AdministratioN of estate and succession under islamIc law.

By
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Introduction

Praise be to Allah, the Lord of the worlds, who by His grace and volition created us humans and showed us in the Quran how to divide inheritance and may His peace and blessings be on our Prophet Muhammad, His family and companions (Sahaba) (Ameen).

I very much appreciate this singular honour done to me by the Administrator of the National Judicial Institute and the Management for inviting me to serve as a resource person at the Refresher course for judicial Officers on Current Trends in Law and Administration of Justice, taking place between 14th – 18th March, 2016, enabling me to write and present a paper titled: “Administration of Estate and Succession Under Islamic Law”, to form part of the conference theme which is “Promoting Judicial Performance Through Innovations and Reforms”
This topic of discussion, “Estate and Succession” is one of the most important and significant sources of knowledge in Islam. This was why the Quran laid much emphasis on its impact on muslim life. In almost every verse of the Quran revealed to Prophet Muhammad (PBUH), majority of the verses were pregnant as they still needed interpretations from the part of its recipient, Muhammad (PBUH), for example, institutions such as Salat, Zakah, Sawm, Hajj etc with many several verses, spread all over the Qur’an, still needed the prophet’s explanations to fully practicalise them.

As for Estate and Succession, the Qur’an leaves no stone unturned. It gives detail information as to how to administer or distribute the Estate of a deceased Muslim amongst his successors. As for the allotees, it provides detailed share each deserves to get from the existing estate. On the part of the Prophet he is the role model for all muslims as stated in Qur’an 33:21 where Allah says: “You have indeed in the apostle of Allah, a beautiful pattern of conduct for anyone whose hope is in Allah and the final day and who engages much in the praise of Allah”. He laid more emphasis in teaching this obligatory knowledge to his companions until they acquired the knowledge and became experts in it. The prophet (PBUH) noting that this important knowledge might be neglected by
his followers, warned that all muslims must seek it at all cost so that there would be no scarcity in the number of preservers of its knowledge amongst Islamic scholars.

Today, this prophecy by the messenger of God has manifested in every facet of muslim life as majority of muslims in today’s generation lack adequate knowledge of Ilmul – al – Faraid (obligatory knowledge) as prescribed in the Qur’an. Lack of this knowledge in our times has made women and children victims of either greedy relations or ignorance prevailing today has made some legal sharers lose their rights and the activities of ignorant Estate administrators most often leads to misguidance of inheritors. That is why the prophet said, “Learn the knowledge related to inheritance (Ilmul Faraid) and teach it to others as this constitutes half of knowledge”\(^1\).

On the whole, I thank the administrator of NJI and the conveners of this conference/workshop for choosing this topic. With humility therefore, I reiterate that whatever flaws you find in this write up, I own them and may Allah forgive (Ameen).

The topic as stated above is “Administration of Estate and Succession under Islamic Law”. For one to treat this topic, we need

1. Sunan Ibn Majah
to first understand some key words. These are Islamic Law, Estate and Succession. I will (In Sha Allah) endeavour to examine these terms in seriatim.

**What is Islamic Law or Sharia?:** Sharia is an Arabic word which, literally, means a path, a way or road that leads one to any watering place.²

Legally speaking, Sharia could be defined as “The immutable law of the creator for the guidance of humanity”. It could also be defined as a divine law ordained for the guidance of both mundane and spiritual life of the muslim Ummah. As it is of divine origin, its guidance encompasses the past, the present and the future life of mankind. In other words Islam is a religion (Deen) and a way of life for all true muslims who adhere to its teachings.

Historically, Islamic Law or Sharia originated right from the period of Prophet Muhammad (SAW). Its laws started right from there with the piece-meal revelation of the Holy Quran to Prophet Muhammad (SAW), who on His own part stood as link and interpreter of the dictates of the Quran especially where the revelation needed explanation for the understanding of its

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adherents. This took place for about 23 years (610 – 632 AD). Through this divine role of messenger-ship by Prophet Muhammad, all His actions, sayings and salient approval were preserved by the Sahaba and/or their followers. This is regarded as Sunnah or Hadith of Prophet Muhammad. This culture of preservation and practice of Sunnah continued until the death of Prophet Muhammad.

Under the rightly guided Caliphs, that is, Caliph Abubakar as Sideeq 632 AD – 634 AD, Umar bn al-Khatab 634 AD – 646 AD, Uthman bin Affan 646 AD – 656 AD and Ali bn Abi Talib 656 AD – 661 AD, the Quran as source of Law of Islam with the Sunnah of Prophet Muhammed served as Islamic legal sources. Under the Sahaba, with the expansion of Islam to various lands and peoples, the two sources served as referral points of guidance to muslims.

When issues not definitely decided upon by both primary sources occurred, the Sahaba resorted to Ijtihad, e.g using their extensive knowledge of the Quran and the Sunnah of the Prophet Muhammad (SAW) to solve the new issues that were not explicitly decided upon. Any solution arrived at through this Ijtihad was termed Consensus of the Sahaba or opinion of the Jurist of an age, which hence became a source of law in Islamic Law or Sharia. Other
sources of law in Islam followed these three and they emanated from the Ijtihad of later generations that followed the companions of the Prophet. We avoid details because of time factor and relevance to our discussion.

The Jurists refer to these basic sources as “AL – Adillat al – Qatiyyat” which are absolutely sure and irrefutable arguments. The second one is referred to as Al – Adillat al – Ijtihadiyyah which means argument and proof derived through exertion and this is from Nass; i.e. the Holy Quran and the Sunnah. These other sources are referred to by Jurist as subsidiary sources. They include Ijmah, which is the consensus opinion of scholars/Jurists of the muslim Ummah in particular ages and on a given law.

Qiyas, a source of Islamic law, means an analogical deduction which literally means “to guess or to estimate” a measurement by comparison. Technically, it means extension of a Sharia rule from an original case (Asl) to a new case (Far’u) “by reasons of an effective case (Illa) which is common to both cases3.

Others are Istihsan, removal of discrepancies in law for public good, Urf which means custom, Istislah consideration for public

3. AbdurRahman Doi: “Outline of Islamic jurisprudence”
interest and Istihab, presumption of continuity in the natural absence of law etc.

