An Introduction to the Science of Islamic Inheritance

Impediments to Inheritance

Definition of an Impediment

Linguistically, an impediment is a barrier or something that prevents an occurrence. In legal theory, it is a factor whose existence entails the non-existence of a ruling, while its absence does not, in itself, entail either the existence or non-existence of that ruling. It is the opposite of a condition: an impediment operates on the side of existence, whereas a condition operates on the side of non-existence. A cause, by contrast, operates in both respects. Al-Āmidī defined it as "an existing, well-defined attribute that is identified as the opposite of the ruling."

Impediments to Inheritance

The majority of jurists agreed on three impediments to inheritance: killing, slavery, and difference of religion. Other impediments are disputed. The Mālikīs counted seven, collected in the mnemonic phrase: "ʿUsh laka rizq."

1. Killing

Killing is the taking of the life of an inviolable person, either directly or by way of causation. It is treated as an impediment because it is a crime, and Islamic law does not make crimes a means of obtaining benefits such as inheritance. The impediment applies to the killer alone, not to the victim. If the killer dies before the victim while the victim is still alive, the killer inherits from the victim by consensus. Jurists differed, however, over which forms of killing prevent inheritance:

The Ḥanafīs: Any killing that entails expiation (kaffārah) prevents inheritance; a killing that does not entail expiation does not. Intentional wrongful killing is an exception: although it does not entail expiation according to them, it still prevents inheritance because it severs the bond of loyalty upon which inheritance is based.

The Mālikīs: A person who commits intentional and wrongful killing inherits nothing, whether the killing is direct or indirect. The same applies to the person who orders or participates in the killing, the instigator, the facilitator who assists through acts connected with it, the lookout who watches the place during the operation, and a false witness whose testimony leads to a judgment of execution against the deceased. In accidental killing, the killer inherits the estate but not the blood-money (diyah). This also includes killings lacking wrongful aggression, such as execution by way of retaliation (qiṣāṣ), killing beyond the limits of legitimate self-defence, and a husband's killing of his wife together with the man with whom he surprises her committing adultery, and similar cases.

The Shāfiʿīs: Anyone who has any involvement in the killing—even an executor of lawful retaliation, a ruler, judge, executioner acting under an order, witness, or person who validates a witness's credibility—is barred from inheriting. The same applies where the person did not intend the death, such as a sleeper, an insane person, or a child; or where the person intended a beneficial purpose, such as a father disciplining his son or treating a wound that then spreads through the body. The basis is the Prophet's statement: "A killer does not inherit." The rationale

in some cases is suspicion that the killer sought to hasten the inheritance; in others, it is to close the door to such conduct. The mufti is excluded, because the mufti merely informs people of the legal ruling and does not compel its implementation.

The Ḥanbalīs: Any killing that entails liability by way of retaliation, blood-money, or expiation prevents inheritance. This includes intentional wrongful killing, accidental killing, quasi-intentional killing, and killing a Muslim while mistakenly believing him to be an unbeliever. Killing that entails no such liability—for example, lawful retaliation, execution of a prescribed penalty, or killing in self-defence—does not prevent inheritance.

2. Difference of Religion

Difference of religion means that the religion of the heir differs from that of the deceased. It is an impediment to inheritance, based on the Prophet's statements: "The adherents of two different religions do not inherit from one another," and "A Muslim does not inherit from an unbeliever, nor does an unbeliever inherit from a Muslim." This is the position of the majority, whether the basis of inheritance is kinship, marriage, or clientage.

Imām Aḥmad held that difference of religion does not prevent inheritance through clientage, relying on the report: "A Muslim does not inherit from a Christian except when he is his male or female slave." Thus, even if the emancipator is an unbeliever, he inherits from the Muslim person whom he emancipated, by analogy with the reverse case. This position is also attributed to ʿAlī, ʿUmar ibn ʿAbd al-ʿAzīz, and the Ẓāhirī school.

If an unbeliever embraces Islam before the estate is distributed, the majority hold that the person does not inherit. Aḥmad disagreed, allowing inheritance to reconcile the person's heart and encourage conversion, relying on the report: "Whoever embraces Islam with respect to something, it belongs to him."

