Equality between Men and Women in the Islamic Law of Inheritance

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Translated from Arabic by Béligh Elbalti

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TABLE OF CONTENT

TRANSLATOR'S FOREWORDI
INTRODUCTION
1. PRESENTATION OF INHERITANCE CASES OF WOMEN AS COMPARED TO THOSE OF MEN OF THE SAME
DEGREE
1.1/ Cases Where Women Inherit Less than Men of the Same Degree
1.1.1/ The Two Cases Mentioned in the Quran: "To Male, a Portion Equal to Two Females" 6
1.1.2/ The Two Remaining Cases
1.2/ Cases in which Women do not receive Less than Men of the Same Degree
1.2.1/ Category of Cases where Women and Men Inherit Equally 17
1.2.2/ Cases Where Women Inherit More than Men
1.2.3/ Situations Where the Woman Inherits but the Man Does Not
2. READING OF CASES OF INHERITANCE OF WOMEN AS COMPARED OF THOSE OF MEN OF THE SAME
Degree
CONCLUSION
AUTHOR'S AFTERWORD
APPENDIX
SELECTED BIBLIOGRAPHY

Translator's Foreword

Is there a need to reform inheritance law as established by the Islamic Sharia law in Muslim societies? This question, among others,¹ has always been controversial especially when it comes to the succession right of Muslim women. This is also an extremely sensitive socio-legal debate that is deeply rooted in Muslims' religious beliefs for whom inheritance rules are God's commands that should be scrupulously followed and implemented. The answer to the question is inextricable from determining whether Islamic succession law discriminates against women.²

It is generally acknowledged that "the Islamic rules of succession improved the position of women and close relatives to the detriment of male agnatic ascendants and descendants".³ Indeed, Islamic law recognizes equal inheritance right for both men and women in social a context where women were deprived of this right (Quran, Chapter 4:7).⁴ However, in a number of situations, the Quran commands that the distribution of the decedent' assets should be done based on the principle of a double share to a man and a single share to a woman (Quran, Chapter 4:11).⁵

Proponents of a law reform advance the argument of the discriminatory nature of the Islamic succession rules.⁶ According to this opinion, Sharia favors men over women. However, in a modern society where women are considered as equal partners to men, traditional Sharia rules become not only obsolete but also outdated compared to modern standards of modern societies no matter how these rules were revolutionary in the context in which they appeared. On the other hand, opponents of any

¹ Another controversial issue relates to the prohibition under *sharia* law for non-Muslims to inherit Muslims and vice versa (but under the *Shi'i* School, a Muslim can inherit a non-Muslim). This rule can be circumvented by mean of bequest in favor of the non-Muslim relative within the limit of one third of the estate or even beyond if consented by other heirs. See, N J. Coulson, *Succession in the Muslim Family*, (Cambridge Press University, 1971), p.185ff). It should be mentioned here that although this prohibition is not expressly mentioned under law Tunisian law (Art. 88 of the Personal Status Code), Tunisian courts and academia are divided on the issue of the eligibility to succession of non-Muslims. This controversy can be highlighted by the position of the Tunisian Supreme Court (*Cour de Cassation*) which, in 2009, rendered two contradictory decisions on the issue of disparity of religion as impediment to succession (decision No. 31115 of 5 February 2009 in which the Higher Court affirmed that religion disparity is not a cause for exclusion from inheritance, and decision No. 26950 of 30 June 2009 in which the Court took completely opposition position). On these decisions, see O Ben Fadhl, Al-fasl bayn al-qānūn al-wad'ī wal 'adyān fī masā'il at-tawāroth bayn al-milal [Separation between Positive law and Religion in Matters relating to Disparity of Religion in Marriage and Succession], *Infos Juridiques*, No. 92/93, Juin 2010, 18ff.

² For an affirmative answer, see S A Abu-Sahlieh, Islamic Family and Inheritance Law in Switzerland, p. 25 available at <u>http://sami-aldeeb.com/english-islamic-family-and-inheritance-law-in-switzerland-2006/</u> (last visited, 30 May 2016). *Contra.* Z Chaudhry, The Myth of Misogyny: A Reanalysis of Women's Inheritance in Islamic Law, *Journal of Islamic Law*, 1998. 41ff.

³ N Yassari, Intestate Succession in Islamic Countries, *in* K Reidm Marius de Waal & R Zimmermann, *Comparative Succession Law: Volume II: Intestate Succession*, (Oxford, 2015), p. 422. See also, John Fleming, Changing Functions of Succession Laws, *American Journal of Comparative Law*, Vol. 26, 1978, p. 235, who recognizes that the females' position under the Islamic law of Inheritance was "far from negligible improvement"; J. Schacht, Mirath, *in Encyclopaedia of Islam, Vol. VII* (E. J. Brill, Leiden-New York, 1993) p. 107.

⁴ Sūrat "An-Nisā (the Women)" (Chapter. IV), Verse 11: "There is a share for men and a share for women from what is left by parents and those nearest related, whether the property be small or large – a legal share". All the Quranic references are from Muhammad Taqi-ud-Din Al-Hilali and Muhammad Muhsin Khan, *Translation of the Meaning of the Noble Qur'an in The English Language* (King Fahd Complex, 1417 A.H.).

⁵ Sūrat "An-Nisā (the Women)" (Chapter. IV), Verse 11: "Allah commands you as regard your children's (inheritance): to the male a portion equal to that of two females [...] ».

⁶ For exemple, Ali Mezghani et Kalthoum Meziou-Douraï, L'égalité entre hommes et femmes en droit successoral (Tunis, Sud Edition, 2006).

modification of the Sharia inheritance rules claim that these rules are of religious nature: these are considered as injunctions from God himself who directly intervened to determine in detail the share due to both men and women in many situations. In addition, opponents of any law reform also advance that these rules are justified, to a large extent, by the financial burden incumbent on men who should maintain their family, provide for the dower (*mahr*) and assistance to their parents and relatives. In other words, the Islamic rules supposedly reflect a "divine wisdom" which ensures greater "justice" between men and women rather than a simple arithmetic equality.⁷

The merit of the book at hand lies in the fact that it tackles the controversial issue of the discriminatory nature of the Islamic succession rules. According to the author, in order to consider that the Islamic inheritance rules discriminatory, it should be demonstrated, in *all* circumstances, that the female's share of inheritance is half the man's counterpart. However, the author shows – to the surprise of many readers – that in many cases men and women receive equal parts. In other situations, women receive even more than men or even women inherit but men do not. The author does not deny that in some other situations women receive less than men. Nevertheless, he shows the application of supposed principle of "a double share of male in comparison to female" is limited only to four cases. In other situations, although the female receives less, the difference with the male is not that significant. Accordingly, the book demonstrates that Islamic rule according to which a male receives a share equal to that of two females is not the nuclear principle of Islamic inheritance law. Therefore, the idea that in Islamic law of inheritance "[f]emale relatives [...] generally receive half the share of male relatives of the same degree"⁸ is discredited.

Moreover, the book shows that Islamic rules of inheritance do not discriminate against women simply because they are women. How could this be the case when, in many situations, men and women are treated equally, and sometimes, women receive more than men? Again, with the help of simple examples and graphics, which makes the assimilation of these complex analyses very easy, the book discredits the assumption that women are discriminated against in Islam, at least as far as inheritance law is concerned.

The analyses and the conclusion are particularly thought-provoking. If it becomes evident that women are not discriminated against under Islamic law of inheritance, would there be any meaning for an eventual law reform (knowing that the calls for such a reform are more than often based on the argument of the discriminatory nature of Islamic rules of inheritance)? Unfortunately, the author does not answer in detail this question. Indeed, the main purpose of the book is to demonstrate that the existence of cases where a Muslim woman receives only a half-share compared to a full share given to a Muslim man cannot be explained by the discriminatory nature of Islamic rules, but rather by the financial and maintenance burden placed on men's shoulders. Nevertheless, the author suggests that since Islamic rules of inheritance are not discriminatory, there would be no need to move away from the divine's directives and change the rules of inheritance. How could this be achieved when "Islamic law overall protects humanely the succession rights of women?"⁹

⁷ Mohd Altaf Hussain Ahangar, Succession Rights of Muslim Women in the Modern World: An Analytical Appraisal, *Arab Law Quarterly* 28 (2014) 134; Abdulmajeed Hassan Bello, Islamic Law of Inheritance: Ultimate Solution to Social Inequality against Women, *Arab Law Quarterly* 29 (2015) 271-272.

⁸ J. Schacht, *supra* n 3 p. 107.

⁹ Mohd Altaf Hussain Ahangar, *supra* n 7, 129. See also, Abdulmajeed Hassan Bello, *supra* n 7, 272.

Although we agree with the author when he affirms that Islamic rules are not *per se* discriminatory against women, we have to disagree with him on the necessity of a law reform which would enhance equality between men and women. In our opinion, the mere fact that the Islamic inheritance rules do not discriminate against women as such does not entail that a law reform is not needed in the situations where inequality exists. On the contrary, since the "spirit" of the Islamic rules of succession is to improve the position of women, to guarantee and protect their rights, it can be argued that establishing equality in the cases where such equality is lacking is a consolidation of that "spirit".¹⁰ In addition, although situations, where a male receives a double share in comparison to a female, are limited to only four situations as identified by the author, they are by far the most important ones compared to the situations in which a female receives an equal share or even more than a male. Cases where women are treated more favorably are clearly less important or even not relevant. This is due to the fact that almost all important succession situations fall within the four situations identified by the author where women receive half the share of male relatives of the same degree.¹¹

Therefore, a law reform, which reflects the change and the modernization of the Tunisian society, is more than needed. Such undertaking can be justified by the fact that Tunisian women are very active in Tunisian society, play a very important role in every aspect of human activities and have cherished many civil rights guaranteed by the modern State since its Independence. Then, is it not true that time is ripe for a considerable move to defeat this last *îlot de résistance* and guarantee once and for all equality between men and women in accordance with the directive of the New Constitution? The fact of showing that the situations of inequality are not justified by the discriminatory nature of the Islamic law of inheritance is in itself a strong argument in favor of the reform in Tunisia: since the traditional justification of the existence of these cases of inequality (maintenance obligation of men) is no longer relevant in Tunisian modern society, there is no logical rationale in maintaining the traditional rules of inheritance in our modern legal system.

Finally, one more question should be addressed. In effect, is it possible for a society which defines itself as Muslim and bound by the Islamic rules and ethics to "change" God's commands especially when it comes to a clear-cut rule such as the rule according to which a male receives a share equal to that of two females? The answer to this question depends on how inheritance rules are to be interpreted. Throughout the history of Islamic law, there has been a sensible consensus ($Ijm\bar{a}$) that inheritance rules should remain perpetually unchanged.

However, it should be mentioned here that there is no unanimity on this issue. One of the most important Tunisian intellectuals, Tahir Haddad, argued at the beginning of the 20th century that the Islamic rules, including those relating to inheritance, can be understood as to guarantee equal rights between men and women.¹² According to this eminent Intellectual, "Islam did not give definite views or judgments about the character of women in the sense of judgments that could stay valid and stand the test of time, while no texts express frank and clear views on this respect." He argued that Islam

¹⁰ Tahir Haddad, *Imra'atuna fi Shari'a wal Mojtama'* [*Muslim Women in Law and Society*], (1930), (Dar Al-Kitab Al-Masri, Dar Al-Kitab Al-Lobnani, 2011), pp. 30 ff. For an English translation, see Ronak Husni and Daniel L. Newman, *Muslim Women in Law and Society: Annotated Translation of Al-Tāhir al-Haddād's Imra'tunā fī 'l-sharī'a wal-mujtama', with an introduction*, (Routledge, 2007), 47 - 48.

¹¹ These include the situation of sisters and brothers, the parents of the deceased (the mother and the father) and the situation of a surviving wife compared to the situation of a surviving husband. The fourth situation is that of a germane or consanguine sister with a germane of consanguine brother.

¹² Ronak Husni and Daniel L. Newman, *supra* n 10.

"introduced its laws and gradually adapted them according to the capacity of people to obey them" and that "[t]he gradual changes in the Sharia took place at a pace that could be sustained by society". Accordingly, there are no reasons why the traditional rules of inheritance should remain fixed in time without change. More importantly, some would see that the Quranic rule of the double share for men and single share for women is simply a recommendation rather than command.¹³ As such, and despite the limits set by the Quran,¹⁴ equality between men and women can be established even with respect to the situations where the Quranic rule would apply.¹⁵

In any case, the main reason for us to accept the invitation of the author, Professor Abdelmajid Zarrouki, to translate his book is to prove that even with respect to a highly sensitive issue, such as the question discussed here, a constructive dialogue is not only possible but also fruitful. We hope that this initiative will encourage others to be engaged in a similar undertaking. For that, there are no reasons why divergence of opinions, no matter how different they are, should negatively impact the academic debate and, most importantly, personal and friendly relationships.

Osaka 2016

¹³ Some reformist preachers and intellectuals argue that the Islamic rules of inheritance are not stipulated for worship purposes, and therefore can be changed; see AbdelAli El Hourri, Héritage. De Tariq Ramadan à Asmaa Lamrabet, des savants favorables à l'égalité, available at http://www.medias24.com/IDEES/pdf159024-Heritage.-De-Tariq-Ramadan-a-Asmaa-Lamrabet-des-savants-favorables-a-l-egalite.html (last visited 30 May 2016).

¹⁴ After detailing the way according to which the estate of the deceased should be distributed, the Quran states that : "These are the *limits* (set by) Allâh (as regards laws of inheritance), and whosoever obeys Allâh and His Messenger will be admitted to Gardens under which rivers flow in (Paradise), to abide therein, abd that will the great success. And whosoever disobeys Allâh and His Messenger, and transgresses His *limits*, He will cast him into the fire to abide therein; and he shall have a disgraceful torment" (An-Nisā [The Women-Chapter IV]:13, 14) (Emphasis added).

¹⁵ In this sense, see Muhammad Shahrur, *Al-Kitab wal-Qur'an - Qira'a Mo'asira [The Book and the Qur'an – A Contemporary Reading]*, (al-Ahali lit-Taba'ah wan –Nashr wat-Tawzi', 1997), pp. 457 ff, 602-603. See also Muhammad Shahrur, *The Qur'an, Morality and Critical Reason – The Essential Muhammad Shahrur*, Translated, Edited, and with an Introduction by Andreas Christmann, (Brill, 2009), 177 where the author explains his "theory of limits" which allows to adapt the Islamic legislation to changing historical circumstances.

Introduction

"Le droit relatif aux successions a été réglé avec une grande équité par le Coran. Le lecteur pourra en juger par les passages que je vais reproduire [...] Les rapprochements que j'ai faits avec les codes français et anglais montrent que les femmes mariées, qu'on dit si maltraitées par les mahométans, sont beaucoup plus favorisées par leur loi que par la nôtre, au point de vue des successions".*

1.— Inheritance laws that have been in force in various legal systems until the present day have always contained privileges: privilege attached to gender difference, to primogeniture, to the nature of the filiation, religion or nationality. Under the first privilege, the inequality is between males and females. Under the second, the inequality is between the firstborn child and subsequent siblings. Under the third, the inequality is between legitimate filiation (child born in wedlock) and "illegitimate" filiation (child born out of wedlock). Under the fourth, the inequality is justified by the difference of religion; and under the fifth one the inequality is justified by the difference of nationality, etc.¹

2.— The inequality in the abovementioned example is an inequality among heirs. But, it is possible to consider the inheritance itself as a question of privilege: between children whose father has assets and those whose father does not. The former inherit from their father but the latter do not.² In addition, certain persons leave a fortune when they die, others leave only a few assets.

Accordingly, it is possible to state that there are different levels of preferences in succession matters. In other words, there are different levels of what can be considered as the opposite of equality. The only that will be discussed here is the issue of the preference based upon gender i.e. the quality of being male or female.

3.— This issue is of a great importance and recent events have contributed to its acuity. Indeed, the Arab Revolutions have brought us to a new crossroad; and a choice is to be made. Here, the choice is between either to reform the Islamic law of inheritance or not. This issue falls within a wider problem that concerns Traditions and Modernity in our societies.

^{*} Gustave Le Bon (1884), *La civilisation des Arabes*, Livre IV, Chapitre 3, No. 2, p. 74. "The law relating to successions has been decided with great fairness by the Quran. The passages reproduced here will allow the reader to judge for himself [...] Comparison with the French and the English codes shows that married women, who are considered as so much abused

by the mohammedans, are much more treated favorably by their law than by ours from successions points of view" (translated by the translator).

