

ISLAMIC LAW OF SUCCESSION

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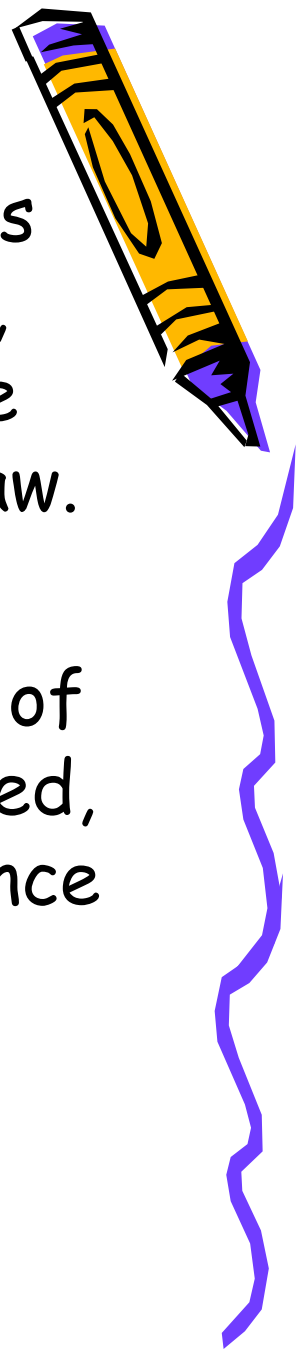
General Principles on Islamic Succession

Dr Akmal Hidayah Halim 2015



- Succession is known as *mirath* or *irth* or *faraid*.
- The *faraid* denotes the fixed shares of inheritance allocated to the various relatives (legal heirs) by the *Qur'an* and *Sunnah*.

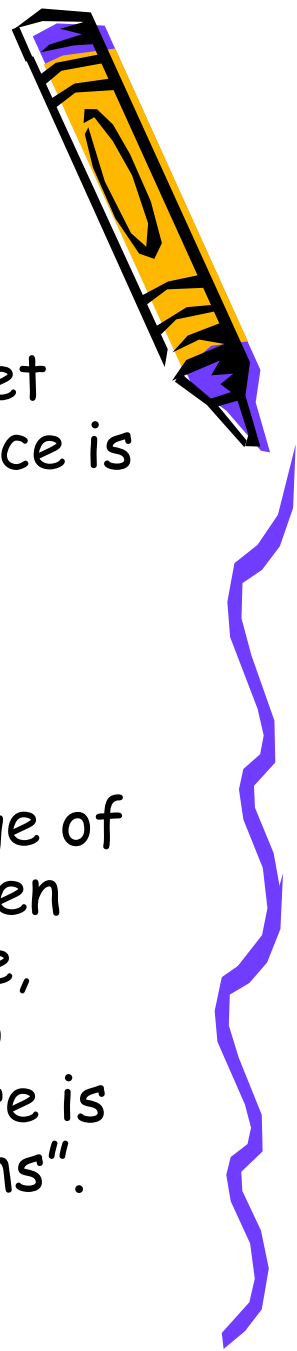




- The **legal heir (warith)** is a term that is properly applied only to those relatives, upon whom property devolves, after the decease of its owner, by operation of law.
- The **estate (tarikah/tirkah)** comprises of all property that the deceased has owned, whether his ownership is of the substance or corpus of a thing, moveable and immovable, realty or personally.



The importance of succession



- There is a statement attributed to the Prophet S.A.W to the extent that the law of inheritance is said to constitute half the sum of 'ilm (knowledge).
- It is also reported by Ibn Mas'ud that the Prophet has said: "Learn (Study) the knowledge of succession and teach it because I shall be taken away (die), and so is the knowledge. Therefore, the twaddle will emerge until a conflict of two persons happens over the succession, yet there is not any person available to solve their problems".



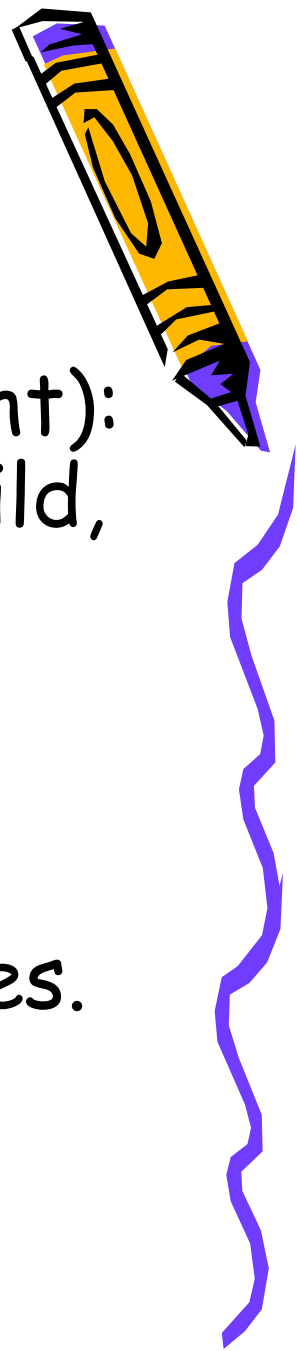
Succession during the pre-Islamic period



- In the tribal society of pre-Islamic Arabia, the system of inheritance was designed to:
 - keep property (wealth) within the individual tribe, to maintain its strength as a fighting force, to preserve the relation between the tribes, to kill the enemy and to be proud of the tribe.

The tribe was patriarchal. The maternal or uterine relationship lies outside the structure of tribal ties and responsibilities. Female and non-agnate (cognate) relatives are excluded.



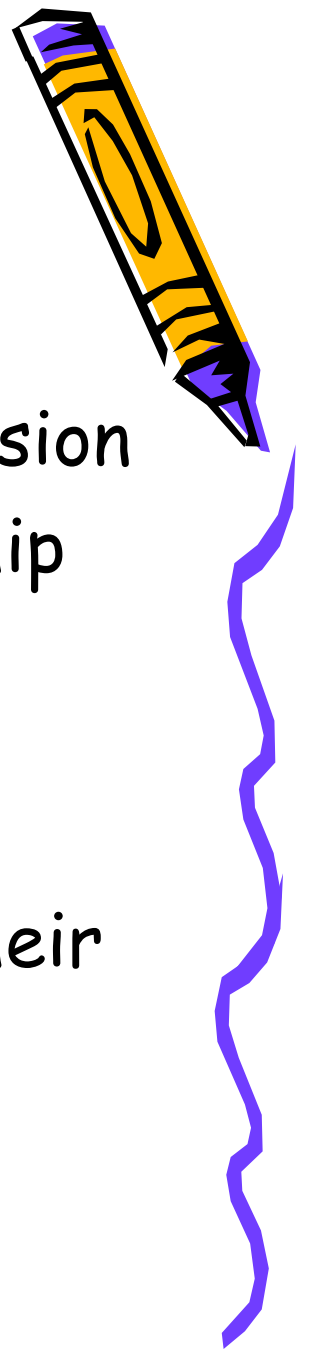


There are three grounds for inheritance (pre Islamic):

1. The ability to carry arms (to fight): though he is a male but still a child, or too old and weak, he is to be excluded from succession.
2. Treaty i.e. an oath to fight and corporate together in peace and war, individually or between tribes.
3. Adoption



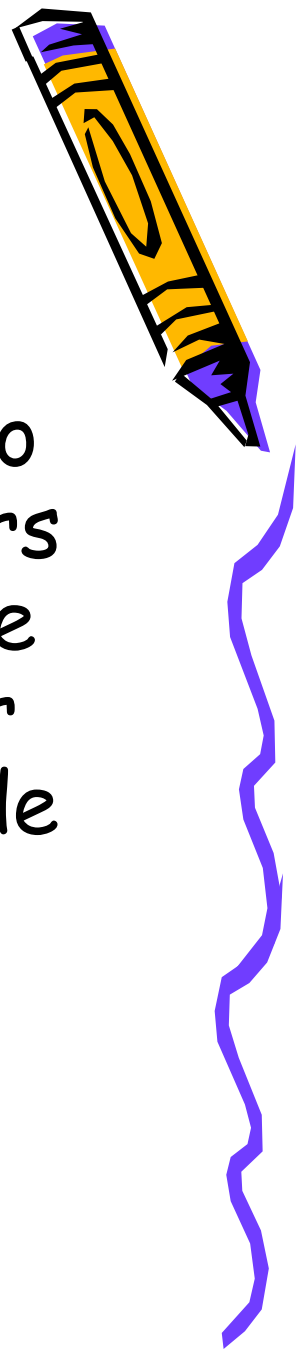
Succession in the Islamic perspective



- Reformation by Islamic law of Succession
 1. Inheritance based on blood relationship and marriage
 2. Both man and woman can inherit. The introduction of 2:1 ratio
 3. Parents and children will surely get their portion



The case of Sa'd al-Rabi'



- The wife of Sa'd b. al-Rabi' came to the Prophet with her two daughters and said: "O Prophet, these are the daughters of Sa'd b. al-Rabi'. Their father died a martyr's death beside you in a battle. But their uncle has taken Sa'd estate and they cannot marry unless they have property"





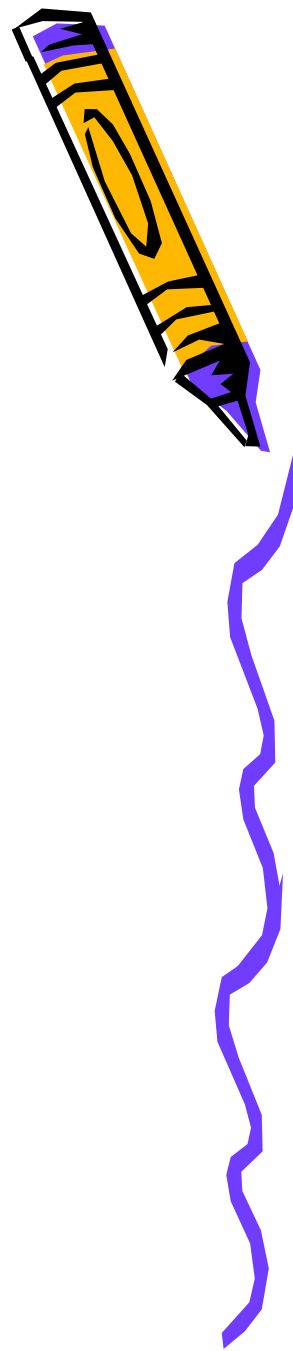
- After this, the verse of inheritance was revealed and the Prophet told the uncle:
"Give the two daughters of Sa'd $\frac{2}{3}$ of the estate, give their mother $\frac{1}{8}$ and keep the remainder yourself"
- * Sa'd's case implies the monopoly of rights by the male agnate relative/asabah to the exclusion of female relative- reformed under Islamic law of succession



Authorities on Succession

- Al-Quran-

Al-Nisaa'(4) : 7,10,11,12,176



- 11. "Allah (thus) directs you as regards your children's (Inheritance): to the male, a portion equal to that of two females: if 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 the 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 and debts. You do not know whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah. and Allah is All-knowing, All-wise."