The source cites, among others, Ibn Mājah; Mālik and Aḥmad; Abū Dāwūd and Aḥmad, through ʿAmr ibn Shuʿayb from his father from his grandfather; the two Ṣaḥīḥ collections, with the wording of Muslim; al-Nasāʾī, al-Sunan al-Kubrā, no. 6389; al-Ḥākim, al-Mustadrak, no. 8007; al-Dāraquṭnī, Sunan, no. 22; Ibn Ḥajar al-Haytamī, Majmaʿ al-Zawāʾid, vol. 5, p. 335; Abū Yaʿlā, Musnad, no. 5847; and al-Bayhaqī, al-Sunan al-Kubrā, vol. 9, p. 113.

3. Apostasy (Ridda)

Linguistically, ridda means returning or turning away from something. In legal terminology, it is the voluntary abandonment of Islam by a rational person in favour of another religion, or departure from Islam without adopting another religion. Apostasy is not valid when committed by an insane or mentally incapacitated person, an intoxicated person, a person acting under coercion, or a child who lacks discernment.

An apostate is therefore someone who replaces Islam with another religion or leaves Islam for no religion. Such a person neither inherits nor is inherited from, because the mutual support and allegiance that Islam establishes among its adherents no longer exist. Thus, even if two brothers both apostatise—for example, by converting to Christianity—there is no inheritance between them, since they do not share allegiance within the religion to which they have moved.

The apostate is liable to the prescribed death penalty after being invited to repent, whether male or female. Abū Ḥanīfah disagreed regarding women: he did not hold that an apostate woman should be killed, but rather that she should be imprisoned until death.

The apostate's property consequently becomes fayʾ (property accruing to the Muslim community), whether acquired before or after apostasy, and none of the apostate's relatives inherits from the apostate. Abū Ḥanīfah distinguished between property acquired before apostasy, which goes to the apostate's Muslim heirs, and property acquired after apostasy, which becomes fayʾ and is deposited in the public treasury (Bayt al-Māl). Abū Yūsuf and Muḥammad held that all the property goes to the apostate's Muslim heirs.

If the apostate returns to Islam before the deceased's estate is distributed, the majority hold that the apostate does not inherit, treating the person like an original unbeliever. Aḥmad ibn Ḥanbal disagreed. The majority's reasoning is that the relevant time for determining inheritance is the time of death.

The source's footnotes explain that the Ḥanafīs and Ḥanbalīs group apostasy (subsequent unbelief) with original unbelief for purposes of classification, whereas the Mālikīs and Shāfiʿīs regard them as distinct impediments. The source also notes a Ḥanafī rule concerning an apostate woman who dies: if she had been ill before apostasy and dies of that illness, her Muslim heirs inherit her property, excluding her husband, because apostasy itself severs the marriage. The husband nevertheless inherits if his right had attached to her property during her illness, in which case it is treated as a death-illness disposition.

4. Uncertainty as to Which Person Died First

This refers to a situation in which several people who could inherit from one another die in a single incident, such as drowning, a fire, or the collapse of a building, and it is not known which of them died first.

The Ḥanbalīs and one narration from the Ḥanafīs do not regard this as an impediment. They allow inheritance, but each person inherits from the other's original property, excluding any property that the latter had inherited from the former. This is conditional upon there being no competing claims. If the heirs of each deceased person claim that their relative survived the other, and there is no evidence or the evidence conflicts, each group swears an oath rejecting the other's claim; in that case, there is no inheritance between them.

The Mālikīs, Shāfiʿīs, and Ḥanafīs (according to another position) regard it as an absolute impediment to mutual inheritance. Mālik said: "I heard Rabīʿah and others among the scholars whom I met say that those killed at the Battle of the Camel, the people of al-Ḥarrah, and the people of Ṣiffīn and Qudayd did not inherit from one another, because it was not known which of them had been killed before the other."

5. Mutual Imprecation (Liʿān)

Linguistically, liʿān means expulsion or distancing. In legal terminology, it consists of sworn testimonies exchanged between spouses, accompanied by an imprecation of condemnation on the husband's part and an invocation of divine anger on the wife's part. It takes place when the husband accuses his wife of adultery or denies that a child belongs to him.

Its basis is the Qur'anic passage: "As for those who accuse their wives, but have no witnesses except themselves, the testimony of one of them…" (Sūrat al-Nūr, verses 6–9). Its effect on inheritance is discussed separately in relation to the spouses and the child whose paternity is denied.

Between the spouses: if either spouse dies after the liʿān has been completed, they do not inherit from one another. This applies where the husband initiates the liʿān and the wife follows with her own imprecations. If the wife begins first and the husband follows, however, inheritance remains between them, because her initial liʿān is not legally recognised: it is contrary to the prescribed procedure. The husband's liʿān constitutes evidence establishing the accusation, whereas the wife's liʿān constitutes evidence denying it; evidence of denial may not precede evidence of establishment.