¹ See, François Terré, Yves Lequette et Sophie Gaudemet, *Droit civil. Les successions. Les libéralités*, 4th ed. (Dalloz, 2014) p. 31 and p. 112 ; Anne-Marie Leroyer, *Droit des successions*, 3rd ed (Dalloz, 2014), p. 73.

² Cf. François Terré, Yves Lequette et Sophie Gaudemet, *ibid*, p. 5.

In other words, Revolutions have brought us to a crossroad where a choice is to be made between the following solutions: To choose either Traditions or Modernity. A third possible solution would consist in reconciling Traditions and Modernity by means of modernizing the Traditions and incorporating Modernity into them. In effect, the conflict between Traditions and Modernity and their reconciliation constitute the background within which the issue of the equality in inheritance between men and women is addressed.

Put differently, after the Arab Revolutions, in Tunisia in particular, the conflict between those who consider themselves modernists and those who see themselves as the protectors of Traditions reappeared. The former contend that modernity requires that equality be established between men and women in inheritance. Hence, the modernist clan advocates the modification of the Tunisian law which incorporates rules of Islamic law favoring men over women in matters of inheritance.^{*} On the other hand, according the conservative clan, authenticity requires that Islamic law be maintained.

4.— If we examine the first stance, i.e. the modernists' stance, we will find that it is based on a predicate proposition (predicative proposition)³ that is widely shared among orientalists as well as others. For example, according to Joseph Schacht, one of the these orientalists, under Islamic law, "[f]emale relatives [...] generally receive half the share of male relatives of the same degree"⁴ ("of the same degree" means daughters as opposed to sons; mothers

^{*} See the Appendix *infra*.

³ A predicate based proposition or a predicative proposition consists of a subject and a predicate. Both subject and predicate are linked by the verb "is": God (subject) is (verb) just (predicate). More precisely, it should be said that: "After having conceived things through ideas, we compare these ideas together; and, finding that some agree together, and that others do not agree, we unite or separate them, which is called *affirming* or *denying*, and generally *judging*. This judgment is called also a proposition, and must have, as will be easily seen, two terms, - the one that of which we affirm or deny something, which is called the *subject*; and the other, that which we affirm or deny, which is called *attribute*, or *predicate*. It is not sufficient to conceive these two terms, - the mind must also unite or separate them: and this action of our mind is denoted as we have already said, in discourse, by the verb is, either alone, when we affirm, or with the negative particle, when we deny. Thus, when I say, God is just, God is the subject of that proposition and just is the attribute; and the word is marks the operation of my mind in affirming, that is to say, in connecting together these two ideas, God and just, as agreeing with each other. An if I say, God is not unjust, is, being joined with the particle not, signifies the contrary action to that of affirming, to wit, that of *denying*, by which I regard these two ideas as repugnant to each other, since there is something contained in the idea of God." Antoine Arnauld et Pierre Nicole, Logic or the Art of Thinking, (translated and edited by Jill Vance Buroker) (Cambridge University Press, 1996) pp. 82-83. See also, John Stuart Mill, A System of Logic, Ratiocinative and Inductive : Being a Connected View of the Principles of Evidence, and Methods of Scientific Investigation, J. M. Robson (ed.) (Liberty Fund, 2006) pp. 84 ff; Al-Ghazali, Mi^cyar al-cilm fi al-mantig [Standard of Science in Logic] (Beyrouth, Dar Al-Kutub Al-'ilmiyya, 1990) pp. 81ff; Muhammad Ridha Al-Mudhaffar, Al-Mantiq [Logic] (Beyrouth, Dar Tacaruf Li Al-Matbou^cat, 1995) pp. 52ff; Samir Khayreddin, Al-Qawa^cid al-mantiiqiya [Rules of Logic] (Beyrouth, Ma^chad Al-Ma'arif Al-Hikamiyya, 2006) pp. 210ff; Abd Al-Hedi Al-Fadhli, Mudhakkara fi Al-Mantiq [Note in Logic] (Mu'assasat Al-Kitab Al-Islami, Qum) pp. 93 ff.

⁴ J. Schacht, "Mirath", *in Encyclopaedia of Islam, Vol. VII* (E. J. Brill, Leiden-New York, 1993) p. 107. See also Ali Mezghani et Kalthoum Meziou-Douraï, *L'égalité entre hommes et femmes en droit successoral* (Sud Edition, 2006) p. 22 ; Mohamed Charfi, *Islam et liberté, le malentendu historique* (Albin Michel, 1998) p. 113 ; Sadok Belaïd, *Islam et droit. Une nouvelle lecture des versets prescriptifs du Coran* (C.P.U, 2000) p. 216 ; Ali Mezghani, "Le droit tunisien reconnaît ses enfants naturels", *in Mélanges offerts au professeur Sassi Ben Halima* (C.P.U, 2005) p. 666 ; Zahia Jouirou, "Mawārith A-Nissā' : A-Naş wa A-Ta'wīl" [Inheritence of Women : Between the Text and its Interpretation], *in Ali Mezghani et Kalthoum Meziou-Douraï, L'égalité entre hommes et femmes en droit successoral, op. cit.*; Mohamed Charfi, "Le statut personnel tunisien entre législation et jurisprudence et entre la réforme considérable dans le passé et la réforme escomptée dans l'avenir", *in Mélanges Yadh Ben achour* (C.P.U, 2008) p. 437.

opposed to fathers; sisters as opposed to brothers etc... The comparison between a daughter and a father, for example, is not at issue since daughters and fathers are of different degrees).⁵

5.— Thus, we have a subject (Islamic law), and a predicate (a law under which female relatives generally receive half the share of male relatives of the same degree): therefore, we have a predicative based proposition (Islamic law is a law under which female relatives generally receive half the share of male relatives of the same degree). A predicative proposition can be true or false.⁶ The proposition is true when the predicate corresponds to the subject; it is false when there is a predicate-subject mismatch.⁷

6.— In other words, the Holy Quran prescribes in two different verses that: "To male, a portion equal to two females".⁸ The question arises as to whether this rule applies to all cases, to the majority of the cases or to a limited number of cases?

According to the orientalists and those who consider themselves modernist (in Tunisia, Algeria, Morocco etc...): the said rule applies to the majority of the cases.

However, in an unprecedented work – to our knowledge $-,^9$ Ṣalāḥ Eddīne Sultān¹⁰ has demonstrated that the Quranic rules according to which females receive half the share of males applies only in limited cases.

7.— Thus, we are in the presence of two opinions: the opinion of Joseph Schacht (and others) as opposed to the opinion of Ṣalāḥ Eddīne Sultān. In the present work, it will be

¹⁰ Ṣalāḥ Eddine Sultān, *ibid.*, p. 6.

⁵ First observation: as mentioned above, the unity of degree refers to the opposition between a son and a daughter or between a male spouse and a female spouse etc. Thus, what is concerned here is not the meaning given to degree in succession by *aşaba* (agnate heirs). See, Youssif Ben hadj Fradj Youssif, *Al-mawārith asshar 'yya wa al-waşiyya wa madjallat al-aḥwāl a-shakhşiyya [Shari'a based Inheritance and Wills and the Code of Personal Status]*, (Dar al-mizan, 1st ed., 1996) pp. 244 ff.

Second observation: the difference of degree justifies preferences. For Example, under French law, children are of a superior degree as compared to parents. Thus, in a situation where someone is survived by a child (son or daughter) and a parent (father or a mother), the child, who is of superior degree, receives everything, and the parent receives nothing (see. *infra*). Conversely, in Islamic law, in similar cases, the daughter receives half of the heritage and the father the other half. But here the situation of the daughter and the situation of the father cannot be compared from the point of view of equality since they are not of the same degree.

⁶ See, Ibn Hazm, Attaqrib li hadd al-mantiq [Introduction to Logic] (Dar al-kutub al-^cilmiya), p. 80; Muhammad Shankiti, Aldhaw al mushriq ^cala sullam al-mantiq [Elucidating Logic], (Dar al-kutub al-^cilmiya, 2007) pp. 83 ff; Ahmad Damanhouri, Risala fil mantik [Epilogue in Logic], (Maktabat al-ma^cārif, 2006) p. 60; Mahdi Fadhl Allah, Shamsiyya fi Al-Qawā^cid al-manțiqiyya [Rules of Logic], (Al-Markaz al-Thaqāfī al-Maghribī, 1998) pp. 50 ff.

⁷ Martin Heidegger, *What is a Thing?*, Trans. W. B. Barton Jr. And Vera Deutsch, (Gateway Edition, 1967) p. 38: "Truth consists in the predicate's belonging to the subject".

See also, Muhammad Bakir Assadr, Al-usus Al- mantiiqiyya li-al istiqra [Logical Bais of Induction] (Dar Ta^cāruf li almatbū^cāt, 1986) p. 324 ; Kamel Al-Haydari, Al-madhhab al-thati fi nazariyyāt al-ma[']rifa [Subjective Doctrine in Theories of Knowledge] (Dār Farākid, 2005) p. 74 ; Kamal Al-Haydari, Al-kat['] (Dār Farākid, Iran, 2006) pp. 115 ff.

⁸ Sūrat "An-Nisā (the Women)" (Chapter IV), Verse 11: "Allah commands you as regards your childdren's (inheritance) : to the male a portion equal to that of two females [...]". Sūrat "An-Nisā (the Women)" (Chapter IV), Verse 176: « They ask you for a legal verdict. Say: "Allah directs (thus) about *Al-Kalalah* (those who leave neither descendants nor ascendants as heirs). [...] If there are brothers and sisters, the male will have twice the share of the female [...]". All references to the Quran are from Noble Quran, of Muhammad Taqi-ud-Din Al-Hilali and Muhammad Muhsin Khan (King Fahd Complex).). ⁹ *Cf*. Muhammad 'Amāra, Preface of the work of Ṣalāḥ Eddīne Sultān, *Nafaqat al-mar'a wa mas'alat al-musāwāt [Woman's Maintenance and the issue of Equality], 1st ed.* (Dār Nahḍat Miṣr li'attibā'a wa annashr wa attawzi', 1999) p. 3.

demonstrated that the first opinion is false and the second opinion is true. However, can the controversy be solved by saying that one opinion is false i.e. that its opposite is true, in a way that only the opinion that matches the truth will be acknowledged?

For those who know the characteristics of the truth (i.e. a true predicative proposition, or a proposition in which the predicate matches the subject) the answer would be negative. This is because there are two aspects of the truth. Indeed, the truth is necessary and universal. What is true is what binds us (and this is the necessary aspect) all (and this is the universal aspect). However, "here it is a question of intellectual necessity and not a necessity of fact. This intellectual necessity is not dependent on what we can decide as individuals, and this is why there is one truth. However, this truth exists for us, as individuals, only when we voluntarily submit to it, we put ourselves under its yoke; and it is for this reason that error exists."¹¹

Therefore, the debate will not be settled between those who assert that Islamic law discriminates against women in most cases and those who affirm that this opinion is not true, for there will continue to be a number of persons who will not change their stance even after proving that such an opinion is not correct.

Then, what is all this endeavor for? In fact, this work aims to distinguish between two opinions: an opinion that is scientifically founded and one that is not. In other words, the purpose is to prevent that a non-scientifically founded opinion presents itself as "science". The significance of this work lies in demonstrating that the opinion of Joseph Schacht and others – according to which Islamic law discriminates against women in matters of inheritance – is not correct.

8.— In this regard, we will first give an account of the different cases in which women inherit and compare them with the cases in which men inherit (1). In the second part, and based on this account, an analytical analysis will be addressed (2).

¹¹ Victor Brochard, *De l'erreur* (Paris, Berger-Levrault et Cie et Germer Baillère et Cie, 1876), p. 175.

1. Presentation of Inheritance Cases of Women as Compared to those of Men of the Same Degree

9.— Based on the work of Ṣalāḥ Eddīne Sultān,¹² will be presented first the situations where women inherit less than men (1). Then account will be given to the situations where women do not inherit less than men (2).

1.1/ Cases Where Women Inherit Less than Men of the Same Degree

10.— In four situations women receive a share in inheritance less than men of the same degree: two situations are mentioned in the Quran: ("To male, a portion equal to two females" (*li-dhakari mithlu hazzi al-'unthayayn*); the two other situations have their justifications in other sources.

1.1.1/ The Two Cases Mentioned in the Quran: *"To Male, a Portion Equal to Two Females"*

11.— \blacksquare First situation: a daughter and a son. In this case, the son receives a share equivalent to that of two daughters.¹³ Accordingly, if the decedent is survived by one daughter and one son for example, the daughter will receive one third of the succession, and the remaining two thirds will go to the son:

A person (man or a woman) dies leaving a daughter, a son and one thousand (1000) dinars $(TND)^*$.

The daughter receives $\frac{1}{3}$, i.e. : 333,333 TND.

The son receives $\frac{2}{3}$, i.e. : 666,666 TND.

Total of Shares	3
Daughter	1
Son	2

¹² Ṣalāḥ Eddīne Sultān, op. cit. (Mirāth al-mar'a wa mas'alat al-musāwāt).

¹³ Sūrat "An-Nisā (the Women)" (Chapter. IV), Verse 11: "Allah commands you as regards your children's (inheritance): to the male a portion equal to that of two females [...] ».

Note: In order to make the following tables, we used the software *Successions and Zaket*. The software is available for download at <u>www.maknoon.com</u>.

^{* &}quot;TND (TND)" is the name of the currency used in Tunisia. 1TND = 0.36 USD; 0.31 EUR according to the exchange rate of 27 August 2018. See Currency Exchange at the Central Bank of Tunisia available at <u>https://www.dinartunisien.com/en/currency-exchange-at-banque-centrale-de-tunisie</u>.



It should be noted that there are other situations that can be included here. For example when the decedent is survived by a wife or any other person in addition to his daughter and son.¹⁴

¹⁴ On the succession of daughters and sons in Islamic law, see Yūsif Ben hādj Fradj Yūsif, op. cit., p. 154 ff; Husine Ben Slama, Ahkām al-mawārith fi ashari 'a wa al-kānun [Rules of Inheritance in Sharia and the Law] (Tunis, 1st ed., 1998), pp. 44 ff. (In Arabic); Fradj al-Ksīr, Ahkām al-mawārith fi al-Oānūn at-Tūnusi [Inheritance Rules in Tunisian Law], (Dar almizān, 2nd ed., 2001) pp. 135ff; Muhammad Izeddine Sallām, Nizām al-'Irth fil Islam [Inheritance System in Islam] (Tunis, 2nd ed., 2007), pp. 127ff; 'Amru Mulud 'Abd Al-Hamid et Munir Ahmad Luka, Al-khulāsa al-wafiyya fi 'ahkām almawārith [Inheritance Law] (Al-Maktab al-Watanī lil Bahth wa Tatwīr, 1st ed., 2006) pp. 86ff; Muhammad Taha Abu alcalā Khalifa, Ahkām al-mawārith [Inheritance Law] (Dar assalām, 4th ed., 2008) pp. 45ff; 'abd ar-Rahmān Bil'kid, 'ilm alfarā'id - al-mawārīth, al-waşiyya, Tasfiyat attarika [Inheritance Law – Inheritance, Wills and Distribution of the Estate] (Sharika Maghribiyya Li Tawzi⁺ al-Kitāb, 5th ed., 2006), pp. 157ff; Muhammad Zuhayli, Al-farā⁺id wa al-mawārith wa alwaşiyya [Prescribed Shares, Inheritance and Wills] (Dar al-Kalim Ațayyib, 2001) pp. 9ff; Muhammad 'ali Şābuni, Almawārith fi ashari a al-'islāmiyya fi daw' al-Kitāb wa assunna [Inheritance in Islamic Law in light of the Quran and Sunna] (Al-maktaba al-'aşriyya, 2002) pp. 47ff; Muhammad Abu Zahra, Ahkām 'attarika wa al-mawārith [Rules of Inheritance] (Dar al- fikr al- arabi) pp. 114ff and 157ff; Muhammad Zakariyyā Al-bardisi, Al-mirāth [Inheritance] (Dar Annahda al-'arabiyya, 1971) pp. 112ff and pp. 235ff; Maryam Ahmad Dāghistāni, Al-mawārith fi ashari 'a al-'isl āmiyya [Inheritance in Islamic Sharia] (Misr, 2001) pp. 26ff and 54ff; Muhammad Shahāt Djundi, Al-mirāth fi ashari'a al-'isl āmiyya [Inheritance in Islamic Sharia] (Dar Al-Fikr Al-Arabi) pp. 99ff and 157ff; Mustafā 'āshur, 'ilm al-mirāth [Science of Inheritance] (Maktabat al- kur'ān) pp. 64ff and pp. 111ff.