**Concept of Inheritance**

The concept of inheritance or succession in Islam is rooted in the transient nature of man’s life. Man’s transient nature itself is underscored by two verses of the holy Quran namely:

كل نفس ذائقة الموت ثم إلينا ترجعون.

“Every soul shall taste death and then unto us is the return” (Quran 29:57)

الذين إذا أصابتهم مصيبة قالوا إننا لله وإنا إليه يرجعون

“...Truly to Allah we belong and truly, to him we shall return” (Quran 2:156)

The implication of the above verses is that man’s sojourn on earth is for a limited period. Then comes the appointed time to die. During the short span of his life, whatever he acquires in the world is left behind except his good deeds which will go with him.

The property and the belongings that he leaves behind goes to his successors. Islam being a complete way of life, the Holy Quran contains rules for the disposal of such property and belongings.

4. Quran 29 – 57
5. Quran 2: 156
Some specific provisions in the Holy Quran and Sunnah of the Holy Prophet Muhammad (PBUH) forming the origin of the concept, principles and science of inheritance are as Follow:

“It is prescribed for you when death approaches any of you, if he leaves wealth, that he makes a bequest to parents and next of kin, according to reasonable manners.”

"Allah commands you as regards your Children’s (inheritance); to the male, a portion equal to that of two females; if (there are) women (only daughters), two or more, their share is two third of the inheritance; if only one (daughter), 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 sister), the mother has a
sixth. (The distribution in all cases is) after
the payment of legacies he may have
bequeathed or debt. You know not which
of them, whether your parents or your
children are nearest to you in benefit;
(those share) are ordained by Allah. And
Allah is Ever All Knower, All wise” (Quran 4:11) 6

Hadith:

Narrated by Jabir: “The Prophet (PBUH) and Abubakar (RA)
came on foot to pay me a visit (during my illness) at Banu Salma
dwellings). The prophet (PBUH) found me unconscious, so he
asked for water and performed the ablution from it and
sprinkled some water over me. I came to my senses and said:
“Allah’s Apostle, what do you order me to do as regards my
wealth?” so this was revealed: “Allah commands you as regards
your children’s inheritance” 7.

6. Quran 4 : 11
7. Sahih al – Bukhari Kitabul Tafsir 101
The Islamic law or principle of inheritance or succession is referred to in Arabic language as Al – MIRATH. About thirty – five verses of the Holy Quran mention or cover it directly or indirectly.

Directly the Quran says in Surah 57:10

“And what causes have you why you should not spend in the cause of Allah? For to Allah belongs the inheritance of the heavens and the earth”

Indirectly it says;

وَإِلَيْ اللهِ تُرَجَّعُ الأمُورُ

“To Allah belongs all that is in the Heaven and Earth. To Allah do all matters return” (Quran 3:109)⁸

While Al – Mirath connotes the inheritance or succession in general, Al – Faraid which is used in reference to the subject matter connotes a fixed share, that is the apportioned shares to the individual heirs.

Inheritance or succession is the knowledge of rules of Islamic law which guide on who inherits and who does not as well as what shares go to the heirs from the property of the deceased (estate)⁹.

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8. Quran 3 : 109
According to Al – Sabuni, (MA 1993) Al – Mirath or ‘Fard’ is the legal terminology connoting the process of transfer of ownership of the estate of the deceased muslim to his surviving heirs in accordance with the principles laid down by Islamic law.  

With regards to Ilmul – Faraid, i.e obligatory knowledge, there are some traditions of the prophet in Hadith books that encourage muslims to acquire knowledge of inheritance. He instructed that if care was not taken by muslims on its acquisition they might risk losses. He also reminded muslims that if muslims deal with Ilmul Faraid in accordance with their own selfish interests and not in consonance with the dictates of Allah, they might also risk its loss.

On the basis of this, we refer to the following Hadith of the prophet (SAW)

1. An Hadith reported by Abdullah Ibn Amr bin AL – ‘As (may Allah be pleased with both of them) said: Learning is of three kinds and any learning beside these is only a beauty; a perfect holy verse, an actual sunnah, and a just religious obligations.

2. In another Hadith reported by Ibn Mas’ud (May Allah be pleased with him) He said the Prophet Muhammad (SAW)

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11. Narrated by Ibn Majah
said: “Learn your religious obligations (Ilmal Faraid) and teach them to other people, for I am mortal, and knowledge will disappear and sedition will appear to such an extent that once two people disagree about an obligation, they will not find any one to decide between them” 12.

3. In another tradition reported by Abu Hurairah, referred us to Prophet Muhammad (PBUH). Abu Hurairah reported the following, “Learn your religious obligations and teach them to others. They are half of the knowledge, and knowledge is forgettable. Besides, it is the first knowledge to disappear from my Ummah” 13.

The above sayings of the prophet indicate that Estate and Succession occupy a very high position in Islamic quest for knowledge.

**Administration of Estate and Succession**

Before doing anything on an Estate in Islam and anything that falls under succession, the reasonable and most wise member of the deceased relations who may be eligible to inherit would now ponder and ask themselves after condolences for any WILL he or she (the

deceased) may have left behind to help guide in administering the Estate. They may equally ask about any credit or debts. The next thing shall be preparation for his/her burial expenses from his/her legacy. After meeting all the above listed expenses i.e the will, if any, is removed, debt, if any, is paid off and credit, if any, is returned, and all the bequests are taken out, the remainder of the legacy now becomes the right of the inheritors. On the basis of these, the Quran in surah 4:12 says “…. After payment of legacy he (or She) may have bequeathed or debt, so that no loss is caused (to any one)”.

One of the most important principles of Administration of Estate in Islam is that when all necessities are met, the remaining portion of the legacy shall now be distributed among the rightful heirs. This must be seen to be done with assistance from some muslim Scholars so that every rightful inheritor is given his/her due. This is because any unnecessary delay in distribution of inheritance some-times leads to some problems. For instance, death of rightful sharers may deprive him from enjoying his shares. In some other cases it leads to litigation which may breed disharmony in a supposedly peaceful family.
Besides these reasons, there may be greedy ones amongst rightful sharers and even unqualified sharers who may use delay tactics to deprive the rightful ones their rights. For this, Allah in the Quran surah 4:10 condemns deprivation of a rightful heir when He says, “verily, those who unjustly eat up the property of orphans, they eat up but fire into their bellies and they will be burnt in the blazing fire.”

