

CHAPTER 6

MUAMALAT (RELATIONSHIPS)

Definitions of the concepts related to the institution of Mirath

Mirath: **Mirath** is from the root Arabic verb, '*Waratha*' which means '*to take or hold a possession or inherit*'. Also, it can mean the return to Allah. Technically, it is a science which shows the eligible **heirs** (those to inherit) and their shares as assigned in the Qur'an.

Faraidh: These are portions that are given to the heirs. There are six fractions of shares that are given to specific heirs in the law of Mirath, namely a half, quarter, third, two-thirds, sixth and an eighth.

Aswabah (Aswib): These are all male relatives from the father's side of the deceased. For example, son, full brother, father etc.

Dhawil Arham: These include all members related to the deceased through a female lineage. For example, son of the daughter, son of the sister among others.

Hajb: These are the heirs who prevent others from inheritance because they are still alive. For example, when the father of the deceased is alive, the brothers and sisters do not inherit.

Al-Awl: This is when the portion exceeds the fractions allocated to the heirs. For example, a deceased left a husband and two full sisters. The husband gets $\frac{1}{2}$ and the two full sisters are to take $\frac{2}{3}$. This is not possible because it makes $\frac{7}{6} = 1\frac{1}{6}$.

Tarika: This is the net property either in form of cash, property or asset that is shared out by the heirs after settling down expenses of funeral, debts and will, and it is to be distributed according to the specifications of the Qur'an.

Radd: A situation where after giving the portions to all heirs, there is a balance and there is no aswib left to share. For example, A deceased is survived by mother and half sister from the father's side and a half-sister from mother's side. The mother gets $\frac{1}{6}$ and the half-sister from father's side gets $\frac{1}{2}$ and half-sister from mother's side gets $\frac{1}{6}$. Total is $\frac{1}{6} + \frac{1}{2} + \frac{1}{6} = \frac{5}{6}$. There is a balance of $\frac{1}{6}$. This is awl.

Significance of the law of *mirath*

The significance of the law of inheritance (*Mirath*) can be discussed under the following sub-headings:

a). Spiritual benefits of *Mirath*

The following are the spiritual significance of *Mirath*:

- a) It is a command from Allah. Therefore, whoever follows Allah's commandments shall have nothing to worry or regret about. Allah rewards those who follow His commandments.
- b) Through wasiya (a will), Muslims are able to gain continuous reward (sadaqatul-jariyah) by construction of charitable centres.
- c) It shows that resources owned by a Muslim are a trust from Allah and should be re-entrusted to other Muslims in a decent manner at the end of one's life.
- d) It is a form of ibaadah and therefore, one gets rewarded by following the prescribed rules of *mirath*.
- e) It provides a divine protection to the wealthy from being harmed by the greedy in the family by barring the villain from inheritance.

b). Social benefits of *Mirath*

The following are the social significance of *Mirath*:

1. It liberates the Muslim women and the young from suppression by allowing them to inherit from their husbands, parents as well as their relatives.

2. It promotes fairness and equity in distribution of resources after the death of a Muslim. Therefore, the law of mirath fights against exploitation, corruption and all forms of injustice.
3. It eradicates wrangles, hatred, quarrels and unnecessary arguments that may occur after the death of a Muslim, among the members of the family.
4. The law safeguards the property from greedy relatives and murderers who may deprive the rightful heir their shares. Hence, the law ensures that rights of the heirs are well protected and administered.
5. It creates peace and unity among Muslims when they are sure of how their estate shall be inherited peacefully. This, can solidify the lineage from offspring to great grandparent.
6. It guides the arbitrators on how they can solve any problems that may occur in the course of inheriting the estate. This is because, division of the shares of the heirs is well stipulated.

c). Economic benefits of Mirath

The following are significance of the law of inheritance to the Economy:

- a) It shows respect to right to the ownership property since only the rightful heirs are entitled to inheritance as their due right over the estate.
- b) It strengthens the economic ability of those heirs left behind. For example, when mirath provides financial security for the heirs who might not have been very able.
- c) It promotes the welfare of the family members and elevates their economic status in the entire society. For example, if through the inheritance, the heirs are able to support themselves from the portions of their share and prosper financially such as business-wise.
- d) The law of inheritance ensures that the wealth of deceased is protected and is free from misuse.
- e) The one-third bequests can be used to support development or income generating projects that will be beneficial to the society.

