Heirs: Men and Women

Summary of Male and Female Heirs

The heirs may be classified according to the following relationships:

Relationship	Heirs
Through parentage (ascendants)	1. Father 2. Mother 3. Paternal grandfather 4. Maternal grandmother 5. Paternal grandmother
Through descendants	1. Son 2. Daughter 3. Son's son 4. Son's daughter
Through siblings	1. Full brother 2. Paternal half-brother 3. Uterine half-brother 4. Full sister 5. Paternal half-sister 6. Uterine half-sister 7. Son of a full brother 8. Son of a paternal half-brother
Through paternal uncles	1. Full paternal uncle 2. Paternal half-uncle 3. Son of a full paternal uncle 4. Son of a paternal half-uncle
Through marriage	1. Husband 2. Wife

Notes

1. If all male heirs are present, only three of them inherit: the son, the father and the husband.
2. If all female heirs are present, five of them inherit: the daughter, the son's daughter, the mother, the wife and the full sister.
3. If male and female heirs are all present together, five inherit:
    - Both parents: the father and the mother.
    - Both direct descendants: the son and the daughter.
    - One of the two spouses.

Summary of Quranic Sharers (Ashab al-Furud)

Heir	Prescribed share	Conditions for entitlement
Husband	One-half	When the deceased wife leaves no inheriting descendant, whether male or female.
Daughter	One-half	When she is the only daughter and has no male agnatic counterpart.
Son's daughter	One-half	When she is the only one of her class, with no male counterpart and no surviving direct daughter.
Full sister	One-half	When she is the only one of her class and has no male agnatic counterpart, direct daughter or son's daughter.
Paternal half-sister	One-half	When she is the only one of her class and has no male counterpart, full sister, direct daughter or son's daughter.
Husband	One-quarter	When the deceased wife leaves an inheriting descendant, however distant.
Wife	One-quarter	When the deceased husband leaves no inheriting descendant, however distant.
Wife	One-eighth	When the deceased husband leaves an inheriting descendant, however distant.
Two or more daughters	Two-thirds	When there is no son to make them residuary heirs.
Two or more son's daughters	Two-thirds	When they are the only ones of their class, are of the same degree, and have no male counterpart.
Two or more full sisters	Two-thirds	When they are the only ones of their class and have no male counterpart, direct daughter or son's daughter.
Two or more paternal half-sisters	Two-thirds	When they are the only ones of their class and have no male counterpart, full sister, direct daughter or son's daughter.
Mother	One-third	When there is no inheriting descendant and no qualifying plurality of siblings.

Heir	Prescribed share	Conditions for entitlement
Uterine siblings	One-third collectively	When there are two or more, regardless of whether they are male or female.
Father	One-sixth	When the deceased leaves an inheriting descendant, whether male or female.
Paternal grandfather	One-sixth	Under the same conditions, subject to the rules governing his inheritance.
One uterine sibling	One-sixth	Whether male or female.
Mother	One-sixth	When there is an inheriting descendant or two or more siblings.
Grandmother	One-sixth collectively	When there is no nearer qualifying grandmother; the relevant conditions of degree and relationship apply.
Son's daughter	One-sixth	When there is one direct daughter and no male counterpart who makes her a residuary heir.
Paternal half-sister	One-sixth	When there is one full sister and no male counterpart who makes her a residuary heir.

Summary of Inheritance by Residuary Entitlement (Ta'sib)

Categories of Heirs According to Their Type of Inheritance

Heirs, according to the two types of inheritance (prescribed shares and residuary entitlement), are divided into four categories:

1. **Heirs entitled exclusively to prescribed shares (Furud):**

The mother, maternal grandmother, paternal grandmother, uterine sister, uterine brother, husband and wife.

2. **Heirs entitled exclusively by residuary entitlement (Ta'sib):**

All male heirs, together with the female emancipator, with the exception of the husband, uterine brother, father and paternal grandfather.