- 12. In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what you leave, their share is a fourth, if you leave no child; but if you leave a child, they get an eighth; after payment of legacies and 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;





- Sunnah-

-“Give the portion of the inheritance to the Qur’anic heirs, and whatever left should be exhausted by the nearest male agnate kindred”.

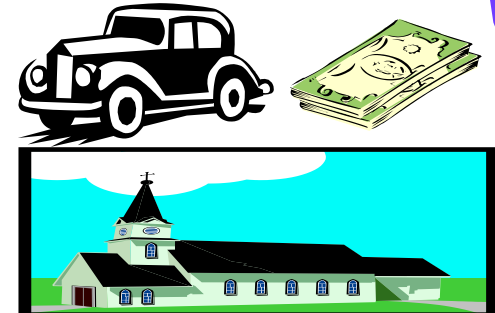
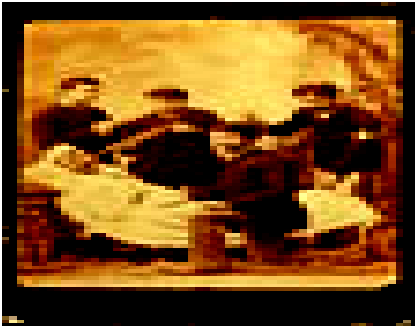


Pillars of Succession

AL-MUWARRITH
(PRAEPOSITUS)

AL-WARITH
(LEGAL HEIR)

AL-IRTH/AL-TARIKAH
(ESTATE)



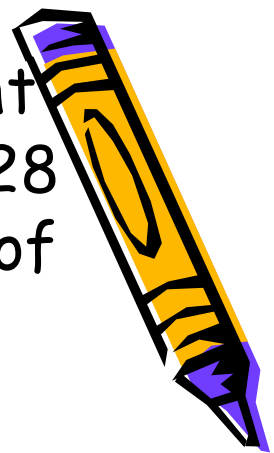
Conditions for inheritance



1. The death/decease of praepositus
 - The death of the praepositus must be determined whether in actual death, or by judicial declaration or by presumption of death (e.g. missing)
 - 7 years for estate administration
 - 4 years for marriage dissolution
 - Special case- eg MH 370



- After 327 days since Malaysian Airlines Flight 370 disappearance, Malaysian government on 28 January 2015 has officially declared the loss of MH370 during a flight from Kuala Lumpur to Beijing as an accident and all of its 239 passengers and crew were 'presumed dead'.



- In *Re Inquest into the Death of Lim Chin Aik, Deceased* [2014] 1 CLJ 136, Lim is believed dead and his body buried at least 40m or 13 storeys underground after his car was hit by a lightning arrestor that snapped and fell off the 21-storey Menara Umno during a freak storm on June 13.

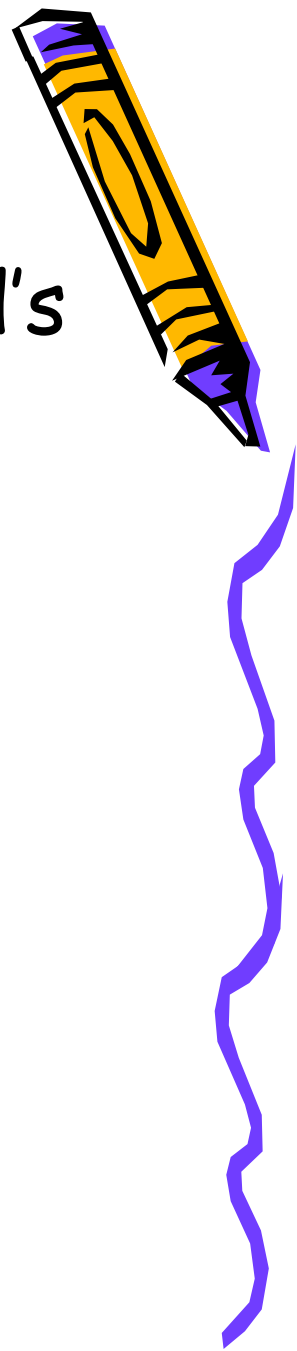


2. Survival of legal heirs

- The legal heirs/warith should be alive at the time of the deceased's death (even for just 1 minute-should be determined)
- Issue on uncertainty of death

3. Free from any impediments

- Killing, different of religion etc



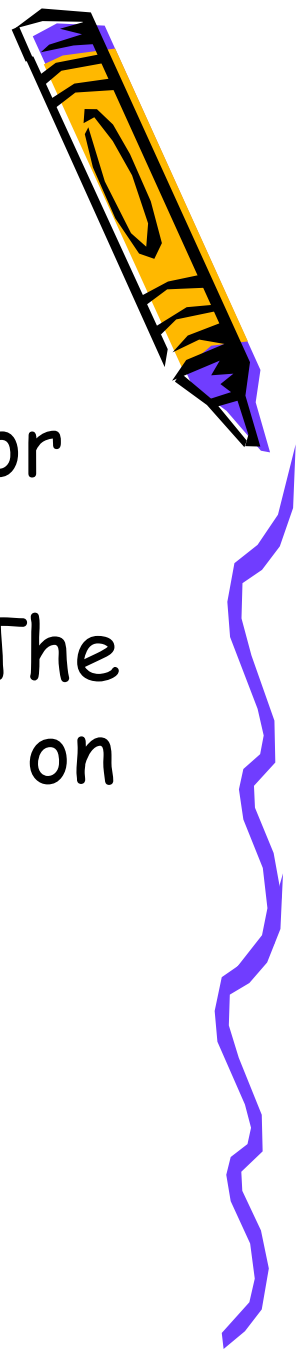
Impediments to inheritance



- Slavery
- Homicide (*qatl*)
 - General principle: a killer does not inherit from his victim.
 - Reason (expressed by al-Ramli of the Shafi'i school);

"The public interest requires that the killer be debared from inheritance since, if he did inherit, killing would accelerate inheritance and lead to universal chaos".



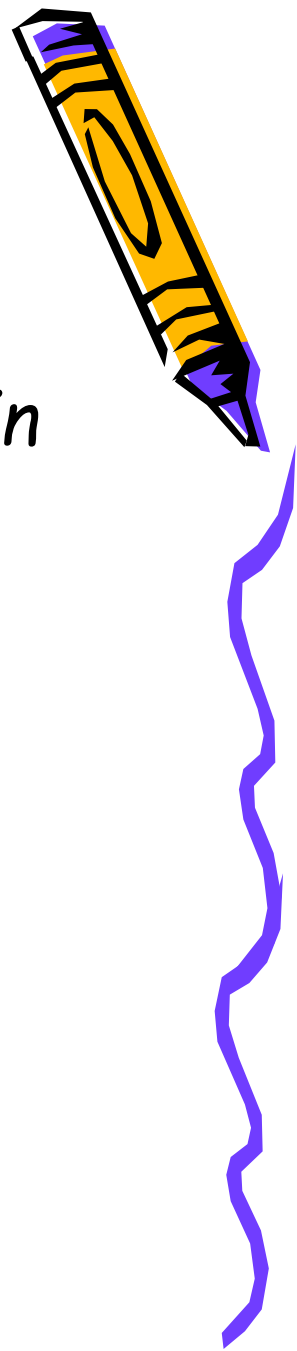


- Jurists unanimously agreed that for deliberate/intentional killing, the killer is barred from inheritance. The intention will be determined based on the type of weapon used.
- E.g. the use of knife, sharp object that can cause death



Cases:

- *Amanah Raya Bhd v. Muhamad Suhaimi bin Abdul Aziz & Ors*
[2009] 2 ShLR 68
- *PP v. Muhamad Suhaimi Abdul Aziz*
[2005] 2 CLJ 826
- *PP v. Muhamad Suhaimi Abdul Aziz*
[2002] 2 CLJ 209





- Difference of religion
 - General principle - Non-Muslim does not inherit from his Muslim and vice-versa.
 - However, difference of religion is not a bar to taking a wasiyyah.





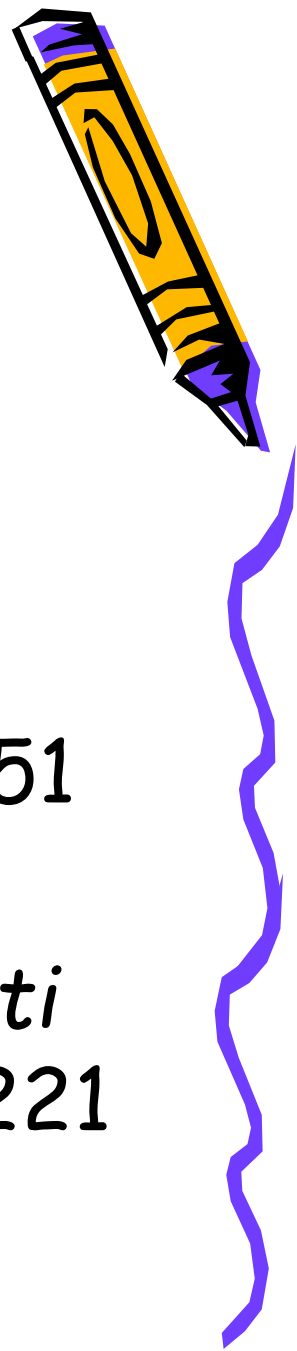
➤ The majority of schools:

- Difference of religion may cause a bar and cannot be removed by any subsequent events, whenever the difference of religion exists at the moment the succession opens i.e. the time when the praepositus dies.