Cf. the succession rules of daughters and sons under French law: François Terré, Yves Lequette et Sophie Gaudemet, *op. cit.*, p. 150; Philippe Malaurie et Laurent Aynès, *Cours de droit civil. Les successions. Les Libéralités* (Cujas, 4th ed., 1988) pp. 61ff; Pierre Guiho, *Cours de droit civil, vol. 8: Les successions. Les Libéralités* (L'Hermès, 1983) pp. 59ff; Michel Grimaldi, *Droit civil. Successions* (Litec, 6th ed., 2001), pp. 170ff; Jean Maury, *Successions et libéralités* (Litec, 2nd ed, 1998), pp. 29ff; Pierre Voirin et Gilles Goubeaux, *Droit civil. Tome 2: Régimes matrimoniaux. Successions – Libéralités*, (L.G.D.J., 25th ed., 2008) pp. 143ff.

In order to understand the French law of successions, the question of "categories (*ordres*)" must be clarified. There are different categories of heirs under French law. These are: the category of descendants which includes the children of the decedent, grandchildren, etc...; the category of ascendants; and the category of collaterals which includes persons who have a common origin with the decedent. From the categories of ascendants and collaterals emanates a distinct category: This is the category of privileged ascendants and privileged collaterals which include the father, the mother, the siblings of the decedent and their dependents. This category differs from the category of ordinary ascendants (grandfathers and grandmothers) and ordinary collaterals (uncle, paternal aunt, nephew etc.). Privileged ascendants and collaterals are grouped

There remains the case of the spouse which is by itself a category. See, Pierre Voirin et Gilles Goubeaux, *op. cit.*, p. 139. The following Tables give an idea about the French inheritance law (see, Pierre Voirin et Gilles Goubeaux, op. cit., p. 152 et 167). Therefore, a comparison with inheritance law in Islam can be made.

Table 1: Succession in the absence of a surviving spouse							
	Father and	l Mother	Siblings	Ordinary As	cendants	Ordinary Collaterals	
Descendants	Father	Mother		Paternal	Maternal	Paternal	Maternal
				Side	Side	Side	Side
All	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$
	1	1		$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$
	$\frac{1}{2}^{*}$	$\frac{1}{2}^{*}$				-	
	1.	1.	1	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$
	$\frac{-}{4}^{*}$	$\frac{-}{4}^{*}$	$\overline{2}$				
	1.		3	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$
	$\frac{-}{4}$		4				
		1 *	3	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$
		4	4				
	1.			$\rightarrow 0$	1	$\rightarrow 0$	$\rightarrow 0$
	$\frac{1}{2}$				$\overline{2}$		
		1 *		1	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$
		$\overline{2}$		$\overline{2}$			
	All					$\rightarrow 0$	$\rightarrow 0$
		All				$\rightarrow 0$	$\rightarrow 0$
			All	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$
				1	1	$\rightarrow 0$	$\rightarrow 0$
				$\overline{2}$	$\overline{2}$		
				All		$\rightarrow 0$	$\rightarrow 0$
					All	$\rightarrow 0$	$\rightarrow 0$
						1	1
						2	2
						All	
							All
* Includes, if necessary, the right of return of the Article 738-2.							

Table 2: Succession in the presence of a surviving spouse										
Spouse	Descendants		Father and		Siblings	Ordinary	Ordinary			
-			Mother		_	Ascendants	Collaterals			
	All from	At least	Father	Mother						
	both	one is								
	spouses	not from								
		both								
		spouses								

in a single category only in case where there is no surviving spouse. In this case, the father and the mother should be distinguished from the siblings.

12.— In addition, can also be mentioned the example of inheritance of the son's granddaughter and the son's son (granddaughter and grandson on the son's side):

A man (or a woman) dies leaving a granddaughter, a grandson and a thousand (1000) TND.

The son's daughter receives $\frac{1}{3}$, i.e. 333,333 TND. The son's son receives $\frac{2}{3}$, i.e. : 666,666 TND.¹⁵

option : usufruct of the whole of the existing assets,	Naked ownership on the whole		$\rightarrow 0$				
or	3		$\rightarrow 0$				
1	4						
4							
1		3	$\rightarrow 0$				
4		4					
1			1 *	1 *	$\rightarrow 0$	$\rightarrow 0$	$\rightarrow 0$
$\overline{2}$			4	4			
3			1 *		$\rightarrow 0$	Alimony	$\rightarrow 0$
$\frac{-}{4}$			4				
3				1 *	$\rightarrow 0$	Alimony	$\rightarrow 0$
$\frac{-}{4}$				4			
All, except					1	Alimony	$\rightarrow 0$
1					$\overline{2}$		
2					right of		
right of return					return		
All						Alimony	$\rightarrow 0$
All							$\rightarrow 0$
* Includes, if necessary, the right of return of the Article 738-2.							

According to these two tables, under French law, all siblings inherit equally but the father and mother receive nothing. However, under Islamic law, it is true that the male receives a part equal to the part of two women, but the father and the mother also inherit.

¹⁵ On the inheritance of son's daughters and the son's sons in Islamic law, see Yusif Ben hādj Fradj Yusif, *op. cit.*, pp. 186ff ; Fradj al- ksir, *op. cit.*, pp. 138ff ; Muhammad Izeddine Sallām, *op. cit.*, pp. 132ff ; Amru Mulud Abd Al-Hamid and Munir Ahmad Luka, *op. cit.*, pp. 91ff ; Muhammad Țaha Abu Al-Alā Khalifa, *op. cit.*, pp. 76ff. ; Abd Arraḥmān Bil'kid, *op. cit.*, pp. 164ff ; Muhammad Zuḥayli, *op. cit.*, pp. 99ff ; Muhammad Ali Ṣābuni, *op. cit.*, pp. 72ff ; Muhammad Abu Zahra, *op. cit.*, pp. 118ff. et 157 ff. ; Muhammad Zakariyyā Al-Bardisi, *op. cit.*, pp. 118ff; Maryam Aḥmad Dāghistāni, *op. cit.*, pp. 28ff.; Muhammad Shaḥāt Djundi, *op. cit.*, pp. 104ff; Muṣtafā 'āshur, *op. cit.*, pp. 67ff.

Cf. with regard to French law see, François Terré, Yves Lequette et Sophie Gaudemet, *op. cit.*, pp. 150ff ; Philippe Malaurie et Laurent Aynès, *op. cit.*, pp. 61ff. ; Pierre Guiho, *op. cit.*, pp. 59ff ; Michel Grimaldi, *op. cit.*, pp. 170ff ; Pierre Voirin et Gilles Goubeaux, *op. cit.*, pp. 143ff.

Total of shares	3
Son's daughter	1
Son's son	2





13.— Similar rule applies to the succession of the daughter of the grandson (on the son's side) or the son of the grandson (on the son's side), regardless of the sex of the decedent.¹⁶

14.— \blacksquare Second Case: A germane sister with a germane brother, a consanguine sister with a consanguine brother.

Also in this case, the male receives the equivalent of the share of two females.¹⁷ For example, if the decedent is survived only a germane sister and a germane brother, the sister inherits one third and the brother inherits two thirds. The same rule applies when the heirs are consanguine brother and sister.

15.— Illustration: A germane sister with a germane brother:

A man (or a woman) dies leaving a germane sister and a germane brother and one thousand (1000) TND.

The germane sister inherits $\frac{1}{3}$, i.e. 333,333 TND. The germane brother inherits $\frac{2}{3}$, i.e. 666,666 TND¹⁸.

¹⁶ On the succession of daughters of grandsons and sons of grandsons in Islamic law, see: 'amru Mouloud 'abd Al-Hamid and Munir Ahmad Luka, *op. cit.*, pp. 93ff; Muhammad Țaha Abu Al-'alā Khalifa, *op. cit.*, pp. 94ff ; 'abd arraḥmān Bil'kid, *op. cit.*, pp. 211ff ; Muhammad Zuḥayli, *op. cit.*, p. 136 ; Muhammad Zakariyyā al-bardisi, *op. cit.*, p. 123.

¹⁷ Sūrat "An-Nis" (the Women)" (Chapter. IV), Verse 176: "if there are brothers and sisters, the male will have twice the share of the female".

¹⁸ On the succession of germane sisters and germane brothers in Islamic law see: Yusif Ben Hādj Fradj Yusif, *op. cit.*, p. 189 ; Fradj Al- Ksir, *op. cit.*, pp. 146ff; Muhammad 'izeddine Sallām, *op. cit.*, p. 141 ; 'amru Mouloud 'abd Al-Hamid and

Total of Shares	3
Germane sister	1
Germane brother	2





16.— Illustration: Case of a consanguine sister with a consanguine brother:

A man (or a woman) dies leaving a consanguine sister, a consanguine brother and one thousand (1000) TND.

The consanguine sister inherits $\frac{1}{3}$, i.e. 333,333 TND. The consanguine brother inherits $\frac{2}{3}$, i.e. 666,666 TND¹⁹.

Munir Ahmad Luka, *op. cit.*, p. 100 ; Muhammad Țaha Abu Al-'alā Khalifa, *op. cit.*, p. 176; 'abd arraḥmān Bil'kid, *op. cit.*, pp. 219 ff; Muhammad Zuḥayli, *op. cit.*, p. 195; Muhammad 'ali Ṣābuni, *op. cit.*, pp. 73ff; Muhammad Abu Zahra, *op. cit.*, pp. 121ff ; Muhammad Zakariyyā Al-Bardisi, *op. cit.*, pp. 160ff; Maryam Aḥmad Dāghistāni, *op. cit.*, p. 44; Muhammad Shaḥāt Djundi, *op. cit.*, p. 134; Muṣṭafā 'āshur, *op. cit.*, pp. 72ff.

Cf. the rules of inheritance under French law, see: François Terré, Yves Lequette et Sophie Gaudemet, *op. cit.*, pp. 161ff; Philippe Malaurie et Laurent Aynès, *op. cit.*, pp. 64ff; Pierre Guiho, *op. cit.*, pp. 59; Michel Grimaldi, *op. cit.*, pp. 171ff; Jean Maury, *op. cit.*, pp. 35ff; Pierre Voirin et Gilles Goubeaux, *op. cit.*, pp. 147ff.

¹⁹ On the succession of consanguine brothers and sisters in Islamic law, see: Yusif Ben hādj Fradj Yusif, *op. cit.*, p. 190; Fradj Al- Ksir, *op. cit.*, pp. 149ff; Muhammad 'izeddine Sallām, *op. cit.*, p.145; 'amrou Mouloud 'abd Al-Hamid and Munir Ahmad Luka, *op. cit.*, p. 105; Muhammad Țaha Abu Al-'alā Khalifa, *op. cit.*, pp. 179ff; 'abd Arraḥmān Bil'kid, *op. cit.*, p. 224; Muhammad Zuḥayli, *op. cit.*, p. 198; Muhammad 'ali Ṣābuni, *op. cit.*, pp. 73ff; Muhammad Abu Zahra, *op. cit.*, p. 127; Muhammad Zakariyyā Al-Bardisi, *op. cit.*, pp. 179ff; Maryam Aḥmad Dāghistāni, *op. cit.*, p. 44; Muhammad Shaḥāt Djundi, *op. cit.*, p. 140; Muṣṭafā 'āshur, *op. cit.*, pp. 75ff.

Total of Shares	3
Consanguine sister	1
Consanguine brother	2



17.— As the above demonstrates, there are two cases provided for by the Quran in which the male receives the equivalent of the share of two females. However, there are two other similar cases.

1.1.2/ The Two Remaining Cases

18.— There are two other cases where a woman inherits a half share in comparison to a man. However, these cases are not an application of the Quranic rule of 'to the male a portion equal to that of two females'. Here again a distinction should be drawn between two subcases. In the first one, and similarly to the cases examined above, the shares received by a male and a female of the same degree in the same situation will be addressed. In the second one, the

Cf. the rules of inheritance under French law, François Terré, Yves Lequette et Sophie Gaudemet, *op. cit.*, pp. 161ff; Philippe Malaurie et Laurent Aynès, *op. cit.*, pp. 64ff; Pierre Guiho, *op. cit.*, p. *;59* Michel Grimaldi, *op. cit*, pp. 171ff; Jean Maury, *op. cit*, pp. 35ff; Pierre Voirin et Gilles Goubeaux, *op. cit.*, pp. 147ff.

same approach will be used to examine the position of the male and the female in two separate situations.

19.— ■ First case: A mother and a father (the decedent dies without children and without a spouse); the prescribed share $(fardh)^{20}$ of the mother is one third, the remaining two thirds go to the father.²¹

A man (or a woman) dies leaving a mother, a father and a thousand (1000) TND.

The mother receives $\frac{1}{3}$, i.e. 333,333 TND. The father receives $\frac{2}{3}$, i.e. 666,666 TND²².

The two following situations should be mentioned here :

First situation: a woman dies leaving a husband, a mother and a father. The husband receives $\frac{3}{6}$, the mother $\frac{1}{6}$, the father

 $\frac{2}{6}$. The majority of scholars are of this opinion. See Yusif Ben hādj Fradj Yusif, *op. cit.*, pp. 195ff; Muhammad 'ali Ṣābuni,

op. cit., pp. 57ff. However, according to others, in this situation the husband receives $\frac{3}{6}$, the mother $\frac{2}{6}$ and the father $\frac{1}{6}$.

Like this, the share allotted to the female is bigger than the one allotted to the male (on these kind of situations see *infra*, 44).

Second situation: A man dies leaving a wife, a mother, a father and a thousand TND. The wife receives $\frac{1}{4}$, the mother $\frac{1}{4}$

and the father $\frac{2}{4}$. The majority of scholars are of this opinion. See Muhammad 'ali Ṣābuni, *op. cit.*, p. 58. However,

according to others, in this situation the wife receives $\frac{3}{12}$, i.e. 249,999 TND; the mother $\frac{4}{12}$, i.e. 333,332 TND; the father

 $\frac{5}{12}$, i.e. 416, 665 TND. Accordingly, although the mother receives a smaller share compared to the one received by the

²⁰ In Islamic law (what is meant here is the succession rules adopted by the Sunni schools. As for the Shia school, the succession rules are a little bit different. See, Dja'far Subhāni, *Al-mirāth bil ķarāba aw bita'şib [Inheritance by Kinship or by Agnation]*, (Mu'assasat al-Imām Şādik, Kom, s. d.), there are two categories of heirs: Quota-heirs [heirs with prescribed shares (*fardh*)] and the agnate [residuary] heirs (°aşab): 1. Quota-Heirs: they receive a predetermined share. It can be two third, a half, one third, a quarter, one sixth or one eighth. Male quota-heirs are: (1) father, (2) grandfather on the side of the father, how high soever, (3) uterine brother (4) husband. Female quota-heirs are: (1) mother, (2) grandmother, (3) daughter, (4) granddaughter on the son's side how low soever, (5) germane sister, (6) consanguine sister, (7) uterine sister, (8) wife. 2. Residuary heirs (universals, agnates). They are usually males and sometimes females, who inherit the remaining share after the shares of the quota-heirs is distributed. For more details, see Yusif Ben hādj Fradj Yusif, *op. cit.*, p. *;141* Muhammad Zuḥayli, *op. cit.*, pp. 99 ff.

²¹ Sūrat "An-Nisā (the Women)" (Chapter. IV), Verse 11: "[...] if no children, and the parents are the (only) heirs, the mother has a third [...]". Like this, according to the Quran, the mother gets one third as fixed share (*fardh*). The remaining two thirds go to the father in application of a hadith according to which the prophet said as reported by Ibn Abbas: "Give the appointed portions to those entitled to them. Then whatever remains is for the closest male. See Salāh Eddine Sultān, *op. cit.* (*Mirāth al-Mar'a wa Mas'alat al-Musāwāt*), p. 19.

²² On the heritage of the mother and the father in Islamic law, see Yusif Ben hādj Fradj Yusif, *op. cit.*, p. 181; Fradj al-ksir, *op. cit.*, pp. 140ff; Muhammad 'izeddine Sallām, *op. cit.*, p. 148; Muhammad Taha Abu al-'alā Khalifa, *op. cit.*, p. 119; Muhammad Zuhayli, *op. cit.*, p. 174; Muhammad 'ali Ṣābuni, *op. cit.*, p. 57; Muhammad Abu Zahra, *op. cit.*, pp. 131ff; Muhammad Zakariyyā al-bardisi, *op. cit.*, pp. 137ff; Maryam Ahmad Dāghistāni, *op. cit.*, p. 33; Muhammad Shahāt Djundi, *op. cit.*, pp. 115 ff; Muştafā 'āshur, *op. cit.*, p. 55.

