160948 - If he dies and does not leave behind anyone but a brother or sister through his mother

the question

If 1/6th property of kalala is given to either of his/her ikyafi brother or sister then what happens to the remaining property of the kalala ?.

Detailed answer

Praise be to Allah.

Kalaalah refers to a person who dies and has no father or son. If he has a brother or a sister through his mother, each of them gets one-sixth (of the estate), and if they are more than that then they share one third, because Allah, may He be exalted, says (interpretation of the meaning):

“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”

[al-Nisa’ 4:12].

If he had a wife, she gets one half.

If he had a full brother, then he gets the entire estate or what is left, by virtue of being a male relative on the father’s side (ta‘seeb), after those who are entitled to allotted shares have received them, if there are any such heirs.

If he has a full sister, then she gets half, and if there are two sisters then they get two thirds, because Allah, may He be exalted, says (interpretation of the meaning):

“They ask you for a legal verdict. Say: "Allâh directs (thus) about Al-Kalâlah (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."

[al-Nisa' 4:176].

If he only has a brother or a sister through the mother, then he or she takes one-sixth as an allotted share and the rest of the estate comes to him (or her) according to the Hanafis and Hanbalis. Thus he (or she) takes the entire estate.

Maalik and al-Shaafa'i were of the view that the remainder of the estate should go to the bayt al-maal if there are no male relatives on the father's side ('asbah).

Ibn Qudaamah (may Allah have mercy on him) said in al-Mughni (6/186): To sum up, if the deceased did not leave behind any heir except those who are entitled to an allotted share, such as daughters or sisters or grandmothers, and there is some wealth left over, then what is left over from the allotted shares should be given to them on the same basis as the allotted shares, except in the case of a husband or wife. This was narrated from 'Umar, 'Ali, Ibn Mas'ood and Ibn 'Abbaas (may Allah be pleased with him). It was also narrated from al-Hasan, Ibn Sireen, Shurayh, 'Ata', Mujaahid, al-Thawri, and Abu Haneefah and his companions. Ibn Suraaqah said: Things are done on this basis now in the regions.

Zayd ibn Thaabit was of the view that what is left over from the allotted shares should go to the bayt al-maal and no one should be given more than his allotted share. This was also the view of Maalik, al-Awzaa'i and al-Shaafa'i (may Allah be pleased with them). End quote.

And he said: With regard to the spouses, what is left over (after giving the allotted shares) should not be given to them, according to the consensus of the scholars, but it was narrated from 'Uthmaan (may Allah be pleased with him) that he did give the left-over wealth to the husband, but perhaps he was a relative on the father's side ('asbah) or on the mother's side (dhu rahm), so he gave that to him or he gave it from the bayt al-maal and not by way of inheritance. End quote.

When it comes to matters of inheritance, it is important to ask about every case according to what the deceased has left behind in his estate, lest there be any error in applying the rulings in a given case.

And Allah knows best.