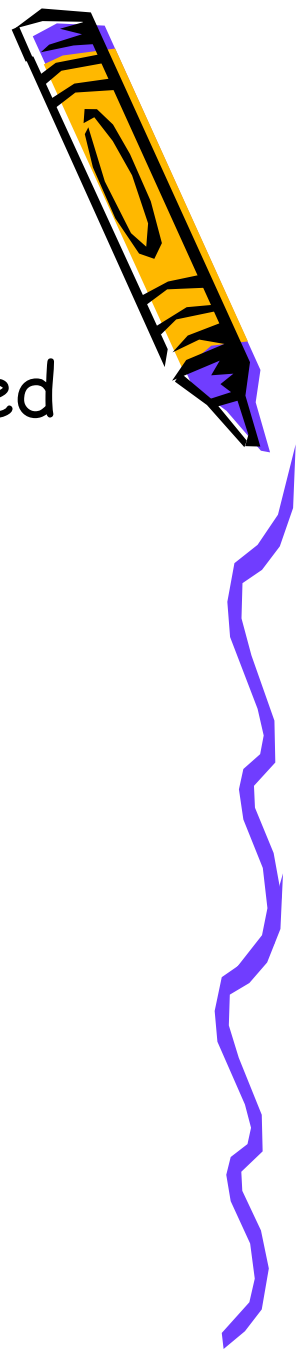
Cases

- *Majlis Agama Islam Wilayah Persekutuan lwn. Lim Ee Seng dan Satu lagi* [2000] 2 CLJ 597.
- *Re Timah bt Abdullah* [1941] MLJ 51
- *Dalam Perkara permohonan Perisytiharan Status Agama Si Mati Nyonya binti Tahir* (2006) 20 JH 221

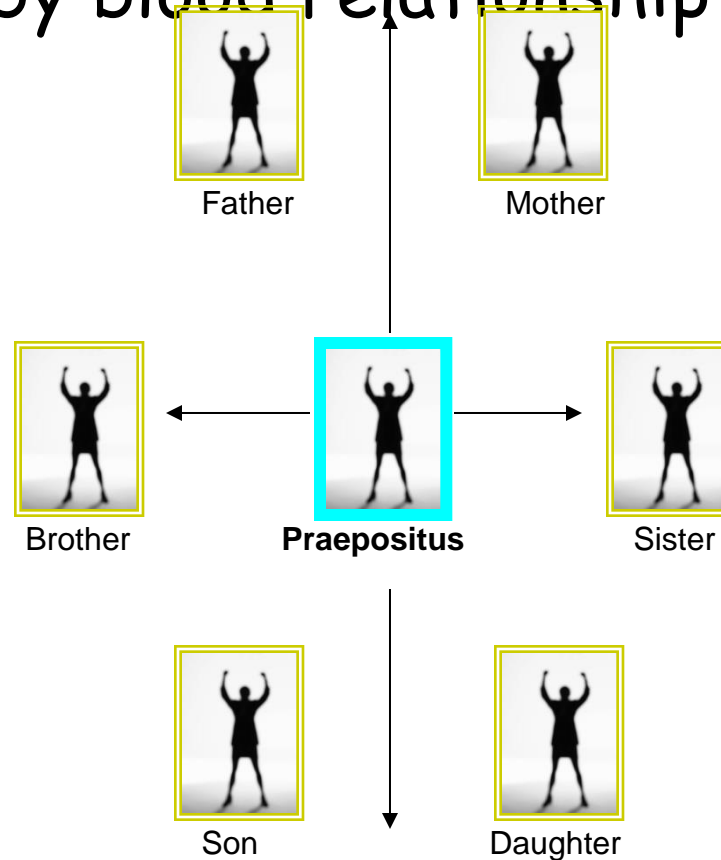


Who are the legal heirs? (Causes of succession)

- 1) Persons who are related to the deceased by blood relationship (*nasab*)
- 2) Spouse (husband/wives)- marital relationship
- 3) Enfranchisement of slavery - no more relevant
- 4) Baitulmal

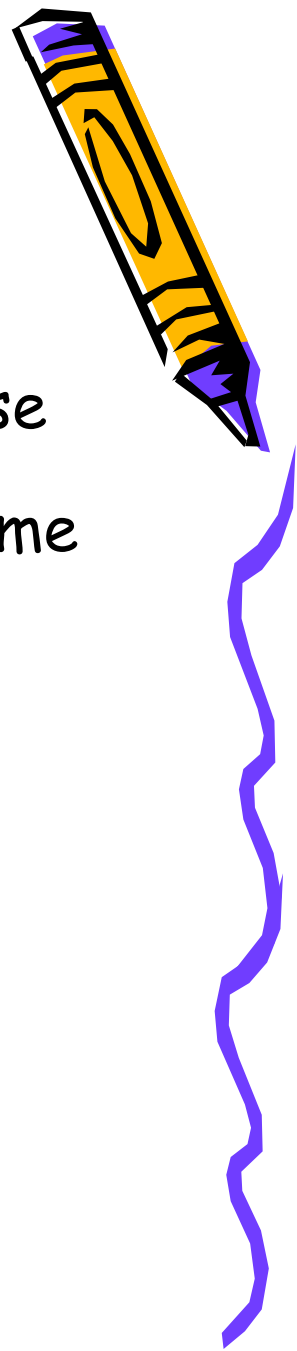


Persons who are related to the deceased by blood relationship (nasab)



Non-legal heir:-

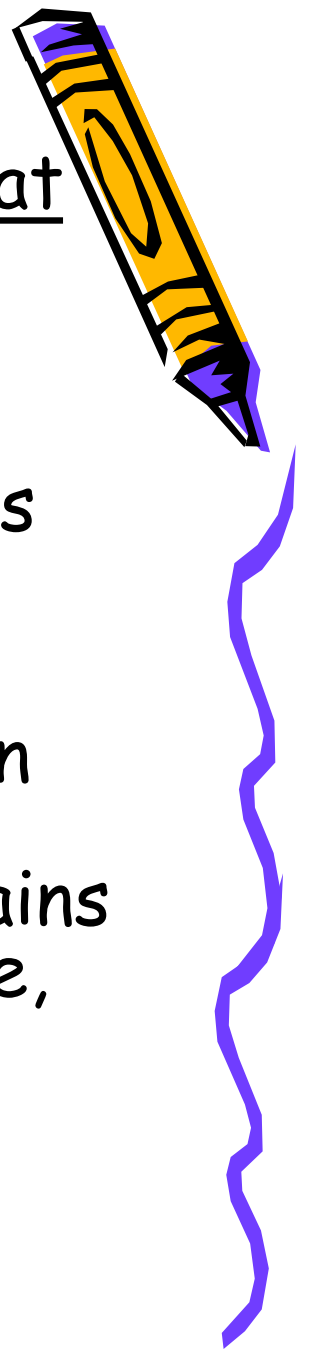
- Illegitimate child
- Step child/father/mother
- Adopted child/father/mother



2. The marital relation.

- A spouse relict in succession law is one whose marriage with the praepositus is valid and existing, actually or constructively at the time of the decease.
- The marriage must be a valid marriage according to Islamic law.



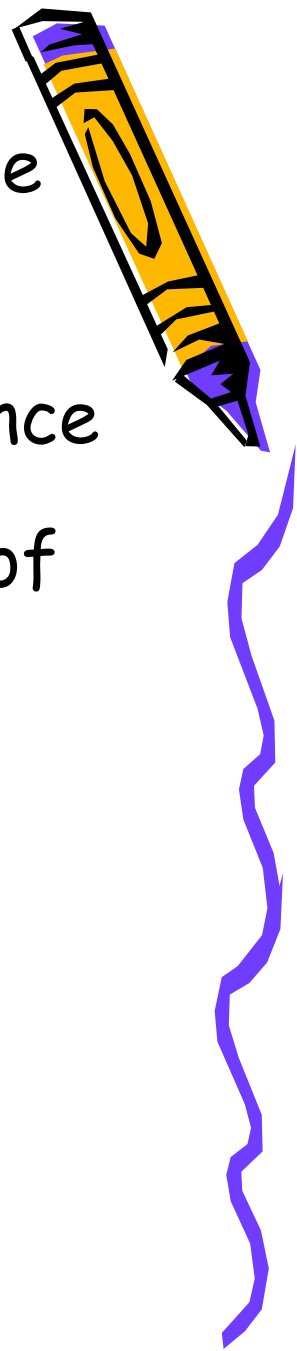


- Existing - subsistence of the marriage at the time of the decease.

-Mutual rights of inheritance between spouses cease as soon as the marriage is terminated.

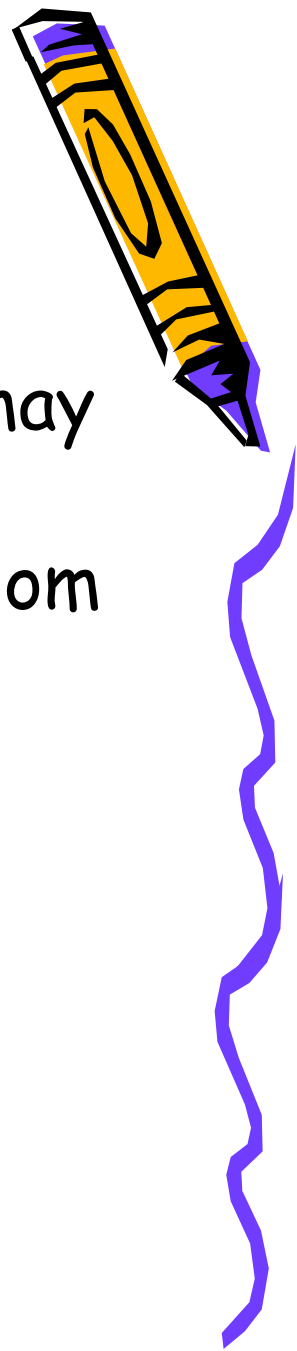
-However, a marriage is deemed to be in existence constructively *inter alia* for succession, for as long as the wife remains in her 'iddah (waiting period). Therefore, the nature of the divorce is vital:-





- i) Revocable (raj'i) - rights of inheritance continue to exist during iddah
- ii) Irrevocable (ba'in)- rights of inheritance cease immediately and do not persist during the 'iddah, with the exception of ba'in during death sickness (marad-al-mawt).
 - Forms of ba'in:-
 - Mutual consent (khul')
 - Judicial decree (faskh)
 - Triple talaq





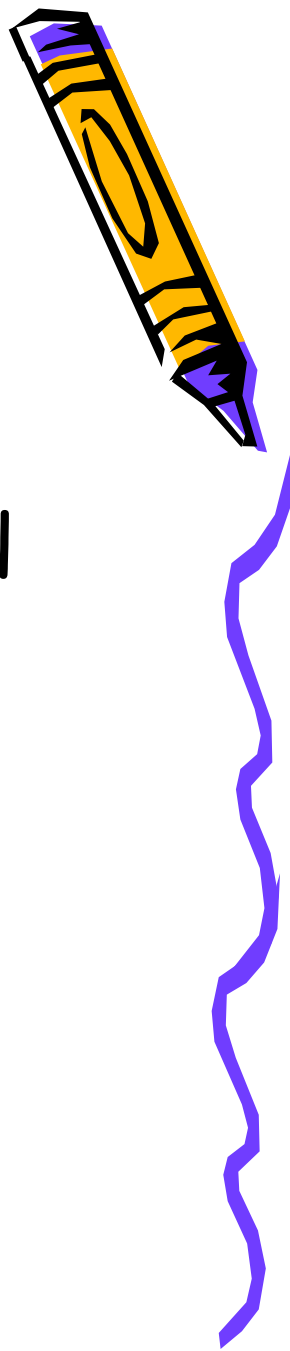
3. Enfranchisement of slavery (wala')

- The master who has freed the slave may inherit the slave's property.
- The kinship is obtained upon the freedom of the slave
- No more relevant in light of current situation



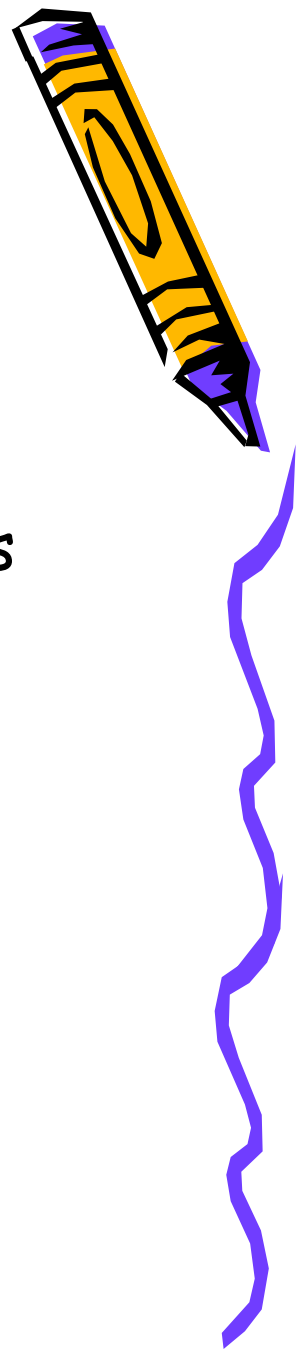
4. Baitulmal

According to Shafi'e, the baitulmal must be properly administered, no corruption.