3. **Heirs entitled to both prescribed shares and residuary entitlement, with the possibility of combining both:**

The father and the paternal grandfather.

4. **Heirs entitled to both prescribed shares and residuary entitlement, but not simultaneously:**

The daughter, son's daughter, full sister and paternal half-sister.

Types of Residuary Heirs (Asabah)

1. Residuaries by Themselves (Asabah bi-nafsihim)

They are all male relatives whose relationship to the deceased is not exclusively through a female intermediary.

This includes:

- Those directly related to the deceased, such as the father and son.
- Those related through a male intermediary, such as the son's son.
- Those related through a female and male intermediary, such as the full brother.

They are:

- Son.
- Son's son, however far down the line.
- Father.
- Paternal grandfather.
- Full brother.
- Paternal half-brother.
- Son of a full brother.
- Son of a paternal half-brother.
- Full paternal uncle.
- Paternal half-uncle.
- Son of a full paternal uncle.
- Son of a paternal half-uncle.

1.1. Legal Rulings Governing Residuaries by Themselves

They are subject to three rules:

- If such an heir is the sole heir, he inherits the entire estate.

- If other heirs are present, he waits until the Quranic sharers receive their prescribed shares, after which he takes whatever remains.
- If nothing remains after the prescribed shares have been distributed, he is excluded from inheritance.

This third rule does not apply to the son and the father, who are never completely excluded from inheritance. Their strong degree of kinship ensures that the estate cannot be entirely exhausted by prescribed shares while either of them is present.

Thus, the son and the father share the first two rules with the other residuaries, but differ from them in the third.

1.2. Degrees of Residuaries by Themselves

Residuaries by themselves do not all occupy the same degree of kinship to the deceased. They are ranked according to the following order:

A. Descendants (Bunuwah):

This category includes the deceased's direct descendants, such as the son and the son's son, however far down the line.

B. Ascendants (Ubuwwah):

This category is specifically limited to the deceased's father.

C. Siblings (Ukhuwah):

This category includes the deceased's paternal grandfather, however high in the line, as well as full brothers and paternal half-brothers.

D. Sons of Brothers:

This category is limited to the sons of full brothers and paternal half-brothers, together with their male descendants.

E. Paternal Uncles (Umumah):

This category includes:

- The deceased's full paternal uncle, followed by his paternal half-uncle.
- Their sons, however far down the line.
- The deceased's father's full paternal uncle, followed by his paternal half-uncle.

3. Categories of Agnatic Heirs (ʿAṣabah)

According to the Maliki, Shafi‘i and Hanbali schools, as well as Abu Yusuf and Muhammad al-Shaybani of the Hanafi school, the four categories of agnatic kinship are as follows. Abu Hanifa, however, classified them differently.

1. **Descendants (al-bunūwah):** This category includes the son and the son's son, however far down the line.

2. **Ascendants (al-ubuwwah):** This category includes the father and the paternal grandfather, however far up the line.

3. **Siblings (al-ukhuwwah):** This category includes full brothers, paternal half-brothers, and their sons, however far down the line.

4. **Paternal uncles (al-ʿumūmah):** This category includes the deceased's full paternal uncles and paternal half-uncles, their sons, as well as the paternal uncles of the deceased's descendants and their sons.

Note: The category following paternal uncles is that of heirs through *walāʾ* (the bond of emancipation), followed by the Bayt al-Māl (Public Treasury), although jurists differ on this matter.

3.1. Rules for Determining Priority among Agnatic Heirs by Their Own Right

As mentioned earlier, agnatic heirs by their own right differ in their degree of kinship to the deceased. They are therefore arranged according to the order set out above. However, several heirs may belong to the same category of kinship. How, then, is priority determined among them, and what criteria govern this priority?

First: Priority by Category (al-jihah)

An heir belonging to a higher category excludes an heir belonging to a lower one. Thus, the category of descendants takes precedence over all lower categories, except those who are not excluded, such as the father.