Islam warned that the legacy left behind by the deceased muslim must not be used in ways unacceptable to Islam. It must be preserved for the rightful heirs to inherit. In other words, when a muslim dies the ownership of his/her legacy now transfers to his/her inheritors. For Prophet Muhammad (PBUH) said in a Hadith that “when the son of Adam dies, his good deeds cease except for three types: Continuous charity, a righteous son who prays for him, or knowledge he left behind from which people get great benefit”

On the whole, the Quran (surah Al – Israi) 17:34 says “And come not near the Orphan’s property except to improve it, until he attains the age of full strength”.

Successive Duties Before Administering Estate in Islam

The successive duties before administering Estate in Islam include:

1. Knowledge of the division of inheritance according to Islamic Jurisprudence (Ilmal Faraid) or obligatory knowledge.
2. The subject matter i.e the Estate which is all that was left behind by the deceased muslim including monetary cash and property.
3. Purpose or objective: giving out of the Estate, the share to every rightful sharer
4. Ruling: it is a collective responsibility (Fardun Kifaya) which when it is once performed by a group of muslims, it now becomes a sunnah for others.

Mirath – Related Rights

In this case five rights concerning inheritance shall be listed and they are arranged according to their importance.

1. The cost of the water (to be used in washing the corpse) the shroud, the embalming, the fees of the washer, the grave diggers etc. The costs of these expenses must be deducted from the main Estate before distribution.  

2. Related rights to the inheritance itself. This includes debts incurred by the deceased while alive. E.g failing to pay out Zakah from his wealth if he is so qualified to offer it before death overtook him; is the wealth left behind mortgaged and/or involved in business partnership with others? Are there any financial problems? All these questions must be addressed before the legacy is considered for distribution.

3. Another consideration is the debts which are partly related to inheritance and partly related to the rights of Allah and are considered to be a compulsory debt left behind by the deceased. E.g payment of Zakah, kaffarrah (expiations) or hajj expenditure and that is, if he had capability to perform hajj and he did not do it in his life time and the debt owed to human beings e.g having loans from banks, humans etc.

4. The legacy or will i.e one third or less of the Estate left by the deceased which might have been willed to a non-rightful sharer in the Estate and/or which might have been willed for “Charity Projects” such as construction of mosque, provision of pipe borne water for poor non inheriting relatives and friends etc all these could fall in this fourth related rights. In Islam, an inheritor does not share in the will of his Prepositus.
The Quran in supporting these dimensions in surah 4:13 – 14 says,

بَلَّكَ حُدُودُ اللَّهِ وَمَنْ يُطِعِ اللَّهَ وَرَسُولَهُ يُذْهَبْهَا جَنَّاتٌ تَجْرِي مِنْ تَحْتِهَا الْأَرْقَامُ
خَالِدَةً فِيهَا وَذَلِكَ الْفَوْزُ الْعَظِيمُ. وَمَنْ يُعَصِّ اللَّهَ وَرَسُولَهُ وَيَتَعَبُّدُ حُدُودُهُ يُذْهَبْهَا
نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مَّهِينٌ

“These are the limits (set by) Allah or ordainment as regards law of inheritance, and whosoever obeys Allah and His Messenger (Muhammad) (PBUH) will be admitted to gardens under which rivers flow (in paradise) to abide there-in, and that will be great success and whosoever disobey Allah and His messengers, and transgresses His limits, He will cast him in the fire, to abide there-in and he shall have a disgraceful torment”

The above verse shows how the issue of willing to a legal inheritor is condemned by Allah and His messenger.

5. The fifth related right of inheritance is in consonance with the dictates of Allah (SWT) where He said in surah 4:12 “After payment of legacies he (or She) may have bequeathed or debts, so that no loss is caused to (any one)".
Accordingly after satisfying the fifth related right, the Ashabul Faraid must be the first to receive their legal shares. Whatever remains as residue now goes to the paternal heirs (Asaba). This view is supported by the statement from the Prophet (PBUH) where He said, “Give the Faraid (the share of the inheritance that is prescribed in the Quran) to those who are entitled to receive them, and whatever remains should go to the closest male relatives of the deceased” 15.

See also Suratul Anfal 8:75 where Allah said, “Blood relatives are nearer to one another (regarding inheritance) in the decree ordained by Allah”. It is only where there are no heirs at all that Estates go to the public treasury (Baitil Mal) in Islam.

**Estate and Its Administration**

Once a muslim dies, his proprietary interest by way of assets and liabilities is referred to as his Estate or legacy. The Arabic word for it is AL – Tarkah literally means “to leave behind”. It originates from the Arabic root “Ta – Ra – Ka. Estate refers to all items of property, movable or immovable left behind by a deceased Muslim”. 16

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15. *Inheritance in Islam by Abu*
16. *Ambali M.A.” The Principle and Practice of Succession under Islamic Law”. Page 114 ANIC, 2003*
The Estate left by a deceased muslim is not always the whole legacy that could qualify immediately for distribution by the administrator. However, for the purpose of sharing it to the heirs, it is not the gross estate but rather the net estate that qualifies as the share-able estate. The net estate is determined by deducting or removing the following from the gross estate:

1. Deposits: this includes the return of deposits, pledges and security in the custody of the deceased. These shall first of all be taken out of the gross estate. All such items under his care after ascertaining them must be taken out of the estate and returned to the original owners so as to know the actual estate. Also certain property which the Sharia makes unlawful cannot form part of inheritance or deceased estate in Islam even though it might be under his possession during his lifetime. Such wealth could be those acquired through Haram (forbidden) means e.g gambling, prostitution, bribery, brigandage theft etc. Such properties are not regarded as qualified estates for Islamic inheritance. If an asset was pledged or mortgaged as security for a debt by the deceased muslim, such asset cannot form part of the estate for inheritance. Any

Insurance/endowment policy(s) which encourages Riba or such other unislamic contract(s) cannot form part of qualified estate for inheritance in Islam. 18

In Islam, only the actual sum of premium paid by the deceased constitutes part of the qualified estate. Right in Business partnership enjoyed in business by the deceased ceases after his death. His inheritors could only inherit his share in the business enterprise. Any continuous profit, loss or gain after the death excludes the inheritors.