Total of shares	3
Mother	1
Father	2





20. \blacksquare Second case: As already mentioned above, this case comprises two different situations. In the first one, the situation of a female of a certain degree and of a given inheritance status will be examined in contrast with the situation of a male of the same rank and of the same inheritance status.

But, before contrasting these two situations, the portion that a wife and a husband receive in Islamic law should be recalled here:

The wife receives one quarter if the husband has no children otherwise she receives one eighth.

As for the husband, he receives one-half if the wife has no children otherwise he receives one quarter.²³

father, the difference is not that important. See 'abd Arraḥmān Bil'kid, *op. cit.*, p. 125. With regard to French law, see François Terré, Yves Lequette et Sophie Gaudemet, *op. cit.*, pp. 166ff; Philippe Malaurie et Laurent Aynès, *op. cit.*, pp. 64ff; Pierre Guiho, *op. cit.*, p. 61; Michel Grimaldi, *op. cit.*, p. 173; Pierre Voirin et Gilles Goubeaux, *op. cit.*, pp. 147ff. ²³ Sūrat "An-Nisā (the Women)" (Chapter. IV), Verse 12: "In what your wives leave, your share is a half, if they leave no child. But if they leave a child, you get a fourth [...] In what you leave, their share is a fourth if you leave no child; but if

you leave a child, they get an eighth [...]".

First Situation	Second Situation
A man dies leaving a wife, a father and one thousand (1000) TND.	A woman dies leaving a husband, a father and one thousand (1000) TND.
The wife receives $\frac{1}{4}$, i.e. 250,000 d.	The husband receives $\frac{1}{2}$, i.e. 500,000 d.
The father receives $\frac{3}{4}$, i.e. 750,000 d.	The father receives $\frac{1}{2}$, i.e. 500,000 d.



21.— Note: Apart from the example taken here of a decedent leaving a wife and a father, there are others such as the example of a decedent leaving in addition to a wife, a mother or a father and a mother or a brother etc. The same rule applies when the decedent is the wife:

First case	Second case
A man dies leaving a wife, a son and one thousand (1000) TND.	A woman dies leaving a husband, a son and one thousand (1000) TND.
The wife receives $\frac{1}{8}$, i.e. 125,000 TND	The husband receives $\frac{1}{4}$, i.e. 250,000 TND
The son receives $\frac{7}{8}$, i.e. 875,000 TND	The son receives $\frac{3}{4}$, i.e. 750,000 TND



22.— Note: Apart from the example taken here of a decedent leaving only one son, there exist others such as the example of a decedent leaving in addition to a son, a daughter or a father etc. The same rule applies when the decedent is the wife.²⁴

23.— In conclusion, there are four situations in which women inherit half the share of men.



²⁴ On the succession of the wife and the husband in Islamic law, see Yusif Ben hādj Fradj Yusif, *op. cit.*, p. 183; Fradj al-Ksir, *op. cit.*, pp. 155ff; Muhammad 'izeddine Sallām, *op. cit.*, pp. 164ff; 'amru Mulud 'abd al-Hamid and Munir Ahmad Luka, *op. cit.*, p. 78; Muhammad Taha Abu al-'alā Khalifa, *op. cit.*, pp. 310ff.; 'abd Arrahmān Bil'kid, *op. cit.*, pp. 140ff, 204ff; Muhammad Abu Zahra, *op. cit.*, pp. 106ff; Muhammad Zakariyyā al-Bardisi, *op. cit.*, pp. 109 ff; Maryam Ahmad Dāghistāni, *op. cit.*, pp. 25ff; Muhammad Shahāt Djundi, *op. cit.*, pp. 151ff; Muştafā 'āshur, *op. cit.*, pp. 58ff.

For French law, see François Terré, Yves Lequette et Sophie Gaudemet, *op. cit.*, pp. 166ff; Philippe Malaurie et Laurent Aynès, *op. cit.*, pp. 73ff; Pierre Guiho, *op. cit.*, p. 62; Michel Grimaldi, *op. cit.*, pp. 174ff; Pierre Voirin et Gilles Goubeaux, *op. cit.*, pp. 155ff.

However, there exist situations in which women do not receive less (i.e. equivalent or even more) than men.

1.2/ Cases in which Women do not receive Less than Men of the Same Degree

24.— These cases can be grouped into three categories: (1) The first includes cases where women and men inherit equally. (2) The second includes cases where women inherit more than men. (3) The third includes cases where women inherit but men do not.

1.2.1/ Category of Cases where Women and Men Inherit Equally

25.— The cases can be divided into two classed of cases: the first is concerned with a single inheritance issue. In the second, two different inheritance situations are concerned. These cases will be outlined in an order that goes from the first class of cases to the second class of cases.

26. \blacksquare First situation: a mother and a father with a son; two daughters or more, and sometimes a single daughter.²⁵

27.— \square A mother, a father and a son:

A person (man or woman) dies leaving a mother, a father, a son and a thousand (1000) TND.

The mother receives $\frac{1}{6}$, i.e. 166,666 TND.

The father receives $\frac{1}{6}$, i.e. 166,666 TND.

The son receives $\frac{4}{6}$, i.e. 666,666 TND.

Total of Shares	6
Mother	1
Father	1
Son	4

²⁵ On the inheritance of the mother and the father, see Yusif Ben hādj Fradj Yusif, *op. cit.*, p. 194 and p. 180; Fradj Al-Ksir, *op. cit.*, pp. 140ff; Muhammad 'izeddine Sallām, *op. cit.*, pp. 146ff; 'amru Mulud Abd Al-Hamid & Munir Ahmad Luka, *op. cit.*, pp. 78ff; Muhammad Taha Abu Al-Alā Khalifa, *op. cit.*, pp. 118ff; Muhammad Abu Zahra, *op. cit.*, pp. 129ff; Muhammad Zakariyyā Al-Bardisi, *op. cit.*, pp. 124ff; Maryam Ahmad Dāghistāni, *op. cit.*, pp. 33 and p. 31; Muhammad Shahāt Djundi, *op. cit.*, pp. 108ff; Muṣṭafā Ashur, *op. cit.*, pp. 53ff.

For an account of the solutions under French law, see François Terré, Yves Lequette et Sophie Gaudemet, *op. cit.*, pp. 162ff; Philippe Malaurie et Laurent Aynès, *op. cit.*, pp. 64ff; Pierre Guiho, *op. cit.*, p. 61; Michel Grimaldi, *op. cit.*, p. 173; Jean Maury, *op. cit.*, pp. 35ff. ; Pierre Voirin et Gilles Goubeaux, *op. cit.*, pp. 147ff.



Note: the example taken here is of a decedent who leaves a mother, a father and a son. However, other examples would include a spouse or several sons.

28.— \square A mother, a father and two or more daughters:

A person (man or woman) dies leaving a mother, a father, two daughters and a thousand (1000) TND.

The mother receives $\frac{1}{6}$, i.e. 166,666 TND. The father $\frac{1}{6}$, i.e. 166,666 TND.

Each of the two daughter receives $\frac{2}{6}$, i.e. 333,333 TND.

Total of Shares6Mother1Father1Daughter 12Daughter 22



Note: In addition to the example taken here, others would include, in addition a spouse, or several sons.

29.— \Box Sometimes (in the presence of a male spouse), a mother, a father and a daughter: A woman dies leaving a mother, a father, a husband, a daughter and a thousand (1000) TND.

The mother receives $\frac{2}{13}$, i.e. 153,846 TND. The father receives $\frac{2}{13}$, i.e. 153,846 TND. The daughter receives $\frac{6}{13}$, i.e. 461,538 TND. The husband receives $\frac{3}{13}$, i.e. 230, 769 TND.

Total of Shares	13
Mother	2
Father	2

Daughter	6
Husband	3





30.— • Second Situation: Will be discussed here cases in which parties are of different sex and degree. Let us look at the case involving a father and a maternal grandmother.²⁶ Here the father receives a share equal to that of the maternal grandmother despite the fact that the maternal grandmother stands in a more distant degree of relationship to the decedent compared to the father. In this case, although the male stands in a closer degree of relationship to the decedent, the female receive an equal share to that of the male.

31.– \square A maternal grandmother, a father and a son:

²⁶ On the inheritance of the grandmother, see Muhammad Izeddine Sallām, *op. cit.*, pp. 137ff; Amru Mulud Abd Al-Hamid & Munir Ahmad Luka, *op. cit.*, pp. 120ff; Muhammad Taha Abu Al-Alā Khalifa, *op. cit.*, pp. 139ff; Abd Arraḥmān Bil'kid, *op. cit.*, pp. 130ff; Muhammad Abu Zahra, *op. cit.*, pp. 143ff; Muhammad Zakariyyā Al-Bardisi, *op. cit.*, pp. 216ff; Maryam Aḥmad Dāghistāni, *op. cit.*, pp. 37ff; Muhammad Shaḥāt Djundi, *op. cit.*, pp. 118ff; Muṣṭafā Ashur, *op. cit.*, pp. 80 ff ; Fradj Al-Ksir, *op. cit.*, pp. 145ff.

For a comparaison with French law, see François Terré, Yves Lequette et Sophie Gaudemet, *op. cit.*, pp. 163ff; Philippe Malaurie et Laurent Aynès, *op. cit.*, p. 66; Pierre Guiho, *op. cit.*, p. 61; Michel Grimaldi, *op. cit.*, p. 173; Jean Maury, *op. cit.*, p. 37; Pierre Voirin et Gilles Goubeaux, *op. cit.*, pp. 150ff.

A person (man or woman) dies leaving a maternal grandmother, a father, a son and a thousand (1000) TND.

The maternal grandmother receives $\frac{1}{6}$, i.e. 166,666 TND.

The father receives $\frac{1}{6}$, i.e. 166,666 TND.

The son receives $\frac{4}{6}$, i.e. 666,666 TND.

Total of Shares	6
Maternal Grandmother	1
Father	1
Son	4





32.– \Box A maternal grandmother, a father and two daughters:

A person (man or woman) dies leaving a maternal grandmother, a father, two daughters and a thousand (1000) TND.

The maternal grandmother receives $\frac{1}{6}$, i.e. 166,666 TND. The father receives $\frac{1}{6}$, i.e. 166,666 TND. Daughter 1 receives $\frac{2}{6}$, i.e. 333,333 TND. Daughter 2 receives $\frac{2}{6}$, i.e. 333,333 TND.

Total of Shares	6
Maternal Grandmother	1
Father	1
Daughter 1	2
Daughter 2	2



33. \blacksquare Third situation: Uterine sisters with uterine brothers.²⁷ In this kind of situations, the male in all cases inherits a share equal to that of the female (a male with a female / two

²⁷ On the inheritance of uterine brothers and sisters, see Muhammad Izeddine Sallām, *op. cit.*, pp. 152ff; Muhammad Țaha Abu Al-Alā Khalifa, *op. cit.*, pp. 187ff; Muhammad Abu Zahra, *op. cit.*, pp. 112ff; Muhammad Zakariyyā Al-Bardisi, *op. cit.*, pp. 150ff; Maryam Aḥmad Dāghistāni, *op. cit.*, p. 45; Muhammad Shaḥāt Djundi, *op. cit.*, pp. 144ff; Muṣṭafā Ashur, *op. cit.*, pp. 6ff; Fradj Al-Ksir, *op. cit.*, p. 152.

For French law, see François Terré, Yves Lequette et Sophie Gaudemet, *op. cit.*, pp. 161ff; Philippe Malaurie et Laurent Aynès, *op. cit.*, pp. 64ff; Pierre Guiho, *op. cit.*, p. 59; Michel Grimaldi, *op. cit.*, pp. 171ff; Jean Maury, *op. cit.*, pp. 35ff; Pierre Voirin et Gilles Goubeaux, *op. cit.*, pp. 147ff.

males with two females / a male with two females/ etc).²⁸ If we take the inheritance case of one male and one female, there are two *fiqh* (jurisprudence) opinions with respect to this issue. However, according to both opinions, the female inherits a share equal to that of a man.

34.— □ First *"fiqh"* opinion: the *Hanbali* school, and others.

A person (man or woman) dies leaving a uterine sister, a uterine brother and one thousand (1000) TND.

The uterine sister receives the half, i.e. 500,000 TND. The uterine brother receives the half, i.e. 500,000 TND.

Total of Shares	2
Uterine Sister	1
Uterine Brother	1





35.— \Box Second "*fiqh*" opinion: the *Maleki* School, and others.

A person (man or woman) dies leaving one uterine sister, one uterine brother and one thousand (1000) TND.

 $^{^{28}}$ Sūrat "An-Nisā (the Women)" (Chapter. IV), Verse 12: "[...] If the man or woman whose inheritance is in question has left neither ascendents nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third [...]".

The uterine sister receives $\frac{1}{6}$, i.e. 166,666 TND. The uterine brother receives $\frac{1}{6}$, i.e. 166,666 TND.

The residue $\frac{4}{6}$ goes to the Public Treasury of Muslims (*bayt al-mal*), i.e. 666,666 TND.

Total des Shares	6
Uterine Sister	1
Uterine Brother	1
Public treasury	4





36. \blacksquare Fourth situation: a husband, two uterine sisters and one germane brother. Here again, the brother receives a share equal to that of the sister. Accordingly, a germane brother who share with the decedent the same father and the same mother – and therefore, closer to the decedent – receive a share equal to that of a uterine sister with whom the decedent has the same mother but different fathers:

A woman dies leaving a husband, two uterine sisters, a germane brother and one (1000) TND.

The husband receives $\frac{3}{6}$, i.e. 500,000 TND. The first uterine sister receives $\frac{1}{6}$, i.e. 166,666 TND. The second uterine sister receives $\frac{1}{6}$, i.e. 166,666 TND. The germane brother receives $\frac{1}{6}$, i.e. 166,666 TND.²⁹

Total of Shares	6
Husband	3
Uterine Sister 1	1
Uterine Sister 2	1
Germane Brother	1

²⁹ If, instead of deceased woman, the decedent is a man, we will have a different result: the wife receives $\frac{3}{12}$, i.e. 250,000 TND; the first uterine sister receives $\frac{2}{12}$, i.e. 166,666 TND; the second uterine sister receives $\frac{2}{12}$, i.e. 166,666 TND; the germane brother receives $\frac{5}{12}$, i.e. 416,666 TND.



37.— The solution does not change in the presence of a mother:

A woman dies leaving a husband, a mother, two uterine sisters, a germane brother and a thousand (1000) TND.

All schools of thought except for *Hanbalite*³⁰ consider that: The husband receives $\frac{9}{18}$, i.e. 500,000 TND. The mother receives $\frac{3}{18}$, i.e. 166,666 TND. The first uterine sister receives $\frac{2}{18}$, i.e. 111,111 TND.

³⁰ For the *Hanbali* School: the husband receives $\frac{3}{6}$, i.e. 500,000 TND; the mother receives $\frac{1}{6}$, i.e. 166,666 TND; the first uterine sister receives $\frac{1}{6}$, i.e. 166,666 TND; the second uterine sister receives $\frac{1}{6}$, i.e. 166,666 TND and the germane brother

receives nothing.

Accordingly, as it will be explained later (see, *infra* 60) this is a situation where the woman inherits but not the man although the woman stands in a more distant degree of relationship to the deceased.
The second uterine sister receives $\frac{2}{18}$, i.e. 111,111 TND. The germane brother receives $\frac{2}{18}$, i.e. 111,111 TND.³¹

Total of Shares	18
Husband	9
Mother	3
Uterine Sister 1	2
Uterine Sister 2	2
Germane Brother	2

³¹ If, instead of a woman, the deceased is a man, the result will be as follow: the wife receives $\frac{3}{12}$, i.e. 250,000 TND; the mother receives $\frac{2}{12}$, i.e. 166,666 TND; the first uterine sister receives $\frac{2}{12}$, i.e. 166,666 TND; the second uterine sister receives $\frac{3}{12}$, i.e. 166,666 TND; the germane brother receives $\frac{3}{12}$, i.e. 250,000 TND.





38.— \blacksquare Fifth situation: Unlike the four abovementioned examples, the following examples do not concern one inheritance situation in which are compared the share received by the male and the share received by a female. It consists however of two different inheritance situations in which the shares of the male and the female of the same degree are compared.