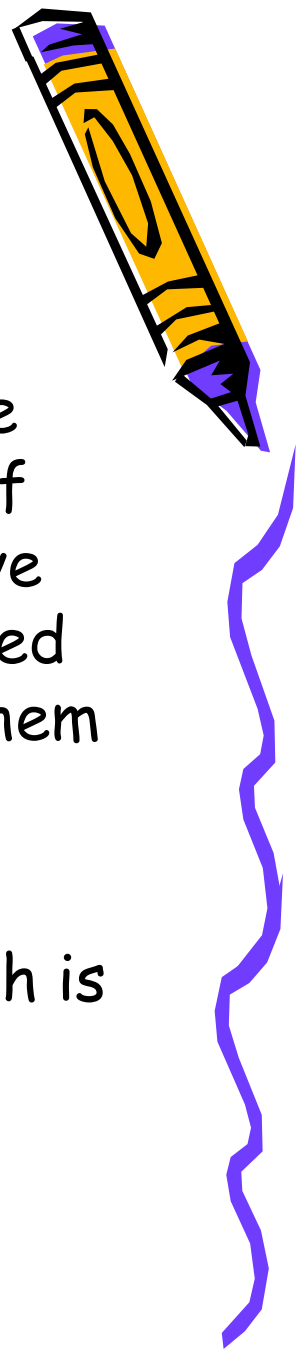


Estates

- All types of properties left by the praepositus. This includes:
 - Property acquired by the deceased during his lifetime via. Sale and purchase, inheritance, Hibah, wassiyah, etc.
 - Debts due to the deceased
 - Shares
 - EPF, Tabung Haji, Takaful.
 - Issue on nomination
 - Conventional insurance

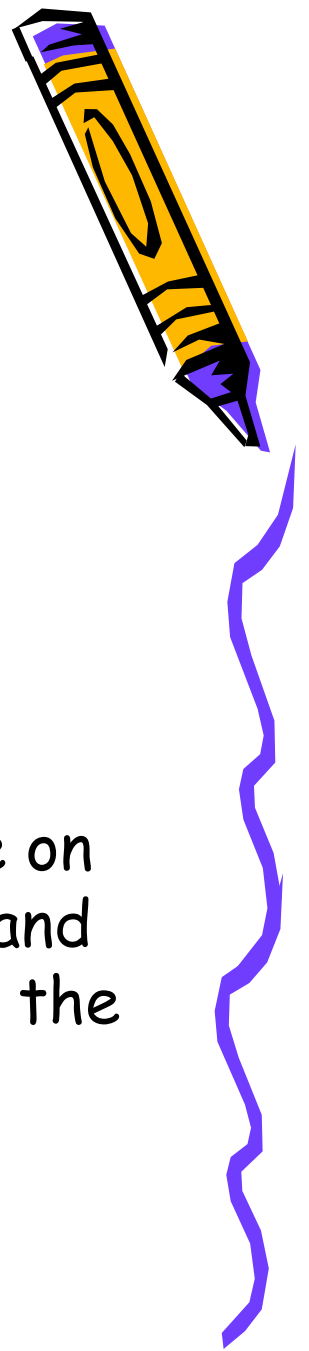


1973 fatwa on nomination



- Nominees of the funds in the Employees Provident Fund, post office savings bank, insurance and co-operative societies are in the positions of a persons who carry out the will of the deceased or the testator. They can receive money of the deceased from the sources stated to be divided among the persons entitled to them under the Islamic law of inheritance.
- Nominee = trustee
- Nominee as beneficiary under conditional hibah is only provided under section 142 IFSA 2013- shariah compliance?





- Non-Muslims?
 - Nominee is the beneficiary.
- If the person nominated by a policy owner is other than his spouse, child or parent, such person shall receive the policy moneys payable on the death of the policy owner as an executor and not solely as a beneficiary and any payment to the nominee shall form part of the estate of the deceased policy owner.



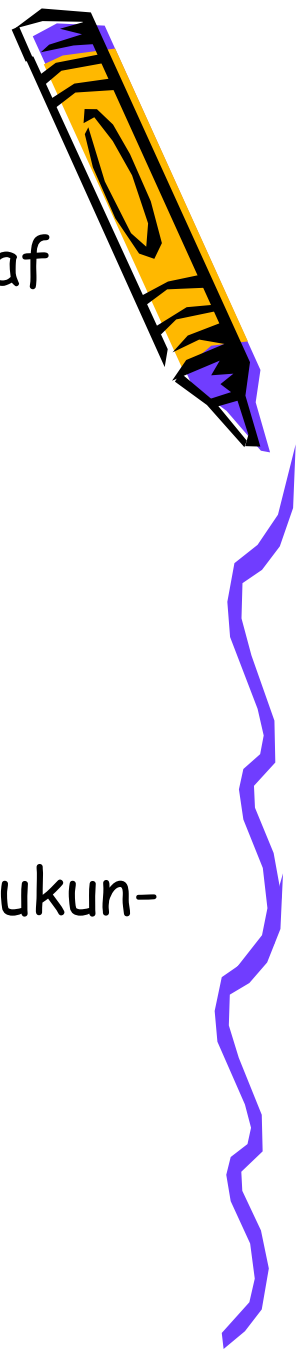
Fatwa on Conventional insurance

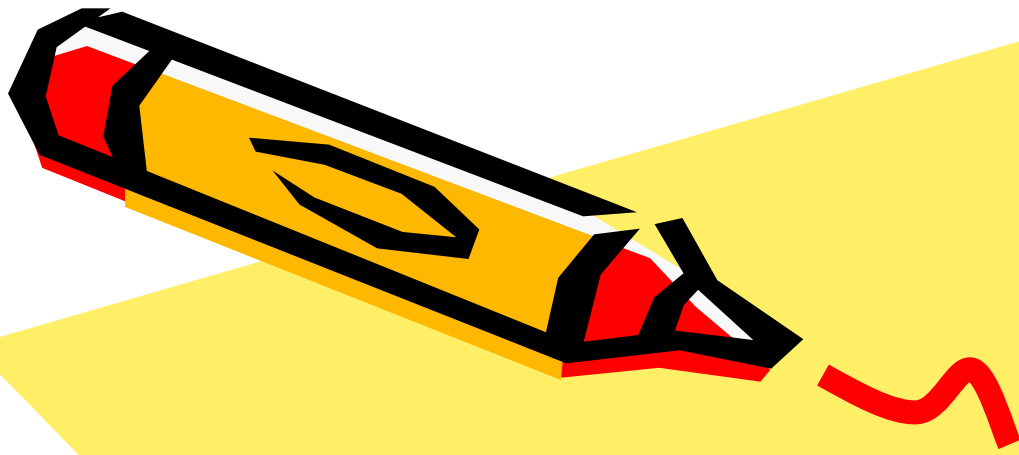
- Non-shariah compliance
- Only the premium paid by the policy owner is inheritable. The balance of the insurance benefit is to be given to *Baitulmal* or donated to those in need of help e.g.fakir/miskin
- If the legal heirs of the deceased fall under the category of fakir/miskin, they are allowed to take the benefit accordingly.