- f) Since the law of inheritance creates peace and harmony, eradicates the scramble for the wealth of the deceased, then it allows the entire society to prosper and develop economically.

Essentials of Inheritance

Inheritance cannot be conducted until there are three elements. Their absence makes inheritance null and void. These are as follows:

- i. There must be a deceased person who is supposed to be inherited. The deceased must either be dead by fact or by law.
- ii. There must be heirs who are directly related to the deceased. Where there are no heirs, then the property cannot be inherited.
- iii. There must be the estate. This refers to the property that belongs to the deceased and is lawful for inheritance.

Conditions for Mirath

These conditions have to be met on the elements i.e. death, availability of heirs and the estate to be inherited.

i) Death of a person

It should be proven that the owner of the estate to be inherited is dead. The property cannot be inherited while he is still alive. One shall be presumed dead in the event of the following:

1. Physical evidence of the death. For example, death due to sickness or accident or any other natural cause and people prove beyond doubt that someone has died and the body is buried.
2. When the doctor proves that a person has died.
3. When people are informed by reliable sources like the authority that someone died at a distant place. For example, a person who left property, but went to a distant place where the relatives lose contact of such a person. Later on, the relatives are informed by reliable people that the person died and was buried.

4. Death can also be presumed on a person. When a ship sinks into deep sea, a plane falls into the ocean or people are buried deeply in a landslide, such people can be presumed to be dead after some days if not found.

ii) Survival of the heirs

The heirs to the deceased should be alive by the time of his death. These heirs should meet the following conditions:

- They must be closely related to the deceased as stipulated in the Islamic Sharia.
- The deceased must be a Muslim and the heirs must also be Muslims. An example is where there are two siblings but one is a Muslim while the other is not, then it becomes haram according to Islam to inherit each other.
- A spouse can only inherit if they were legally married.
- A child will only inherit from his parents if the two parents were married according to the Islamic Sharia on *Nikah*. Therefore, a child born outside marriage relation cannot inherit.
- A person who kills either of the parents or any other family member from whom they are entitled to inherit will be not allowed to inherit any estate.

iii) Existence of the estate

The estate includes all the property and the financial gains and debts of the deceased. The estate should be legally owned by the deceased. In a case where the deceased has left no estate because of his poverty or exhaustion of his estate through settlement of debts or was used to cover funeral expenses, then there shall be no inheritance.

Factors that will prevent an heir from inheriting a deceased Muslim

The following are the factors that will prevent an heir from inheriting a deceased Muslim:

- a) Differences in religion: that is a Muslim and Non-Muslim cannot inherit from each other.
- b) Murder: A person who kills intentionally is denied the right to inherit.
- c) Slavery: Slaves can neither inherit nor be inherited.
- d) Difference in domicile: A child born out of fornication cannot inherit a deceased father.

Conditions/Factors to be considered before Administration of the Estate of a deceased Muslim

The following steps are to be followed before distributing the estate of the deceased among heirs:

- a) **Funeral Expenses:** Islam teaches that if the deceased has any money, then the expenses for preparing for his burial should be paid from this money. These expenses must be reasonably and strictly conform to the Islamic teachings. They include; washing, shrouding of the body, transportation and the burial.
- b) **The settlement of debts.** After the burial expenses are settled, it is now important that all the debts owed by the deceased are paid off. For example, loans, money owed by people or any other unsettled debts.
- c) **Wasiya:** The wasiya (will) and legacies should be honoured. However, both the will and the gifts shall not exceed one third of the estate of the deceased unless this is consented to by the heirs.

