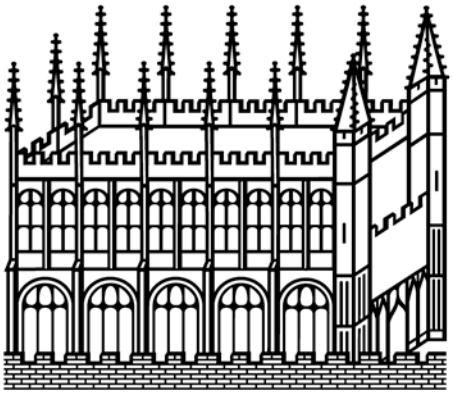
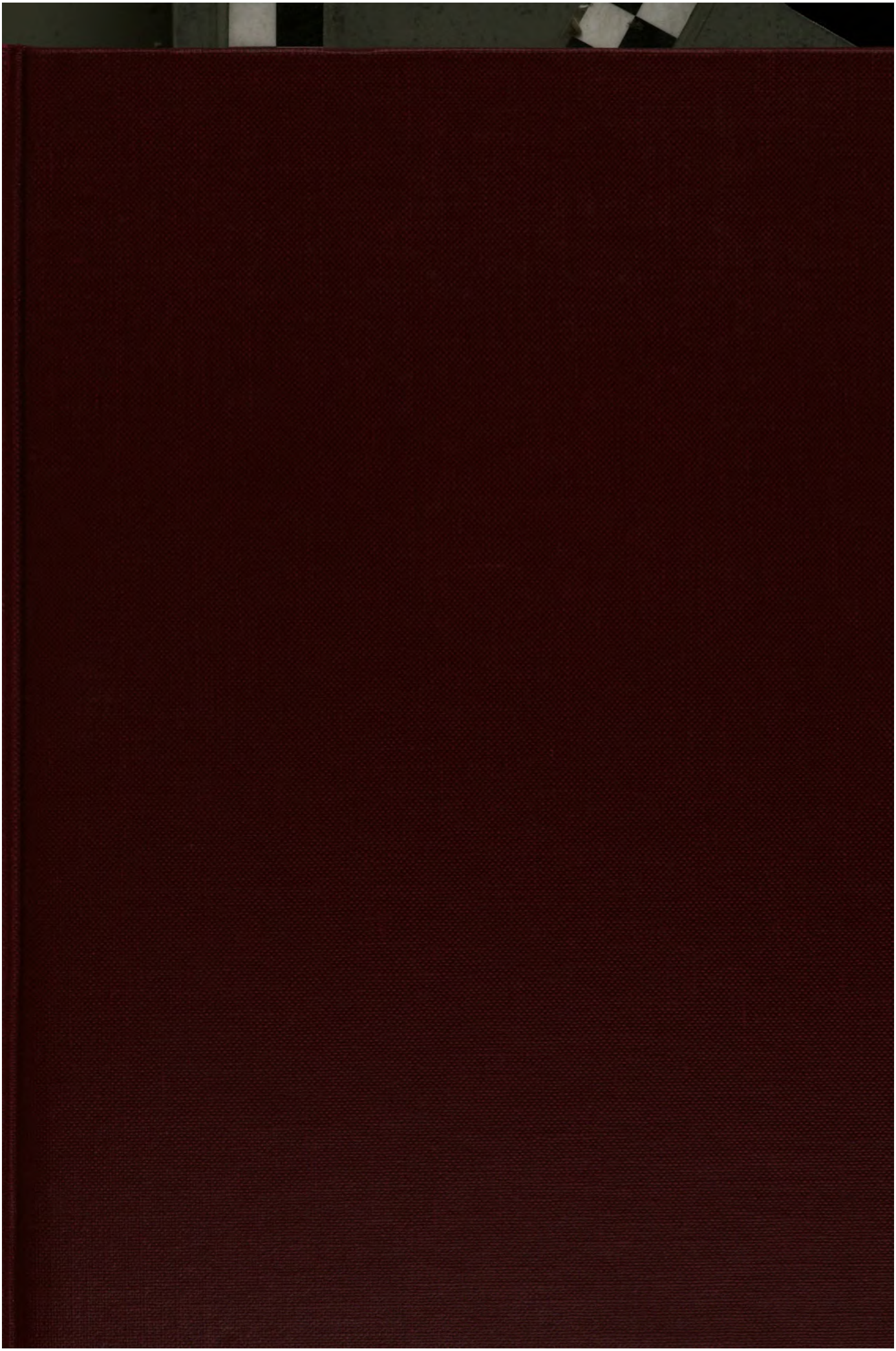




AL SIRÁJIYYAH:

OR,

THE MOHAMMEDAN LAW

OF

INHERITANCE,

WITH A

COMMENTARY,

BY SIR WILLIAM JONES.