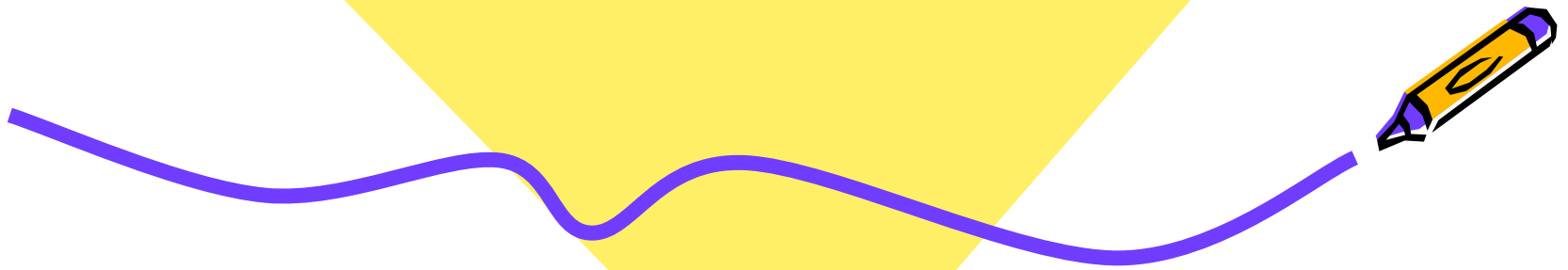
➤ Non-estate

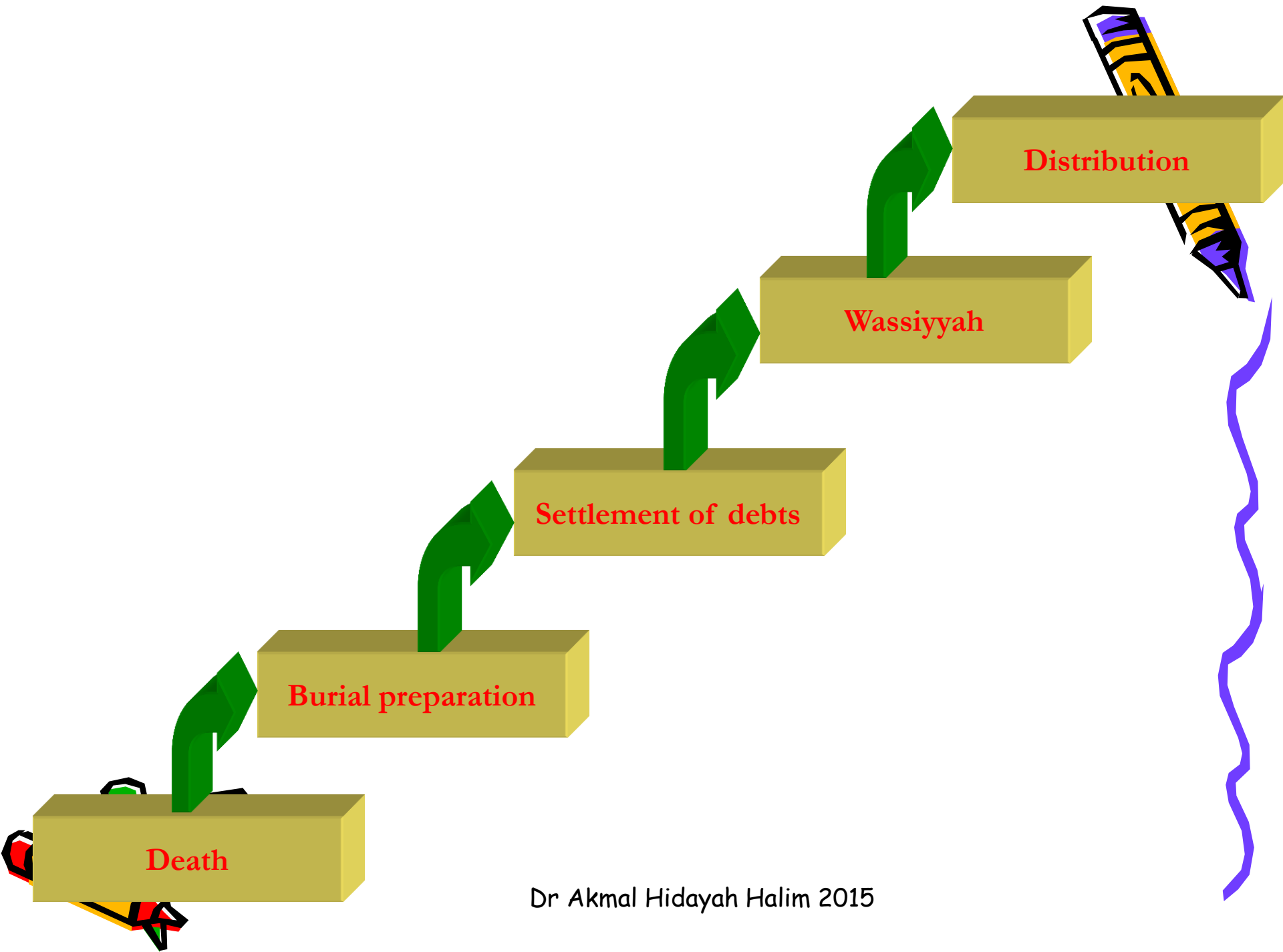
- Property disposed of via. Sale, hibah and waqaf
- Trust property
- Khairat kematian
- Pension
- Derivative gratuity upon death
- Ex-gratia (exception to ex-gratia paid to ex-judges)
- Joint account (subject to the fulfillment of rukun-rukun *hibah*)
- Part of the estate claimed as jointly acquired property

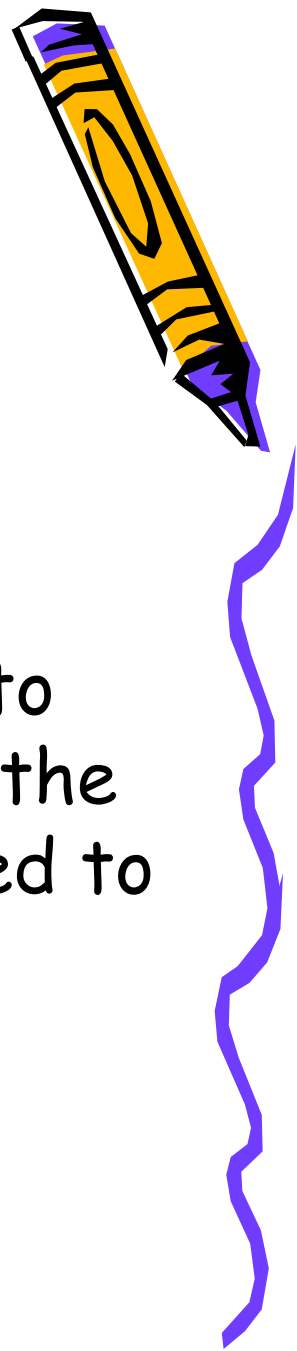




Rights Associated to Inheritance







➤ Burial preparation

- consists of all expenses required to provide for ritual bath, dress for the grave (kafn), carrying the deceased to the graveyard and burial.

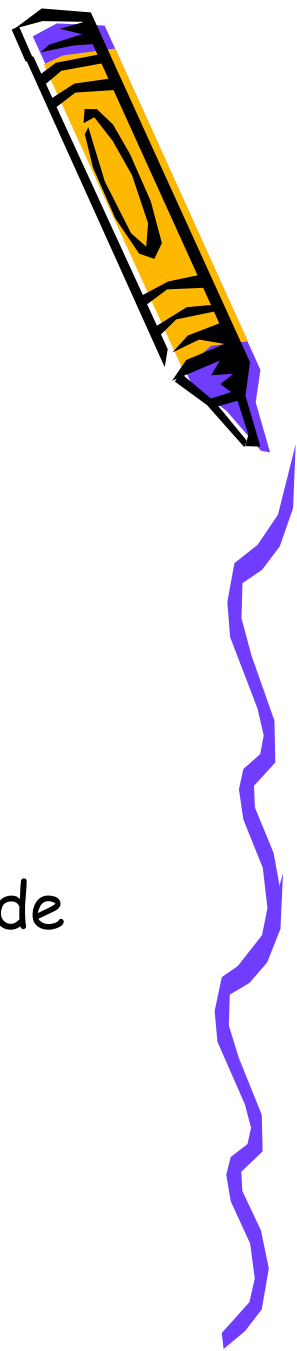




➤ Settlement of debts

- Debts to Allah e.g. Hajj, zakat, fidyah etc.
- Debts to humans or financial institution e.g. financial claims, loans, rent etc.



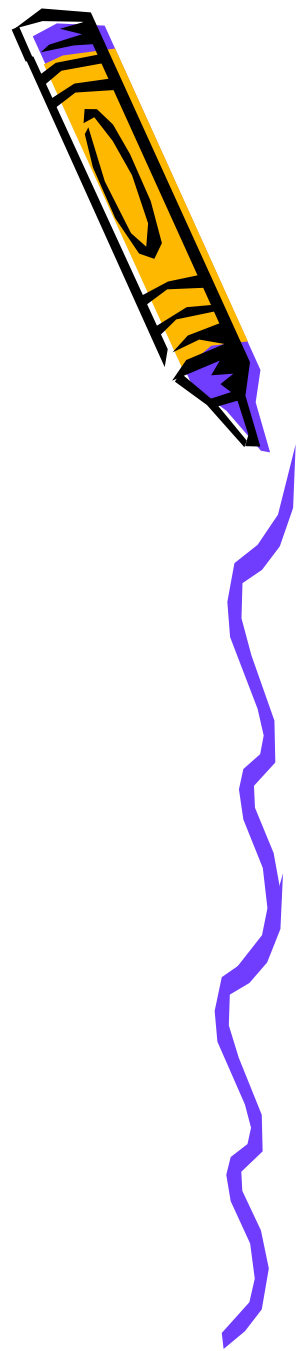


- Execution of Wassiyah
- The wassiyah must be valid
- Not exceeding $\frac{1}{3}$ of estate
- Not in favour of legal heirs

Notes:

A bequest that exceed $\frac{1}{3}$ of the estate or made in favour of a legal heir may be executed if the consent of other legal heirs can be obtained.

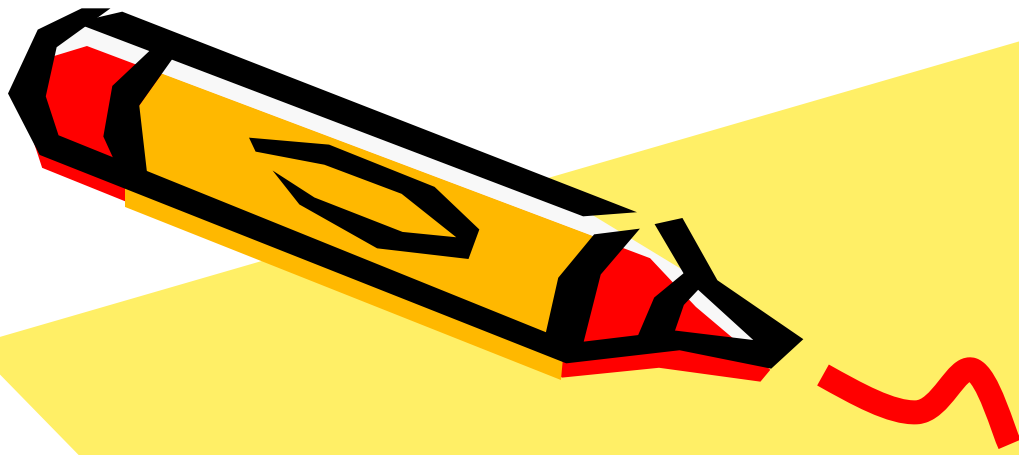




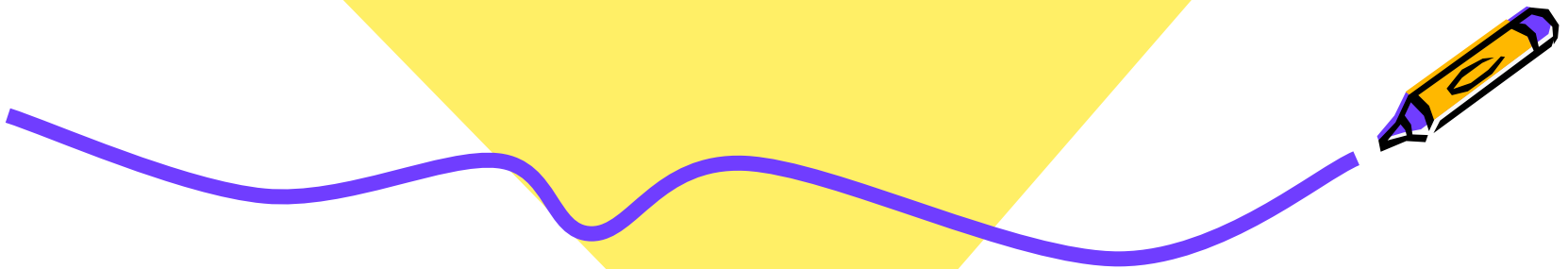
➤ Distribution of the estate

- According to *faraid*
- Mutual agreement
 - Takharuj





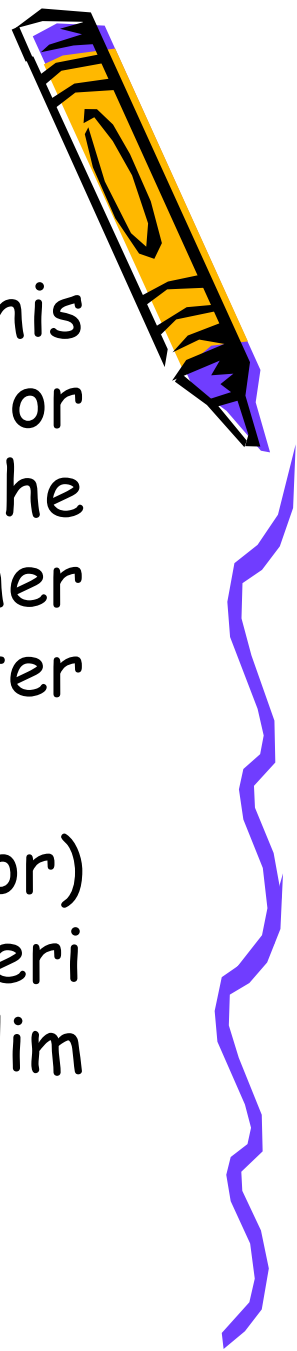
WASSIYYAH



Dr Akmal Hidayah Halim 2015

Definition

- An *igrar* of a person made during his lifetime with respect to his property or benefit thereof, to be carried out for the purposes of charity or for any other purpose permissible by Islamic law, after his death.
- See section 2(1), Muslim Wills (Selangor) Enactment 1999, Muslim Wills (Negeri Sembilan) Enactment 2004 and Muslim Wills (Malacca) Enactment 2005.