WASIYA (Will)

Meaning of wasiya (bequest)

The term *wasiyya* comes from an Arabic word “Auswa”, which literally means to enjoin, order, direct or command. Technically, wasiya refers to the directions that are given by

the deceased while still alive either orally or in writing, about how an apportionment of his property can be distributed.

Conditions for wasiyya

In order for a will to be valid, there are certain conditions governing its execution. These conditions apply to the will, mu'swi, mu swalahu and al-Wa'swi (executor).

Conditions that *Wasiyyah* (The will) should fulfill

The following are the conditions that *wasiyyah* should fulfill before administered:

- It should not be more than a third of the total property.
- It should either have been pronounced orally or in writing.
- It must be written or pronounced by the owner of the property.
- It should come into operation after the death of the testator.
- It should be witnessed by two male reliable people.
- It should not exclude or curtail the rightful heirs from inheritance.
- It should be executed after all the debts and funeral expenses are settled.
- The content of the will must have halal intentions.
- There must be the estate or property that has been willed out at the time of writing the will.
- It should not show disparity or favour some heirs.
- The intention of the testator must be clear.
- It should state the exact property to be given to the person.

Conditions that the *Mu'swi* (the person writing the will) should fulfill

The following are the conditions to be fulfilled by the Mu'swi:

- He or she must be of sound mind.
- He or she must be an adult (one who has reached puberty).
- He or she should write it under his own free will i.e should not be under compulsion.
- He or she must have the legal capacity to dispose of whatever he bequeaths in his will.
- He or she has the right to revoke his previous will by a subsequent one.
- He or she must own the property which has been willed out.

- He should not give out more than one third of the total property unless the heirs agree or there are no legal heirs at all or the spouse is the only surviving legal heir.

Conditions that should to be fulfilled by the *Mu-swalahu*

Mu-swalahu is the person in whose favour the will is written. He or she has to fulfill the following conditions:

- The mu'salahu must be alive at the time when the will is executed.
- Those included in the will should not be rightful heirs.
- He or she can accept or reject the bequest only after the death of the testator.

Conditions that should to be fulfilled by Al-Wa'swi (the executor)

The following are the conditions that should be fulfilled by the executor of the Will:

- He should be trustworthy, truthful and just.
- He should carry out the wishes of the testator according to the Islamic Sharia.
- The executor can either be male or female.
- He should consider the interest of the children of the deceased and that of the estate.
- He or she can either be a Muslim or a non-Muslim. If he is a non-Muslim, he must follow the Islamic Sharia.
- The authority of the executor should be specified in the will.
- If the executors are more than one, the testator must state if each executor can act independently of the other(s).

Circumstances under which a Will (wasiya) is considered unlawful

The following are situations that invalidate administration of a will:

- a) When more than a third of the property is bequeathed to friends (Mu'swillahu)
- b) When a will infringes on the lawful rights of the heirs by including the following category of people who are not supposed to inherit a man's property
- c) If the testator makes a non-Muslim or infidel to inherit his property
- d) In case the will shows any disparity or favour of some rightful heirs
- e) If the will is made by a minor or insane person.
- f) In case the will is made under compulsion and fraud (corruption)

Significance of wasiya

The following are the significance of the institution of wasiyya:

a). Significance of wasiya to the Testator (The person writing the will)

The following are significance of wasiya to Mu'swi:

- Wasiya ensures and gives the deceased an opportunity to help the poor, the needy and other vulnerable people in the society while they are not inheritors.
- It is an opportunity for him to pause with himself, to pinpoint duties, obligations and rights, with a firm will to devote the wasiyyah to Allah alone.
- Live up to what Allah adjudged and cling to his extensive clemency, expecting Allah's forgiveness and invoke Allah to bestow upon the testator a good end.
- To compensate elapsed undone benefactions in order to increase good deeds.

a). Significance of wasiya to the benefactor (person in whose favour a will is written)

