings of Allāh be upon him) said, «Give the shares of inheritance *to those who are entitled to them. As for what remains, then it is for the closest male relative.»*[218]

Residuary heirs or ʿ*Aṣabah* can be classified into the following groups:

1. The male agnates in their own right (ʿ*aṣabah bi nafsihi*): this group includes son, father, brother, and paternal uncle. This is the most important class of ʿ*Aṣabah* which will be discussed in detail in the following pages.
2. The four specified female agnates in the right of others (ʿ*aṣabah bi ghayrihi*). They become agnates by virtue of others, they are:
   – Daughters in the presence of a son
   – Son's daughter in the presence of a son's son
   – Full sister in the presence of a full brother
   – Consanguine sisters in the presence of a consanguine brother.

218. Ibn Ḥajar, Aḥmad bin ʿAlī, *Ṣaḥīḥ* al-Bukhārī maʿ al-Fatḥ, no. 6732.

In these circumstances, the four individuals inherit not as Qur'anic sharers but rather as agnates. It is important to note that a lower son does not possess the capacity to designate a higher-ranking daughter as a residuary heir. For instance, should an individual leave behind a father, a mother, a daughter, a son's daughter, and a son's son as heirs, the son's son is unable to elevate the daughter to the status of a residuary heir.

Furthermore, although a daughter is recognized as a Qur'anic heir, she attains the status of a residuary heir (*ʿaṣabah*) only when accompanied by a son or a son's son of equal degree. For example, this occurs when a daughter is accompanied by a son or when a son's daughter is accompanied by a son's son. In such cases, the daughter is entitled to receive half of the inheritance amount that a son would receive. This determination is grounded in the interpretations found within the Qur'anic texts:

... يُوصِيكُمُ ٱللَّهُ فِىٓ أَوْلَـٰدِكُمْ ۖ لِلذَّكَرِ مِثْلُ حَظِّ ٱلْأُنثَيَيْنِ...

*«Allāh commands you as regards your children's (*inheritance*): to the male, a portion equal to that of two females…»*
(Al-Nisāʾ, Q4:11)

3. The two specified female agnates with others (*ʿaṣabah maʿ ghayrihi*). This group comprises two female agnates of full sister and consanguine sister when they are heirs with a daughter or a son's daughter or both, provided they are not accompanied by a male agnate at their degree.

9.8.2.1 Male Agnates (*ʿAṣabah Bi Anfusihim*) and The Rules of Priority among Them

The fundamental principle of priority among *ʿaṣabah* is that "the nearest must take the whole residue." This is based on the previously mentioned *ḥadīth*.

Identifying the closest or nearest relatives is decided on the bases of:

1. order
2. degree
3. strength of blood tie

9.8.2.1.1 Basis of Order

On the basis of order the male agnates are divided into the following five classes:

1. *Bunuwwah* (Childship): These are the descendants of the deceased, i.e. sons, son's son, no matter how much he descends through males.
2. *'Ubuwwah* (Fatherhood): These are the ascendants of the deceased, i.e. father, father's father, no matter how much he ascends through males.
3. *'Ukhuwwah* (Brotherhood): These are the full and consanguine brothers and their male agnatic descendants no matter how much they descend through males.
4. *ʿUmūmah* (Uncleship): These are the full and paternal uncles (i.e. a father's full and half-brothers) and their male agnatic descendants no matter how much they descend.
5. *Walāʾ*: This is for the ones who granted emancipation to the deceased and they are *ʿaṣabah* bi al-*nafs*.

As a general principle, descendants either wholly or partially exclude the other four classes of heirs, whereas ascendants exclude collateral relatives. For instance, a grandson possesses precedence over the father, despite the fact that the former is two degrees removed from the deceased, in comparison to the father, who is only one degree removed. Consequently, the grandson excludes the father from being a residuary heir; however, the father retains the right to his designated Qur'anic share of 1/6. In a similar manner, the father excludes brothers from inheritance, as brothers fall under the third order of the hierarchy, classified as collaterals.

9.8.2.1.2 Basis of Degree

In situations where agnatic heirs belong to the same order, the distinction in the degree of closeness or nearness establishes the priority within that particular class. The guiding principle for this group is that "the nearer in degree excludes the more remote." Accordingly, a son supersedes all lower male agnatic descendants; for example, a son (S) will exclude a son's son (SS). Similarly, a father will exclude other ascendants, such as a father's father (FF) and a father's father's father (FFF). Furthermore, a brother excludes nephews, while an uncle excludes cousins from the line of succession.

9.8.2.1.3 Basis of Strength of Blood

The variation in blood lineage may occur solely in relation to collateral relatives. It is conceivable that surviving heirs possess equal degrees of relationship to the deceased but are connected through differing familial lines. For instance, some heirs may be related solely through the maternal lineage, while others may be connected exclusively through the paternal lineage, and yet others may hold connections from both paternal and maternal sides. Those related to the deceased through both familial lines take precedence over those connected exclusively through the paternal lineage. Furthermore, full siblings and uncles preclude corresponding consanguine relationships. For example, a full brother negates the claim of a consanguine brother, even though both share equal proximity to the deceased. It is important to note that uterine relations represent an exception to this general principle, allowing them to inherit concurrently alongside full and consanguine blood relations.[219] A daughter, while receiving her apportioned share of 1/2, does not exclude a granddaughter from a son. Likewise, a full sister does not exclude a consanguine sister or a consanguine brother after obtaining her prescribed share of 1/2. However, in her role as a residuary heir, rather than as a sharer, a full sister is granted precedence over consanguine siblings, as the distribution among agnates is governed solely by the principle that "the nearer in degree excludes the more remote.

The fundamental principle governing *ʿaṣabah* is that the closest relative receives priority in inheritance. Within each category of inheritance, a nearer relative will exclude a more distant one. When the hierarchy can be established through a clear order, there is no necessity to evaluate the degrees of relationship or the strength of blood ties among claimants. Furthermore, if preference can be determined based on proximity, the strength of these blood connections becomes irrelevant. For example, a consanguine brother will exclude the son of a full brother, despite the latter being a collateral relative with greater blood strength; the former is simply closer in degree. In instances where *ʿaṣabah* are of the same order, degree, and blood strength, the residual estate is to be shared equitably among them.