2. Debt: even if all burial expenses are expended and removed from the gross estate; the deceased’s creditors if they remain still have rights on the estate or legacy left behind by the deceased. What are these types of debts? Debt could be the one which was confirmed by the deceased before some members of his family or through the testimony of witnesses or the one known by all people around the deceased. A debt could also be confirmed by the deceased before he died and even if there is no witness. If there is ascertained debt without any doubt, it is paid off from the estate. If after burial expenses and payment of the ascertained debt there is not enough left to pay his creditors again, the remaining estate could be given out as

advanced payment to the creditors. The rest debt could be waved or left till hereafter. In Islam it is not a must for the would-be inheritors to pay the debt incurred by their deceased relatives through their nose i.e through their hard earned resources. If they decide to do so, it is Charity. From one statement of the Prophet Muhammad (SAW) he said, “The Shaheed (Martyr) will be forgiven all his sins but debt” so if the inheritors do this charity, it shall liberate the deceased from the burden of debt in the grave and Hereafter. Other categories of debts have been earlier mentioned e.g Zakat, Salat unsaid, Sawm, Hajj etc.¹⁹

It should however be noted that in an ideal Islamic Community, where the Tarika cannot settle the debts and the relations are unable to settle such debts, the responsibilities for settling such debt shift to Bait al – mal.

**Administrator of Estate in Islam.**

Preferably, he should be a free male, God fearing Muslim or person who is conscious of the fact that he too would die one day and leave behind estate and heirs. These qualities flow from the contents of the Holy Quran:

“And let those (Executors and Guardians) have the same fear in their minds as they would have for their own, if they have left weak offspring behind. So let them fear Allah and speak right words.”

**General Principles**

The general principles of inheritance are obtained in the verse of the Quran Suarah 4:7 where Allah says “From what is left by parent and those nearest relation, there is a share for men and a share for women, whether the property is small or large, a determined share”

From the above verse five legal implications / principles could be deduced, namely:

1. The inheritance covers both men and women unlike the period before the advent of Islam when women were not qualified to inherit from the estate of their deceased relatives. Even today in Nigeria, many traditions still exclude women from inheritance and are considered as part of the estate meant for inheritance.
2. The second implication is that, no matter how little a deceased person’s property might be, it must be distributed justly amongst the heirs.

3. The inheritance applies to all kinds of property, movable or immovable or any other kinds.

4. The question of inheritance arises only when the deceased has left behind any property.

5. The nearer relation precludes the distant relation from the inheritance.

**Pre – Conditions or Requirements for Inheritance.**

The Arabic term for condition that must exist for inheritance to take effect is known as “*Shurut al – Irth*”. These conditions are:

1. Death of the prepositus must be confirmed or a competent court must have declared him/her to be missing. (mafqood)\(^{21}\)

   Upon credible evidence that he is absent from his usual place of abode for a long time and nothing has been heard from him.

2. The existence of Heirs who must be proved to have survived the deceased no matter how short the interval might be.

3. There must be an Estate (property) to be inherited.

\(^{21}\) *Quran Surah 4 : 176*
4. The nexus (relationship) between the deceased muslim and the heir apparent which qualifies the later to inherit the former must be established\textsuperscript{22}. This relationship usually is on account of either Nasab, Zawaj or Wala.

**Impediments to Inheritance.**

In Islam, there are some grounds that disqualify an otherwise qualified heir from inheriting the estate of his / her deceased relation. These are:

1. Differences or change in religion: Based on the Hadith which says that a muslim cannot inherit an unbeliever and vice versa, the four Sunni Schools are agreed that a muslim shall not inherit from non muslim and vice versa. The Prophet (PBUH) said, “A muslim does not inherit a non – muslim, neither does a non – muslim inherit a muslim”\textsuperscript{23}

2. The second restriction or impediment is Slavery (male and Female). Slaves cannot inherit neither can they be inherited in Islam. The reason is because whatever the slaves possess belong to their masters. One of the exceptions however is that, a freed slave can be inherited by his Master and no vice – versa. Provided that the freed slave has no relation(s).

\textsuperscript{22} As – Sayyid Uthman Al-Malik (1402/1982): Sirajus Salik, commentary on Ashahul Masalik, darul Fikr, Lebanon, Vol. 11 page 104; Jatan V.

\textsuperscript{23} Iafia of (1998) 1 NWLR (535) P.693 (SC)
3. Killing or Murder prevents the killer from inheriting the murdered whether such action was pre-meditative or by mistake, even if he is the legators son. This is supported by a saying from the Prophet (PBUH) where he said, “The killer does not inherit anything”\(^{24}\). According to some jurists, there is one case called “Common mistake”. It is a situation where two or more people got involved in the course of a legator’s death by mistake e.g motor accident where the driver may be an inheritor of the deceased. In this case the rate of the driver’s mistake is deducted from his share and distributed among the rest of the inheritors. After the deduction, what remains is his final share.\(^{25}\)


5. Lian: in accordance with the Quran Surah 24:6-7 both the mother and the father of the child disowned by the later shall not inherit themselves. So also are the child and the disowning father.

6. Bastard: A child born out of lawful marriage cannot inherit the father but only the mother.

\(^{24}\) Narrated by Abu Daud
\(^{25}\) Inheritance in Islam by Abu Isam, P.33, Opsit.
Acknowledged relations

“Islamic law allows the acknowledgement of paternity and once it occurs such an acknowledgement of paternity will establish full rights of inheritance as between father and the acknowledged son as against all other relations”. See “Verma” opcit in Ruxton.

This is because the person so acknowledged here is of blood relation.

SHARES, THEIR PROPORTIONS AND BENEFICIARIES.

There are two classes of shares and sharers namely; Faraid and Asaba or “Far’D” and SI’B.