If only one spouse performs liʿān and the other does not, inheritance remains between them, because separation takes effect only after both have completed the procedure. Mālik states in al-Mudawwanah: "If the woman dies after he has performed liʿān against her but before she completes her own liʿān, he inherits from her. If he dies after performing liʿān against her and she is then asked to invoke liʿān but refuses, she inherits from him and is liable to the prescribed punishment of stoning; but if she performs liʿān, she does not inherit from him."

As for the child whose paternity is denied: once liʿān takes place—even if performed by the father alone—it becomes an impediment to inheritance on both sides, because paternal lineage is severed. The child remains affiliated only through the mother, and therefore inherits from the mother and the mother inherits from the child.

The child does not inherit from the father who denied paternity, nor from those connected to the father through lineage. Mutual inheritance is severed between the child and everyone connected to the child through the man who performed liʿān, or connected to that man through the child, because lineage between them has not been established.

According to the Mālikīs, twins born following liʿān are considered full brothers, contrary to the majority. They consequently inherit from one another by agnatic succession, because paternity in the case of liʿān is not entirely extinguished. If the father later seeks to acknowledge them, they are affiliated to him; and if he retracts his denial, lineage is established with its legal consequences. The source states that this may be recognised even after distribution of the estate where there is a need to establish the lineage of his child or of an existing brother of the child denied by the father. In such a case, the distribution is set aside. If there is no such need, neither lineage nor inheritance is established.

Al-Shāfiʿī and Aḥmad hold that if the father retracts his denial and acknowledges the child whose paternity he had denied, the child is affiliated to him even after the child's death. The legal consequences of lineage follow, even if this occurs after the estate has been distributed. They do not give weight to the suspicion that the father is motivated by a desire to obtain the child's inheritance. Establishing lineage takes precedence over inheritance. The source argues that suspicion would also exist if the child were alive and wealthy and the father poor, and the father acknowledged him in order to obtain maintenance from him; yet that suspicion would not prevent the establishment of lineage.

6. Unlawful Sexual Intercourse (Zinā)

A child born of zinā is barred from inheriting through paternal lineage, because no paternal lineage is established between the child and the biological father. The child inherits only from the mother, and inherits from siblings only where the relationship is through the mother. Even if two children are twins, they are regarded as maternal siblings only.

7. Absence of a Sign of Life at Birth (Non-Istihlāl)

This refers to a fetus emerging from its mother's womb without showing any sign of life, such as crying, weeping, movement, suckling, opening its eyes, yawning, or sneezing. It is treated as an impediment to inheritance because it cannot be established that the fetus was alive at the time of the deceased's death.

Rights Connected with the Estate

By induction from the sources of Islamic law, five rights are connected with the estate.

1. Rights Attached to Specific Property in the Estate

These are rights attached to a particular item of property by another person during the deceased's lifetime. They take priority over other rights because they became attached to the property before it became part of the estate. Examples include:

- A vow (nadhr): for example, if a person says, "It is incumbent upon me for God to sacrifice this animal or give it in charity," the animal is first delivered for the purpose specified.
- The residence of a widow observing the waiting period after her husband's death: provision of her accommodation takes precedence over other claims, or, if the deceased owned no residence, the equivalent rental value is provided.
- Zakāh: whether relating to crops or livestock, if the owner dies after the crops have ripened or the zakāh year has elapsed while the minimum taxable amount remains. If the taxable property has been destroyed, zakāh is treated as an ordinary debt owed by the deceased.
- Mortgaged property: if the estate includes property pledged as security for a debt owed by the deceased, that debt is paid from it before anything else.
- Goods belonging to an insolvent buyer: if a person buys a slave, for example, on credit and then dies insolvent while the seller's goods remain identifiable, the seller may rescind the sale and reclaim the goods.
- A loan: if a person lends another a dinar and the borrower dies while the very same money remains identifiable among the borrower's assets, the lender has priority to recover it.
- Rescission for a defect: if a buyer returns goods because of a defect after the seller has died, and the purchase price is still available, the buyer has priority in respect of the returned goods.

2. Preparing the Deceased for Burial

This means preparing the deceased for the journey to the Hereafter. It includes everything required from the time of death until burial in the grave, in a manner appropriate to the deceased's circumstances. These expenses include the shroud, payment for washing the body, carrying it, and digging the grave. They are paid from the estate in a customary and reasonable amount, appropriate to the deceased's poverty or wealth.