The application of these rules gives rise to the following principles:[220]

1. In the presence of a son of the deceased, the grandsons, brothers, uncles, nephews, and cousins are completely excluded.
2. In the presence of the father of the deceased, the grandfathers, brothers, uncles, nephews, and cousins do not inherit.

219. Al-Kātib, ʿAbd al-Ṣamad bin Muḥammad, Kitāb al-*Farāʾiḍ*, 74.
220. For more details on Exclusion, see ibid., 69–84.

3. The grandfather inherits along with full and consanguine siblings (except according to the Ḥanafīs) but excludes uncles and all other collaterals.
4. Brothers exclude nephews including sons of a predeceased brother.
5. Brothers and nephews exclude uncles and cousins.
6. Uncles exclude cousins including the sons of a predeceased uncle.

9.8.2.2 Examples of The Inheritance of The *ʿAṣabah*

		6 (× 3 =)	18	Explanation
1⁄6	M	1	3	She is partially excluded from 1⁄3 to 1⁄6 by the grandchildren of the deceased.
ʿĀṣib	SD	5	10	They take the remainder as agnates and the male takes twice the portion of the female.
	SS		5	

A person died leaving behind his M, SD, and SS

		12	Explanation
1⁄4	H	3	He takes 1⁄4 due to the existence of a daughter of the deceased.
1⁄2	D	6	She takes 1⁄2 because she is alone at this degree.
ʿĀṣib	FS	1	She takes the remainder as an agnate due to the existence of a daughter.
1⁄6	SD	2	She takes 1⁄6 to complete the 2⁄3 allocated to daughters.

A person died leaving behind his H, D, FS, and SD

		24	Explanation
1⁄8	W	3	She is partially excluded from 1⁄4 to 1⁄8 due to the existence of a child of the deceased.
2⁄3	2D	16	They take it as this is the share allocated to daughters when they are more than one and there is no son of the deceased at their level.
ʿĀṣib	CS	5	She takes the remainder as an agnate due to the existence of daughters.
Nil	FBS	–	Excluded by the CS.

A person died leaving behind his W, 2D, CS, and FBS

		6	Explanation
1⁄2	H	3	He takes it due to the lack of a child of the deceased.
ʿĀṣib	F	2	Takes the remainder as an agnate.
Nil	GF	–	Totally excluded by the father.
Nil	U	–	Totally excluded by the father.
1⁄3 of B	M	1	She takes 1⁄3 of the remainder because the case is one of the *al-Gharrāwayn*.
Nil	GM	–	Totally excluded by the mother.

A person died leaving behind his H, F, GF, U, M, and GM

		24	Explanation
1⁄6	F	4	Partially excluded from being ʿĀṣib to a sharer receiving 1⁄6 due to the existence of a son of the deceased.
1⁄6	M	4	Partially excluded by the son from receiving 1⁄3 to 1⁄6.
ʿĀṣib	S	13	He takes the remainder as the closest agnate to the deceased.
Nil	SS	–	Excluded by the son.
1⁄8	W	3	Partially excluded from 1⁄4 to 1⁄8 due to the existence of a child of the deceased.

A person died leaving behind his F, M, S, SS, and W

		6	Explanation
ʿĀṣib	F	2	He takes the remainder as an agnate.
1⁄3 of B	M	1	She takes 1⁄3 of the remainder after the whole portion of the husband because the case is one of the two cases of *al-Gharrāwayn*.
Nil	FB	–	Totally excluded by the father.
1⁄2	H	3	Gets 1⁄2 because the deceased has no child.

A person died leaving behind her F, M, FB, and H

		12	Explanation
ʿĀṣib	F	7	He takes the remainder as an agnate.
1⁄6	M	2	Partially excluded by more than one sibling from receiving 1⁄3 to 1⁄6 due to the existence of more than one sibling.
Nil	2FB	–	Totally excluded by the father.
1⁄4	W	3	She takes it because the deceased has no child.

A person died leaving behind his F, M, 2FB, and W

		12	Explanation
ʿĀṣib	U	7	He takes the remainder as an agnate.
1⁄6	GM	2	She takes it because the deceased is not survived by the mother.
Nil	MQ		Totally excluded by the Uncle.
1⁄4	3W	3	They get 1⁄4 of the estate because the deceased did not leave a child.

A person died leaving behind his U, GM, MQ, and 3W

		1	Explanation
Nil	FU	–	Totally excluded by CBSS.
Nil	PU	–	Totally excluded by CBSS.
ʿĀṣib	CBSS	1	Takes the whole estate as the closest agnate to the deceased.

A person died leaving behind his FU, PU, and CBSS

		3	Explanation
2⁄3	2D	2	They get it because they are more than one, and the deceased left no son at their degree.
Nil	SD	–	They get nothing because the 2⁄3 share allocated for the daughters is taken by the nearest daughters.
ʿĀṣib	CS	1	She becomes agnate due to the existence of the daughters.
Nil	US	–	Totally excluded by the daughters.

A person died leaving behind his 2D, SD, CS, and US

9.8.2.3 Doctrine of Increase (*ʿAwl*)

In situations where the shares allotted to the heirs exceed the lowest common denominator (LCD) utilized for the division of the estate, a proportional reduction of their shares will occur. This reduction process is referred to as the doctrine of increase (*ʿawl*), and it is executed through specific methodological approaches:

1. Reduce the fractional share to a common denominator.
2. Increase the denominator so as to make it equal to the sum of numerators and allow the individual numerators to remain.

There are three numbers that accept *ʿawl*:

a. **Six (6)**: and extends in the following sequence, to 7, 8, 9, 10.
b. **Twelve (12)**: and extends in the following sequence, to 13, 15, 17.
c. **Twenty-four (24)**: and extends once to 27.

The following examples illustrate the doctrine.

9.8.2.3.1 *ʿAwl* of 6 to 7

		6 → 7	Explanation
1⁄2	H	3	Takes 1⁄2 of the estate because the deceased has no child.
2⁄3	2FS	4	They get it because they are more than one, and the deceased has no male sibling at their degree.

A person died leaving behind her H and 2FS

9.8.2.3.2 *ʿAwl* of 6 to 8

		6 → 8	Explanation
1⁄2	H	3	He gets 1⁄2 because the deceased has no child.
1⁄6	M	1	Partially excluded by more than one sibling from receiving 1⁄3 to 1⁄6 due to the existence of more than one sibling.
2⁄3	2CS	4	They get it because they are more than one, and the deceased has no male sibling at their degree.

