



An Appraisal of Some Instances of Competition between Grand Father and Collaterals under Islamic Law of Succession

Dr. Gambo Ibrahim Yaro

**Department of Private and Business Law
Usmanu Danfodiyo University, Sokoto, Nigeria
Email: talk2yaro@gmail.com**

ABSTRACT

Islamic Law of succession regulates how the estates of deceased persons are administered. The applicable rules are provided for in the Holy Qur'an and complemented by Prophetic traditions. One of the rules is that people inherit one another based on the relationship between them. However, this paper focuses on grandfather and collaterals while competing with one another over the estate of their deceased relation i.e. (Grandchild to a grandfather, and brother to the collaterals) who gets what and under what circumstances. Consequently, the paper explains and differentiates grandfathers who can inherit from those who cannot within the context of this paper. Likewise, the collaterals have been subjected to the same treatment. Finally the paper highlights the generals as well as specific conditions that qualify either of the competing parties to inherit their deceased relation as the case may be. Thereafter, some observations, recommendations and conclusion marked the end of the paper.

Keywords: Grandfather, collaterals, deceased, survived.

INTRODUCTION

Islamic religion is one of the three divine religions that are globally acknowledged. One of the features of the Islamic religion is that it has laid down rules and regulations meant to govern all aspect of human lives. The principal source of legislation under Islamic law is the Holy Qur'an which contains all the rules either in expressed form or via necessary inferences governing the entire human conducts e.g. commercial, matrimonial, judicial, economics, political etc. The above assertion is corroborated the Holy Qur'an as follows "we have left out nothing in the book" (H/Q: 6:38). The above quotation points that Muslims should first consult the holy Quran for a solution to any of their problems. Interestingly, Islamic law of succession received elaborate coverage in the Holy Qur'an by providing rules that are applicable among Muslims from Indonesia to Chile, Norway to Cape Town etc. This paper is however focusing on one out of many aspects of Islamic law of succession, precisely the various shares earmarked for a grandfather while competing with collaterals over the estate of his/their Grandchild/brother respectively. Consequently the paper is structured as follows: Part one (1) discusses definition and the historical development of the Islamic law of succession. Part two (2) highlights on the elements of succession under Islamic law. Part three (3) discuss grandfathers and their classification. Part four (4) discusses different classes of collaterals and those who are qualified to compete with the grandfather. Part five (5) discusses general as well as specific conditions for inheritance within the context of this paper. Part six (6) highlights on the competition between the grandfather and collaterals with reference to juristic arguments of the earlier scholars. Part (7) seven marks the last lap which comprises of some observation, recommendation and conclusion.

PART ONE (1)

Definition and Historical Development of the Islamic Law of Succession

Before the advent of Islamic religion, the Arabs in the Arabian Peninsula were administering the estate of their deceased relations using rules and regulation prevalent at that time. Those rules were however in

sharp contrast with their Islamic law counterpart. The paper will at this juncture bring to limelight some of the definitions ascribed to the world succession by different scholars from their individual perspective. First and foremost the language of Islamic law is Arabic, therefore the equivalent to succession in Arabic. Therefore, the equivalent to succession in Arabic is called Mirath. The word has literal as well as technical meaning. In the former sense it means transfer of something from one person to another or from one group of people to another.... In the latter case i.e. technically, it means transfer of ownership from the deceased to his surviving heirs whether the subject of transfer is chattels, immovable property or rights among the rights recognized by Sharia.

Muhammadu Dasuki defined succession as a science by which persons who can inherit are distinguished from those who do not inherit. The knowledge also ascertains the quantum of shares each inheritor is entitled to take. It all centers on the (Mal) (i.e. property) left by a deceased person. In a related development, "There belong to the property of a deceased person for successive duties to be performed by the magistrate. First, his funerals and burial without deficiency. Next the discharge of his just debt from the whole of his remaining effects. Then the payments of his legacies out of a third of what remains after his debt are paid and lastly, the distribution of the residue among his successors according to the divine book to the tradition of the Prophet and to the assent of the learned (Ijma) consensus". Therefore, succession under Islamic law means the duty incumbent on those in authority to distribute what is left from the properties of a deceased person among his heirs in a manner specified by the Holy Qur'an, enunciated by the prophetic traditions and the consensus of jurist. Historically speaking, the law of succession had passed through three stages of development as follows.