The following are the importance of Wasiya to the Mu'swillahu:

- A will creates love and a strong bond of relationship between the mu'swi (deceased) and the mu'swillahu. It can therefore be used in the appointment of a guardian for the children.
- Those bequeathed get a chance to better their lives from the property left for them.
- It is a reminder to the Mu'swillahu to strive in the cause of Allah and prepare himself or herself for the next life.

b). Significance of wasiya to the community

The following are the social benefits of wasiya to the community:

- It prevents quarrels, wrangles and fights among family members, because deceased will have clearly stated how he wants his wasiya to be distributed.
- It inculcates discipline and obedience among the heirs while handling the property of the deceased.
- It cements love and friendship among the family members. Therefore, it fights against unnecessary hatred among the family members.
- It eradicates favouritism among heirs, because the deceased give the bequest to their non-heirs of their relatives therefore, indicate generosity to the others.
- It accords the rights of business partners, workers and third parties.
- The one third bequests can be used to support development or income generating projects that be beneficial to the society.
- It encourages individual members in the society to be dutiful, responsible and exercise love and care since whoever does contrary to this may be exempted from the will.
- Wasiyya controls against fraud or misappropriation of the estate. Therefore, the deceased's wealth is not misused.

HEIRS AND THEIR SHARES

a). Male heirs

According to the Islamic law of succession, male heirs include the following:

- i) Son
- ii) Father
- iii) Son of a son (Grandson)
- iv) Paternal grandfather of the deceased
- v) Full brother of the deceased
- vi) Paternal half-brother of the deceased
- vii) Paternal son of the half-brother of the deceased
- viii) Maternal half-brother of the deceased
- ix) Maternal son of the brother of the deceased
- x) Uncle (full brother of the deceased)
- xi) Son of the uncle (full brother of the deceased)
- xii) Uncle (half-brother of the deceased) i.e paternal
- xiii) Son of the uncle (half-brother of the deceased) i.e paternal
- xiv) Husband

b. Female heirs

According to the Islamic law of succession, male heirs include the following:

- i) Daughter of the deceased
- ii) Mother of the deceased
- iii) Daughter of the son of the deceased
- iv) Full sister of the deceased
- v) Paternal Half-sister of the deceased
- vi) Maternal half-sister of the deceased
- vii) Paternal grandmother
- viii) Maternal grandmother
- ix) Wife of the deceased

Heirs and their shares according to Islamic Sharia

The following table shows how the heirs get their shares:

CASE NUMBER	DECEASED	HEIRS	CONDITION	SHARES
1	Father or mother	Children (brothers and sisters)	As the only heirs	The male's portion is twice that of female. (ratio 2:1)
2	Father or mother	Two or more daughters	As the only heirs	2/3
3	Father or mother	One daughter	As the only heir	1/2
4	Daughter or son	Parents (father and mother)	If deceased left children	1/6 (to each)
5	Daughter or son	Mother	If no children	1/3 (to the mother)
6	Daughter or son	Mother	If deceased left brothers or sisters	1/6 (to the mother)
7	Wife	Husband	If wife leaves no children	1/2
8	Wife	Husband	If wife leaves a child	1/4
9	Husband	Wife	If husband leaves no child	1/4

10	Husband	Wife	If husband leaves a child	The wife gets 1/8.
11	Husband or wife	One brother or one sister	If no ascendants (father/mother/grand parents) 12nor descendants (children/grandchildren)	1/6 to each of them
12	Husband or wife	More than two brothers or more than two sisters	If no ascendants (father/mother/grand parents) nor descendants (children/grandchildren)	They share 1/3 among themselves.
13	Brother	One sister	If deceased leaves no child and also no descendant or ascendants.	1/2
14	Sister	Brother	If the deceased left no child and also no descendant or ascendants.	Brother takes her inheritance (Qur'an gives no fraction)
15	Brother	Two sisters	If the deceased left no child and also no descendant or ascendants.	2/3 shall be divided between them.
16	Brother	Brothers and sisters	If the deceased left no children and also no descendant or ascendants.	Brothers to have twice the share given to sisters. (ratio 2:1)

Example of Case 1 and Case 4

When Khalid died, he left an estate that was valued at Ksh. 90,000 (Ninety thousand). He was survived by his parents, his two sons, Ayub and Suleiman, and his two daughters, Fatma and Zahra. Calculate the shares each is entitled to inherit.