A person died leaving behind her H, M, and 2CS

9.8.2.3.3 *ʿAwl* of 6 to 9

		6 → 9	Explanation
1⁄2	H	3	He gets 1⁄2 because the deceased deceased has no child.
2⁄3	2FS	4	They get it because they are more than one, and the deceased has no male sibling at their degree.
1⁄3	2UB	2	They all share 1⁄3 because they are more than one and there is nobody to exclude them.

A person died leaving behind her H, 2FS, and 2UB

9.8.2.3.4 *ʿAwl* of 6 to 10

		6 → 10	Explanation
1⁄2	H	3	He gets 1⁄2 because the deceased has no child.
2⁄3	2CS	4	They get it because they are more than one, and the deceased has no male sibling at their degree.
1⁄3	2US	2	They all share 1⁄3 because they are more than one and there is nobody to exclude them.
1⁄6	GM	1	She gets it because there is no mother to exclude her.

A person died leaving behind her H, 2CS, 2US, and GM

9.8.2.3.5 ʿ*Awl* of 12 to 13

		12 → 13	Explanation
1⁄4	H	3	Partially excluded from 1⁄2 to 1⁄4 due to the existence of a child of the deceased.
2⁄3	2D	8	They get it because they are more than one, and there is no male child of the deceased at their degree.
1⁄6	M	2	Partially excluded from 1⁄3 to 1⁄6 due to the existence of a child of the deceased.

A person died leaving behind her H, 2D, and M

9.8.2.3.6 ʿ*Awl* of 12 to 15

		12 → 15	Explanation
1⁄4	H	3	Partially excluded from 1⁄2 to 1⁄4 due to the existence of a child of the deceased.
1⁄2	D	6	She gets it because she is alone; The deceased did not leave any other child at the same degree as her.
1⁄6	SD	2	Gets 1⁄6 as a completion of the share allocated to the daughters.
1⁄6	F	2	Partially excluded from *Taʿṣīb* to 1⁄6 due to the existence of a child of the deceased.
1⁄6	M	2	Partially excluded from 1⁄3 to 1⁄6 due to the existence of a child of the deceased.

A person died leaving behind her H, D, SD, F, and M

9.8.2.3.7 ʿ*Awl* of 12 to 17

		12 → 17	Explanation
1⁄4	3W	3	They get 1⁄4 because the deceased did not leave a child.
2⁄3	8FS	8	They get it because they are more than one, and the deceased has no male sibling at their degree.
1⁄3	4US	4	They get it because they are more than one and there is nobody to exclude them from inheritance.
1⁄6	2GM	2	They get it because the deceased has no mother.

A person died leaving behind his 3W, 8FS, 4US, and 2GM

9.8.2.3.8 ʿ*Awl* of 24 to 27

		24 → 27	Explanation
1⁄8	W	3	Partially excluded from 1⁄4 to 1⁄8 due to the existence of a child of the deceased.
1⁄6	F	4	Partially excluded from *Taʿṣīb* to 1⁄6 due to the existence of a child of the deceased.
1⁄6	M	4	Partially excluded from 1⁄3 to 1⁄6 due to the existence of a child of the deceased.
2⁄3	2D	16	They get it because they are more than one, and there is no male child of the deceased at their degree.

A person died leaving behind his W, F, M, and 2D

9.8.2.3.9 The Extraction of The Rule of ʿ*Awl* from The Qur'an

The term ʿ*Awl*, which literally translates to "increase," refers specifically to an increase in the lowest common denominator (LCD) and a corresponding decrease in the portions allocated to heirs. The principle of ʿ*Awl* is derived from the Qur'an, which establishes fixed portions for each heir in matters of inheritance.

Heirs can be categorized into two types: those who are excluded from inheritance and those who are not. In instances where certain individuals are deprived of their inheritance, these individuals receive no allocation whatsoever. Conversely, in situations where all heirs are entitled to inherit, two scenarios may occur: either the total fixed portions do not completely exhaust the estate, or the sum of the fixed portions exceeds the estate left by the deceased.

In the latter scenario, two approaches are available: either the allocations of the heirs are adjusted, such that some portions are reduced to make up for the deficiency experienced by others, or each heir receives their allocated share to the fullest extent possible, dependent on the available estate. In this case, the heirs may be regarded as creditors, owed funds by the deceased, while the estate is unable to satisfy the debts entirely. The distribution then takes place in accordance with the available wealth of the estate.

Ultimately, it is evident that ʿ*Awl* provides a mechanism to navigate the complexities of inheritance as outlined in the Qur'an, ensuring that such matters are addressed comprehensively.[221] Allāh (Exalted be He) knows best.[222]

221. Al-Saʿdī, ʿAbd al-Raḥmān bin Nāṣir, *Taysīr al-Karīm al-Raḥmān fī Tafsīr Kalām al-Mannān*, Q4:11–2: p. 181.
222. For more details on ʿ*Awl*, see Al-Kātib, ʿAbd al-Ṣamad bin Muḥammad, Kitāb al-*Farāʾiḍ*, 112–7.

9.8.2.4 Doctrine of Return (*Radd*)

In situations where the shares allocated to the heirs fall below the lowest common denominator (LCD) utilized for the division of the estate, and there is no agnate to assume the residue, the heirs' shares will be adjusted upward in proportion to their actual shares. The portion allocated to the spouse is subject to reduction in cases of increase (*ʿawl*); however, the spouse does not partake in the return (*radd*) when any blood relations are present. In the absence of all blood relations, the spouse is entitled to receive the entirety of the property, in accordance with the views of the Ḥanafīs. Some scholars argue that spouses should also be included in the return, as they are affected by the increase and should therefore benefit from the disposition of the return.[223] The Shāfiʿīs do not recognize the doctrine of return and argue that the residue should be given to *bayt al-māl*.[224]

The doctrine of return (*radd*) would apply in the following steps:

FIRST STEP: reduce the fractional shares to a common denominator. Thus,

$$\frac{1}{6}+\frac{1}{2}=\frac{1}{6}+\frac{3}{6}$$

SECOND STEP: decrease the denominator to make it equal to the sum of the numerators, and allow the individual numerators to remain.