The category of ascendants takes precedence over the grandfather's category, the siblings' category and all subsequent categories. The category of siblings excludes the sons of brothers and those belonging to lower categories. The latter, in turn, exclude the paternal uncles, and so on.

This criterion applies when agnatic heirs belong to different categories of kinship. If they belong to the same category, the next criterion applies.

Second: Priority by Degree (al-darajah)

This refers to the degree of kinship to the deceased. Where heirs belong to the same category, the closer relative takes precedence over the more distant one. Thus, a son takes precedence over a son's son, and a son's son excludes a son's son's son. Similarly, the son of a full brother excludes the son of that brother's son, and so forth: every closer relative excludes the more distant one.

Where the heirs share both the same category and the same degree, the third criterion applies.

Third: Priority by Strength of Kinship (al-quwwah)

This criterion refers to the strength of the relationship to the deceased. Where agnatic heirs share the same category and degree, the one with the stronger kinship takes precedence over the one with the weaker kinship.

Thus, a full brother takes precedence over a paternal half-brother; the son of a full brother takes precedence over the son of a paternal half-brother; and a full paternal uncle takes precedence over a paternal half-uncle. Likewise, a full paternal uncle takes precedence over the son of a paternal half-uncle.

Fourth: Equality (al-istiwāʾ)

This means that the agnatic heirs belong to the same category, share the same degree of kinship, and have equal strength of relationship. In this case, they share equally in the entire estate or in the residue remaining after the prescribed shares have been distributed.

2. Agnatic Heirs by Another (ʿAṣabah bi-l-Ghayr)

These are the four female heirs who are entitled to one-half when each inherits alone, or two-thirds when there are two or more of them, provided that each is accompanied by a corresponding male heir:

a. A daughter together with a son.

b. A son's daughter together with a son's son of the same degree, whether he is her brother or her paternal cousin. He makes her an agnatic heir and prevents her prescribed share from being lost. A more distant male descendant may also make her an agnatic heir, such as a son's son's son, however far down the line, provided that a direct daughter or more than one daughter is present and the female descendant would otherwise be excluded from the two-thirds share. Such a male heir is described as a *blessed* heir because he saves her from exclusion.

c. A full sister together with a full brother.

d. A paternal half-sister together with a paternal half-brother, without any additional condition. He is considered a *blessed* heir when he prevents her exclusion in the presence of two or more full sisters.

Their inheritance rule: When each of these four female heirs is accompanied by the corresponding male heir, they inherit the entire estate if they are the only heirs, or whatever remains after the prescribed shares have been allocated, with the male receiving twice the share of the female.

3. Agnatic Heirs Together with Another (ʿAṣabah maʿa al-Ghayr)

There are two categories:

a. One or more full sisters when accompanied by one or more daughters, one or more son's daughters, or both.

b. One or more paternal half-sisters when accompanied by one or more daughters, one or more son's daughters, or both.

Their inheritance rule: Each such sister receives the residue as an agnatic heir, after the share of the daughter or son's daughter, and after the shares of any other Quranic sharers, if present.

A sister also excludes those male agnatic relatives who would have been excluded by her brother. For example, in a case involving a daughter, a full sister and the son of a full brother, the daughter receives one-half as a prescribed share, and the residue goes to the full sister as an agnatic heir. The son of the full brother receives nothing because he is excluded by the full sister.

Similarly, in a case involving a daughter, a son's daughter, a paternal half-sister and the son of a full brother, the daughter receives one-half as a prescribed share, the son's daughter receives one-sixth as a complement to the two-thirds, and the residue goes to the paternal half-sister as an agnatic heir. The son of the full brother receives nothing because he is excluded by the paternal half-sister.