Form this example we can deduce the following information:

- The deceased is a son (Khalid)
- The heirs are both parents of Khalid.

- c) The condition is the children are alive. (Two daughters, Fatma and Zahra and two sons, Ayub and Suleiman)

SOLUTION:

The parents are entitled to $\frac{1}{6}$ each (i.e. father will get $\frac{1}{6}$ and the mother will get $\frac{1}{6}$)

While the children are entitled the remaining share at a ratio of 2:1 (male to female).

These shares are calculated as follows:

STEP 1: Father = $\frac{1}{6} \times \text{Ksh. } 90,000 = \text{Ksh. } 15,000$

STEP 2: Mother = $\frac{1}{6} \times \text{Ksh. } 90,000 = \text{Ksh. } 15,000$

(Therefore, the parents will get a total of Ksh. 30,000)

Children will get the remainder of the tarka i.e. $\text{Ksh. } 90,000 - \text{Ksh. } 30,000 = \text{Ksh. } 60,000$

The children's shares should be at the ratio of 2:1 between the boys and girls.

STEP 5: Sons = $\frac{2}{3} \times \text{Ksh. } 60,000 = \text{Ksh. } 40,000$

STEP 6: Each son will get Ksh. 20,000

STEP 7: Daughters = $\frac{1}{3} \times \text{Ksh. } 60,000 = \text{Ksh. } 20,000$

STEP 8: Each daughter will get Ksh. 10,000

Case study:

Hamadi has died. He has left a tarka worth 120,000/= and is succeeded by a wife, his father and children; Maryan and Mohammad. Using the distribution table of inheritance, discuss how the Tarka of the deceased shall be shared.

SOLUTION:

The Father is entitled to $\frac{1}{6}$ and the wife is entitled to $\frac{1}{4}$. While the children are entitled the remaining share at a ratio of 2:1 (male to female).

These shares are calculated as follows:

STEP 1: Father = $\frac{1}{6} \times \text{Ksh. } 120,000 = \text{Ksh. } 20,000$
STEP 2: Wife = $\frac{1}{8} \times \text{Ksh. } 120,000 = \text{Ksh. } 15,000$
(Therefore, the father and the wife will get a total of Ksh. 35,000)
Children will get the remainder of the tarka i.e.
 $\text{Ksh. } 120,000 - \text{Ksh. } 35,000 = \text{Ksh. } 85,000$
The children's shares should be at the ratio of 2:1 between the boys and girls.
STEP 5: Let the girl be represented by 'G'
STEP 6: $2G + G = \text{Ksh. } 85,000$
STEP 7: Therefore, G i.e Maryam will get Ksh. 28,333.
STEP 8: Mohammed will get Ksh. 56, 666.

NOTE THAT:

The unborn baby: The unborn baby can only inherit if the pregnancy is there at the time of the death of the deceased and the baby must come out alive during delivery. Inheritors who are portion holders will inherit while others will wait until the situation is clear. Others are of the opinion that inheritors can each take their minimum share and then wait.

The missing heir: The inheritors each takes his or her share assuming that the missing person is alive, but those who would be prevented by his or her presence do not inherit. The inheritors each takes his or her minimum share assuming that the missing heir is dead but those who would be prevented due to his or her presence will wait. The balance is kept until the situation is clear.

Hermaphrodites: This is somebody who has both male and female reproductive organs and it is known which side is stronger. He or she will take the average of the two. Meaning he will be taken as a male and his or her share is set aside. She will then be taken as a female and her share is set aside. Then the two shares are divided by two to determine the average.