Thus, ⅙ + 3⁄6 becomes ¼ + ¾, where 4 is the sum of numerators 1 and 3. The shares are thus proportionately increased, so that their sum becomes equal to unity (¼ + ¾ = 4⁄4 = 1)

9.8.2.4.1 Examples of Return (*Radd*)

		6 → 2	Explanation
1⁄6	GM	1	She gets it because the deceased has no mother.
1⁄6	UB	1	He gets it because he is alone and there is nobody to exclude him from inheritance.

A person died leaving behind his GM and UB

223. Al-Mawsūʿah al-Fiqhīyyah, vol. 3, p. 49–50.
224. Ibid., p. 49–51.

		6 → 5 (× 5)	25	Explanation
2⁄3	5D	4	20	They get it because they are more than one, and there is no male child of the deceased at their degree.
1⁄6	3GM	1	5	They get it because the deceased has no mother.

A person died leaving behind his 5D and 3GM

		12 → 7	Explanation
1⁄4	3W	3	They get 1⁄4 because the deceased did not leave a child. They are also included in *radd*.
1⁄3	4UB	4	They get it because they are more than one and there is nobody to exclude them from inheritance.

A person died leaving behind his 3W and 4UB (Spouses included in *radd*)

		4 × 12	48	Each	Explanation
1⁄4	3W	1	12	4	They get a 1⁄4 because the deceased did not leave a child. The wives here are not included in *radd*.
B	4UB	3	36	9	They take the balance after the portions of the wives.

A person died leaving behind his 3W and 4UB (Spouses not included in *radd*)

		12 → 9	Explanation
1⁄4	W	3	She gets 1⁄4 because the deceased did not leave a child.
1⁄3	M	4	She gets it due the absence of a child or group of more than one sibling of the deceased.
1⁄6	UB	2	He gets it because he is alone and there is nobody to exclude him from inheritance.

A person died leaving behind his W, M, and UB (Spouses included in *radd*)

		Spouse case	*Radd* case	Final merger	Explanation
		4	6 → 3	4	
1⁄4	W	1		1	She gets 1⁄4 because the deceased did not leave a child. They did not get involved in the *radd* according to this view.
1⁄3	M		2	2	She gets 1⁄3 and some more due to the absence of a child or a group of more than one sibling of the deceased. In addition, she is included in *radd*.
1⁄6	UB		1	1	He gets 1⁄6 because he is alone and there is nobody to exclude him from inheritance. In addition, he is included in *radd*.

A person died leaving behind his W, M, and UB (Spouses not included in *radd*)

9.8.2.4.2 The Extraction of The Doctrine of Return from The Qur'an

Radd is conceptually distinct from the method of *ʿawl*, wherein the reduction occurs within the lowest common denominator (LCD) while the portions are increased. This situation arises when the designated fixed portion does not encompass the entirety of the deceased's estate, and there exists no ʿāṣib to claim the residual amount. The prevailing ruling among the majority is to reallocate the remainder to the *aṣḥāb al-furūḍ*, who are the inheritors of the deceased without exception, provided the basis for their inheritance is *nasab* (blood relationship). This principle is supported by the teachings of Allāh (Exalted be He):

وَأُوْلُواْ ٱلْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِى كِتَـٰبِ ٱللَّهِ ۗ إِنَّ ٱللَّهَ بِكُلِّ شَىْءٍ عَلِيمٌۢ...

«…But kindred by blood are nearer to one another (regarding inheritance*) in the decree ordained by Allāh. Verily, Allāh is the All-Knower of everything.»*
(Al-Anfāl, Q8:75)

This indicates that heirs possessing this type of familial relationship are entitled to *radd*. In contrast, spouses are typically excluded from *radd* as they are not connected by blood, which aligns with the majority view on this matter. However, some scholars argue that spouses should be treated equally to other heirs, similar to the treatment during *ʿawl*, where all shares are proportionately reduced. Consequently, in instances of *radd*, spouses should also be considered. This latter interpretation appears to be the most accurate and logically consistent with the principles outlined in the Qur'an.[225] Allāh (Exalted be He) knows best.

9.8.2.5 Rules of Exclusion (*Ḥajb*)

The regulations governing the distribution of shares among heirs, as well as the entitlements of various relatives, are subject to modification by specific principles and guidelines. These regulations, which prioritize certain familial relationships over others, were established by Islamic jurists. In the absence of these regulatory frameworks, all relatives—both immediate and extended—would assert claims to inheritance concurrently. The primary objective of the rules of exclusion (*ḥajb*) is to ascertain the relative priority and preference of an heir, determined by their relationship to the deceased. Through the application of these principles, it is possible to identify which heirs possess the right to inherit and which do not.[226]

225. Al-Saʿdī, ʿAbd al-Raḥmān bin Nāṣir, *Taysīr al-Karīm al-Raḥmān fī Tafsīr Kalām al-Mannān*, Q4:11–2, pp. 181–2.
226. NOTE: The primary heirs – i.e. son, daughter, husband, wife, father, and mother – are never excluded from inheritance. The secondary heirs include son's daughter(s), grandfather, grandmother, and collaterals. They sometimes inherit while at other times, may be either fully or partially excluded by a primary heir.

Exclusion is of two types: Partial (imperfect) and Total (perfect).

9.8.2.5.1 Partial (Imperfect) Exclusion

1. When an heir is excluded from their original right and is allowed to have a different right. For example, the son excludes the daughter as a sharer and places her in the category of residuary heirs.
2. Where there is a partial reduction of the specific share due to the presence of certain heirs. For instance, the share of a spouse is reduced due to the presence of a child or an agnatic descendant.

9.8.2.5.2 Total (Perfect) Exclusion

It refers to a situation where a person, though entitled otherwise, is excluded based on three principles.[227]

PRINCIPLE I "Nearer in degree excludes the more remote." For example, son excludes son's son, and father excludes grandfather.

PRINCIPLE II "Full blood brothers exclude half-blood brothers." An important exception is that uterine siblings are not excluded on this ground.

PRINCIPLE III "A person who is related to the deceased through another is excluded by the presence of the latter." Individuals who are related to one another through a third party are prohibited from inheriting from each other while the third party is still alive. For instance, siblings and their grandfather cannot inherit from each other in the presence of their father. However, siblings—whether full, consanguine, or uterine—are permitted to inherit in the presence of their mother. It is important to note that the death of the father does not automatically grant the grandchildren the right to inherit from the grandfather; they may still be excluded by their uncles. Likewise, even in the event of the father's death, siblings may be excluded from inheriting from one another if they have surviving sons.