The verse of bequests(wassiyah)



- "It is prescribed, when death approaches any of you, if He leave any goods that He make a bequest to parents and next of kin, according to reasonable usage; This is due from the Allah fearing."

[Al-Baqarah(2) : 180]





- "Those of you who die and leave widows should bequeath for their widows a year's maintenance ..."

[*Al-Baqarah*(2) : 240]




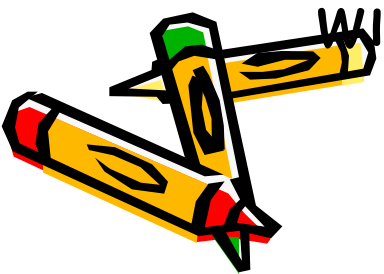
- The verses were generally held to be superseded and abrogated by the later Qur`anic texts which laid down the rules of inheritance



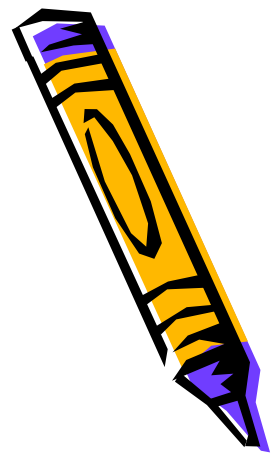
Hadith:

Abu Imamah reported: I heard the Prophet said: "Allah has already given to each entitled relative his proper entitlement. Therefore, no bequest in favour of a legal heir."



- 
- Nonetheless, although the verses of bequests were generally held to be abrogated, the making of a *wassiyyah* is still allowed subject to some limitations.
 - In fact, it is highly recommended.
“It is not right for a Muslim who has property to bequeath, that he should pass two nights without having a written will with him”
- 

(Al-Bukhari)



- "...The distribution in all cases is after the payment of legacies and debts.."

(Al-Nisa'(4): 11)



Differences with Hibah



- **Wassiyyah** - testamentary gift (takes effect after death)
- **Hibah** - gift *inter vivos* (during the lifetime of the donor)



Limitations of wassiyah



1. No bequest to legal heir

- Hadith: Abu Imamah reported: I heard the Prophet said: "Allah has already given to each entitled relative his proper entitlement. Therefore, no bequest in favour of a legal heir."

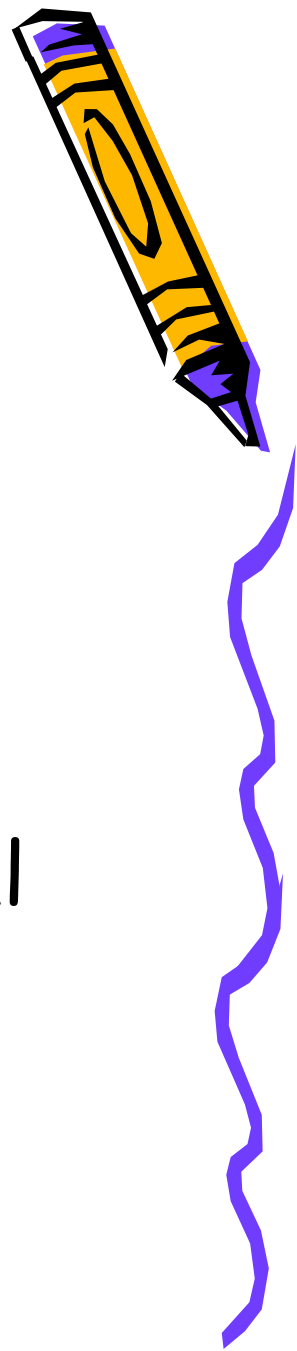


2. The 1/3 rule

Hadith: Sa`ad ibn Abi Waqqas said:

The Prophet came to visit me in my sickness... I said to the Prophet, "O Prophet! I am wealthy and my only heir is my daughter. Permit me that I make a will of my entire property." He said, "No". I said, "Should I make a will of two-thirds of my property?" He said, "No". I said, "Permit me for a third." The Prophet replied, "You may make a will of a third, although this is also too much. To leave after you your heirs well to do is better than you leave them poor and in want whilst others meet their needs."





Calculation of 1/3

- Shafi`i - $\frac{1}{3} \times$ net estate at the testator's death
- Maliki - $\frac{1}{3} \times$ net estate at the beneficiary's acceptance
- Hanafi - $\frac{1}{3} \times$ net estate at actual distribution of property



Invalidation of *wassiyyah*

- The testator becomes a person of unsound mind and dies in that state
- The beneficiary predeceases the testator
- The subject matter is destroyed before the testator's death
- The testator revokes the *wassiyyah*
- The beneficiary has **intentionally** caused the death of the testator



Cases



Bequest of more than 1/3

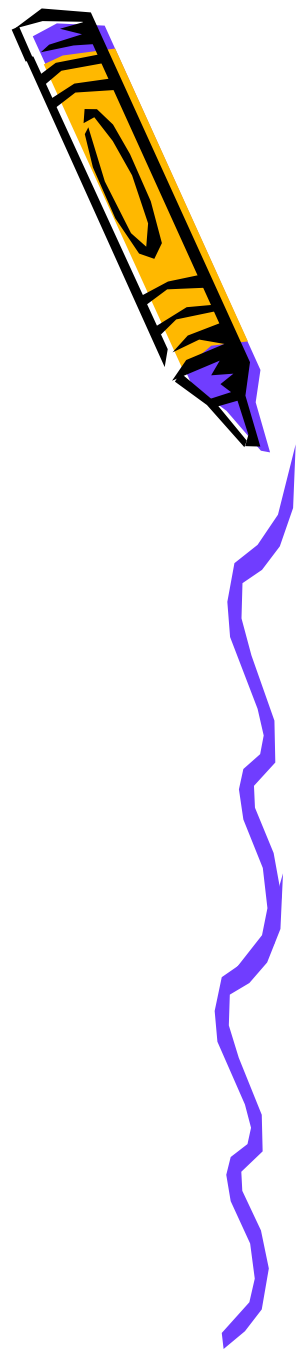
- Shaikh Abdul Latif Iwn Shaikh Elias Bux (1915) 1 FMSLR 204
- Katchi Fatimah Iwn Mohamed Ibrahim (1962) 28 MLJ 374

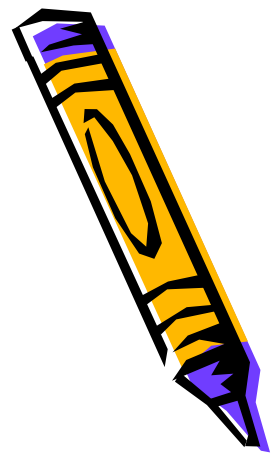
* It was held that the 2/3 of the estate is to be distributed acc. to *faraid* unless consented by the other legal heirs



Postponement of the execution of wassiyah

- Abd Rahim lwn Abd Hameed dll (1983) 2 MLJ 78 - 21 years after death
- The condition was not valid.