First situation	Second situation
A woman dies leaving a germane sister and a husband.	A woman dies leaving a germane brother and a husband.
The germane sister receives $\frac{1}{2}$, i.e. 500,000 TND	The germane brother receives $\frac{1}{2}$, i.e. 500,000 TND
The husband receives $\frac{1}{2}$, i.e. 500,000 TND	The husband receives $\frac{1}{2}$, i.e. 500,000 TND ³²



39. \blacksquare Sixth situation: Similarly, the following examples comprises two different inheritance situations:³³

 $^{^{32}}$ Same thing when the deceased is a man. In this case also the germane sister receives a share equal to that of a germane brother:

First case	Second case
A husband dies leaving a germane sister and	A man dies leaving a germane brother
a wife.	and a wife.
The germane sister receives $\frac{3}{4}$, i.e. 750,000	The germane brother receives $\frac{3}{4}$, i.e.
TND	750,000 TND
The wife received $\frac{1}{4}$, i.e. 250,000 TND	The wife receives $\frac{1}{4}$, i.e. 250,000 TND

³³ In the following graphic, examples where the technique of « *radd* » or return is applied will be mentioned. It is a question here of a subsidiary right conferred to heirs with fixed share (*fardh*) in cases where there is a residue after the allocation of shares and in the absence of agnate heirs. The residue is then distributed among the prescribed share heirs in the absence of universal (agnate) heirs. V. Muhammad Abu Zahra, *op. cit.*, p. 172.



40.— In all the aforementioned cases, the decedent can be a man or a woman. According to Salāh Eddīne Sultān, these cases are few examples among others³⁴ (for instance: the son's

³⁴ Ṣalāḥ Eddine Sultān, op. cit. (Mirāth al-mar'a wa mas'alat al-musāwāt), p. 27.

son and son's daughter). Other cases can also be mentioned (cases in which a (*radd*) or return for the benefit of persons other than spouses is applicable):³⁵

Second situation
A man dies leaving a wife, a brother and a thousand (1000) TND.
The wife receives $\frac{1}{4}$,i.e. 250,000 TND
The brother receives $\frac{3}{4}$, i.e. 750,000
TND (As a universal heir). ³⁶

41.— □ Illustration with regard of two different inheritance situations:



42.— The foregoing demonstrates that there are situations where women inherit a share equal to that of men (it should be born in mind that all the possible cases have not been examined here).

³⁶ When the deceased is a woman, the following cases can be mentioned:

First case	Second case
A woman dies leaving a husband, a germane sister and a thousand (1000) TND.	A woman dies leaving a husband, a germane brother and a thousand (1000) TND.
The husband receives $\frac{1}{2}$, i.e. 500,000 TND.	The husband receives $\frac{1}{2}$, i.e. 500,000 TND.
The germane sister receives $\frac{1}{2}$, i.e. 500,000	The germane brother receives $\frac{1}{2}$, i.e. 500,000
TND.	TND.

³⁵ Ṣalāḥ Eddine Sultān, *ibid*.



Besides, there are cases where women inherit more than men.

1.2.2/ Cases Where Women Inherit More than Men

- **43.** In the two following situations, women inherit more than men:
- First situation.





44.— ■ The second situation (In this respect there are two positions).³⁷ A woman dies leaving a husband, a mother, a father and a thousand (1000) TND. The husband receives $\frac{3}{6}$, i.e. 499,998 TND.

³⁷ We have already examined this situation, *supra*.

The mother receives $\frac{2}{6}$, i.e. 333,332 TND. The father receives $\frac{1}{6}$, i.e. 166,666 TND.

Total of Shares	6
Husband	3
Mother	2
Father	1





45.— In addition to the above, in many other cases women can inherit more than men. In a descending order, we can consider the cases relating to the prescribed share of two thirds; a half; one third; and finally a sixth.

46. \blacksquare First situation. Sometimes, women receiving the prescribed share of two thirds get more than men in their quality of agnate.

47.— □ First example. It comprises two separate cases:

First case	Second case
A Woman dies leaving a husband, a father, a mother,	A Woman dies leaving a husband, a
two daughters and a thousand (1000) TND.	father, a mother, two sons and a
	thousand (1000) TND.
The husband receives $\frac{3}{15}$, i.e. 200,000 TND.	The husband receives $\frac{6}{24}$, i.e.
	250,000 TND.
The fother receives $\frac{2}{10}$ i.e. 133 333 TND	The father receives $\frac{4}{100}$ i.e. 166 666
$\frac{1100}{15}$, i.e. 155,555 mVD.	The funct freedows $\frac{1}{24}$, i.e. 100,000
	TND.
The mether receives $\frac{2}{12}$ i.e. 133 333 TND	The mother receives 4 i.e.
The moment receives $\frac{1}{15}$, i.e. 155,555 TND.	The momen receives $\frac{1}{24}$, i.e.
	166,666 TND.
Each of the two daughters receives $\frac{4}{15}$, i.e.	Each of the two sons receives $\frac{5}{24}$,
266,666 TND.	i.e. 208 TND.



Accordingly, the woman (the daughter in the example) receives, as prescribed share (two thirds, i.e. 266,666 TND), a portion that is bigger than what the man (the son in the example) receives as agnate (208 TND).³⁸

³⁸ The result would be similar had the deceased been a man: The da	aughter gets more than the son.
---	---------------------------------

First case	Second case
A man dies leaving a wife, a father, a mother, two daughters and one thousand (1000) TND.	A man dies leaving a wife, a father, a mother, two sons and one thousand (1000) TND.
The wife receives $\frac{3}{27}$, i.e. 111,111 TND.	The wife receives $\frac{6}{48}$, i.e. 125 TND.
The father receives $\frac{4}{27}$, i.e. 148,148 TND.	The father receives $\frac{8}{48}$, i.e. 166,666 TND.
The mother receives $\frac{4}{27}$, i.e. 148,148	The mother receives $\frac{8}{48}$, i.e. 166,666
TND.	TND.

First case	Second case
A woman dies leaving a husband, a mother, two germane sisters and one thousand (1000) TND.	A woman dies leaving a husband, a mother, two germane brothers and one thousand (1000) TND.
The husband receives $\frac{3}{8}$, i.e. 375,000 TND.	The husband receives $\frac{3}{6}$, i.e. 500,000 TND.
The mother receives $\frac{1}{8}$, i.e. 125,000 TND.	The mother receives $\frac{1}{6}$, i.e. 166,666 TND.
Each of the germane sister receives $\frac{2}{8}$, i.e.	Each of the germane brother receives $\frac{1}{6}$,
250,000 TND.	i.e. 166,666 TND.

48.— □ Second example. It comprises two separate cases:



Accordingly, what the woman (the germane sister in the example) receives as prescribed share (the two thirds i.e. the equivalent of 250 TND) is bigger than what the man (the germane brother) receives as agnate $(166,666 \text{ TND})^{39}$.

Each of the two daughter receives $\frac{8}{27}$,	Each of the two sons receives $\frac{13}{48}$, i.e.
i.e. 296,296 TND.	270,833 TND.

³⁹ The result would be similar had the deceased been a man: The germane sister gets more than the germane brother.

	<u> </u>
First case	Second case
A man dies leaving a wife, a mother, two germane sisters and one thousand (1000) TND.	A man dies leaving a wife, a mother, two germane brothers and one thousand (1000) TND.
The wife receives $\frac{3}{13}$, i.e. 230,769 TND.	The wife gets $\frac{6}{24}$, i.e. 250,000 TND.
The mother receives $\frac{2}{13}$, i.e. 153,846 TND.	The mother gets $\frac{4}{24}$, i.e. 166,666 TND.

49. \blacksquare Second situation. Sometimes, women receiving the prescribed share of a half get more than men in their quality of agnate.

50.— \square First example. It comprises two separate cases:



Accordingly, what the woman (the daughter in the example) receives as prescribed share (the half i.e. the equivalent of 461,538 TND) is bigger than what the man (in our example, the son) receives as agnate (416,666 TND).⁴⁰



⁴⁰ The result would be different had the deceased been a man: The daughter gets less than the son. However, the difference is not due to the application of the rule of the men get a double share of inheritance.

First case	Second case
A woman dies leaving a husband, a father, a mother, a son's daughter and one thousand (1000) TND.	A woman dies leaving a husband, a father, a mother, a son's son and one
	thousand (1000) TND.
The husband gets $\frac{3}{13}$, i.e. 230,769 TND.	The husband gets $\frac{3}{12}$, i.e. 250 TND.
The father gets $\frac{2}{13}$, i.e. 153,846 TND.	The father gets $\frac{2}{12}$, i.e. 166,666
	TND.
The mother gets $\frac{2}{13}$, i.e. 153,846 TND	The mother gets $\frac{2}{12}$, i.e. 166,666
	TND.
The son's daughter gets $\frac{6}{13}$, i.e. 461,538 TND.	The son's son gets $\frac{5}{12}$, i.e. 416,666
	TND.

51.− □ Second example. It comprises two separate cases:



First case	Second case
A man dies leaving a wife, a father, a mother, a daughter and one thousand (1000) TND.	A man dies leaving a wife, a father, a mother, a son and one thousand (1000) TND.
The wife receives $\frac{3}{24}$, i.e. 125 TND.	The wife receives $\frac{3}{24}$, i.e. 125 TND.
The father receives $\frac{5}{24}$, i.e. 208,333 TND	The father receives $\frac{4}{24}$, i.e. 166,666 TND.
The mother receives $\frac{4}{24}$, i.e. 166,666 TND	The mother receives $\frac{4}{24}$, i.e. 166,666 TND.
The daughter receives $\frac{12}{24}$, i.e. 500 TND.	The son receives $\frac{13}{24}$, i.e. 541,666 TND.

Accordingly, with the prescribed share of the half, the woman (in our example the son's daughter) receives more than the man (the son's son) in his quality of agnate (in our example, the son's son receives 416,666 TND whereas the son's daughter receives 461,538 TND).⁴¹ **52.** \square Third example. It comprises two cases:

First case	Second case
A woman dies leaving a husband, a mother, a germane sister and one thousand (1000) TND.	A woman dies leaving a husband, a mother, two sons and a thousand (1000) TND.
The husband receives $\frac{3}{8}$, i.e. : 375 TND.	The husband receives $\frac{6}{24}$, i.e.: 250 TND.
The mother receives $\frac{2}{8}$, i.e. : 250 TND.	The mother receives $\frac{4}{24}$, i.e.: 166,666 TND.
The germane sister receives $\frac{3}{8}$, i.e. : 375	Each of the two sons receives $\frac{7}{24}$, i.e. : 291.666 TND.



⁴¹ The result would be different had the deceased been a man: the son's daughter gets less than the son's son. However, the difference is not due to the application of the rule of double shares for men.

First case	Second case
A man dies leaving a wife, a father, a mother, a son's daughter and one thousand (1000) TND.	A man dies leaving a wife, a father, a mother, son's son and one thousand (1000) TND.
The wife receives $\frac{3}{24}$, i.e. 125 TND.	The wife gets $\frac{3}{24}$, i.e. 125 TND.
The father receives $\frac{5}{24}$, i.e. 208,333 TND.	The father receives $\frac{4}{24}$, i.e. 166,666 TND.
The mother receives $\frac{4}{24}$, i.e. 166,666 TND.	The mother receives $\frac{4}{24}$, i.e. 166,666 TND.
The son's daughter (on the son's side) gets $\frac{12}{24}$, i.e. 500	The son's son receives $\frac{13}{24}$, i.e. 541,666 TND.
TND.	

Accordingly, with the prescribed part of the half, a woman (the germane sister in the example) receives more than what the man (the son in the example) receives as agnate heir (the son receives 291,666 TND whereas the germane sister receives 375TND). The woman inherits a larger portion than what the man inherits although she is in a more distant position from the decedent.⁴²

53.— \blacksquare Third situation: In certain cases, women with a prescribed share of a third receive more than men in their quality of agnate heirs.

54.− □ First case:

A man dies leaving a wife, a mother, two uterine sisters, two germane brothers and one thousand (1000) TND.

The wife receives $\frac{6}{24}$, i.e. 250,000 TND. The mother receives $\frac{4}{24}$, i.e. 166,666 TND. The two uterine sister receive $\frac{4}{24}$ each, i.e. 166,666 TND. The two germane brother receive $\frac{3}{24}$ each, i.e. 125 TND.⁴³

⁴² The result would be the same had the deceased been a man: the germane sister gets more than the son.

First case	Second case
A man dies leaving a wife, a mother, a germane sister and one thousand (1000) TND.	A man dies leaving a wife, a mother, two sons and one thousand (1000) TND.
The wife receives $\frac{3}{13}$, i.e. : 230,769 TND.	The wife receives $\frac{6}{48}$, i.e. : 125 TND.
The mother receives $\frac{4}{13}$, i.e. : 307,692 TND.	The mother receives $\frac{8}{48}$, i.e. : 166,666 TND.
The germane sister receives $\frac{6}{13}$, i.e. : 461,538 TND.	Each of the sons receives $\frac{17}{48}$, i.e. : 354,166 TND.

⁴³ If we consider the case where the decedent leaves two uterine brothers instead of two uterine sisters, the result would be that each of the brothers receives 166,666 TND. Accordingly, again we are in the presence of another situation, as contrasted with the one considered above, where the woman (uterine sister) inherits the same portion as the man (the uterine brother).

First case	Second case	
A man dies leaving a wife, a mother, two uterine sisters, two germane brothers and one thousand (1000) TND.	A man dies leaving a wife, a mother, two uterine brothers, two germane brothers and one thousand (1000) TND.	
The wife receives $\frac{6}{24}$, i.e. 250,000 TND.	The wife receives $\frac{6}{24}$, i.e. : 250 TND.	
The mother receives $\frac{4}{24}$, i.e. 166,666 TND.	The mother receives $\frac{4}{24}$, i.e. 166,666 TND.	

Total of Shares	24
Wife	6
Mother	4
Uterine sister (1)	4
Uterine Sister (n° 2)	4
Germane brother (n° 1)	3
Germane brother (n° 2)	3





Each of the two uterine sisters receives $\frac{4}{24}$, i.e. 166,666	Each of the two uterine brothers receives $\frac{4}{24}$, i.e. :
TND.	166,666 TND.
Each of the two germane brother receives $\frac{3}{24}$, i.e. 125 TND.	Each of the two germane brother receives $\frac{3}{24}$, i.e. : 125
	TND.

Note: In the second case, the uterine brother gets more than germane brother although he is in a more distant position to the deceased.

Accordingly, with the prescribed share of one third, the woman gets (in the example, the uterine sister) receives a larger portion compared to what the man (the germane brother) receives as agnate heir (in the example, the germane brother receives 125 TND whereas the uterine sister receives gets 166,666 TND). Again, the woman receives a larger portion although she is more distant to the defendant than the man.⁴⁴

55.— \Box Second case:

A woman dies leaving a husband, two uterine sisters, two germane brothers and one thousand (1000) TND.

The husband receives $\frac{6}{12}$, i.e. 500,000 TND.

Each of the uterine sisters receives $\frac{2}{12}$, i.e. 166,666 TND.

Each of the germane brothers receives $\frac{1}{12}$, i.e. 83,333 TND.

Total of Shares	12
Husband	6
Uterine sister (1)	2
Uterine sister (2)	2
Germane brother (1)	1
Germane brother (2)	1

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the husband receives \frac{6}{12}, i.e. 500,000 TND; the mother gets \frac{2}{12}, i.e. 166,666 TND; each of the uterine sisters receives \frac{1}{12},
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⁴⁴ If the deceased were a man, the uterine sister would get a portion equivalent to the germane brother would receive. Accordingly, in this example, the woman gets an equal portion although she is more distant to the deceased. Consider this case: A woman dies leaving a husband, a mother, two uterine sisters, two germane brothers and one thousand (1000) TND;

i.e. 83,333 TND and each of the germane brothers gets $\frac{1}{12}$, i.e. 83,333 TND.



Accordingly, with the prescribed share of one third, the portion of the woman (the uterine sister in the example) is larger than the portion the man receives (the germane brother) in his quality of agnate heir despite the fact that the woman is more distant to the decedent than the man.⁴⁵

56. \blacksquare Forth situation: in certain cases, the prescribed share of one sixth allotted to a woman is larger than the portion the man gets in his quality of agnate heir. Many example can illustrate this situation among them, the following will be considered:

57.— \Box First example:

A woman dies leaving a husband, a mother, a uterine sister, two germane brothers and one thousand (1000) TND.

