140167 - The difference of scholarly opinion on ways of dividing the estate, who the heirs are, and what is to be given precedence over their share

the question

For a long time I have been confused about the estate. I used to think previously that there was only one way to divide the estate, but I discovered, when I downloaded a program about division of the estate from the Internet, that there are a number of different juristic opinions and different ways of dividing the estate. From this program I learned the following: There are a number of categories of heirs, namely siblings, children, wives and so on. I want to know the following on the basis of evidence from the Qur'an and Sunnah: 1. Are there really different ways of calculating the estate and dividing it? 2. Are there any other categories of heirs who are entitled to a share other than those who are mentioned in the Qur'an? 3. What are the priorities that should be taken into consideration when dividing the estate? I hope that you can give a detailed answer. 4. How can the following scenario be worked out? A man died and left behind one million dollars. He left behind three wives, five sons, six daughters, two stepsons from the first wife, three stepdaughters from the third wife, his parents, two brothers, three sisters, a half-brother through his father, a half-sister also through his father, a half-brother through his mother, two half-sisters through his mother, and two grandfathers and two grandmothers, on his mother's and father's sides.

Detailed answer

Praise be to Allah.

Firstly:

The difference of scholarly opinion regarding the allocated shares of inheritance and division of the estate has to do with very few issues, because Allah, may He be Exalted, has mentioned in His Book the shares of each one who is entitled to a share. It does not seem that this is what the

questioner meant; rather he was referring to ways of dividing the estate and differences between scholars regarding that. That is true, but they are different methods of calculation only; as for the final outcome, it is the same, which is giving each heir his share of the estate, no more and no less.

Generally speaking, the estate is divided into two categories, which are:

1.That which is quantifiable or can be shared out on the basis of numbers and parts, such as money, and that which can be quantified by volume or weight and so on.

2.That which cannot be divided on the basis of the above, such as a small piece of real estate, an animal and a vehicle.

For the first category: there are different ways of dividing it, the most famous and straightforward of which is as follows:

We find out the number of shares due to each heir, then we multiply this number by the total amount of the estate. Then we divide the result by the total number of shares. The result of this calculation is the heir’s share of the estate.

For the second category: if the estate consists of things that cannot be quantified, then one of the ways of dividing it is by fractions, which means that we work out the share of each heir as a numerator, and work out the total numbers of shares on the basis of the common denominator, then each heir is given his share as a percentage of the total.

For more details regarding that, please see the book: *As-Sayr al-Hathith nahwa Tas-hil Qismat al-Mawarith* (206-221).

Secondly:

With regard to the categories of those who will inherit from the estate, we may divide them as follows:

a.Those who have specific allocated shares; they are the ones who have specific shares of the

estate. They are:

1. The mother
2. The half-brother through the mother
3. The half-sister through the mother
4. The husband
5. The wife
6. The maternal grandmother
7. The paternal grandmother.

b.Those who can only inherit as residual heirs.

What is meant by those who inherit as residual heirs is those who inherit without any specification of the amount. They are:

1. The son
2. The son’s son, no matter how far the line of descent extends
3. The full brother
4. The half-brother through the father
5. The son of the full brother
6. The son of the half-brother through the father
7. The full brother of the father (paternal uncle)
8. The half-brother of the father
9. The son of the full brother of the father (paternal cousin)
10. The son of the half-brother of the father.

c. Those who may sometimes inherit an allocated share, or sometimes inherit as residual heirs, or may combine both. They are only two:

1. The father
2. The grandfather

d.Those who may sometimes inherit an allocated share, or sometimes inherit as residual heirs, but they cannot combine both. They are only four, all of whom are women:

1. One daughter or more
2. One or more daughter of a son
3. One full sister or more
4. One half-sister through the father or more.

Thirdly: With regard to priorities when dividing the estate, they are as follows:

a.Spending on the rights of the deceased and what he owes to others, such as funeral costs, namely washing (ghusl), shrouding and burial; then paying off debts; then carrying out any bequests or instructions, if the deceased left any instructions.

b.Attention must also be paid to any impediments to inheritance, of which there are three:

1. Enslavement (a slave cannot inherit from his master)
2. Murder (a killer cannot inherit from his victim)
3. Difference of religion (a Muslim cannot inherit from a non-Muslim or vice versa).

c.Attention must be paid to who has greater priority when dividing the estate. Those who have allocated shares take precedence over residual heirs, so those who have allocated shares should be given their shares, in accordance with what Islamic law states.

d.Attention must also be paid to the issue of who prevents or excludes someone else from inheriting. This is of several types:

1.Complete exclusion. For example, a son excludes a grandson, and a father excludes the grandfather and siblings of the deceased.

2.Partial exclusion, which is of several types:

i.Reducing the allocated share from one percentage to another. So if there are children who are heirs, they reduce the share of the wife from one quarter to one eighth.

ii.Changing the share from an allocated shared to a residual share, such as the share of the sisters changing from an allocated share to a residual share if they have a brother.

iii. Changing from one residual share to a different residual share. This also applies to sisters, if they have a brother and they were entitled to a residual share alongside daughters of the deceased. Thus they move from having what is left of the estate to themselves, to sharing what is left with their brothers, on the basis of each male receiving their share of two females.

e.If there are no heirs who are entitled to an allocated share or a residual share, then we must look at freed slaves (who were manumitted by the deceased)

Fourthly:

With regard to the case asked about, those who will inherit out of all these people are: the father, the mother, the wives, the sons, and the daughters. Everyone else is excluded.

The father will receive one sixth.

The mother will also receive one sixth

The three wives will receive one eighth, to be divided equally among them.

The five sons and six daughters will take the rest, with each male getting the share of two females.

And Allah knows best.