Inheritance by “FarD” is the share prescribed in the Holy Quran while inheritance by “SI’B” is the fact of distributing what remains, after all prescribed shares are distributed, among the closest male relatives of the deceased. 26

Inheritance by “SI’B” means the inheritor is not among those who were prescribed in the Quran.

“FURUD / FARAID” HEIRS

The Prophet (PBUH) said, “Give the Faraid to those who are entitled to receive them. Then, whatever remains should be given to the closest male relative of the deceased (Fathu Bari, 12/11)\(^27\).

Faraid therefore connotes fixed percentage of an estate due to individual heirs as done by Allah’s injunctions in the Holy Quran Surah 4 verses 11, 12 and 174.

There are six sharers under this class namely; a half (1/2); a fourth (1/4); an eight (1/8); a third (1/3); a two third (2/3) and a sixth (1/6).

The table below shows the above fractions the sharers and the basis of their allotted shares.

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<th>FRACTION</th>
<th>SHARER(S)</th>
<th>BASIS OF SHARES</th>
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<tr>
<td>½</td>
<td>a. Husband</td>
<td>In absence of any child by wife</td>
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<td></td>
<td>b. Only daughter</td>
<td>In absence of brother to agnatis her.</td>
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<td></td>
<td>c. Only son’s daughter.</td>
<td>No direct son of the deceased.</td>
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<td></td>
<td></td>
<td>No brother to agnatis this son’s</td>
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\(^27\) Fathu Bari, 12/11
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<tr>
<th>Fraction</th>
<th>Relationship</th>
<th>Description</th>
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<tbody>
<tr>
<td>¼</td>
<td>a. Husband</td>
<td>In absence of child or grandchild.</td>
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<td></td>
<td>b. Wife/Wives</td>
<td>In absence of child or grandchild.</td>
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<tr>
<td>1/8</td>
<td>Wife/Wives</td>
<td>In presence of child or grandchild.</td>
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<tr>
<td>1/3</td>
<td>a. Mother</td>
<td>In absence of child and grandchild. In absence of more than one brother or sister.</td>
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<td></td>
<td>b. Plurality of uterine brothers and sisters or combination of</td>
<td>In absence of father, child and provided they are not less than two.</td>
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<tr>
<td>Fraction</td>
<td>Relationship</td>
<td>Notes</td>
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<tr>
<td>2/3</td>
<td>a. Daughters</td>
<td>In absence of brother to agnatisse them.</td>
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<tr>
<td></td>
<td>b. Son’s daughters</td>
<td>In absence of direct male child or grandchild.</td>
</tr>
<tr>
<td></td>
<td>c. Full sisters</td>
<td>In absence of brother to agnatisse them, absence of deceased’s father to bar them.</td>
</tr>
<tr>
<td>1/6</td>
<td>a. Father</td>
<td>In presence of son, daughter or son’s son.</td>
</tr>
<tr>
<td></td>
<td>b. Mother</td>
<td>Presence of son or son’s son.</td>
</tr>
<tr>
<td></td>
<td>c. Son’s daughter</td>
<td>Presence of daughter.</td>
</tr>
<tr>
<td></td>
<td>d. Grandfather</td>
<td>Presence of a daughter.</td>
</tr>
<tr>
<td></td>
<td>e. Consanguine sister</td>
<td>Presence of germane sister</td>
</tr>
<tr>
<td></td>
<td>f. Maternal grandmother</td>
<td>Maternal/paternal grandmother’s co-sharers.</td>
</tr>
<tr>
<td></td>
<td>g. Uterine brother/sister</td>
<td>In absence of son, true grandfather or daughter.</td>
</tr>
</tbody>
</table>
‘Furu’D’ people are ten: Husband, Wife (or wives), Mother, Father, Grandfather, Grand Mother(s), Daughters, the son’s daughters, full sisters and the mother’s children.

Let us look at how each Far’D’s share is administered:

i. **Husband’s inheritance.** The husband inherits from his wife’s estate one half (1/2) of her legacy if he survives her and she has no children of her own nor children’s son(s) where the late wife has children or sons living, the stake of share for the husband returns to ¼. This is whether they belong to the surviving husband or previous one. See Quran 4:12, Allah said,

> "In that which your wife’s leave, your share is a half if they have no child, but if they live a child, you go a forth of that which they leave"
The following can illustrate how a husband’s share in inheritance could be administered in Islam. E.g:

a. A woman died and left behind a husband and a father. Here the husband gets half (1/2) of the property while the father takes the rest.

b. A situation where the woman has a son with her husband surviving her, the husband takes a fourth (1/4). The surviving son is of secondary affinity so his existence reduces the husband share from ½ to ¼

ii. The wife’s inheritance: the wife’s share if she survives her husband is ¼ where the husband left no issue(s) and 1/8 (one eight) of the legacy where her husband left issues. The Quran in surah 4:12

"...in that which you leave, their (your wives) share is a fourth if you live no child, but if you leave a child, they get an eight (1/8) of that which you leave..."

The following examples could suffice to show how a wife’s share in inheritance is administered. A man died and left behind a wife and his father. The wife takes ¼ of the property because there is no Heir or no son by the husband. But where a son(s) exist, her share
becomes 1/8 according to Quranic allotment. Where the wife’s are more, they co-share.

iii. Mother’s inheritance: mothers being a Quranic sharer inherit a third (1/3), a sixth (1/6) and/or the remaining third (1/3). The mother inherit 1/3 in three ways:

a. Where the deceased son or daughter has no issue.

b. Where the deceased although having no issue, still does not have brothers or sisters, she still retains her 1/3 share.

c. She inherit again the remaining 1/3 where the inheritors beside her are:

i. Husband, mother and Father, and

ii. Where the inheritors are wife, mother and father.

No sharer excludes the mother. The last discussion is based on the logic of Ummayriyyah based on the independent reasoning propounded by Umar bn Al – Khattab (may Allah be pleased with him).