227. For more details, see Al-Kātib, ʿAbd al-Ṣamad bin Muḥammad, Kitāb al-*Farāʾiḍ*, 72–76.

9.8.2.5.3 Examples of Exclusion in All of Its Categories

		6	Explanation
1⁄6	M	1	Partial exclusion from 1⁄3 to 1⁄6 due to the existence of a child of the deceased.
1⁄2	D	3	She gets it because she is alone; nobody else at her degree.
1⁄6	SD	1	She gets 1⁄6 of the estate which is the completion of the portion allocated for the daughters.
Nil	GM	–	Excluded by the mother.
ʿĀṣib	SSS	1	Takes the remainder as an agnate.
Nil	FB	–	Excluded by the SSS.

A person died leaving behind his M, D, SD, GM, SSS, and FB.

		24	Explanation
1⁄6	F	4	Partially excluded from *Taʿṣīb* to 1⁄6 due to the existence of the deceased's child.
ʿĀṣib	S	13	Takes the remainder as an agnate.
Nil	SS	–	Totally excluded by the nearest son.
1⁄6	GM	4	Gets it as a replacement of a mother.
1⁄8	4W	3	Partially excluded from 1⁄4 to 1⁄8 due to the existence of the deceased's child.

A person died leaving behind his F, S, SS, GM, and 4W

		6	Explanation
1⁄6	F	1	He gets it due to the existence of a female child of the deceased.
1⁄6	M	1	Partially excluded from 1⁄3 to 1⁄6 due to the existence of a child of the deceased.
2⁄3	2D	4	They get it because they are more than one, and there is no son at their level.
Nil	2FS	–	Totally excluded by the father.
Nil	2CS	–	Totally excluded by the father.
Nil	2US	–	Totally excluded by the father.

A person died leaving behind his F, M, 2D, 2FS, 2CS, and 2US

		6 → 9 (× 5 =)	45	Explanation
1⁄2	H	3	15	He gets it because the deceased did not leave a child.
1⁄2	FS	3	15	She gets it because she is alone, nobody else at her degree. There is no one to exclude her as well.
1⁄6	2CS	1	5	They get 1⁄6 as a completion of the of the 2⁄3 allocated for the sisters.
1⁄3	UB 2US	2	10	They all share 1⁄3 because they are more than one and there is nobody to exclude them.
ʿĀṣib	U	–		Did not get anything because he is an agnate, and there is no residue.

A person died leaving behind her H, FS, 2CS, UB, 2US, and U

9.8.2.6 Grandfather (GF)

The grandfather, specifically the father's father, is entitled to inherit only in the event that the father is deceased. In such circumstances, the grandfather assumes the role of the father and receives his designated share in the absence of the latter. However, when full or consanguine siblings are also present, there is a divergence of opinion among scholars regarding the grandfather's share, as neither the Qur'an nor the Sunnah explicitly outline his portion in these scenarios.

On one occasion, ʿAli (May Allāh be pleased with him) was quoted to have said:

مَنْ سَرَّهُ أَنْ يَقْتَحِمَ جَهَنَّمَ فَلْيَقْضِ بَيْنَ الجَدِّ وَالإِخْوَةِ.

Whoever is happy to break into Hellfire let him judge between a grandfather and brothers.228

The complexities of Islamic inheritance necessitate the formulation and systematization of legal rules regarding the role of a grandfather in inheritance matters. Consequently, early Muslim jurists diligently sought to render a legal opinion on the grandfather's status by examining the general teachings of the Qur'an, the Sunnah, and the diverse viewpoints of the Companions (May Allāh be pleased with them). This body of opinion may be categorized into two principal groups: the Ḥanafīs and the majority of other legal schools (madhabs).

228. Al-Bayhaqī, Aḥmad bin al-Ḥusayn bin ʿAlī, *Al-Sunan al-Kubrā*, vol. 6, no. 12416. However, this narration is weak.

The Ḥanafī school has adopted the perspective of various Companions (May Allāh be pleased with them), including Abū Bakr, Ibn ʿAbbās, ʿAbd Allāh bin al-Zubayr, and others, who contended that a grandfather can assume the role of a father in matters of inheritance, thereby excluding all full and consanguine siblings from inheritance precedence.[229] According to this perspective, the verses of the Quran that delineate the inheritance rights of a father should similarly be applied to a grandfather. As a result, all siblings are precluded from inheriting from a grandfather.

In contrast to the Ḥanafī school of thought, the majority of other jurisprudential schools, including the Mālikī, Shāfiʿī, and Ḥanbalī schools, as well as scholars such as Abū Yūsuf and Muḥammad bin al-Ḥasan al-Shaybānī, maintain that both full and consanguine siblings are entitled to inherit alongside their grandfather.[230] The position of this group posits that full and consanguine siblings possess a relationship to the deceased that is equivalent in degree to that of the grandfather. Specifically, the grandfather's connection to the deceased is mediated through their father, which parallels the relationship of full and consanguine siblings. Additionally, prioritizing the grandfather while disregarding the claims of full and consanguine siblings would result in an inequitable outcome for the latter. This viewpoint is rooted in the perspectives held by the majority of the Companions, such as ʿAlī bin Abī Ṭālib, Ibn Masʿūd, and Zayd bin Thābit[231] and many others (May Allāh be pleased with them).[232]t Consequently, due to the equitable and judicious nature of this perspective, numerous Muslim nations have adopted it within their *Sharīʿah* courts. The cases involving grandfathers in conjunction with either full or consanguine siblings can be categorized into two distinct groups: (1) cases involving a grandfather alongside either full or consanguine siblings, but not both; and (2) cases involving a grandfather together with either full or consanguine siblings in addition to any Quranic sharer(s).