PRINTED BY JOSEPH COOPER AT CALCUTTA,

AND SOLD FOR THE BENEFIT OF INSOLVENT DEBTORS.

M, DCC, XCII.

THE PREFACE.

THE two *Muſelman* authors, whom I now introduce to my countrymen in *India*, are *Shaikh* SIRÁJU'DDÍN, a native of *Sejávend*, and *Sayyad* SHARÍF, who was born at *Jurján* in *Khwárezm* near the mouth of the *Oxus*, and is ſaid to have died, at the age of ſeventy-ſix years, in the city of *Shíráz*: their compoſitions have equal authority in all the *Mohammedan* courts, which follow the ſyſtem of ABÚ HANÍFAH, with thoſe of LITTLETON and COKE in the courts at *Weſtminſter*; and there is, indeed, a wonderful analogy between the works of the old *Arabian* and *Engliſh* lawyers, and between thoſe of their ſeveral commentators; with this difference in favour of our own country, that LITTLETON is always too clear to need a gloſs, and with this difference in favour of the *Arabs*, that the ſole object of SHARÍF was to explain and illuſtrate his text, without an oſtentatious diſplay of his own erudition; but, when it is admitted, that a deſire of extreme brevity has often made the *Sirájiyyah* obſcure, the reader ſhould in candour allow, that every author muſt appear to

great diſadvantage in a literal tranſlation, eſpecially when his own idiom differs totally from that of his tranſlator, when his terms of art muſt be rendered by new words, which uſe alone can make eaſy, and when the ſyſtem, which he unfolds to his countrymen, has no reſemblance to any other, that the world ever knew. In the *Sharíſiyyah* (for that is the popular title of the *Arabian* comment) we find little or no obſcurity; and, if there be a fault in the book, it is a ſcrupulous minuteneſs of explanation, and a needleſs anxiety to remove every little cloud, which the reader himſelf might diſperſe by the ſlighteſt exertion of his intellect. Both works were tranſlated into *Perſian* by the order of Mr. HASTINGS; and the tranſlation, which bears the name of *Maulavi* MUHAMMED KÁSIM, muſt appear excellent, and would be really uſeful, to ſuch as had not acceſs to the *Arabick* originals; but the text and comment are blended without any diſcrimination, and both are ſo intermixed with the notes of the tranſlator himſelf, that it is often impoſſible to ſeparate what is fixed law from what is merely his own opinion: he has alſo erred (though it be certainly a pardonable errour) on the ſide of clearneſs, and has made his work ſo tediouſly perſpicuous, that it fills, incluſively of a turgid and flowery dedication, about ſix hundred pages, and a faithful verſion of it in *Engliſh* would occupy a very large volume.

If the pains, which have been taken to render my own work as complete as poſſible, be meaſured by the ſize of it, they muſt be thought very inconſiderable; but in truth no greater pains could have been taken with any work; and it would have been a far eaſier taſk to have dictated or written a verbal tranſlation of the two comments on my text, than to have made a careful ſelection of all that is important in them; for which purpoſe I peruſed each of them three times with the utmoſt attention, and have condenſed in little more than fifty ſhort pages the ſubſtance of them both, without any ſuperfluous paſſage, that I ſhould wiſh to be retrenched, and with as much perſpicuity as I was able to give, in ſo ſhort a compaſs, to a ſyſtem in ſome parts rather abſtruſe: leſt men of buſineſs, for whom the book is intended, ſhould be alarmed at firſt ſight by the magnitude of it, I have omitted all the minute criticiſm, various readings, and curious *Arabian* literature; moſt of the anecdotes concerning old lawyers, and all their ſubtil controverſies with the arguments on both ſides; together with the demonſtrations of arithmetical rules and the very long proceſſes, after the prolix method of the *Arabs*, in words inſtead of figures. Practical utility being my ultimate object in this work, I had nothing to do with literary curioſities, how agreeable ſoever they might have been in their proper places; but, in order to attain that object by a full explanation