Example: A woman died and left behind her husband, a mother, and a father. The inheritance is divided into six Qirats (measures). First the husband takes ½ of 6 = 3 then the mother takes 1/3 of the
remaining three Qirat which is 1/3 while the father takes the rest two Qirat.

iv. **Father’s inheritance**: A father being among the Heirs who inherit by ‘Far’D’ can inherit by Fard, Si’B and by both at a time. Where the deceased son or daughter has male issues, his share is 1/6. That is why in Quran 4:11 Allah says, “For parents, 1/6 share of inheritance is to each if the deceased left children”. Father inherit by Ta’sib, where the deceased did not leave behind any son or sons from secondary affinity, then after the mother’s share of 1/3 is taken, the remainder 2/3 goes to the father. See the same Verse 11 of Surah 4 where Allah says,

"...if he left no children, and his parents are the only heirs, the mother has a third.”"
The following examples could illustrate it: Inheritance by Far’D, the father inherit 1/6 where a son of secondary affinity or son’s son exist. When the son’s daughter survives her father and the father of this deceased son also survived him, the surviving father inherit 1/6 by Far’d while after the daughter’s ½ is taken, the remainder goes back to the father again as share by Si’B. The father remains a sharer in all these cases. No existence of any issue can deprive him of any of his shares, when Si’B share is deprived, he returns to his 1/6.

v. **Son’s inheritance**: it should be noted that “Son” as a principal sharer is not mentioned directly in the list of heirs by the Quran although son is the most important heir among the children mentioned by the Quran. Holy prophet Muhammad (PBUH) said, “whatever is left after giving away the share to the mandatory heir goes to the son”. 28

It should be recollected that the mandatory sharers include the son, so where all have taken their shares, whatever remains as residue is again given to the son. See Quran Chapter 4:12.

Others are the grandfathers and the grandmother’s inheritance with the following examples:

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28. *Bukhari, Kitab-ul- Faraid*
vi. **Grandfather:** His position is similar to that of father as long as there exist none who can deprive him, such as existence of the actual father of the deceased. Automatically the deceased father shall deprive the grandfather of the right to inherit his grandson.

vii. **Grandmother’s inheritance:** To administer an estate where the grandmother survives the grandson, she cannot inherit where the mother is still alive. The grandmother is not among the prescribed heirs.

**Sons:**

When a son is alone without any competitor he takes the whole estate but where parents of the father, wife, father or grandfather survive, the son takes what remains after these might have had their shares. A son’s son takes the place of the deceased son when there is no son. Where there are sons and daughters, they will share in the ratio of two to one (2:1) i.e the male taking two while the female takes one.

**Daughters:**

Where only the daughter survives, she takes half of the estate but if they are more than one they share in the 2/3 (two thirds of the
estate). This is a very serious revolution under the prophet in the sixth Century AD when womenfolk were liberated by this singular divine law. Here is the story and it runs thus:

"The wife of Sa‘ad bn al-Rabi came to the prophet with her two daughters and said, “O! Prophet these are the daughters of Sa‘ad Al-Rabi. Their father died a Martyr, in the battle of Uhud. But their uncle has taken Sa‘ad’s estate and they cannot marry unless they have property”

It was after this report, the verse of inheritance was revealed to Prophet Muhammad (PBUH). He immediately sent for Sa‘ad and told him about the divine law. He said, “Give the two daughters of Sa‘ad 2/3 of the estate, give their mother 1/8 and keep the remainder to yourself”. In this revelation, women and daughters who were part of the estate meant for inheritance in the Pre-Islamic Arabia and even today in part of Nigerian traditions and customs became liberated by Islam. They were made to co-share with their men counter-parts in any given legacy.

**Granddaughter:**

In the absence of daughter, the son’s daughter and where they are two or more they are treated as daughters. Where there exist, a
daughter and a son’s daughter, the daughter takes half of the estate while $1/6$ is for the son’s daughter. Where they are more than one, they still co-share in the one sixth $(1/6)$. Where the daughters are two or more, the son’s daughter shall receive nothing unless there is with her a brother. It is only by this “Ta’asib” she can share the residuary with both on the basis of 2:1 ratio.

**Sisters:**

A sister germane i.e full sister take $\frac{1}{2}$ of an estate but if brothers exist alongside with them, they share the property accordingly i.e male taking double of female. Where the sister exists with daughter of the deceased, the daughter first takes $\frac{1}{2}$ or $\frac{2}{3}$ if they are two or more while the sisters take the residuary if any, i.e Asaba. $^{29}$

Where there exist, the father, the daughter or son, the sisters are excluded unless there is a male with consanguine sisters, it is then they take the residue. Full sister usually eliminate the consanguine sister if there is no male (Asaba) to retain them.

**Brothers and Sisters Uterine:**

In the case of brothers and sisters uterine, the share is $1/6$ and where they are more, the share is $1/3$, all of them having equal share.

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$^{29}$ Justice Yunus Abdallah. “Succession under Islamic Law: Issues, Controversies and Solution”. Page 136
However, where there exist a father, a son, a son’s son, the paternal grandfather of the deceased, the uterine brothers and sisters are excluded.

Brother Germane and Consanguine. Where either of these two exists alone, and no other relative the brother germane or the brother consanguine takes the whole estate but where the two co-exist or more the germane brother excludes the consanguine, where there are other sharers along with the brother, either consanguine or germane, the brother always wait for the residue. The above decision is derived from the ruling that preference is given to the full blood over the half blood.

**ASABAH OR “TA’SIB**

This connotes residuary heirs. Allah, (SWA) divided inheritors of estate into two groups. The group of six whose shares in the inheritance are fixed which we have already discussed and referred to as ‘Far’D”. The other groups are those that the remaining estate after the fixed shares is given (such heirs are known as **ASABAH**). This group inherits by Ta’sib. “Asabah” is the plural of Asib while Ta’sib is a noun form from the verb Asaba, Ya’sib means “to
surround and hold”. When we hear Usbatur Rijal in Arabic, it means “a group of men who surround, help and protect each other”. Asaba therefore connotes Residuary heirs as it has its root in Hadith which says: “Apportion the specific shares of the estate to those heirs entitled to them and whatever portions remain thereof should be taken by residuary male heirs”.