The husband receives $\frac{6}{12}$, i.e. 500,000 TND.

a man dies leaving a wife, two uterine sisters, two germane brothers and one thousand (1000) TND. The wife receives $\frac{6}{24}$,

i.e. 250,000 TND ; each of the uterine sister receives $\frac{4}{24}$, i.e. 166,666 TND; each of the germane brother receives $\frac{5}{24}$, i.e. 208,333 TND.

⁴⁵ The result would be different had the deceased been a man: the uterine sister receives less than the germane brother. However, the difference is not the result of the application of the rule of the double share for men. Consider this example:

The mother receives $\frac{2}{12}$, i.e. 166,666 TND. The uterine sister receives $\frac{2}{12}$, i.e. 166,666 TND. Each of the germane brothers receives $\frac{1}{12}$, i.e. 83,333 TND.

Total of Shares	12
Husband	6
Mother	2
Uterine sister	2
Germane brother (1)	1
Germane brother (2)	1





Accordingly, with the prescribed share of the sixth, the portion of the woman (the uterine sister in the example) is larger than the portion of the man (the germane brother) in his quality of agnate heir (the germane brother receives in the example 83,333 TND whereas the uterine

sister receives gets 166,666 TND) although she is more distant to the decedent than the man.⁴⁶ In addition, the share that the germane brothers inherit would even be smaller depending on their number whereas the share of the woman remains the same.

58	□ Second	example.	It com	prises	two cases:
00.		emanipre.	10 00111	PILOCO	en o eases.

First case	Second case
A man dies leaving a wife, a father, a	A man dies leaving a wife, a father, a
one thousand (1000) TND.	thousand (1000) TND.
The wife receives $\frac{3}{27}$, i.e. 111,111	The wife receives $\frac{3}{24}$, i.e. 125 TND.
TND.	
The father receives $\frac{4}{27}$, i.e. 148,148	The father receives $\frac{4}{24}$, i.e. 166,666 TND.
TND.	
The mother receives $\frac{4}{27}$, i.e. 148,148	The mother receives $\frac{4}{24}$, i.e. 166,666
TND.	TND.
The daughter receives $\frac{12}{27}$, i.e. 444,444	The daughter receives $\frac{12}{24}$, i.e. 500 TND.
TND.	
The son's daughter receives $\frac{4}{27}$, i.e.	The grandson receives $\frac{1}{24}$, i.e. 41,666
148,148 TND.	TND.



Accordingly, the portion that the woman receives as prescribed share of the sixth, (in the example the son's daughter) is larger than the portion the man (the son's son) gets in his

⁴⁶ The result would be different had the deceased been a man: the uterine sister gets less than the germane brother. However, the difference is not due to the application of the rule of the double share to the man. Consider the following example: A man dies leaving a wife, a mother, an uterine sister, two germane brothers and one thousand (1000) TND. The wife inherits $\frac{6}{24}$, i.e. 250,000 TND ; the mother inherits $\frac{4}{24}$, i.e. 166,666 TND; the uterine sister inherits $\frac{4}{24}$, i.e. 166,666 TND; each of the germane brothers inherits $\frac{5}{24}$, i.e. 208,333 TND.

quality of agnate heir (the son's son receives 41,666 TND whereas the son's daughter receives 148,148 TND).⁴⁷ In other words, "the son's daughter inherits four shares [...] because her prescribed portion is the sixth. As for the grandson, he inherits only one share because he is an agnate heir. Therefore, he takes what remains. And what remained is only one share".⁴⁸

59.— \Box The third example is a rare one and comprises two cases:

First case	Second case
A man dies leaving a mother, a maternal grandmother, a paternal grandmother and one thousand (1000) TND.	A man dies leaving a father, a maternal grandmother, a paternal grandmother and one thousand (1000) TND.
The mother receives one portion of the assets as prescribed share, and the remaining portion as return (according to certain academic opinions).	The father receives $\frac{5}{6}$, i.e. 833,333 TND.
The maternal grandmother receives nothing because she is precluded. ⁴⁹	The maternal grandmother receives $\frac{1}{6}$, i.e. 166,666 TND.
The paternal grandmother receives nothing because she is precluded.	The paternal grandmother receives nothing because she is precluded.



⁴⁷ If the deceased were a woman, we would have the following situations: On the one hand, the mother would get a portion equivalent to the portion of the father (this cases enters in the situations considered above *supra*, No. 25ff). On the other hand, the son's daughter inherits whereas the son's son receives nothing (this case enters in the situations that will be considered below *infra*, No. 60ff) : *The first case*: The husband receives $\frac{3}{15}$, i.e. 200 TND; the father receives $\frac{2}{15}$, i.e. 133,333 TND; the mother receives $\frac{2}{15}$, i.e. 133,333 TND; the mother receives $\frac{2}{15}$, i.e. 133,333 TND; the daughter receives $\frac{3}{13}$, i.e. 230,769 TND; the father receives $\frac{2}{13}$, i.e. 153,846 TND; the mother receives $\frac{2}{13}$, i.e. 153,846 TND; the daughter receives $\frac{6}{13}$, i.e. 461,538 TND and the grandson

on the side of the son gets nothing.

⁴⁸ Salah Eddine Sultan, op. cit. (Mirath al-mar'a wa mas'alat al-musawat), p. 40.

⁴⁹ On preclusion (Hadjb), see Muhammad Abu Zahra, op. cit.., pp. 167 ff.

In this case also the portion of the woman is larger than the one of the man.



Furthermore, in certain situations, the woman inherits whereas the man does not.

1.2.3/ Situations Where the Woman Inherits but the Man Does Not

60.— Two situations can be given as example. Each of them consists of two separate cases.⁵⁰

61. ■ First situation: a son's daughter and a son's son.

It should be noted that the example of the situation given here can be considered in the context of the scholarly opinion that does not admit the obligatory bequest.

⁵⁰ In addition, see the aforementioned example (*supra*, No. 37) and the example given *supra*, No. 58.

First case	Second case
A woman dies leaving a husband, a	A woman dies leaving a husband, a
father, a mother, a daughter, a son's	father, a mother, a daughter, a son's son
daughter and one thousand (1000) TND.	and one mousand (1000) TND.
The husband receives $\frac{3}{15}$, i.e. 200,000	The husband receives $\frac{3}{13}$, i.e. 230,769
TND.	TND.
The father receives $\frac{2}{15}$, i.e. 133,333	The father receives $\frac{2}{13}$, i.e. 153,846
TND.	TND.
The mother receives $\frac{2}{15}$, i.e. 133,333	The mother receives $\frac{2}{13}$, i.e. 153,846
TND.	TND.
The daughter receives $\frac{6}{15}$, i.e. 400,000	The daughter receives $\frac{6}{13}$, i.e. 461,538
TND.	TND.
The son's daughter gets $\frac{2}{15}$, i.e. 133,333	The son's son receives what remains as agnate heir (but in this example, he
TND.	gets nothing as nothing remains). ⁵¹



⁵¹ If the deceased were a man, the mother and the father would get equal shares and the son's daughter would receive a portion larger than that of the son's son:

First case	Second case
A man dies leaving a wife, a father, a mother, a daughter, a granddaughter and one thousand (1000) TND.	A man dies leaving a wife, a father, a mother, a daughter, a grandson and one thousand (1000) TND.
The wife receives $\frac{3}{27}$, i.e. 111,111 TND.	The wife receives $\frac{3}{24}$, i.e. 125,000 TND.
The father receives $\frac{4}{27}$, i.e. 148,148 TND.	The father receives $\frac{4}{24}$, i.e. 166,666 TND.
The mother receives $\frac{4}{27}$, i.e. 148,148	The mother receives $\frac{4}{24}$, i.e. 166,666
TND.	TND.

62.— \blacksquare Second situation. It consists of two cases: The first concerns a consanguine sister; the second a consanguine brother.

First case	Second case
A woman dies leaving a husband, a germane sister, and consanguine sister and one thousand (1000) TND.	A woman dies leaving a husband, a germane sister, a consanguine brother and one thousand (1000) TND.
The husband receives $\frac{3}{7}$, i.e. 428,571 TND.	The husband receives the half, i.e. 500 TND.
The germane sister receives $\frac{3}{7}$,	The germane sister receives the half, i.e. 500 TND.
1.C. 420,571 IND.	
The consanguine sister receives $\frac{1}{7}$, i.e.	The consanguine brother receives nothing. ⁵²
142 857 TND	



The daughter receives $\frac{12}{27}$, i.e. 444,444	The daughter receives $\frac{12}{24}$, i.e. 500,000
TND.	TND.
The son's daughter receives $\frac{4}{27}$, i.e.	The son's son gets $\frac{1}{24}$, i.e. 41,666 TND.
133,333 TND.	

⁵² The result would be different if the decedent were a man: the consanguine sister would get lesser than the consanguine brother. However, the difference is not justified by the rule of the double share to men:

First case	Second case
A man dies leaving a wife, a germane sister, a consanguine sister and one thousand (1000) TND.	A man dies leaving a wife, a germane sister, a consanguine brother and one thousand (1000) TND.
The wife receives $\frac{4}{16}$, i.e. 250,000 TND.	The wife receives $\frac{1}{4}$, i.e. 250,000 TND.
The germane sister receives $\frac{9}{16}$, i.e. 562,500 TND.	The germane sister receives $\frac{2}{4}$, i.e. 500,000 TND.
The consanguine sister receives $\frac{3}{16}$, i.e. 187,500 TND.	The consanguine brother receives $\frac{1}{4}$, i.e. 250,000 TND.

63.— As the foregoing shows, there are situations where women inherit whereas men do not. These can be summarized as follows:



It should be recalled that cases where women get more than men, cases where women get equal part as men and cases where women get less than men have been addressed in previous sections. Now it is time to analyze these situations.

2. Reading of Cases of Inheritance of Women as Compared of those of Men of the Same Degree

64.— The reading of the cases of the inheritance of women in comparison to those of men of the same degree enables us to draw two conclusions. First, in most of the cases, women do not inherit the half of what men get. Second, in certain cases women inherit less than men. However, this is justified by the fact that women are compensated and this compensation is provided for by the rules of maintenance. Therefore, in this chapter we will proceed as follow: First, we shall determine the predominant cases of the inheritance of women. Then, we shall present justifications for the existence of the non-predominant cases.

2.1/ Determination of the Predominant Cases

65.— The analyses of the inheritance cases of women and men of the same degree reveals the following:

▶ There are four cases of inheritance of the daughter as compared to the son:

 \Box The daughter inherits the half of share inherited by the son.⁵³

□ The daughter inherits less than the share inherited by the son, however the difference is not that of the rule of the double share for men.⁵⁴

 \Box The daughter and the son inherit equally.⁵⁵

 \Box The daughter inherits more than the son.⁵⁶

▶ There are five cases of inheritance of the son's daughter as compared to the son's son:

 \Box The son's daughter inherits the half of the son's son.⁵⁷

□ The son's daughter inherits less than the son's son, however the difference does not result from the application of the rule of the double share for men.⁵⁸

 \Box The son's daughter and the son's son inherit equally.⁵⁹

 \Box The son's daughter inherits more than the son's son.⁶⁰

 \Box The son's daughter inherits but the son's son does not.⁶¹

▶ There are three cases of inheritance of the germane sister as compared to germane brother:

 \Box The germane sister inherits the half of the germane brother.⁶²

⁵³ See, *supra*, No. 11.

⁵⁴ See, *supra*, No. 50 (note).

⁵⁵ See, *supra*, No. 39.

⁵⁶ See, *supra*, No. 43, No. 46 (text and note) and No. 50.

⁵⁷ See, *supra*, No. 12.

⁵⁸ See, *supra*, No. 51 (note).

⁵⁹ See, *supra*, No. 40. ⁶⁰ See, *supra*, No. 51, No. 58 and No. 61 (note).

⁶¹ See, *supra*, No. 61. As for the inheritance share of the daughter of the son's son as compared to the share of the son of the son's son, the following cases exist: The daughter of the son's son inherits the half of the son of the son's son [see, supra, No. 12]. The daughter of the son's son and the son of the son's son inherit equally [see, supra, No. 40]. ⁶² See, *supra*, No. 15.

 \Box The germane sister and the germane brother inherit equally.⁶³

 \Box The germane sister inherits more than the germane brother.⁶⁴

▶ There are four cases of inheritance of the consanguine sister as compared to the consanguine brother:

 \Box The consanguine sister inherits the half of the consanguine brother.⁶⁵

□ The consanguine sister inherits less than the consanguine brother, however the difference does not result from the application of the rule of the double share for men.⁶⁶

 \Box The consanguine sister and the consanguine brother inherit equally.⁶⁷

□ The consanguine sister inherits but not the consanguine brother.⁶⁸

▶ There are four cases for the inheritance of the mother as compared to the father:

 \Box The mother inherits the half of the father.⁶⁹

□ The mother inherits less than the father, however the difference does not result from the application of the rule of the double share for men.⁷⁰

 \Box The mother and the father inherit equally.⁷¹

 \Box The mother inherits more than the father.⁷²

▶ There are two cases of inheritance of the wife as compared to the husband:

 \Box The wife inherits the half of the husband.⁷³

 \Box The wife and the husband inherit equally.⁷⁴

Moreover, the inheritance of the uterine sister as compared to the uterine brother (the aunt as compared to the uncle etc...): in this case, the uterine sister and the uterine brother inherit equally.75

66.— If we look at the cases of the daughter (and the son's daughter etc...), the sister (germane sister or consanguine sister), the mother and the wife, there do exist cases in which the female inherits the half of the share inherited by the male of the same degree as shown above. Then, one may conclude that it was these cases which have led Joseph Schacht (and

⁶³ See, *supra*, No. 38 (text and note), No. 39 and No. 41.

⁶⁴ See, *supra*, No. 48. Better yet, we have seen a case where the germane sister inherits more than the son, although she is more distant to the deceased (see, supra, No. 52).

⁶⁵ See, supra, No. 16.

⁶⁶ See, supra, No. 62 (note).

⁶⁷ See, *supra*, No. 39. 68 See, *supra*, No. 62.

⁶⁹ See, *supra*, No. 19.

⁷⁰ See, *supra*, No. 19 (note).

⁷¹ See, *supra*, No. 27, No. 28, No. 29 and No. 39. ⁷² See, *supra*, No. 19 (note), No. 44 and No. 59.

⁷³ See, *supra*, No. 20 et No. 21.

⁷⁴ See, *supra*, No. 39.

⁷⁵ See, *supra*, No. 34, No. 35, No. 39, No. 41, and No. 54 (note). Better yet, in certain cases, the uterine sister and the germane brother inherit equally although the former is more distant from the deceased than the latter (see, supra, No. 36, No. 37 and No. 54 [note]). In other cases, the uterine sister inherits but not the germane brother (see, *supra*, No. 37 [note]).

others) to argue that: "in Islamic law, "[f]emale relatives [...] generally receive half the share of male relatives of the same degree".⁷⁶

67.— However, in many other cases – much bigger in number – women inherit larger portion. Thus, it is possible to assert that the predicative proposition formulated by Joseph Schacht (and others) according to which in Islamic law, female relatives generally receive half the share of male relatives of the same degree is not correct. Put it differently, the predicate (a law under which female relatives generally receive half the share of male relatives of the same degree) does not correspond the subject (Islamic law).

68.—It can be argued that such a result (the wrongness of the predicative proposition) can be reached only if the starting point of the discussion on issues relating to inheritance are theoretical, i.e. issues that are not concerned with reality, and which are considered in a specific place (Tunis for example) during a specified period (one year for example), so that it is not possible to know how many successions were done, and how much did women and men (of the same degree) effectively inherit.

It is possible to answer back by saying that the main purpose of this book is to discuss the argument of some authors according to which women in Islamic law generally inherit the half of the share inherited by men. This argument is based on elements taken from rules of inheritance rather than elements taken from the application of these rules in a specified place during a specified period of time.

69.— But, let us consider that the issue of equality in inheritance had to be addressed from a practical point of view rather than theoretical. The question that should be answered then is the following: does the aforementioned analyses lead to the conclusion that in Islamic law female relatives generally receive half the share of male relatives of the same degree? The answer can be either positive or negative depending on the demographic elements to be considered.⁷⁷

70.— In any case, as the forgoing suggests, what need to be kept in mind is that in the majority of cases women do not inherit half of men. Hence, the question that should be answered is as follow: what justifies the cases, although non predominant, in which women inherit the half of the share inherited by men?