of every thing uſeful in my text, I was under a neceſſity of retaining the *Arabian* phraſeology both in law and arithmetick, and muſt requeſt the *Engliſh* reader to diſmiſs from his mind, while he ſtudies the *Sirájiyyah*, thoſe appropriated ſenſes, in which many of our words, as *heir*, *inheritance*, *root*, and the like, are uſed in our own ſyſtems. One *Arabick* word I was at a loſs to tranſlate preciſely in our language without circumlocution: the chief problem, in the diſtribution of eſtates among *Muſelman* heirs, is *to find the leaſt number, by which an eſtate muſt be divided, ſo that all the ſhares and the reſidue may be legally diſtributed without a fraction:* this they call *integration*; but, if I could have hazarded ſuch a word in *Engliſh*, the frequent repetition of it would have been extremely harſh; and I have generally called it *arrangement* or *verification*, which are popular ſenſes of the *Arabick* verbal noun; but the number ſought, or, to uſe the *Arabian* expreſſion, *the integrant of the caſe*, I have uſually named the *diviſor* of the eſtate.

It will be ſeen in the *Sirájiyyah*, that the ſyſtem of Zaid, though in part exploded by Abu Hanifah, had very powerful ſupporters, and its author is always mentioned in terms of reſpect: it is the ſyſtem, which I publiſhed at *London* above ten years ago; and I am not ſurpriſed, that, without a native aſſiſtant or even a marginal gloſs, I could not then interpret the many technical words, which no dictionary explains, except in

their popular ſenſes; but, though my literal verſion of the tract by ALMUTAKANNA, ſeems for pages together like a ſtring of enigmas, yet the following work makes every ſentence in it perfectly clear; and the original, which was engraved from a very old manuſcript, appears to be a lively and elegant epitome of the law of inheritance according to ZAID, but manifeſtly deſigned to aſſiſt the memory of young ſtudents, who were to get it by heart, when they had learned the rules from ſome longer treatiſe, or from the mouths of their preceptors. This may be no improper place to inform the reader, that, although ABU HANÍFAH be the acknowledged head of the prevailing ſect, and has given his name to it, yet ſo great veneration is ſhown to ABU YÚSUF and the lawyer MUHAMMED, that, when they *both* diſſent from their maſter, the *Muſelman* judge is at liberty to adopt either of the two deciſions, which may ſeem to him the more conſonant to reaſon and founded on the better authority.

I AM ſtrongly diſpoſed to believe, that no poſſible queſtion could occur on the *Mohammedan* law of ſucceſſion, which might not be rapidly and correctly anſwered by the help of this work; but it would be eaſy to confirm or invalidate my opinion by the following method. Let one capital letter, or more, if neceſſary, repreſent each of the ſharers, reſiduaries, and diſtant heirs; and let thoſe letters be the initials of the ſeveral words, in aid of the memory, but ſo choſen (as with

out difficulty they may be) that all may be different; let them be placed in alphabetical order, and connected by the ſign of addition; let an enumeration be then made, by the known rule, of all the poſſible caſes, in which they can occur, two and two, three and three, and ſo forth; let them accordingly be arranged in tables from the loweſt number to the higheſt; and let the ſhare or allotment of each be ſet above the letter, in the place of an exponent. If the queſtion then were propoſed, in what manner the property of HINDA muſt be diſtributed among her *daughter*, her *ſiſter by the ſame father only*, and the *daughter of her ſon*, the table of the *third* claſs would exhibit this formula $D^{\frac{3}{6}} + DF^{\frac{2}{6}} + DS^{\frac{1}{6}}$; or, if AMRU had left his *wife*, *two daughters*, and *both his parents*, the formula in the *fourth* table would be $2\,D^{\frac{16}{27}} + F^{\frac{4}{27}} + M^{\frac{4}{27}} + W^{\frac{3}{27}}$; where the denominator of the index would be the *integrant*, as the *Arabs* call it, *of the caſe*, and the numerator would point out the ſeveral allotments: thus might we conſtruct a ſet of tables, mathematically accurate, in which the legal diſtribution, in every poſſible caſe, might be ſeen in a moment without thought and even without learning; and ſuch a blind facility, though not very conſiſtent with the dignity of ſcience, would certainly be convenient in practice. We might alſo arrange the whole in a ſynthetical method (of all the moſt luminous and ſatisfactory) by beginning with the *ſentences* of the *Koràn*, as with indubitable axioms, followed by the genuine oral *maxims*