Asaba are of three kinds: -

1. Asaba by itself: Asabah by the self means every male who has no female link between him and the deceased. If there are fixed sharers, he takes the residue. Where there are no fixed sharers, he takes all the estate. If the fixed sharers take all the inheritance as their shares, the Asabah has lost. By Ta’sib, the most close to the deceased shall be the one to inherit. Where they are many, the closest relative inherits. If they are equal status in relation to the deceased, those who have the strongest tie to the deceased shall inherit him. Where they are equal in kinship and strength of tie to the deceased, they now inherit together by Ta’sib. Example of this case could be: A man left behind three children and four full brothers, the children

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30. “Inheritance in Islam” by Abu Isam, Opsit Page 26
31. Al – Mawarith Fil Shar’iats Islamiyyah, page 33
taking 2/3 of the property while the residue goes to the four full brothers which they are to share equally.

2. The second group is ‘Asabah’ by others: for example, any female whose share is 1/6 among the fixed sharers can share the residue by the existence of Asib who is male and who is of equal rank in relationship with the deceased. The female e.g son’s daughter, full sister or daughter, if there is a son, son’s son or a brother amongst them, the females cannot inherit by Ta’sib with the existence of the male Asabah. This group inherits therefore as ‘Asabah by others’.

3. Asabah with others: In this case, fixed sharers like daughter or son’s daughter are in existence with other relatives like full sisters or half-sisters. When the fixed sharers like the daughter exist, she now stands in the position of Asabah to make the full sisters or the half-sisters have share in the residue of the estate. In this case, it is the heirs whose link does not have any female link with the deceased that have helped the others to inherit by Ta’sib.

a. Evidence for ‘Asabah’ by the self can be found in surah 4:176, see also 4:11
b. Asabah by others. E.g, a man died and left behind a wife, a son, and two daughters. The wife gets one eight (1/8) because of the existence of an heir from the secondary affinity, the rest goes to the son and daughters, with a double portion to the male.

c. Asaba with others. Example: A man died and left behind a mother, two daughters and a full sister. In this case, the mother is 1/6, the two daughters 2/3 and the full sister takes the residue. The existence of the sister have shown that no female link between her and her brother. So, she has an Asabah shares with other Asabahs.

**Issues:**

Some social critics criticize the issue of making female daughters taking half of that of male. Some call it inequality amongst genders. Many Islamic Scholars have tried to explain the stand point of Islam.

First of all, the society that Islam wishes to establish amongst humans must be understood and the duties of individual human species be properly understood. The male is given the responsibility to maintain the household. All necessities of the home are to be
provided by the male and even the female member of the family is to be catered for by the male.

When the female member in an Islamic family is in her home she is maintained according to law by the male member and when she marries, her responsibility transfers to her husband in her matrimonial home. Her feeding, clothing, shelter etc. is to be catered for by her male counterpart. In this wise, she is always under the care of males. If she returns from her husband’s place to her parent’s home, the male relations there take care of her needs. This is Islamic way of life.

Unlike our present day life, where individual tendency overrules our lives and the tendency to involve women in the feeding of household, provision for the needs of the children, sharing in providing feeding for the family etc are the issues of the day. Islam gave the female the right to have access to education, to use her skill, to contribute her quota to societal upliftment but not that she will be victimized. That is why the man is given more responsibility. Even in his own share, the female must be maintained and it is not a rule that her share in the estate could be used for upkeep of the family.
If we go back to the issue of inheritance, judging by the case of the wife of Sa’ad al-Rabi and the uncle of her daughters, one finds that women were treated equally. Sa’ad’s wife saw the heavy load confronting her in the maintenance of her daughters who just lost their father and bread winner of the family, the uncle following Pre-Islamic custom decided to usurp all the estate and Allah solved the issue through the revelation. In this case, the two daughters share was 2/3 of the estate while the mother’s share was 1/8 of the property and the remainder went to the uncle. Daughters had 16/24, mother had 3/24 while the uncle had 5/24. In this calculation, only the females have the majority share. No irregularity here and it did not prevent the uncle from being the guardian of these children. In some cases we see where both parents (father and mother) have equal share of 1/6 of an estate each. All these show how Islam cared for female rights.

Islam rules that before marriage, the man must pay dowry and without dowry, no proper marriage in Islam. This dowry is an asset and it is an exclusive property for the woman. It could be used as her capital for future business. Unlike the woman, the man is saddled with many obligations and liabilities to shoulder for the good of the household.
In administering estate and succession in Islamic law the following issues later emanated. These issues include the doctrine of AWL, the doctrine of Radd and the case of Mafquud (missing person) and that of the Hermaphrodite and the Foetus etc.

Doctrine of AWL: Awl means proportionate reduction. This principle came into being when Khalifah Ali bn Abi Talib was delivering a lecture (Friday Khutbah) in Medina. He was on the Pulpit (Minbar) and a question by a muslim woman was asked and that’s why this narration was referred to usually as the Minbariyyah case. She asked Sayyidinah Ali, “what is the wife’s share in inheritance when her deceased husband left behind both parents and his two daughters” Ali according to this narration promptly answered that the wife’s share instead of 1/8 now becomes 1/9.

Under normal circumstances, the two parents are Quranic heirs so they have 1/6 each, with the 1/6 each way, the estate remains 2/3. Two daughters share shall be 2/3 of the remainder thus making the whole estate exhausted. Now the “wife” who was among the survivors is a Quranic heir who cannot be excluded. To let her have her share the LCM denomination of 24 has to be increased to 27 as the principle of AWL.³²

³². Ustaz Yunus Abdullah. “Succession under Islamic Law, Issues, Controversies and Solutions”. Page 138 – 139
**AWL** is a development in Islamic law meant to deal with issues not covered by the primary sources of Islamic Law, e.g. where the estate of a wife is to be shared by the following successors, a husband and two sisters under normal circumstances, the husband, a “FarD” sharer, shall take ½ of the estate as his share while the sisters share, according to the Quran, is 2/3. What happens here is the existence of shortage and not residue. Whichever share one wants to start with there shall be shortage in meeting the Quranic prescription. This issue or challenge started under Caliph Abubakar As-Sadeeq and with consultation with some of the Sahaba, they arrived at the doctrine of **AWL**. This doctrine is the idea of maintaining the original fractional share and increasing the denominator. 33

**Ar – Radd:** meaning proportional return or redistribution of the surplus of the estate where only Quranic sharers exist and they take their allotted shares and the estate still remains, that residue according to Maliki School should be returned to the public treasury for public use while other schools viewed that it should be returned to the existing sharers if there are no agnatic or residue sharers available instead of Baitil-Mal. This redistribution theory is only

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33. “The Principles and Practice of Succession under Islamic Law” by M. A. Ambali; page 144 – 145
applicable to Zhawilarham (blood relatives of the deceased person) as the wife and husband are not participating.