Part One: Grandfather Together with Either Full or Consanguine Siblings but Not Both

There are two distinct cases to consider in this matter, and the most effective approach to determining the optimal option for the grandfather is through a thorough comparison of precise calculations:

229. Ibn Qudāmah, ʿAbd Allāh bin Aḥmad, Al-Mughnī, vol. 9, pp. 65–6.
230. Al-Kātib, ʿAbd al-Ṣamad bin Muḥammad, Kitāb al-*Farāʾiḍ*, 186–7; Ibn Qudāmah, ʿAbd Allāh bin Aḥmad, Al-Mughnī, vol. 9, pp. 66.
231. The Prophet (Peace and Blessings of Allāh be upon him) himself declared that he was the most knowledgable of the Companions (May Allāh be pleased with them) on inheritance; See Al-Tirmidhī, *Sunan al-Tirmidhī*, no. 4144
232. Ibn Qudāmah, ʿAbd Allāh bin Aḥmad, Al-Mughnī, vol. 9, pp. 66.

THE FIRST CASE is the concept known as *al-muqāsamah* which refers to the distribution of inheritance whereby the grandfather receives a share that is divided among the siblings. In this arrangement, the grandfather is treated as one of the brothers, resulting in his receiving twice the portion allotted to one sister.

Formula: this is when the number of siblings' heads[233] inheriting with the grandfather is less than four. This can happen in only five (5) situations: Grandfather with either one sister; or two sisters; or one brother; or one brother and one sister; or with three sisters.

		3	Explanation
ʿĀṣib	GF	2	He does *muqāsamah* because he acts as a sibling to the full sister.
ʿĀṣibah	FS	1	She shares the portion with GF.

		4	Explanation
ʿĀṣib	GF	2	He does *muqāsamah* because he acts as a sibling to the full sisters.
ʿĀṣibah	2FS	2	They share the portions with GF.

		2	Explanation
ʿĀṣib	GF	1	He acts as a sibling to the full brother
ʿĀṣib	FB	1	He does *muqāsamah* with the GF.

		5	Explanation
ʿĀṣib	GF	2	He acts as a sibling to both of them.
ʿĀṣib	FB	2	He does *muqāsamah* with both GF and the full sister.
ʿĀṣibah	FS	1	She shares the portion with both GF and FB.

		5	Explanation
ʿĀṣib	GF	2	He acts as a sibling to the full sisters.
	FS	1	
ʿĀṣibaat	FS	1	They share the portion with GF.
	FS	1	

THE SECOND CASE is where the grandfather takes 1⁄3 of the total estate.

Formula: this is when the siblings' heads are more than four. The examples of this option are endless, e.g. Grandfather with three brothers; or two brothers and one sister; or five sisters, etc.

233. Number of heads: this is the number of heirs if they are of the same gender. But if the heirs are of a mixed gender, they are classified based on a head-count instead. A male is counted as "2 heads" while a female is counted as "1 head."

	3 (× 3 =)	9	Each
GF	1	3	
3FB	2	6	2

	3 (× 5 =)	15	Each
GF	1	5	
5FS	2	10	2

<table>
<tr><th></th><th>3 (× 5 =)</th><th>15</th><th>Each</th></tr>
<tr><td>GF</td><td>1</td><td>5</td><td>5</td></tr>
<tr><td>2FB</td><td rowspan="2">2</td><td rowspan="2">10</td><td>8</td></tr>
<tr><td>FS</td><td>2</td></tr>
</table>

Part Two: Grandfather Together with Either Full or Consanguine Siblings, as well as Quranic Sharer(s)

Muslim jurists have agreed that Quranic sharers are always given priority over others, and that whenever the grandfather and full or consanguine siblings inherit together with any Quranic sharer, the grandfather should be given the best of the following:

1. An equal share
2. 1⁄3 of the remainder
3. 1⁄6 of the total

Obviously, finding out which of the above shares is the best for the grandfather will only be possible through comparison of accurate calculations.

1. *al-Muqāsamah*
Formula: The application of *al-Muqāsamah* occurs under specific conditions related to the distribution of an estate among heirs. This practice is relevant when the remaining estate, after the allocation of portions to the heirs, constitutes 1⁄2 or more of the total estate, provided that the number of siblings does not exceed three. Alternatively, it is applicable when the remainder is less than 1⁄2 but exceeds 1⁄3, with the condition that the total number of siblings is two or fewer. Additionally, *al-Muqāsamah* is relevant when the remaining estate equals 1⁄3, and the number of siblings is less than two. Some illustrative examples of this concept include:[234]
Grandfather with wife and sister; or daughter and sister; or mother and brother; or husband and brother; or wife, brother, and sister; or wife, grandmother, and three sisters; or son's daughter, brother, and sister; or mother, wife, and brother.

234. All siblings are either full or consanguine.

	4
W	1
GF	2
FS	1

	4 (× 5 =)	**20**
W	1	5
GF		6
FB	3	6
FS		3

In these cases, the best portion for the grandfather will only be in sharing the remainder with brothers.

2. 1⁄3 of the remainder (after the portions of the heirs)
Formula: This situation arises when the remainder constitutes more than half of the estate, and the number of siblings involved exceeds four. Examples include:[235] Grandfather with three brothers and wife; or two brothers, one sister, and mother; or one brother, three sisters, and grandmother; or five sisters and one wife; or three brothers, three sisters, mother, and one wife.

	4 (× 3 =)	**12**
W	1	3
GF	1	3
3FB	2	6

	36 (× 3 =)	**108**
W	9	27
M	6	18
GF	7	21
3FB	14	42

3. 1⁄6 of the estate 1⁄4
Formula: In this scenario, the conditions include instances where the remainder is less than 1⁄2 but greater than 1⁄4 , and the number of siblings is greater than two. Additionally, it applies when the remainder equals 1⁄4 and the number of siblings

235. All siblings are either full or consanguine.

is two or more, or when the remainder is less than 1⁄4. Under these circumstances, a division of 1⁄6 would be more favorable for the grandfather. Several examples demonstrate these principles.:[236] Grandfather with daughter, mother, brother and sister; or son's daughter, wife, and three sisters; or daughter, husband and a brother; or wife, two daughters, and one sister.

	12
D	6
H	3
GF	2
FB	1

	24
2D	16
W	3
GF	4
FS	1

NOTE

In cases where the grandfather's estate involves both full siblings and consanguine siblings, the rule stipulates that all siblings will be included in the calculations without excluding consanguine siblings, treating them as equally related by blood. Upon the allocation of the grandfather's share, the typical rules of exclusion will be employed accordingly. Specifically, full siblings will exclude consanguine siblings once the grandfather's share has been distributed. Conversely, if the scenario only involves full sisters and consanguine sisters, all individuals will be counted as if they share an equal blood relationship. Following the allocation of a minimum 1⁄3 of the estate to the grandfather's designated heirs, the full sisters will collectively receive 2⁄3 of the estate, which effectively depletes the entire estate. As a result, no residual assets will be left for the consanguine sisters.