of MUHAMMED; by ſubjoining the *points*, on which all the learned have at length agreed, and by concluding with *caſes* deduced from thoſe three ſources of juridical knowledge, to which there ſhould be conſtant references by numbers in the manner of geometricians: this method I propoſe to adopt in the Digeſt, from which I have ſeparated the *Sirâjiyyah*, becauſe it ſeemed worthy of being exhibited entire, and may be conſidered as Inſtitutes of *Arabian* Law on the important title, mentioned by the *Britiſh* legiſlature, of *inheritance and ſucceſſion to lands, rents, and goods.*

UNLESS I am greatly deceived, the work, now preſented to the publick, decides the queſtion, which has been ſtarted, *whether, by the* Mogul *conſtitution, the ſovereign be not the ſole proprietor of all the land in his empire, which he or his predeceſſors have not granted to a ſubject and his heirs*; for nothing can be more certain, than that *land, rents*, and *goods* are, in the language of all *Mohammedan* lawyers, *property alike alienable and inheritable*; and ſo far is the ſovereign from having any right of *property* in the goods or lands of his people, that even eſcheats are never appropriated to his uſe, but fall into a fund for the reilef of the poor. SHARIF expreſſly mentions *fields* and *houſes* as inheritable and alienable property: he ſays, that a *houſe*, on which there is a lien, ſhall not be ſold to defray even funeral expenſes;

that, if a man dig a well *in his own field*, and another man periſh by falling into it, he incurs no guilt; but, if he had treſpaſſed on *the field of another man*, and had been the *occaſion* of death, he muſt pay the price of blood; that *buildings* and *trees* paſs by a ſale of *land*, though not converſely; and he always expreſſes what we call *property* by an emphatical word implying *dominion*. Such *dominion*, ſays he, may be acquired by the act of *parties*, as in the caſe of *contracts*, or, by the act of *law*, as in the caſe of *deſcents*; and, having obſerved, that *freedom is the civil exiſtence and life of a man*, but *ſlavery, his death and annihilation*, he adds, *becauſe freedom eſtabliſhes his right of property, which chiefly diſtinguiſhes man from other animals and from things inanimate*; ſo that he would have conſidered *ſubjects without property* (which, as he ſays in another place, *compriſes every thing that a man may ſell, or give, or leave for his heirs*) as *mere ſlaves without civil life*: yet SHARIF was beloved and rewarded by the very conqueror, from whom the imperial houſe of *Dehli* boaſted of their deſcent. The *Kordn* allots to certain kindred of the deceaſed ſpecifick ſhares of *what he left*, without a ſyllable in the book, that intimates a ſhade of diſtinction between realty and perſonalty; there is therefore no ſuch diſtinction, for interpreters muſt make none, where the law has not diſtinguiſhed: as to MUHAMMED, he ſays in poſitive words, *that if a man leave either property, or rights, they*

go to his heirs; and SHARIF adds, *that an heir ſucceeds to his anceſtor's eſtate with an abſolute right of ownerſhip, right of poſſeſſion, and power of alienation.* Now I am fully perſuaded, that no *Muſelman* prince, in any age or country, would have harboured a thought of controverting theſe authorities. Had the doctrine lately broached been ſuggeſted to the ferocious, but politick and religious, OMAR, he would in his beſt mood have aſked his counſellor ſternly, whether he imagined himſelf wiſer than GOD and his Prophet, and, in one of his paſſionate ſallies, would have ſpurned him as a blaſphemer from his preſence, had he been even his deareſt friend or his ableſt general: the placid and benevolent ALI would have given a harſh rebuke to ſuch an adviſer; and AURANGZÍB himſelf, the bloodieſt of aſſaſſins and the moſt avaricious of men, would not have adopted and proclaimed ſuch an opinion, whatever his courtiers and ſlaves might have ſaid, in their zeal to aggrandize their maſter, to a foreign phyſician and philoſopher, who too haſtily believed them, and aſcribed to ſuch a ſyſtem all the deſolation, of which he had been a witneſs. Conqueſt could have made no difference; for, either the law of the conquering nation was eſtabliſhed in *India*, or that of the conquered was ſuffered to remain: if the firſt, the *Korán* and the *dicta* of MUHAMMED were fountains, too ſacred to be violated, both of publick and private law; if the ſecond, there is an end of the debate; for the old *Hindus* moſt aſſu-