This does not include extravagance or anything prohibited by Islamic law, such as paying people to recite Qur'an over the deceased. Anyone who spends extravagantly or on a prohibited practice is liable to make good the expenditure. Any adult, legally competent heir who agrees to such spending shares in that liability and responsibility.

The expenses of preparing the deceased for burial take precedence over ordinary debts because a living person who becomes bankrupt is entitled to retain what is necessary for his subsistence before his creditors are paid. The same principle applies, with even greater justification, to the deceased, whose ability to provide for himself has come to an end.

The Prophet Muhammad (peace be upon him) said concerning a man who died after being thrown from his riding camel: “Shroud him in two garments.” He did not ask whether the deceased had outstanding debts. Since this ruling applies to the shroud, the other necessary burial expenses follow the same principle.

As for giving priority to debts secured by specific property over burial expenses, according to the majority of jurists, the deceased did not have the right during his lifetime to dispose of property pledged as security for a debt. He is even less entitled to do so after death. If the entire estate is pledged as security for a debt, the deceased's preparation for burial must be financed by those who were legally obliged to support him during his lifetime, provided that the estate contains no surplus sufficient to cover these expenses.

According to the majority of jurists, the same ruling applies to persons whose maintenance was legally obligatory upon the deceased, even if they died only moments before him.

Thus, a slave is to be shrouded at his master's expense. If both the master and the slave die together, the master's estate does not bear both burial expenses; rather, the slave is entitled to only one shroud, since he has no claim against the Muslim public treasury. As for the master, his shroud is paid for by the public treasury or, in its absence, by the Muslim community.

The wife's burial expenses:

A wife is not to be prepared for burial from her husband's estate, even if he is wealthy. Rather, the expenses are paid from her own estate if she is financially capable. Otherwise, they are borne by the person legally responsible for her maintenance, in the absence of marriage. If no such person exists, the expenses are paid from the Muslim public treasury.

This is the position of the Maliki and Hanbali schools and some Hanafi jurists. The basis of this position is that burial preparation is considered part of maintenance, which becomes obligatory in consideration of marital enjoyment and the possibility thereof. Such an obligation ceases in cases of marital disobedience (nushuz) and irrevocable divorce. Since death terminates this relationship, the wife is treated like an unrelated woman.

The Shafi'i and Hanafi schools, however, maintain that the wife's burial expenses should be paid from her husband's estate. Their reasoning is that the marital relationship continues to have certain legal effects after death, since spouses inherit from one another, and the husband may wash his deceased wife and perform other related duties.

3. Ordinary Debts

These are debts established against the deceased's financial liability, independently of any specific property belonging to the estate. They may be established through evidence or admission.

They take precedence over bequests because they constitute obligations owed by the deceased, and their repayment is mandatory, whereas a bequest is voluntary and subordinate to the settlement of debts.

Their precedence is also emphasized in the Qur'anic order of succession, since people generally tend to be reluctant to pay debts when payment entails giving up their property without receiving anything in return.

4. Bequests (Wasiyyah)

Bequests are given priority over inheritance for the benefit of the deceased, just as certain rights were given priority during his lifetime.

Allah the Almighty says:

"...after any bequest he may have made or debt..." (Qur'an, Surah al-Nisa', 4:12).

Bequests must be executed from one-third of the estate remaining after:

- The settlement of rights attached to specific estate property.
- The expenses of preparing the deceased for burial.
- The repayment of debts.

They are not calculated from one-third of the entire estate.

If the bequest is made in favour of an heir, even if it is less than one-third of the estate, it requires the consent of the other heirs.

If it is made in favour of a non-heir, any amount exceeding one-third requires the consent of all the heirs.

The limitation of a bequest to one-third is established by the Sunnah.

'Amir ibn Sa'd narrated from his father, Sa'd ibn Abi Waqqas (may Allah be pleased with him), that the Prophet (peace be upon him) visited him during his illness in Mecca. Sa'd said:

"I have wealth. May I bequeath all of it?" He replied: "No." Sa'd asked: "Then half?" He replied: "No." Sa'd asked: "Then one-third?" He replied: "One-third, and one-third is much. It is better that you leave your heirs wealthy than that you leave them dependent, begging from people. Whatever you spend, even a morsel that you place in your wife's mouth, will be counted as charity, and perhaps Allah will raise you in rank so that people benefit through you, while others may be harmed."

5. Inheritance

The remaining property, after all the aforementioned rights have been settled, is distributed among the heirs according to each heir's legally prescribed entitlement.