⁷⁶ See, *supra*, No. 4.

⁷⁷ In a study on inheritance in the region of Kastamonu under the Ottoman Empire during 1712 to 1760, the authors of the study showed the following: Son and daughter had inherited 49% of the value of the estates object to succession. Sons had inherited 30% and daughters 19%. According the ration of the average inherited by sons and the average inherited by daughter shows that it is not 2 but 1,54. Bogaç A. Ergene and Ali Berker, "Inheritance and Intergenerational Wealth Transmission in Eighteenth-Centrury Ottoman Kastamonu: An Empirical Inverstigation", *Journal of Family History*, 2009, pp. 24-46. Cf.: Muḥammad Moḥsin Shakrūn, *Madkhal ila al-baḥth dimoughrafi fi al-mawārith [Introduction to Demographic Research in matter of Inheritance]*, (Ezzitouna University, Higher Institute of Theology, Tunis, 2017 – 2018), p. 48 and passim.

2.2/ Justification of the existence of non-predominant cases

71.— The justification of the aforementioned four cases in which women inherit the half of the share inherited by men⁷⁸ lies especially in the rules related to maintenance obligation.⁷⁹

72.— If we take the first case, i.e. the case of the daughter as compared to the son, it was mentioned that the daughter inherits the half of the share inherited by the son, but inherits the totality of the assets provided she is the sole heir. The reason is the following: when the daughter is in need, the maintenance obligation is borne by her brother. But, when the daughter does not have a brother who would guarantee her maintenance, there are no reasons why she will be given the half of the inheritance. Moreover, Islamic law provides for another source of living to the married woman as she receives a dower $(mahr)^{80}$ in addition to the maintenance obligation guaranteed by her husband.⁸¹

73.— The situation of the germane sister and the consanguine sister is comparable to the situation of the daughter. The sister inherits the totality of the estates provided she is the only heir. She inherits the half in case she has a brother, the latter bearing the obligation to provide a maintenance to his sister when she is in need. The question is different for uterine siblings, and that is why the uterine sister (the woman) and the uterine brother (the man) inherit equally.

74.— As for the inheritance of the mother and the father, there are only few cases in which the mother inherits the half of the share inherited by the father.

The reason of the existence of these few cases lies behind the fact that the mother is either a married, and therefore, the husband bears the maintenance obligation towards his wife or she is no longer married; and in this case her maintenance obligation is incumbent on the new husband, the father or by an agnate relative.

⁷⁸ See *supra* No. 11 and No. 65.

⁷⁹ On maintenance obligation in Islamic law, see Wahba Zuhayli, *Al-wadjiz fi al-fikh al-islami* (Dar al-fikr, 2005), T. III, pp. 238 ff.

 $^{^{80}}$ In Islamic law, the dower (*mahr*) is the property given by the bridegroom to his bride the time of the marriage and which becomes the ownership of the wife.

⁸¹ Can we say, as some modernists argue, that equality is in the spirit of Islamic law and that the spirit prevails over the letter of the text? The relation between the letter and the spirit of the law has been discussed in modern western literature. See Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (Thomson/West, 2012), p. 341. The answer given by the majority of opinions is the following: the thesis according to which the spirit of the text should prevail over its letter is dangerous. It gives arbitrary power to the judge, threatening, therefore, legal security. The judge will be also empowered to legislate, which goes against the principle of separation of powers. "The requirements of good faith and common sense . . . do not justify the interpreter . . . to seek the spirit or equitable meaning of the statute in disregard of its textual implications. These doctrines lead more often than the doctrine of literalness to spurious interpretation and to completely unforeseeable and unreasonable results." (*ibid*, p. 342). In islamic law, the specialists of the methodology ($us\bar{u}l$ *al- fiqh*) adopt a thesis that is similar to the western majoritarian opinion. They distinguish between the idea of "interest adopted by the text", "interest excluded by the text" and "interest that is neither adopted nor excluded by the letter of the text. (Abd al-Wahhāb <u>Kh</u>allāf, "Les fondements du droit musulman, *cilm usūl al-fiqh*, translated from Arabic by Claude Dabbak, Asmaa Godin et Mehrezia Labidi Maïza, forrwarded par Abdel-Majid Turki, (Éd. Al Qalam, Paris, 1997), p. 123.

75.— With regard to the inheritance of the wife and the husband, usually the wife that does not remarry after the death of the husband and inherits him has children. In this case, the portion given to the wife when she has underage children allows her to have a life without needs; if not her maintenance is incumbent on her father or agnate relatives.⁸² In case she remarries, her maintenance obligation is incumbent on the husband.⁸³

76.— Accordingly, the cases in which women inherit the half of the share inherited by men have their justification basically in the rules of the maintenance obligation which are borne on men. This is not to mention that these cases are not predominant as contented by some authors.

⁸² Şalah Eddīne Sultān, op. cit. (Nafakat al-mar'a wa mas'alat al-musawat), p. 63.

⁸³ Maintenance obligation includes food, clothes, housing and the house servant if the husband can afford it and the wife is used to be served in the house of her father or ill...The maintenance of the woman also includes washing machines and furniture of the house, cosmetics etc...see, Wahba Zuhayli, *op.cit.*. pp. 249-250. The maintenance on others is mandatory only in case of need, except for the maintenance of the wife which is incumbent on the husband. This obligation is not justified by the need of the wife. Wahba Zuhayli, *op.cit.*, p. 243.

Conclusion

77.— The orientalist Joseph Schacht has made a predicative proposition (or a statement if we do not use the terminology used in logic) according to which in Islamic law, female relatives generally receive half the share of male relatives of the same degree. Many authors who proclaim to be modernist in Tunisia and other countries agree with this statement. We could show along this book that this statement is false in the meaning that the predicate does not correspond the subject.

Certainly, orientalists and those who consider themselves modernist can still believe in a statement which is proved wrong. This can be considered as an exercise of their freedom of opinion. This freedom surely includes the adoption of false (untrue) opinions.

However, proving that a statement is false would prevent it to be presented as « science ». Schoenberg once said he composed music so that people later would no longer write music.⁸⁴ Pierre Bourdieu adds: «I write so that people, and especially those who are authorized to speak, the 'spokesmen', can no longer produce noise [...] that sounds like music.⁸⁵

⁸⁴ Quoted by Pierre Bourdieu, Sociology in Question (Sage Publication, 1993), p. 6 (Translated by Richard Nice).

⁸⁵ "Schoenberg disait un jour qu'il composait pour que les gens ne puissent plus écrire de la musique. J'écris pour que les gens, et d'abord ceux qui ont la parole, les porte-parole, ne puissent plus produire [...] du bruit qui a les apparences de la musique." Pierre Bourdieu, *Question de Sociologie* (Les Editions Minuit, 2002) p. 18.

Author's Afterword

A man dies leaving a son, a daughter, a mother and a father. In Islamic Law, the daughter inherits half the share of her brother. The mother receives a share equal to that of the father. We are faced, then, with a single case where a female inherits less than a male and where another female inherits a portion equal to that of the male. This means that if under Islamic law, certain women are portions lesser than what men receive, it by no means because they are females.

There are those who argue that: "Yes, we admit that under this law, women do not inherit less than man in all cases. Nevertheless, this is the case in most of the cases." This book attempts to prove that the number of cases where the woman inherits less than the man is limited (four cases). In most cases however, a woman may inherit a portion equal to that of man or she may inherit a bigger portion; in other cases, the woman may even inherit but not the man.

Another objection may be raised as well. For some, it is admitted that the cases where the woman inherits half the share of man are theoretically limited but, practically, these cases are the most likely to occur. The answer to this allegation is exactly what the present work aims to discuss, i.e. an issue pertaining to cases of inheritance as derived from inheritance law rather than from the application of that law at a specific time and in a specific place. But, let us assume that the debate is about the application of the law. Let us take, for instance, a specific geographical region and examine the inheritance cases dealt with over a particular period of time. If we compare what sons and daughters inherit from their parents, will the total inherited value by males be the double of that inherited by females? The answer is to be found in a study covering a region called Kastamonu over a period of half a century (cf. paragraph n° 69, Footnote). The study concluded that the average value inherited by sons compared to that inherited by daughters was not the double (2) but less (precisely: 1.54). Anyone working from a different demographic perspective will certainly find different results.

We turn now to the argument of those who admit that Islamic law does not discriminate against women because they are women. According to some of them, the law can be improved from a law that prescribes for an inheritance share for women lesser than that of men in a number of cases and an equal or bigger share in others to a law that prescribes equal shares for both men and women in all cases. How could this happen? The proponents of this view argue that the spirit of Islamic law is equality and emphasis should be placed on the spirit of the text over its letter. This is the stance espoused by the translator of the book. However, with all due respect for my colleague Béligh Elbalti, who has kindly accepted to translate this work from Arabic into English despite the fact that he does not fully share the opinion of the author, which in itself is a proof of his great patience with respect to difference of opinion, I am one of those who embrace the position articulated by Islamic jurists according to which the spirit of the law and its letter should not be in contradiction. Such a position is not exclusive to Islamic jurists, for the majority of modern western jurists adopt it. Indeed, they say that any thesis that contradicts theirs is a dangerous one that could threaten

legal stability and turn the interpreter into a legislator. In other words, it could undermine the principle of separation of powers. (cf. paragraph n° 72, Footnote).

Appendix

Code of Personal Status¹

Book IX – Inheritance

Chapter I – General Provisions

Article 85 – Inheritance is due upon the death of the decedent, even when declared judicially, and the existence of surviving heirs.

Article 86 – If two persons die without being possible to ascertain who died first, none of them shall have an entitlement in the estate of the other irrespective of whether their death occurred in the same accident or not.

Article 87 – The estate shall be distributed in the following order:

- a) Claims connected with the estate itself;
- b) Burial and funeral expenses;
- c) [The decedent's personal] unquestionable debts;
- d) The valid and executory bequest;
- e) The inheritance [remaining estate].

In the absence of heirs, the estate or whatever left from it shall revert to the State Treasury.

Article 88 – Intentional killing is one of the inheritance impediments.² The murderer shall not inherit, whether he is the principle perpetrator, an accomplice or has acted as a false witness whose testimony has led to the conviction and execution.

Chapter II – Heirs

Article 89 – Heirs are of two categories: heirs with prescribed share³ and agnatic heirs.⁴

Article 90 – *Male heirs are*: 1) the father, 2) the grandfather of whatever degree removed unless a female interposes, 3) the son, 4) the son's son of whatever degree removed, 5) the brother, whether germane, consanguine or uterine, 6) the son of a germane or consanguine

¹ Translated by Béligh Elbalti, based on the English translation of G N. Sfeir, The Tunisian Code of Personal Status (Majallat Al-Ahwal Al-Shakhjiyah), *Middle East Journal*, Vol. 11 (3), 1957, pp. 309 ff. It should be mentioned here that this translation followed the Arabic version of the text, which is the official language of the State (Constitution Art. 1). The official French version was considered but not relied on, as the language used in it does not faithfully reproduced the contents of the Arabic version. According to the Law No. 93-64 of 5 July 1993 relating to the publication of official texts in the Official Gazettes and their implementations, other languages, including the official French translation published along with the Arabic version of the text, have only informative purpose (Art. 1).

² In the official French version, this provision simply reads as follows: "Intentional killing *is an* impediment to inheritance." (*emphasis added*) The Arabic version, which implies that there are impediments other than intentional killing, has led the conservative movement in the judiciary to (re)introduce other impediments recognized under the traditional Islamic law, namely the disparity of religion. Case law and scholars are still split on this issue.

³ "Dhū-l furūdh" also called Qur'anic heirs.

⁴ "*Dhū at-ta^csīb*" also called residuary or universal heirs.

brother, 7) the paternal uncle, whether germane or consanguine, 8) the son of a germane or consanguine paternal uncle, 9) the husband.

Female heirs are: 1) the mother, 2) the maternal grandmother, unless a male interposes, and paternal grandmother unless a male other than the father even of a lower degree interposes, 3) the daughter, 4) the son's daughter to whatever degree removed unless a female interposes, 5) The germane, consanguine or uterine sister, 5) the wife.

Chapter III – Inheritance by *fardh* [prescribed share]⁵

Article 91 – The prescribed share (*fard*) is a specified part of the estate to which the heir is entitled. The distribution of inheritance shall begin with those entitled to a prescribed share. They are:

The men:

1) the father,

- 2) the paternal grandfather to whatever degree removed,
- 3) the uterine brother,

4) the husband.

The women:

1) the mother,

2) the grandmother,

3) the daughter,

4) the son's daughter of whatever degree removed,

5) the germane sister,

6) the consanguine sister,

7) the uterine sister,

8) the wife.

Article 92 – The prescribed shares are six in number: a half (1/2), a fourth (1/4), an eighth (1/8), two thirds (2/3), a third (1/3) and a sixth (1/6).

Article 93 – Those entitled to a half (1/2) are five:

1) The husband, provided there are no descendants of the wife be they male or female.

2) The daughter, provided she is not co-heir with a child of the decedent be it male or female.

3) The son's daughter, provided she is the only child and she is not co-heir with a child of the decedent, be it male or female, and the child of the son.

4) The germane sister, provided that there is no father, child of the decedent be it male or female, son's child and germane brother.

5) The consanguine sister, provided she is not a co-heir with those mentioned in respect of the germane sister, and with the consanguine brother and sister as well.

Article 94 – Those entitled to a fourth (1/4) are two:

⁵ In the French version "Heirs with prescribed shares"; i.e. the Quranic Heirs.
- 1) The husband, where there are inheriting descendants to the wife.
- 2) The wife, where there are no inheriting descendants.

Article 95 – The eighth (1/8) is the *fardh* [prescribed share] of the wife where there are inheriting descendants to the husband.

Article 96 – Those entitled to two third (2/3) are four:

1) Two or more daughters provided they are not co-heirs with a son.

2) The son's two daughters provided they are not co-heirs with a child of the decedent be it male or female, and a son's son.

3) Two germane sisters provided they are not co-heirs with the father, a child of the decedent be it male or female, and a germane brother.

4) Two consanguine sisters provided they are not co-heirs with those mentioned in respect of the two germane sisters and a uterine brother.

Article 97 – Those entitled to a third (1/3) are three:

1) The mother provided there are no inheriting descendants and two or more brothers.

2) The uterine brothers and sisters provided they are several and not co-heirs with the father, a child of the decedent be it male or female and a son's child.

3) The grandfather when he is co-heir with brothers and the share of one third is greater.

Article 98 – The sixth (1/6) is the *fardh* [prescribed share] of seven [beneficiaries]:

1) The father provided there is a child or a son's child be it male or female.

2) The mother provided there is a child or a son's child or two or more brothers be they inheriting or excluded heirs.

3) The son's daughter provided she is co-heir with one daughter and there is no son's son.

4) The consanguine sister provided she is co-heir with one germane sister and not coheir with the father, a child male or female and a consanguine brother.

5) The uterine brother provided he is one and provided he is not co-heir with the father, the grandfather, a child, the son's child male or female. The same [applies] for the uterine sister.

6) The grandmother when she is alone whether she is maternal or paternal grandmother. In the presence of two grandmothers, the sixth share shall be divided between them when they are of the same degree or when the maternal grandmother is one further removed. However, if the maternal grandmother is of a closer degree, she inherits the sixth alone.

7) The grandfather where there is a child or the son's child and there is no father.

Chapter IV – Details of the shares of the *Dhū-l Furūdh* [heirs with prescribed shares] in correlation with other heirs

Article 99 – The father's case falls into in three situations:

1) A heir with prescribed share (*fardh*) only, which is the sixth (1/6), without being heir by agnation $(ta^c s \bar{\imath} b)^6$ [residuary heir] when he is co-heir with the son and the son's son to whatever degree removed.

2) A heir with prescribed share (fardh) and heir by agnation $(ta^c s \bar{s}b)$ when he is co-heir with the daughter and the son's daughter to whatever degree removed.

3) A heir by agnation $(ta^c s \bar{s} b)$ only in the absence of a child [of the decedent] or the child of the son [of the decedent].

Article 100 – The uterine brothers and sisters' case falls into three situations:

- 1) The sixth to one brother [if he is alone].
- 2) The two third to two or more. Males and females receive equal shares.

3) Non-eligibility when there is a son or a son's son to whatever degree removed, a daughter or a daughter's daughter to whatever degree removed, a father or a grandfather.