**Issue of Foetus:** A woman may be under pregnancy when she loses her husband. As no one knows what gender the child may be and whether it may be a still-born, it is assumed that the child will be born a male. When the estate is administered upon, the Foetus share shall be a share to a male heir. If per chance, the child turns to be female the share of female is resorted to i.e half of it and the other half is taken back to the other sharers proportionately.\(^\text{34}\)

However, the most favoured view of the Malik’s School on this issue is that the distribution of the estate be suspended pending the birth of the child.\(^\text{35}\)

**Issue of Al – Mafquud (Missing person):** Where a person disappears without being heard of for a long time and after many inquiries no news about his where about, such a person could be declared missing by the court of law.

Two issues must be established before declaring anything.

1. It must be established that there is no information what-so-ever about him.

\(^{34}\) Ustaz Yunus Abdallah, Page 140 Ibid
2. Many years might have passed and still no information. The time allowed by Maliki school to elapse before one could be declared missing is seventy (70) years while other Sunni schools unanimously agreed that the year should be between ninety (90) years and one hundred and twenty (120) years before such declaration. In Islamic law of inheritance, it is after this that the missing person’s estate could be shared amongst his inheritors. Where the missing person (Al – Mafqud) is the inheritor, his share shall be reserved till he is found and if he could no more be found, his own inheritors takes over his shares.\textsuperscript{36}

**Hermaphrodite:** A great sign of Allah’s power of creation is the creation of human species known as ‘Hermaphrodite’. This sort of human being is neither a complete male nor female. Nobody can decide to which gender this specie belongs until the age of puberty. When inheritance of an estate is being administered, the Jurist viewed that it should be counted as male. To detect which gender, if it is found that it menstruates through the female organ and there is feminine growth of the breast, it is then considered as female. If on the other hand, it shows signs of manhood i.e. have moustache and change in the voice, then it is male. As for the share of inheritance, if

\textsuperscript{36} See: Colson Opsit page 198
it turns to be female, half of the share allotted shall now be given to him while the other half be shared between the other inheritors in accordance with their due shares.  

**Conclusion:**

In the foregoing pages and paragraphs of this discourse, we have attempted to explain the concept of administration of estates and succession under Islamic Law.

We particularly tried to look at the primary sharers of inheritance who are referred to as Ashab al-Furud (prescribed heirs) and how their status and existence affect inheritance as an institution in Islam. We also looked at the institution of Asabah (agnatised inheritors in Islam) and how these groups affect Islamic inheritance. Other issues pertaining to homicide where a propositus got killed by a legal inheritor (a successor), a missing inheritor and/or a missing propositus, a case of Hermaphrodite or lian (a disowned child by a father by way of legal oath), illegitimacy, slavery and master propositus etc. All these listed are relevant categories of sharers of the Estate that may be left behind by their deceased legator.

On the whole, what we refer to as estate and succession in Islam call for serious studies by all stakeholders with a view to understanding what constitute the content and context of inheritance in Islam. This is because no family is exempted from death and what prevails after. Therefore, without any clear understanding of Sharia Law on administration of estate and succession, an inheritor may be misguided to take a share either below or more than the prescribed share for him/her by Allah which consequence is very grave in line with Surah Nisa’i verse 10

“Verily those who unjustly eat up the property of orphans, they eat up but fire into their belies, and they will be burnt in the blazing fire”. (Q4:10)

For this reason, the Almighty Allah decreed that estates left behind by the deceased Muslims be shared for the benefit of its legal inheritors and in the right quantity.

Under the issue of legal exclusion from inheritance, we see that in cases concerning differences in religion, since a non-muslim may not allow Muslim to succeed him as heir and vice versa, the Prophet (PBUH) was reported to have even said, “Neither does a Muslim inherit a non-believer nor does a non-believer inherit a muslim”. This
is the Islamic rule on Estate and succession. Some notable scholars like Dr. Tabi’u hold that “The basis of rules governing inheritance in Islam is centered on reciprocity”. That is to say that in line with the tenets of Islamic personal law, a non-muslim may not allow a muslim heir to succeed him/her or vice versa.

Also, a muslim child or son who converted to Christianity or any other religion ceases, according to Islamic law of inheritance, to be a heir to the estate of a muslim father/mother who died a muslim. Similarly, a muslim parent cannot legally inherit his son if the son dies as a Christian. The only exception where each could succeed in either’s estate is through will.

In Islam, a muslim is free to make a will to non-inheritor(s) of his/her estate provided such a will is less or not more than one third (1/3) of the total estate and it is also not at the detriment (expense) of the legal inheritors. That is why the Islamic law of succession insists that after the primary obligations have been made, the remaining estate (net-estate) however the portion is (small or big) must be shared amongst its inheritors (successors). One very important measure to be taken by the Administrator(s) is the proper valuation of the Estate before sharing.
From the foregoing discussion, it is clear that administration of Estate and succession in Islamic law takes into cognisance issues pertaining to the rights of women as heirs in the sharing of inheritance in Islam. In comparison therefore with other existing laws, both old and new, Islamic law of inheritance has proved that Estate and Succession as part of human life needs full measures to tackle. Therefore, the need to acquire the requisite knowledge which is contained in the Qur’an and Sunnah of Prophet Muhammad (P.B.U.H) cannot be over emphasised.

I thank this august and distinguished audience for exercising patience to listen to me despite the voluminous pages of this discourse. As I have said earlier, where I strayed, do please forgive me.

Wassalam alaykum war Rahmatullahi Wabarakatuhu.
FOR FURTHER READING


Fiqh Al – Sunnah Vol. 3 Page 498.


Sahih al – Bukhari, Kitabul Tafsir 101.

Sunan Ibn Majah

The Holy Qur’an.