- a) **Pre Islamic or Jahiliyah period:** The above refers to the period of complete absence of divine guidance to the inhabitants of the Arabian peninsula, consequently, their rules of succession by then excluded women, old aged and minors due to the fact that they could not play any role during the outbreak of war with contending tribes.
- b) **Early Islamic Periods:** This refers to the first part of the messenger hood of the Holy prophet Muhammad (S.A.W) i.e. the period of his stay in Mecca which was twelve years, five month and thirty days. The primary concern of the prophet mission then was calling the Meccan into believing that there is no God but Allah and Muhammad was his servant and messenger. However, their customary rules of succession were momentarily left unhampered.
- c) **The period of Prophet's stay in Medina** (i.e. after his migration) the period was of nine years, nine month and nine days. The period marked the last lap of the mission of the Holy prophet Muhammad (S.A.W). Consequently all aspects of the Islamic religion (succession inclusive) were perfected as attested to by the following verse of the Glorious Qur'an.

"..... today I have completed your religion for you and completed my blessing upon you, I have chosen for you Islam as your religion....."

PART II (2)

At this juncture, the paper shades some light on the elements of succession which are three in number as outlined below:

- (i) The deceased (Almuwarath). The person who died as a result of which some section of his relations will by law share whatever he leaves behind
- (ii) Heir/Heirs (Alwarith/Alwaratha): This refers to those who are entitled to inherit their deceased relation. It is written in singular and plural form because sometimes there may be only one person more qualified than the others.
- (iii) Estate (Almuwarath): This refers to the property left behind by the deceased. It includes interest in other properties (e.g. rent, mortgage etc.). However, the property must be the type that enjoys protection by the law (Mal mutaqawam).

PART III (3)

Grand fathers and their status: Literally grandfather means the father of a person's mother or father. So a grandfather can be:

- (a) From mother's side
- (b) From father's side

However, under Islamic law of succession category (a) of grand fathers are qualified as fake grandfather (Jad Fasid) they fall within the members of the outer family. But category (b) Grandfathers from father's side are qualified as true grandfathers (Jad sahih) because they are linked to their grandchildren through male parents only e.g. father's father, the father of father's father how high so ever. Mother's father or the fathers of mothers' father, how high so ever are members of the outer family whose rules of succession are treated separately. In short they cannot compete with a true grandfather.

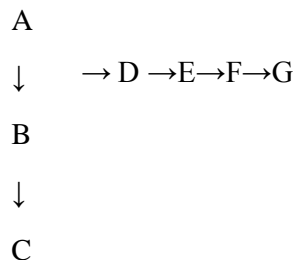
PART IV (4)

Collaterals and their classes:

The above refers to the brothers and sisters to the deceased who may fall within one of the following categories.

- (a) German brothers/sisters (Akhi Shaqeeq/Ukhtu Shaqeeqa) these are collaterals who share the same parents with the deceased i.e the same father and mother. So they are automatically grand children to the father of their deceased brother.
- (b) Consanguine brother/sister (Akhi liab/Ukhti liab): These are those who share the same father but different mothers with the deceased. They are nevertheless grandchildren as in (a) above.
- (c) Uterine brother/sister (Akhilium/Ukhtilium): These are those who share mother with the deceased but different fathers. These category are grandchildren of their father's father contrasted with the a and b above

e.g.



A is the father of B, at the same time B is the father of C, D, E, F and G, they are grandchildren of A. And are brothers to one another. Suppose B has two other children L and M from his second wife, they are still A's grandchildren.

If B's wife (the mother of C, D,E, F &G) was divorced by another husband and subsequently got married to B and the marriage was blessed with two sons X and Y. X and Y are brothers or sisters to C,D,E,F and G because they share the same mother but are not grand children to A.

PART V (5)

General and specific conditions for succession

a) **General Conditions**

The above refers to condition that of general requirement for the purpose of succession between all classes of heirs and their respective deceased relations. E.g. husbands and wives, parents and their children, grand parents and their grandchildren etc. so they are outlined as follows:

- (i) The person to be inherited must have died either actually or by presumption of law.
- (ii) The person to inherit (Heir) must survive the deceased even by some minutes.
- (iii) The ground for the succession must be satisfactorily established.

b) **Specific Conditions:**

These are conditions with a grandfather must satisfy in order to compete with collaterals over the property of his deceased grandchild. They are listed as follows:

- (i) He must be a true grandfather

- (ii) He must not compete with the direct father of the deceased
- (iii) He must not compete with a nearer grandfather.

PART VI (6)

Juristic arguments over Grandfather and collaterals

The earlier Muslim jurists were of two variant positions over this subject as a result of which they were divided into two opposing groups as follows:

- i) The first group whose membership comprised of Abu Hanifa, Ibn Abbas and Ibn Umar among others opined that all categories of collaterals i.e German or Consanguine, males or female are out rightly excluded by the grandfather. Their position is based on the understanding that a grandfather is a father (in the absence of direct father) and direct father excludes all classes of collaterals.
- ii) The second group (Jamhur) which comprised the following Imams (Malik + Hanbali +Shafiee) are of the view that collaterals of German and consanguine denominations should inherit alongside (the qualified) grandfather. I.e. they should not be excluded by him (grandfather). Their argument is that both the grandfather and the collaterals are of the same degree of closeness to the deceased. The grand father is related to his grandchild through the father. On the other hand, the collaterals are also related to the deceased through the same father as well as such neither of them should exclude the other.