Summary of Exclusion (Ḥajb al-Ḥirmān)

First: Exclusion of Grandmothers

Excluded heir	Excluding heir
Any grandmother	The mother
Paternal grandmother (father's mother)	The father
A more distant grandmother from any line	A closer grandmother from the same line
A more distant paternal grandmother	A closer maternal grandmother

Note: Two grandmothers share the one-sixth in either of the following cases:

a. When they are of the same degree.

b. When the maternal grandmother is more distant.

Second: Exclusion of the Paternal Grandfather

Excluded heir	Excluding heir
The paternal grandfather	The father
A more distant paternal grandfather	A closer paternal grandfather

Third: Exclusion of the Son's Daughter

Excluded heir	Excluding heir
One or more son's daughters	One or more sons
One or more son's daughters	Two or more daughters
One or more son's son's daughters	Any of the preceding heirs together with one or more son's sons
The same	Any of the preceding heirs together with two or more son's daughters
The same	Any of the preceding heirs together with a daughter and one or more son's daughters

Fourth: Exclusion of the Son's Son

Excluded heir	Excluding heir
One or more son's sons	One or more sons
One or more son's son's sons	One or more sons together with one or more son's sons

Fifth: Exclusion of Uterine Siblings

Uterine brothers and sisters are excluded by any of the following:

- The father.
- The paternal grandfather.
- The son.
- The son's son.
- The daughter.
- The son's daughter.

Sixth: Exclusion of Siblings and Paternal Uncles

Excluded heir	Excluding heir or heirs	Number of excluding heirs
Full brothers and sisters	Son, son's son, or father	3
Paternal half-brothers and sisters	The preceding heirs, together with a full brother and a full sister acting as an agnatic heir with another	5
One or more paternal half-sisters	The preceding heirs, together with two or more full sisters	6
One or more sons of full brothers	The preceding heirs, except the two full sisters, together with the paternal grandfather, a paternal half-brother, and a sister acting as an agnatic heir with another	8
One or more sons of paternal half-brothers	The preceding heirs, together with one or more sons of full brothers	9
One or more full paternal uncles	The preceding heirs, together with one or more sons of paternal half-brothers	10
One or more paternal half-uncles	The preceding heirs, together with one or more full paternal uncles	11
One or more sons of full paternal uncles	The preceding heirs, together with one or more paternal half-uncles	12
One or more sons of paternal half-uncles	The preceding heirs, together with one or more sons of full paternal uncles	13

The Two ʿUmariyyatan Cases (al-Gharrawān)

The basic rule in these two cases is that the mother receives one-third of the estate in full, since the conditions for her entitlement to that share are met: there is neither a descendant entitled to inherit nor a qualifying number of siblings.

However, granting the mother the full one-third would disrupt the principle that a male receives twice the share of a female when they inherit in the same capacity.

To maintain this principle, the mother is therefore given one-third of what remains after the husband's or wife's share has been distributed, while the father receives the remaining two-thirds, as illustrated in the following two cases:

Case A: The Deceased Leaves a Wife, a Mother and a Father

The estate is divided into four parts:

Heir	Share
Wife	1/4
Mother (one-third of the residue)	1/4
Father (the residue)	1/2

Case B: The Deceased Leaves a Husband, a Mother and a Father

The estate is divided into six parts:

Heir	Share
Husband	1/2
Mother (one-third of the residue)	1/6
Father (the residue)	1/3

The Mushtarakah Case (The Joint-Inheritance Case)

This case is called *al-Mushtarakah* (the joint case), with the *rāʾ* pronounced with a fatḥah, referring to the case in which the inheritance is shared. It is also called *al-Mushtarikah*, with the *rāʾ* pronounced with a kasrah, in reference to the act of sharing.

It is also known as *al-Ḥimāriyyah* (the donkey case), *al-Ḥajariyyah* (the stone case), and *al-Yamiyyah*, owing to the argument that took place between the full siblings and ʿUmar ibn al-Khaṭṭāb, may Allah be pleased with him, as will be explained below.

Description of the Case

A woman dies leaving behind a husband, a mother, two or more uterine siblings, and one or more full siblings, whether accompanied by one or more full sisters or not.