236. All siblings are either full or consanguine.

9.8.2.6.1 Exceptional Case of *al-Akdarīyyah*

This case is referred to as *al-Akdarīyyah*, which translates to "troubling," due to a woman who challenged Zayd bin Thābit (May Allah be pleased with him) regarding his position that resulted in her being excluded from inheritance. Meanwhile, the designated Quranic heirs and her grandfather received their respective shares of the inheritance.[237] She engaged him in a discourse by challenging his perspective and successfully persuaded him to reconsider her case pertaining to inheritance, as she believed that the prevailing interpretation required certain modifications. Upon re-evaluating her situation, Zayd bin Thābit (may Allah be pleased with him) determined that her case indeed deviated from conventional circumstances. This necessitated a tailored resolution whereby he consolidated her shares with those of her grandfather, allocating one portion to her and two portions to her grandfather, following the deduction of the Quranic shares.

		6	9	9 (× 3 =)	27	Each
	H	3	3	3	9	
	M	2	2	2	6	
3	GF	1	1	4	12	8
	FS	?	3			4

Al-Akdarīyyah: H, M, GF, and FS

According to the established principles of inheritance, a full sister is precluded from receiving a fixed share of the estate in the presence of a grandfather; she is obligated to share the remainder with him, except under specific circumstances. In the presence of the husband, mother, grandfather, and a full or consanguine sister, the full sister is entitled to her fixed share, which is one-half, provided that the grandfather is absent. Consequently, the lowest common denominator (LCD) is adjusted to nine through the principle of *ʿawl*. Following this adjustment, the full sister and the grandfather collectively take into account their respective shares. Subsequently, the grandfather is treated as a brother, resulting in his receiving double the portion allocated to one sister, in accordance with the principle of *muqāsamah*.[238]

NOTE

All madhabs agree that the grandfather excludes uterine siblings.[239]

237. For other possible reasons for this name, see Al-Mawsūʿah al-Fiqhīyyah, vol. 6, p. 97.
238. See § *al-Akdarīyyah* in the poem of inheritance by ʿAbd al-Malik al-Fatanī, found in Majmūʿ Muhimmāt Al-Mutūn, 62.
239. Al-Mawsūʿah al-Fiqhīyyah, vol. 3, p. 33.

9.8.3 Distant kindred (*Dhawī al-Arḥām*)

The term "*Arḥām*" is the plural form of "*raḥim*," which is generally interpreted as pertaining to the womb. This concept encompasses maternal relationships and affiliations. Specifically, it includes every blood relative of the deceased who does not qualify as a sharer or a residuary heir within the classification of heirs.[240] Female agnates, in conjunction with both male and female cognates, collectively comprise this specific class. The sole exceptions to this categorization are uterine siblings and grandmothers, who are considered sharers. This class may encompass the children of a daughter, the children of a son's daughter, maternal grandfathers, as well as the daughters of brothers and the daughters of paternal uncles. The Ḥanafī school, aligning with certain Companions of the Prophet (May Allāh be pleased with them), maintains the position that these individuals should receive a share from the estate of the deceased. According to this perspective, distant relatives should be prioritized over non-relatives, including the public treasury (*bayt al-māl*). Conversely, the Mālikī and Shāfiʿī schools adhere to the view of another group of Companions (May Allāh be pleased with them) which asserts that no share shall be allocated to these individuals. They argue that any remaining assets should be directed to the public treasury.[241]

Dhawī al-arḥām refers to relatives who do not qualify as either Quranic sharers or residuary heirs. According to the Ḥanafī school of thought, individuals categorized as *dhawī al-arḥām* are entitled to inheritance only in the absence of both Quranic sharers and residuary heirs. In instances where a husband or wife is present, after allocating the fixed shares designated by the Quran, any remaining estate will be distributed to the *dhawī al-arḥām*.

Conversely, the Shāfiʿī school posits that the *bayt al-māl* (state treasury) takes precedence over *dhawī al-arḥām*, provided that it is effectively managed and operational. Should there be an absence of a functional *bayt al-māl* along with a lack of Quranic sharers or residuary heirs, the *dhawī al-arḥām* would then be eligible to inherit.

Furthermore, both the Shāfiʿī and Mālikī schools contend that the Quran explicitly recognizes Quranic sharers and residuary heirs but does not mention *dhawī al-arḥām* as legitimate heirs. They also reference a narrative wherein the Prophet Muhammad (Peace and Blessings of Allāh be upon him) was queried regarding the inheritance shares of paternal and maternal aunts, to which he responded that he had been informed by Jibrīl (Peace be upon him) that no inheritance shares exist for either group.[242]

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240. Ibid., p. 53.
241. Ibid., pp. 45 and 53.
242. Al-Bayhaqī, Aḥmad bin al-Ḥusayn bin ʿAlī, *Al-Sunan al-Kubrā*, no. 12204.

The proponents, i.e. the Ḥanafīs and Ḥanbalīs, support their argument by quoting the following *āyah*:

وَأُوْلُوا۟ ٱلْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِى كِتَـٰبِ ٱللَّهِ ۗ إِنَّ ٱللَّهَ بِكُلِّ شَىْءٍ عَلِيمٌۢ...

«...But kindred by blood are nearer to one another (regarding inheritance*) in the decree ordained by Allāh. Verily, Allāh is the All-Knower of everything.»*

(Sūrah al-Anfāl, Q8:75)

According to them, the referenced verse indicates that, in matters of inheritance, certain relatives are prioritized over others. The term "*Dhawī al-arḥām*," as mentioned in the Qur'an, encompasses all familial connections, including sharers, agnates, and those whose inheritance shares are not explicitly defined. Proponents of this interpretation assert that the verse pertains to these relatives, thereby establishing their rights. They maintain that this entitlement is not a novel addition to the divine ordinance. Furthermore, they support their position by citing specific traditions in which the Prophet Muhammad (Peace and Blessings be upon him) allocated the estate to a maternal uncle.[243]

9.8.3.1 Order of Inheritance of *Dhawī al-Arḥām*

Dhawī al-arḥām are of four types and inherit in the following order:

1. Those who originated from the deceased such as daughter's children or son's daughter's children.
2. Those from whom the deceased has originated such as maternal grandfather or father's mother's mother.
3. Collaterals or those who originated from the deceased parents such as the children of sisters whether they are full, consanguine, or uterine and the daughters of brothers whether they are full, consanguine, or uterine.
4. Those who originate from the deceased's grandparents such as parental aunts, maternal uncles and maternal aunts, i.e. full, consanguine, or uterine sisters of the father, mother's brothers, and mother's sisters.