This paper aligned itself with the second group, so it will now move to practical and different scenarios under which the grandfather competes with collaterals.

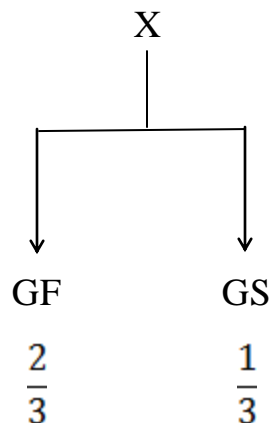
A) The first Scenario: where a grandfather completes with collaterals and there is no heir with fixed share along with them. The share of a grandfather is determined through one of the following ways/rules:

- (i) Muqasamah
- (ii) $\frac{1}{3}$ of the estate (whichever is more advantageous to him)

(i) **Using Muqasamah:** The grand father is joined to one or more collaterals. Then the estate is to be distributed among them under strict adherence to 2:1 ratio for male and female respectively (i.e. the grandfather is to be treated like one of the collaterals).

Examples

- (a) X died and is survived by a grandfather and German sister.



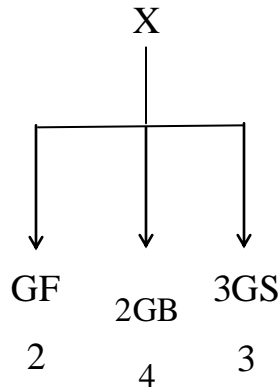
The GF will get $\frac{2}{3}$ which is $> \frac{1}{3}$

The German sister gets $\frac{1}{2}$ based on the Qur’anic injunction concerning your children. God enjoins you that a male shall receive a share equivalent to that of two females. So in this case the grandfather get more than $\frac{1}{3}$ so Muqasamah is more advantageous to him.

(b) If the Grandfather competes with GB and 2GS the share will be as follows:

$\frac{GF}{2}, \frac{GB}{2} - \frac{2GS}{2}$ Using Muqasamah. The whole estate should be divided by six and allocate 2 slots to the grandfather. 2 to the German brother and one each to the German sisters $\frac{2}{6} = \frac{1}{3} \therefore$ No problem for the Grandfather because his $\frac{1}{3}$ is secured.

(ii) $\frac{1}{3}$ if the Grandfather (GF) competes with two German brothers (2GB) and three German sisters (3GS), the distribution using Muqasamah will be as follows:



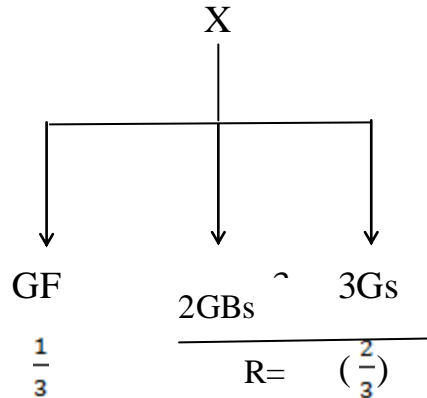
GF+2GBs = 3 males of equal
 3GS are equivalent to $1\frac{1}{2}$ males. In order to eliminate fraction we multiply each of the above by 2 it becomes GF + 2GBs x2= 6.

3GBs which is equivalent to $1\frac{1}{2}$ males x 2 = 3

\therefore whatever the estate, should be divided by 9. Six parts to be allotted to GF and the two GBs while three should be allotted to the three germane sisters.

GF = $\frac{2}{9}$, each of the GBs also $\frac{2}{9}$ and each of the three GSs = $\frac{1}{9}$.

Note that $\frac{2}{9} < \frac{1}{3}$. So the new sharing formula should be $\frac{1}{3}$ first for the grandfather and R for 2GB and 3Gs =



So it becomes

$R = \frac{2}{3}$, should be shared among them at the ratio of 2:1

Suppose the money is N90, 000

The share of a grandfather under Muqasama above = N20, 000 likewise each of the two German brothers.

$N20, 000 \times 2 = N40, 000$

$N40, 000 + N20, 000 = N60, 000$, and $N90, 000 - N60, 000 = N30, 000$

The remaining N30, 000 is for the three German sisters.

$\therefore N10, 000$ for each of them = $10,000 \times 3 = N30, 000$. But in the second situation $\frac{1}{3}$ of N90, 000 = N30,

000 and $N30, 000 > N20, 000$. Hence, doing away with muqasama.