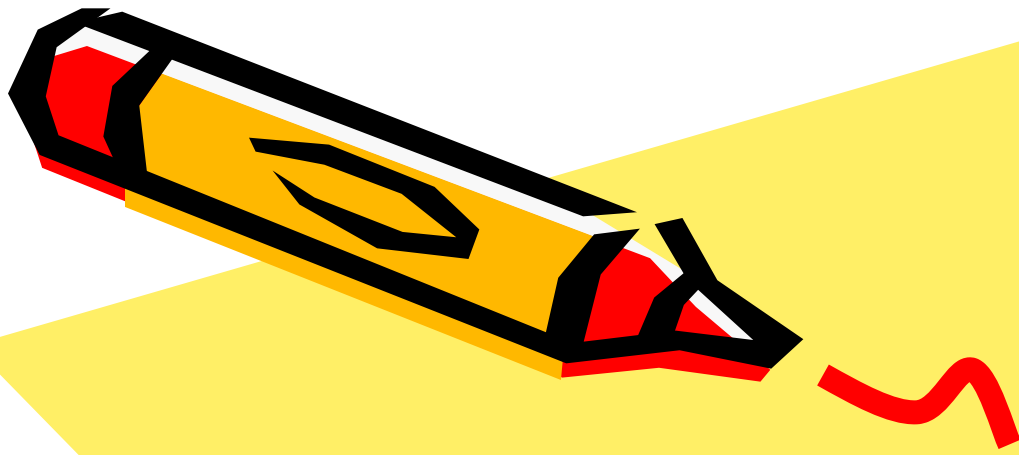




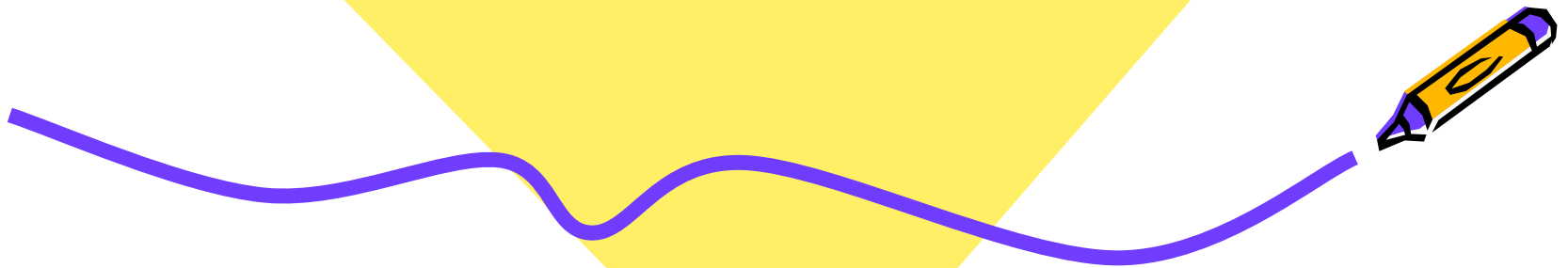
Bequest to legal heir

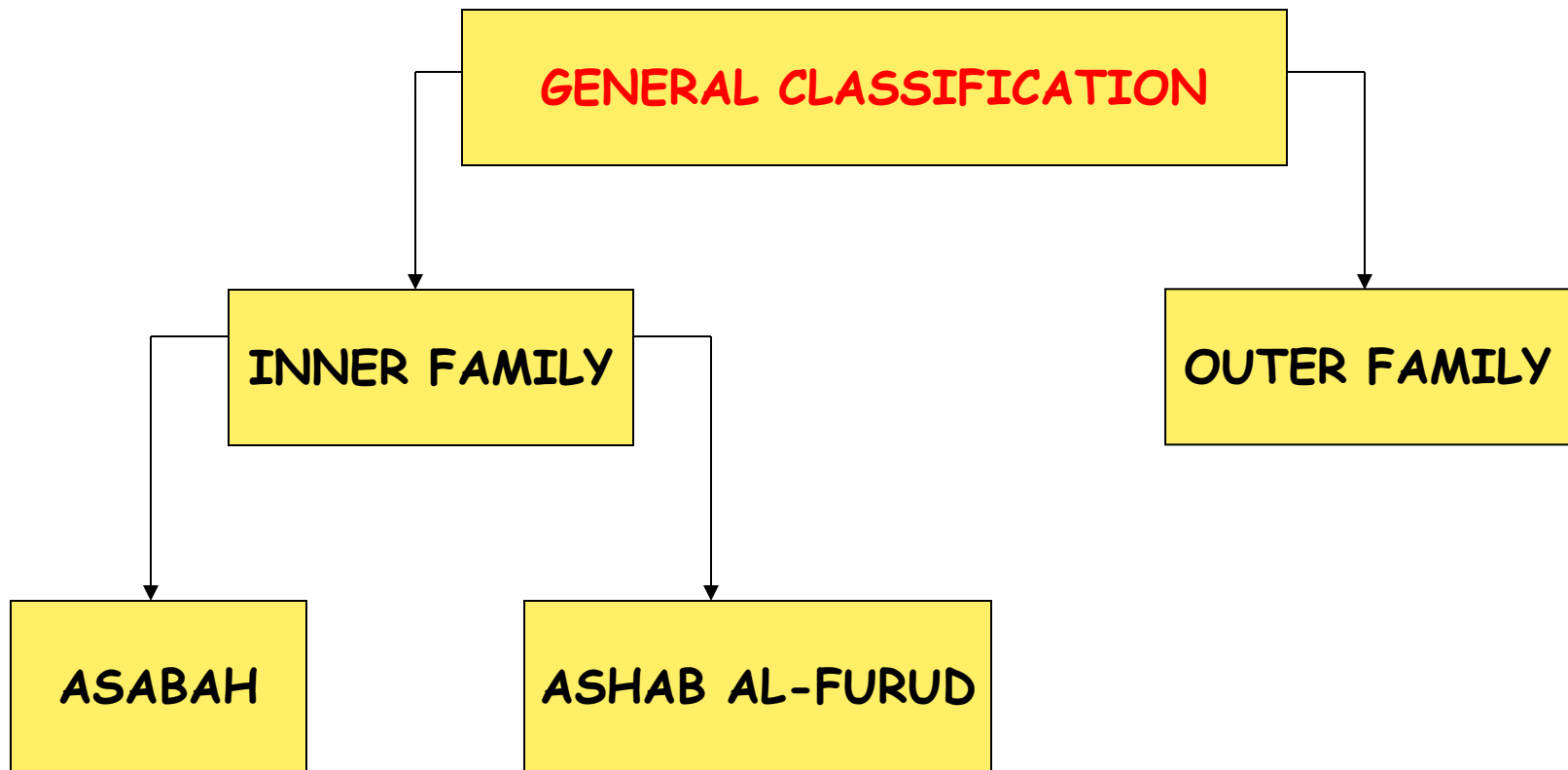
- Siti bt Yatim lwn Mohamed Nor bin Bujal (1928) 6 FMSLR 135
- Amanullah bin Hj Ali Hassan lwn Hjh Jamaliah bt Sheikh Madar (1975) 1 MLJ 30
- The will was held to be invalid



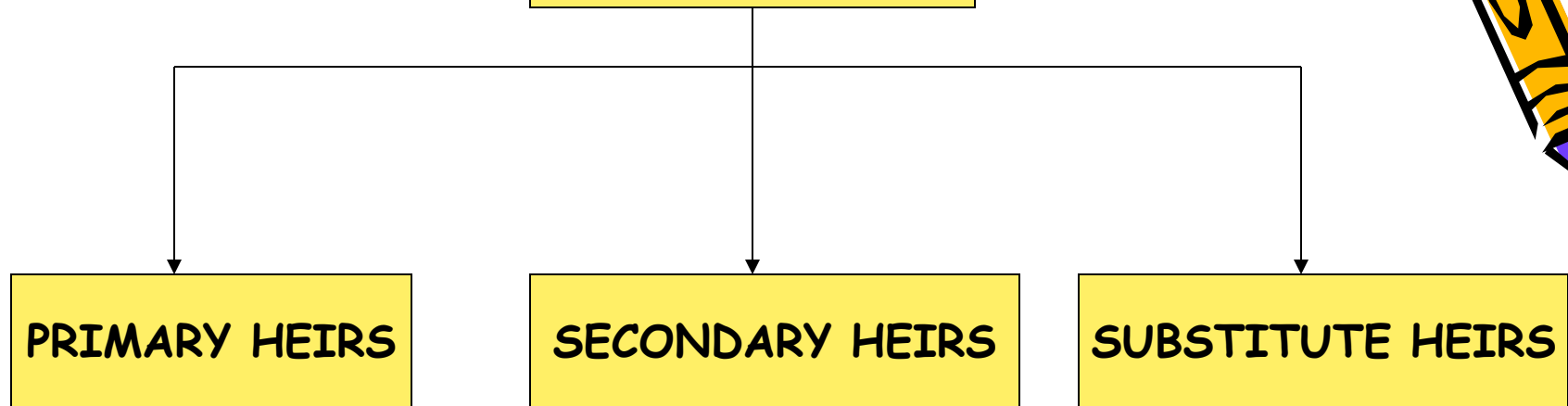


CLASSIFICATION OF LEGAL HEIRS





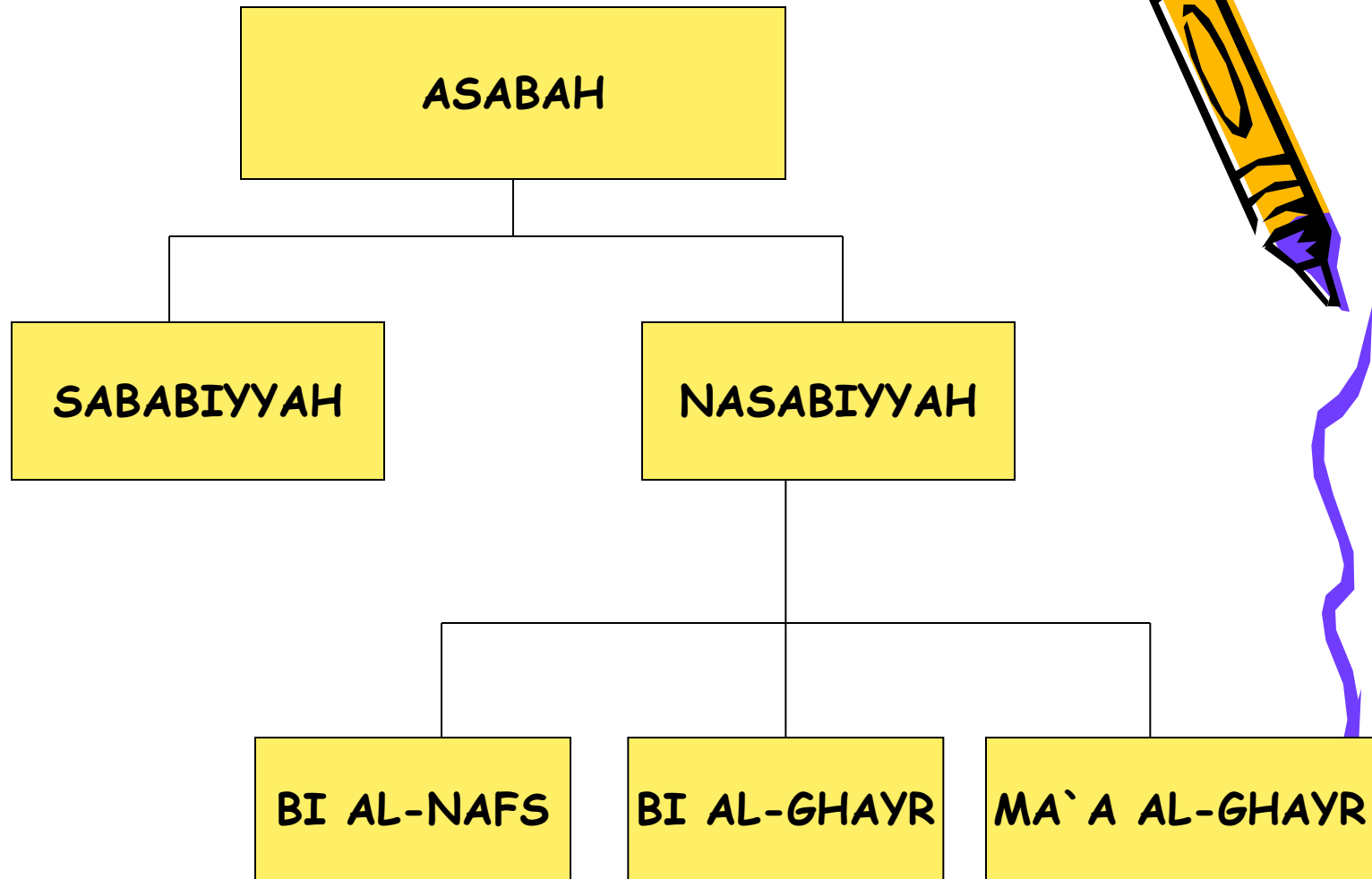
ASHAB AL-FURUD



- Father
- Mother
- Husband/Wife
- Daughter

- Germane sister
- Consanguine sister
- Uterine sister
- Uterine brother

- Grandfather
- Grandmother
- Grand daughter



ASABAH BI AL-NAFS



CLASS	DEGREE (DARAJAH) (same class but different degree)	STRENGTH OF BLOOD TIE (mainly applies to collaterals)
BUNUWWA:- Son, son's son, son's son's son how low so ever	<ul style="list-style-type: none"> - Son excludes son's son - Son's son excludes son's son's son 	
UBUWWA:- Father, father's father, father's father's father how high so ever	<ul style="list-style-type: none"> - Father excludes grandfather - Grandfather excludes great g/f 	
UKHUWWA:- -Germane brother, Consanguine brother -GB's son, CB's son (nephew)	<ul style="list-style-type: none"> - Germane brother excludes germane brother's son (Nephew is excluded by the brother of the deceased) 	Germane brother excludes consanguine brother
`UMUMA -Paternal uncles how low so ever -Great uncles how high so ever	<ul style="list-style-type: none"> - Paternal uncle excludes paternal uncle's Son (cousin) -Paternal uncle excludes paternal grand Uncle 	