243. Abū Dāwūd Sulaymān bin al-Ashʿath, *Sunan Abī Dāwūd*, no. 2899; Al-Tirmidhī, *Sunan al-Tirmidhī*, no. 2248, and *Imam* al-Tirmidhī graded it ḥasan; Ibn Mājah, *Al-Sunan*, no. 2746.

9.8.3.2 Example

The scholars who are of the view that *dhawī al-arḥām* inherit are divided into groups:

a. The view of al-Qarābah: This means that the closest among the dhawī al-*arḥām* in terms of order, degree, and strength of blood tie takes the whole estate and excludes the most remote in terms of degree and strength of blood tie.
b. The view of al-Tanzīl: This means that each one of the *dhawī al-arḥām* inherits the share of the one who connected him to the deceased – in other words, replaces the one who connected him to the deceased. The following is an illustration of the said controversy to ease its understanding:

Distant kindred	The connection	The view of al-Tanzīl	The view of al-Qarābah
		6	–
DS	Daughter	3	Takes the whole estate
SDS	Son's daughter	1	–
Father's sister	Father	2	–

9.9 QUESTIONS

1. What is the meaning of inheritance?

2. Discuss the pillars of inheritance.

3. Discuss the conditions of inheritance.

4. What are the causes of inheritance and the classification of heirs in relation to each one of them?

5. Discuss the factors depriving an heir from inheritance and their supporting evidence(s).

6. List down the number of heirs from both the males and females.

7. Discuss the *ʿaṣabah* and their order of priority in inheritance.

8. Mark as TRUE or FALSE:
a. The two types of inheritance are farḍ and *taʿṣīb*.
b. Farḍ is only inherited by female heirs whereas *taʿṣīb* is only inherited by the male heirs.
c. There are four āyāt from the Quran that discuss the entire law of inheritance.
d. A daughter can only inherit half of the estate in the absence of her father.
e. A full sister gets two-thirds of the estate in the presence of the full brother.
f. A husband gets a quarter of the estate in the presence of a mother.
g. Whoever is deprived from inheritance by *waṣf* is like somebody who does not exist.
h. There are two types of *ḥajb*: *ḥajb* shakhṣ and *ḥajb waṣf*.

9. Write an essay discussing the law of exclusions and inheritance in detail.

10. Write an essay explaining *taʿṣīb* and all its forms in detail.

11. Write an essay discussing the fixed portions and the individuals inheriting each one of them in detail.

FURTHER READING MATERIALS

1. Al-Kātib, ʿAbd al-Ṣamad bin Muḥammad. *Kitāb al-Farāʾiḍ.* Madīnah: Islamic University of Madīnah, 2001.
2. Al-Fawzān, Ṣāliḥ bin Fawzān bin ʿAbd Allāh. *Al-Taḥqīqāt al-Marḍīyyah fī al-Mabāḥith al-Farḍīyyah*. Riyadh: Maktabah al-Maʿārif, 1986.
3. Al-Ṭaʿīmāt, Hānī. *Fiqh al-Aḥwāl al-Shakhṣīyyah fī al-Mīrāth wa al-Waṣīyyah*. Amman: Dār al-Shurūq, 2007.

CONCLUSION

In conclusion, this compilation represents an effort to enhance the understanding of Islamic economics among students. The primary objective of this textbook is to facilitate an accessible comprehension of the topics presented. The authors aspire to have achieved this goal. The content of this work is primarily derived from the teachings of the Qur'an and the Sunnah of Prophet Muhammad (Peace and Blessings of Allah be upon him).

As the world continues to modernize, the principles of Islam and the knowledge it imparts become increasingly pertinent to the lives of Muslims. The complexities of the contemporary global economy—characterized by globalization, heightened interdependence among nations, and the emergence of transnational corporations—should not lead to confusion. It is imperative for Muslims and students to recognize that Islam, particularly in the context of fiqh, provides guidance for all new circumstances that arise.

It should be noted, however, that the scope of this book is intentionally limited to foundational concepts. The authors hope that the basic knowledge presented herein will inspire students and seekers of knowledge to explore and deepen their understanding of *muʿāmalāt*.

Moreover, the authors humbly advise students of Islamic economics and those pursuing knowledge that a Muslim should refrain from making statements or taking actions on any issue without first understanding what Allah has revealed concerning that matter.

وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِۦ عِلْمٌ ۚ إِنَّ ٱلسَّمْعَ وَٱلْبَصَرَ وَٱلْفُؤَادَ كُلُّ أُو۟لَـٰٓئِكَ كَانَ عَنْهُ مَسْـُٔولًا

«And follow not (O man, i.e. say not, or do not, or witness not) that of which you have no knowledge. Verily! The hearing, and the sight, and the heart, of each of those one will be questioned (by Allāh).»

(Al-Isrāʾ, Q17:36)

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Fiqh For The ECONOMIST: WEALTH DISTRIBUTION

This book is to address pertinent issues related to wealth management and distribution within the framework of Islam. It seeks to provide a clear and comprehensive understanding of the topics under discussion, catering not only to students but also to anyone pursuing knowledge of Islamic principles.

The methodology employed in this compilation draws upon the Qur'an, Sunnah, the opinions of the Companions, and the consensus of scholars. In cases of controversy, different perspectives are generally not elaborated upon unless deemed necessary. Instead, the book presents the most authoritative opinions from scholars, as guided by relevant texts, in a succinct manner.

The authors have concentrated on delivering essential information for students in this field of study, prioritizing brevity. The content is organized into chapters by topic, including bayt al-māl, zakāh, voluntary ṣadaqah, hibah, waqf, waṣiyyah, estate administration, and inheritance. The discussion commences with bayt almāl,as it serves as the central theme that intersects with the other topics. It is imperative for students to familiarize themselves with bayt al-māl prior to engaging with subsequent subjects.

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