Ruling on the Case

The Companions, may Allah be pleased with them, differed over this case and divided into two groups.

The first group held that the husband should receive one-half, the mother one-sixth, and the uterine siblings one-third. Nothing would remain for the full siblings, who would consequently be excluded because they are residuary heirs in their own right.

The second group held that the full siblings should share the one-third equally with the uterine siblings.

It is reported that ʿUmar ibn al-Khaṭṭāb, may Allah be pleased with him, initially ruled in accordance with the first opinion, excluding the full siblings. However, the full siblings argued:

"O Commander of the Faithful, we have a father, whereas they have no father. If you have excluded us on account of our father, then let us inherit through our mother, for we share the same mother. Consider our father to have been a donkey. Have we not all come from the same womb?"

It is also reported that one of the siblings said: "Suppose our father were a stone thrown into the sea!"

Hence, the case acquired the names mentioned above. ʿUmar then said: "You are right," and ruled that the full siblings should share the one-third with the uterine siblings.

The Hanafi and Hanbali schools adopted the first opinion, namely, the exclusion of the full siblings in this case.

Their argument is that uterine siblings and full siblings belong to two different categories, each having a distinct legal basis for inheritance. Uterine siblings are Quranic sharers only, whereas full siblings are residuary heirs. A residuary heir is excluded when nothing remains for him.

The Prophet (peace and blessings be upon him) said:

"Give the prescribed shares to those entitled to them, and whatever remains goes to the closest male relative."

In the Mushtarakah case, the prescribed shares leave no residue.

As for the second opinion, it was adopted by the Maliki and Shafi‘i schools.

Its proponents argued that a full brother is related to the deceased through two lines of kinship and is a residuary heir by virtue of that relationship. If the paternal line is disregarded, his status as a residuary heir is no longer applicable; he may then inherit in the capacity of a uterine sibling.

Moreover, the degree and strength of kinship are relevant considerations in inheritance. A stronger relative always takes precedence over a weaker one. A full brother has a stronger relationship than a uterine brother, and at the very least, he should share equally with the uterine brother in respect of their common maternal relationship. The principles of inheritance do not establish that a stronger relative should be excluded by a weaker one.

Conditions for the Mushtarakah Case

The following conditions must be met:

1. The deceased must have left a husband entitled to one-half.
2. There must be a female heir entitled to one-sixth, such as the mother or a grandmother.
3. There must be more than one uterine sibling. If there is only one, that sibling receives one-sixth, leaving a residue for the full siblings. In that situation, there is no disagreement among Muslim jurists.
4. There must be at least one male full sibling, whether alone or accompanied by other male or female full siblings, so that they inherit as residuary heirs. If the full siblings are only one or two females, they inherit by prescribed shares and cannot be excluded.

If, instead of full siblings, the deceased leaves a paternal half-brother, either alone or accompanied by a paternal half-sister, no comparable dispute arises concerning their exclusion. They have no maternal relationship with the uterine siblings and cannot invoke the same argument as the full siblings.

Imam Mālik ibn Anas said of them:

"They did not come from the same mother who gave birth to those others."

However, if the full siblings are replaced by one or more paternal half-sisters, without any male paternal half-sibling, those sisters receive their prescribed shares, and the case undergoes an increase in the denominator (*ʿawl*), since there is no heir to exclude them.

Note: When full siblings are included alongside uterine siblings in this case, they all inherit in the capacity of uterine siblings. Thus, the male receives the same share as the female.

For example, if the deceased leaves a uterine brother, a uterine sister, a full brother and a full sister, the one-third is divided equally among the four of them, as follows:

Heir	Share
Husband	1/2
Mother	1/6
Uterine brother	1/12
Uterine sister	1/12
Full brother	1/12
Full sister	1/12

The legislator addressed this case in Article 176, within the chapter devoted to special inheritance cases.