The rules of priority

- Any member of a higher class excludes any member of a lower class-

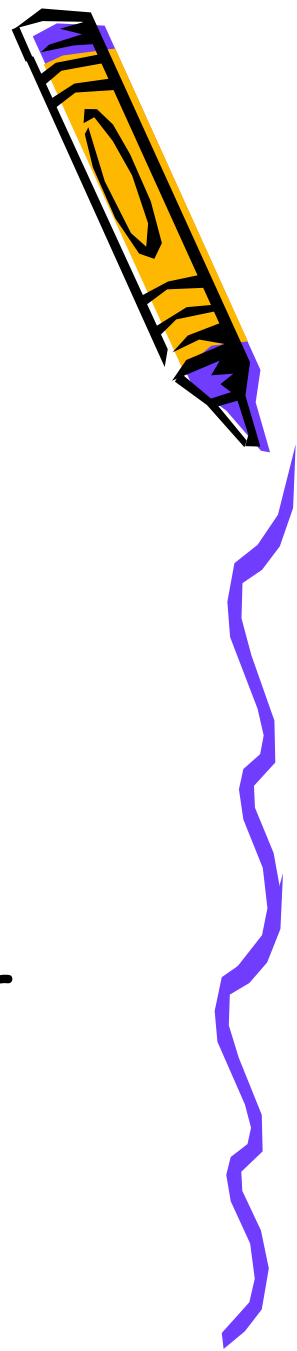
Exception: the brothers of the deceased are not excluded by the grandfather

- The nearer in degree to the deceased excludes the more remote
- The stronger of blood-tie excludes the more remote



ASABAH BI AL-GHAYR (residue by another)

- Son(s) will convert daughter(s)
- Son's son(s) will convert son's daughter(s)
- Germane brother(s) will convert germane sister(s)
- Consanguine brother(s) will convert consanguine sister(s)

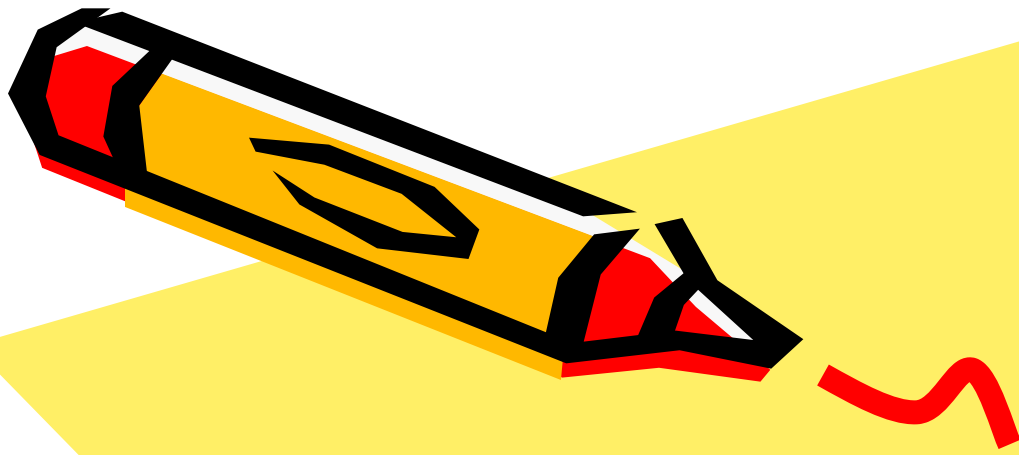


ASABAH MA`A AL-GHAYR (accompanying residue)

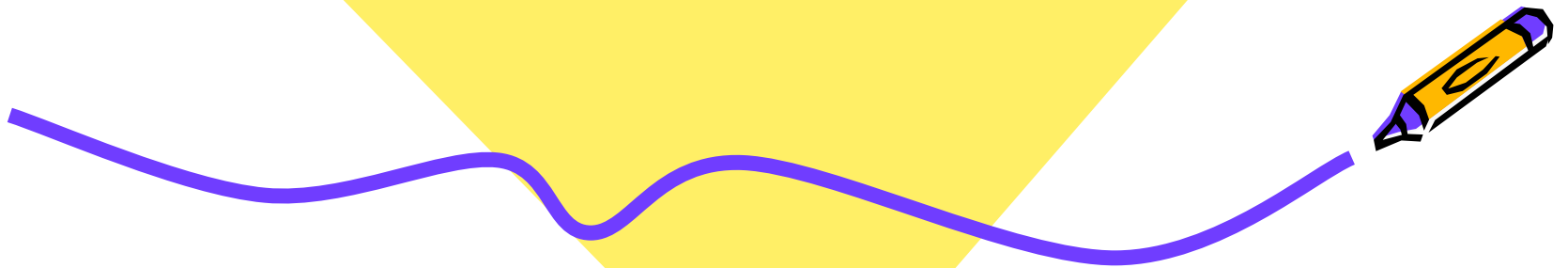


- Daughter or son's daughter will convert germane sister(s)
- Daughter or son's daughter will convert consanguine sister(s)





Ashab Al-furud (Primary Heirs)





- In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what you leave, their share is a fourth, if you leave no child; but if you leave a child, they get an eighth;
(An-Nisa':12)



Husband

1/2

- In the absence of any offspring with him or ex-husband

1/4

- In the presence of offspring



Wife

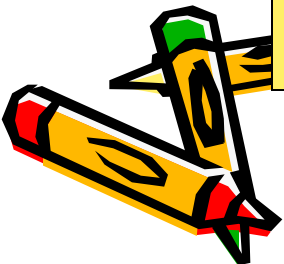
1/4

- In the absence of the deceased's offspring (with her or ex-wife)

1/8

- In the presence of offspring

If there are wives, they will share equally





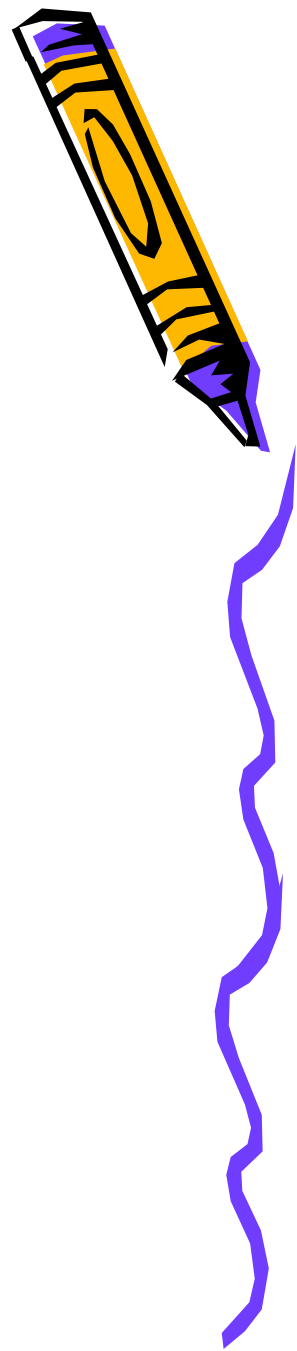
“Allah (thus) directs you as regards your children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, Her share is a half.

(An-Nisa':11)



Daughter

- **1/2** - Alone, in the absence of son
- **2/3** - 2 or more, in the absence of son
- **Asabah bi al-ghayr** - In the presence of her male counterpart (2:1 shall apply)





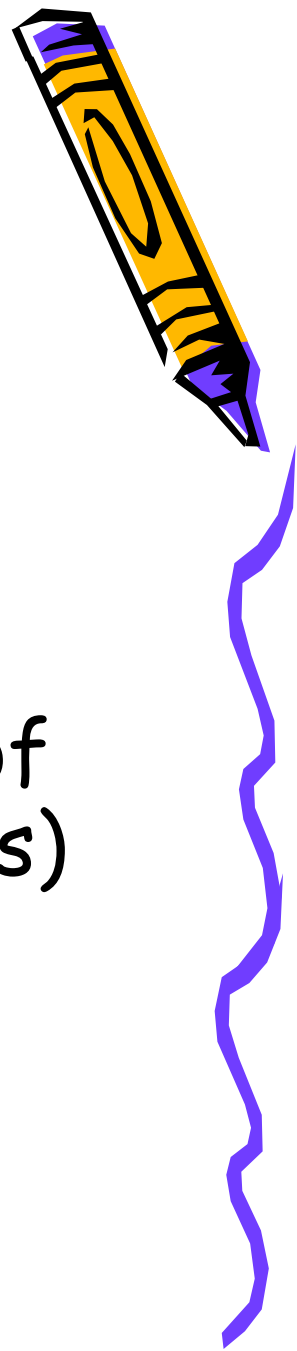
- “..For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth... these are settled portions ordained by Allah. and Allah is All-knowing, All-wise.”

(An-Nisa':11)



Father

- 1/6 - In the presence of any male offspring (s, ss, sss hls)
- 1/6 + Residue - In the presence of any female offspring (d, sd, sdd hls)
- Residue - In the absence of any offspring at all



Mother

1/6

- In the presence of any offspring; or
- In the presence of 2 or more brothers/sisters (germane/cons./uterine)

1/3

- In the absence of any offspring; or
- In the presence of only 1 brother or sister



The case of Umariyyatan



- Based on two cases that were decided by Khalifah Umar r.a.
- Applicable when the surviving legal heirs consists of only father, mother & husband/wife of the deceased
- In such a case, the mother will take 1/3 from residue and not 1/3 from the whole estate



Umarriyyatan

- Case 1:

X dies leaving:

		12	
Wife	$1/4$	3	
Mother	$1/3$	4	} $1/3 \times 9 = 3$ $2/3 \times 9 = 6$
Father	R	5	

* Umar decided that the mother would take $1/3$ from the residue (after deducting the wife's portion)

Umarriyyatan

- Case 2:

X dies leaving:

		6	
Husband	$1/2$	3	
Mother	$1/3$	2	} $1/3 \times 3 = 1$
Father	R	1	
			$2/3 \times 3 = 2$

* Umar decided that the mother would take $1/3$ from the residue (after deducting the husband's portion)