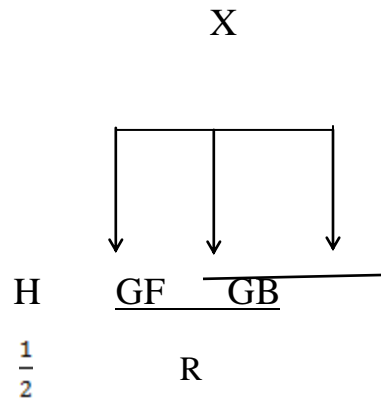
(B) The Second Scenario:

In the earlier scenario both the grandfather and the collateral were residuary heirs. But in this scenario there may be one or more heirs with fixed share in which case the grandfather will inherit via one of the followings rules:

- i. Muqasamah
- ii. $\frac{1}{3}R$ i.e. $\frac{1}{3}$ of what remains after satisfying heirs with fixed shares

iii. 1/6 of the net estate that is if heirs with fixed shares will exhaust all the estate. So the grandfather must be allotted $\frac{1}{6}$ of the net estate.

E.g. The deceased (X) is survived by husband, grandfather and Germane brother



The husband gets a half of the net estate while the grandfather and the germane brother get $\frac{1}{4}$ of the net estate each (using Muqasamah)

Supposing the net estate is N24, 000.00

$$\frac{1}{4}X \frac{24,000}{1} = N6, 000 \text{ (Muqasamah)}$$

$$\frac{1}{3}R = \frac{1}{3} \text{ of } N12, 000 = N4, 000.00$$

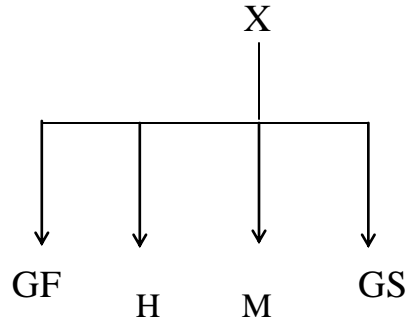
Note that N12, 000 = N24, 000 - the share of the husband = N12, 000

∴ Muqasamah is better for the grandfather in this case, because $\frac{1}{2} \times 12, 000 = 6,000$.

Whereas $\frac{1}{3} \times 12,000 = 4,000$ ($\frac{1}{3}$ R)

Another example from situation (iii) i.e. $\frac{1}{3}R$ is $\frac{1}{6}$ of the net estate if heirs with fixed shares will exhaust all the estate.

X is survived by Grandfather, husband, mother and germane sister

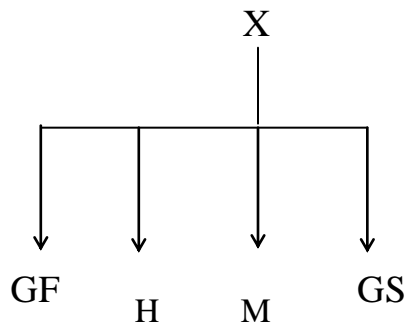


$$\frac{1}{3}R \quad 3 \quad \frac{1}{2} \quad \frac{1}{3} \quad \frac{1}{2}$$

LCM=6 therefore $\frac{3+2+3+\frac{1}{3}R}{6} = \frac{8+\frac{1}{3}R}{6}$

There is under subscription because R=0, so there is nothing left for the Grandfather.

The new sharing formula should be



$$\frac{1}{6} \quad \frac{1}{2} \quad \frac{1}{3} \quad \frac{1}{2}$$

LCM is =6

$$\frac{1+3+2+3}{6} = \frac{9}{6}$$

There is something for the grandfather in spite of the under subscription. Because the whole estate should be divided by 9 and then allocated as follows:

GF -1, H -3, M -2 and GS -3

PART VI (6)

Observation, Recommendations and Conclusion

- Observation

- Earlier jurists were not unanimous on the issue of grandfather competing with collaterals. However, the Janhur carried the day especially in this part of the world (Nigeria) where the Maliki School enjoys official recognition.
- Islamic law of succession is just and fair in the sense that Allah the most high laid down the applicable rules, giving no room for manipulation by anyone.

- Recommendations

- Muslims should strive to learn at least the basic rules of Islamic law of succession so as to minimize the incidents of going to courts.
- The authorities should come up with time limit within which the estate of a deceased person must be distributed in order to eliminate some complexities that crop up because of the undue delay.

- Conclusion

- This paper is intended to give an insight on the topic therefore it doesn't claim treating it exhaustively. Finally, majority of the materials consulted are in Arabic so any deficiency observed in the translation emanated from the author (my humble self) and I owned it.

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