Article 101 – The husband's case falls into two situations:

- 1) The half in the absence of the child or the son's child to whatever degree removed.
- 2) The fourth with the child or the son's child to whatever degree removed.

Article 102 – The wife or the wives' case falls into two situations:

1) The fourth for one wife or more in the absence of a child or the son's child to whatever degree removed.

2) The eighth with the child or the son's child to whatever degree removed.

Article 103 – The case of the Daughters of the decedent falls into three situations:

- 1) The half to one with no co-heirs [siblings].
- 2) The two thirds to two or more

3) Inheritance by agnation with their brothers, in which case the males receive the equal part of two females.

Article 104 – The son's daughters are considered the same as the daughters of the decedent. Their case falls into six situations:

1) The half to one with no co-heirs [siblings].

2) The two thirds to two or more [son's daughters] in the absence of the daughters of the decedent.

3) The sixth where there is one daughter of the decedent to make up the two thirds.

4) They do not inherit with two or more daughters of the decedent unless they are coheirs with a male son of a son of an equal degree with them.

5) Or, they inherit by agnation when the son's son is of a lower degree. In this case, the residue is divided among them on the basis of [the principle] the male receives the equal part of two females.

6) They do not in the presence of a son of the decedent.

⁶ Residuary/universal heir

Article 105 – The case of germane sisters falls into five situations:

1) The half to one with no co-heirs [siblings].

2) The two thirds for two or more.

3) [They inherit] by agnation with a germane brother and a grandfather in which case the male receives the equal part of two females.

4) The residue on becoming agnatic heirs with the daughters or the son's daughters.

5) They do not inherit in the presence of the father, the son, the son and the son's son to whatever degree removed.

Article 106 – The case of consanguine sisters falls into six situations:

- 1) The half one with no co-heirs [siblings].
- 2) The two thirds for two or more in the absence of germane sisters.

3) The sixth when they are co-heirs with one germane sister.

4) [They inherit] by agnation with two germane sisters. In the presence of a consanguine brother, the residue is divided on the basis of [the principle] the male receives the equal part of two females.

5) [They inherit] by agnation with the daughters of the decease or the son's daughters.

6) They do not inherit in the presence of the father, a son, a son's son to whatever degree removed, a germane brother, a germane sister on becoming agnate heirs by the daughters or the son's daughters and two germane sisters if there is no consanguine brother.

Article 107 – The case of the mother falls into three situations:

1) The sixth if the decedent has a child or a son's child to whatever degree removed or she is co-heir with two or more sisters either germane, consanguine or uterine.

2) The third of all the property in the absence of the mentioned above.

3) The third of the residue after [deduction of] the prescribed share of one of the spouses, and that in two instances:

- a) Where there are a husband and two parents, and
- b) Where there are a wife and two parents

Where there is a grandfather in place of the father, the mother receives a third of the property after [deduction of] the prescribed share of the spouses.

Article 108 – The case of the grandfather with other heirs falls into four situations:

1) In the presence of a son or a son's son to whatever degree removed, he receives the sixth without expecting more.

2) In the presence of heirs with prescribed share only, he receives with them the sixth. He [also] receives the residue, if any, as agnatic heir.

3) In the presence of the brothers and sisters of the decedent, he receives which is higher of the third or sharing. The third becomes mandatory where the number of brothers or sisters is more than two males [brothers] or four females [sisters]. The sharing becomes mandatory where the number of brothers and sisters is one male [brother] and three females [sisters]. [In this case,] the grandfather shall be treated as a brother shares with the other [in application of the principle] to the male the equal share of two females.

4) In the presence of brothers and heirs with prescribed shares, he receives whichever is the higher of the following three instances:

- a) the sixth as a whole or;
- b) the third of the residue after those entitled to prescribed shares receive their parts or;
- c) sharing with the brothers.

Article 109 – In the presence of germane brothers and consanguine brothers with a grandfather, the germane brother shall offset, in sharing the parts, the share of grandfather by the share of consanguine brother and then receives the part computed for the consanguine brother.

Article 110 – In the presence with the grandfather one germane sister and one consanguine sister, the germane sister shall offset the share of the grandfather by the share of the consanguine sister. Thus, the grandfather receives the half, the germane sister receives the half and nothing for the consanguine sister. In the presence with the grandfather and one germane sister two or three consanguine sisters, the two or three consanguine sisters receive the residue after the offset of the share of the grandfather by the share of all sisters and sharing portion of the estate with him and the germane sister receives the half.

Article 111 – One or more grandmothers, whether maternal or paternal, receive the sixth provided they are of the same degree or the paternal grandmother is of closer degree, such as the mother of the father, the mother of the mother and the mother of the father's father. In this case, the maternal grandmother receives the whole sixth and nothing for the paternal grandmother in the presence of the father. Both maternal and paternal grandmothers do not inherit in the presence of the mother.

Article 112 – The estate shall be distributed among heirs entitled to prescribed shares in proportion to their shares in the inheritance if their shares exceed the estate.

Chapter V – Inheritance by $Ta^c s \bar{t} b^7$

Article 113 – Agnates are of three categories:

- 1) Agnates by themselves⁸
- 2) Agnates by others⁹
- 3) Agnates with others.¹⁰

Article 114 – Agnates by themselves inherit the whole property in the absence of other heirs, the residue, if any, after distribution of the prescribed shares and nothing otherwise.

The agnates are:

⁷ Inheritance by agnation [being agnate] or inheritance by agnates or residuary heirs.

⁸ Agnates in their own rights.

⁹ Agnates in the rights of another

¹⁰ Agnates with another.

1) the father,

2) the grandfather of whatever degree removed,

3) the son,

4) the son's son to whatever degree removed,

5) the germane or consanguine brother,

6) the son of the germane or consanguine brother to whatever degree removed,

7) the germane or consanguine paternal uncle,

8) the son of the germane or consanguine paternal uncle how high or how low soever, such as the paternal uncle of the father or the grandfather,

9) the State Treasury.

Article 115 – The agnates by themselves are classified into ranks arranged in succeeding order of priority as follow:

1) the son,

2) then fatherhood,

3) the grandfather and the brothers [germane and consanguine]. They are classified in the same rank,

4) the sons of the brothers,

5) the uncles and their sons are classified in the same rank. The priority among them is determined by the closeness of the relationship.

6) the State treasury

Article 116 – Those of a closer rank, however remote they are, have precedence over those of a lower rank.

Article 117 – Where the heirs are of same rank but different in degree, those of a closer degree have precedence over those of a degree further removed.

Article 118 – Where both rank and degree are the same, but the kinship relationship is different in strength, the strongest relationship has precedent over the weaker.

Article 119 – The agnates by other are every female¹¹ who becomes agnate in the presence of a male agnate.¹² These are four:

- 1) the daughter,
- 2) the son's daughter,
- 3) the germane sister,
- 4) the consanguine sister.

The daughter becomes agnate by her brother and inherits with him all the property or the residue on the basis of [the principle] the male receives the equal part of two females.

¹¹ Female heirs with prescribed share from the side of filiation or brotherhood.

¹² Male agnate by himself of the same or related degree.

The son's daughter becomes agnate by her brother and the son of her (paternal) uncle of the same degree unconditionally; and by the son's son a lower degree than her provided she is not entitled to the two thirds.

The germane or consanguine sister becomes agnate by her brother and grandfather. The latter shall have with her the same status as the brother.

Article 120 – A female without a prescribed share and her brother is agnate shall not become agnate by her brother, such as the [paternal] uncle and the [paternal] aunt, the [paternal] uncle's son with the uncle's daughter, the brother's son [nephew] with the brother's daughter [niece]. The property shall be devolved to the agnate and the sister has not share in it.

Article 121 – The agnate with others is every female¹³ who becomes agnate through her association with another female.¹⁴ They are of two categories:

1) One or more germane sisters with one or more son's daughters or one or more the daughters of the son's daughters.

2) Consanguine sister with one or more son's daughters or one or more the daughters of the son's daughters.

Chapter VI – Preclusion (*Hajb*)

Article 122 – Preclusion is the barring of a specific heir by another heir from the whole or a part of the inheritance. Preclusion is of two types:

1) Partial preclusion by reduction of one share of the inheritance to a lower share (hajb $noqs\bar{a}n$).

2) Total preclusion from inheritance (*hajb hirmān*).

Article 123 – There is no total preclusion in respect of the following six heirs:

- 1) The father,
- 2) The mother,
- 3) The son,
- 4) The daughter,

5) The husband, and

6) The wife.

Partial preclusion by reduction may affect the spouses, the parents, the grandfather, the son's daughter, the germane sister and the consanguine sister.

Article 124 – Those who preclude by reduction are six:

1) The son,

- 2) The son's son,
- 3) The daughter,
- 4) The son's daughter,

¹³ Female heir with prescribed share from the side of the brother.

¹⁴ Female descendent heir.

- 5) The brothers without distinction,
- 6) The germane sister.

Article 125 – Each of the son and the son's son preclude by reducing their share following:

- the husband: from the half to the fourth;
- the wife: from the fourth to the eighth;
- the mother: from the third to the sixth;
- the father and grandfather: from inheritance by agnation to the sixth.

Article 126 – One daughter alone precludes by reducing their share the following:

- the son's daughter: from the half to the sixth;
- the two daughters of the son: from two thirds to the sixth;
- the germane or consanguine sister: from the half to inheritance by agnation (the residue);
- the two germane or consanguine sisters: from the two thirds to inheritance by agnation (the residue);
- the husband: from the fourth to the eighth;
- the mother: from the fourth to the eighth;
- the father and the grandfather: from inheritance by agnation to the sixth. They also receive the residue of the estate, if any, as agnate heirs.

Article 127 – The son's daughter precludes by reducing their share the following:

- other daughters of the son who are of inferior degree and are not agnates heirs by the brother or a son of a (paternal) uncle if equal degree: [in the case of] one daughter alone, from the half to the sixth; [in the case of] two daughters, from two thirds to the sixth;
- the germane or consanguine sister: from the half to inheritance by agnation (the residue);
- the two germane or consanguine sisters: from two thirds to inheritance by agnation (the residue);
- the husband: from the half to the forth;
- the wife: from the fourth to the eighth;
- the father and the grandfather: from inheritance by agnation to the sixth. They also receive the residue of the estate, if any, as agnate heirs.

The siblings, whether males or females, shall preclude the mother by reducing her share from the third to the sixth whatever their claim is and whether eligible to inheritance or [themselves] precluded.

Article 128 – The germane sister precludes by reducing their share the following:

- the consanguine sister: from the half to the sixth if there is no consanguine brother by whom she becomes agnate heir;
- the two consanguine sisters: from two thirds to the sixth if there is no consanguine brother by whom they become agnate heirs.

Article 129 – Those who totally preclude others from inheritance are sixteen:

- 1) The son.
- 2) The son's son to whatever degree removed.
- 3) The daughter.
- 4) The son's daughter.
- 5) The germane brother.
- 6) The consanguine brother.
- 7) The germane brother's son.
- 8) The consanguine brother's son.
- 9) The germane uncle.
- 10) The son of a germane uncle.
- 11) The daughter or the son's daughter with the germane sister.
- 12) The two germane sisters.
- 13) The father.
- 14) The grandfather.
- 15) The mother.
- 16) The maternal grandmother.

Article 130 – The following do not inherit with the son or the son's son to whatever degree removed: all of the son's descendants whether males or females; germane, consanguine or uterine brothers; and the germane or consanguine uncle.

Article 131 – The following do not inherit with a daughter or a son's daughter: one or more uterine siblings, be they males or females.

The following do not inherit with two daughters: the uterine brother; one or more son's daughters if they do not become agnate by brother or a son of a paternal uncle of an equal degree with whom they inherit the residue by agnation on the basis of the principle "to the male a share equal to that of two females".

The rule applicable to two daughters shall apply to two daughters of a son with respect to the daughters of the son's son of a lower degree.

Article 132 – The following do not inherit with the germane brother: one or more consanguine brothers; the germane or consanguine uncle. However, the uterine brother shall not be precluded by the germane brother.

Article 133 – The following do not inherit with a consanguine brother: a germane or consanguine uncle; the brother's son, be he a germane brother.

Article 134 – The following do not inherit with the son of a germane brother: the uncle, be he a germane uncle; the son of a consanguine brother; all other brother's sons of a lower degree.

Article 135 – The following do not inherit with the son of a consanguine brother: the uncle, be he a germane uncle; all other brother's sons of a lower degree be he a germane brother.

Article 136 – The following do not inherit with a germane uncle: the consanguine uncle; all other uncle's sons, be he germane or consanguine uncle.

Article 137 – The following do not inherit with the son of a germane uncle: the consanguine uncle; all other sons of the uncle's sons, be he germane or consanguine uncle.

Article 138 – The following do not inherit with the daughter, or the germane sister or the son's daughter with the germane sister: one or more consanguine brothers.

Article 139 – The following do not inherit with two germane sisters: the consanguine sister if she does not become an agnate heir by a brother.

Article 140 – The following do not inherit with the father: the grandfather; the paternal grandmother; the uncle; the brother.

Article 141 – The following do not inherit with the grandfather: all the grandfathers of a higher degree; the uterine brother; the uncle; the brother's sons.

Article 142 – The following do not inherit with the mother: the paternal grandmother; the maternal grandmothers.

Article 143 – The following do not inherit with the maternal grandmother: the paternal grandmother if she is of one degree remoter.

Article 143-1 – In the absence of agnate heirs and whenever the prescribed shares do not exhaust the entire estate, the residue is returned and distributed among the heirs with prescribed share heirs who are entitled to it in proportion to their original shares.

However, the residue shall be returned the daughter, one or more, or the son's daughter to whatever degree removed even where there are other agnate heirs by themselves of the category of the brothers, paternal uncles and the State Treasury.

Chapter VII – Rules Pertaining to Particular Cases

The Common Case

Article 144 – If the deceased women is survived by the husband, the mother or grandmother, the uterine siblings and one or more germane brothers, the uterine siblings and the germane brothers share equally the residue from the prescribed share of the husband and the mother or the grandmother without distinction between males and females and between germane and uterine brothers.

In the presence of consanguine brothers with the germane brothers, the consanguine brothers do not inherit.

The "Malekite" Case

Article 145 – If the deceased woman is survived by the husband, the mother or grandmother, uterine siblings and one or more germane brothers and a grandfather, the husband receives one half; one sixth goes to the mother or grandmother and one sixth to the grandfather. The residue, which is one sixth, goes to the germane and consanguine brothers and nothing for the uterine siblings.

The "Akderite" Case

Article 146 – If the deceased woman is survived by the husband, the mother or grandmother, a germane or consanguine sister and a grandfather, the husband receives one half; one third goes to the mother, one half for the sister and one sixth to the grandfather. However, the shares of the sister and the grandfather shall be joined and divided between them the male receiving a share equal to that of two females.

Chapter VIII – Miscellaneous Cases

Article 147 – Shall be deducted to the unborn child from the estate of the decedent a share higher than the one due to one son or one daughter if the unborn child is a co-heir or precludes the other heirs by reduction. If the unborn child precludes the heirs totally, the whole estate shall be reserved and should not be distributed.

Article 148 – If the unborn child is entitled to inheritance or precludes the other heirs by reduction, those whose prescribed shares remain unmodified shall be given their shares; those whose prescribed shares would be reduced from a higher share to a lower share shall be given the lower share. Those who are totally precluded in either cases [because of the sex unborn child is either male or female] shall receive nothing.

Article 149 – In the case a woman alleges to be pregnant and the heirs contest her pregnancy, she shall be examined by an expert.

Article 150 - If a man is survived by his wife or his divorced woman during her waiting period, her unborn child shall not inherit unless the child is born alive within a period not exceeding one year.

The unborn child shall inherit a person other than his father only in the two following cases:

1) The child is born alive during a period not exceeding 365 days as from the date of the death or the separation if the mother is in legal waiting period due to death or separation and the death of the decedent during the legal waiting period.

2) The child is born alive during a period not exceeding 270 days as from the death of the decedent if the child is the fruit of a marital bond that exists at the time of the death of the decedent.

Article 151 – Shall be reserved to the disappeared a share from the estate of the decedent. If the disappeared is alive, he/she shall be given his/her portion. If the death of the disappeared is declared by a judgment, his/her part shall be distributed among the heirs who are entitled to it at the time of the death of the decedent. If, the disappeared appears to be alive after the declaration by judgment of his/her death, he/she shall be given what remains available of his share in the possession of the heirs.

Article 152 – The child born out of wedlock shall inherit his mother and her relatives who are respectively entitled to his/her inheritance.

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