redly were abſolute proprietors of their land, though they called their ſovereigns Lords of the Earht; as they gave the title of Gods on Earth to their *Bráhmens*, whom they puniſhed, nevertheleſs, for *theft* with all due ſeverity. Should it be urged, that, although an *Indian* prince may have no right, in his *executive* capacity, to the land of his ſubjects, yet, as the ſole *legiſlative* power, he is above control; I anſwer firmly, that *Indian* princes never had, nor pretended to have, an unlimited legiſlative authority, but were always under the control of laws believed to be divine, with which they never claimed any power of diſpenſing.

I AM happy in an opportunity of advancing theſe arguments againſt a doctrine, which I think unjuſt, unfounded, and big with ruin; for, in the courſe of nine years, I have ſeen enough of theſe provinces and of their inhabitants, to be convinced, that, if we hope to make our government a bleſſing to them and a durable benefit to ourſelves, we muſt realize our hope, not by wringing for the preſent the largeſt poſſible revenue from our *Aſiatick* ſubjects, but by taking no more of their wealth than the publick exigencies, and their own ſecurity, may actually require; not by diminiſhing the *intereſt*, which landlords muſt naturally take in *their own ſoil*, but by augmenting it to the utmoſt, and giving them aſſurance, that it will

deſcend to their heirs: when their laws of property, which they literally hold *ſacred*, ſhall in practice be ſecured to them; when the land-tax ſhall be ſo moderate, that they cannot have a colourable pretence to rack their tenants, and when they ſhall have a well grounded confidence, that the proportion of it will never be raiſed, except for a time on ſome great emergence, which may endanger all they poſſeſs; when either the performance of every legal contract ſhall be enforced, or a certain and adequate compenſation be given for the breach of it; when no wrong ſhall remain unredreſſed, and when redreſs ſhall be obtained at little expenſe, and with all the ſpeed, that may be conſiſtent with neceſſary deliberation; then will the population and reſources of *Bengal* and *Bahar* continually increaſe, and our nation will have the glory of conferring happineſs on conſiderably more than *twenty-four* millions (which is at leaſt the preſent number) of their native inhabitants, whoſe cheerful induſtry will enrich their benefactors, and whoſe firm attachment will ſecure the permanence of our dominion.

DIRECTION

TO THE BOOKBINDER.

THE binder muſt take particular care to place the original *Arabick* after the Commentary, with the pages in an inverſe order; ſo as to begin where an *Engliſh* book would end.

AL SIRÁJIYYAH.

THE

INTRODUCTION.

IN THE NAME OF THE MOST MERCIFUL GOD!

PRAISE *be* to GOD, the Lord of *all* worlds; the praiſe of thoſe who give *Him* thanks! And *His* bleſſing on the beſt of created beings, MUHAMMED, and his excellent family! The Prophet of GOD, (on whom be His bleſſing and peace!) ſaid: "Learn the laws of inheritance, and teach them "to the people; for they *are* one half of uſeful know-"ledge." Our learned in the law (to whom GOD be merciful!) ſay: "There belong to the property of a per-"ſon deceaſed four ſucceſſive duties *to be performed by* "*the magiſtrate:* firſt, his funeral ceremony and "burial without ſuperfluity of expenſe, yet without "deficiency; next, the diſcharge of his juſt debts "from the whole of his remaining effects; then, the "payment of his legacies out of a third of what re-"mains after his debts *are* paid; and, laſtly, the diſtri-"bution of the reſidue among his ſucceſſors, according

"" tothe Divine Book, to the Traditions, and to the Aſſent " of the Learned." They begin with the perſons entitled to ſhares, who are ſuch as have each a ſpecifick ſhare allotted to them in the book of Almighty GOD; then they proceed to the reſiduary heirs by relation, and they are all ſuch as take what remains of the inheritance, after thoſe who are entitled to ſhares; and, if there be only reſiduaries, they take the whole property: next to reſiduaries for ſpecial cauſe, as the maſter of an enfranchiſed ſlave and his *male* reſiduary heirs; then they return to thoſe entitledto ſhares according to their reſpective rights of conſanguinity; then to the more diſtant kindred; then to the ſucceſſor by contract; then to him who was acknowledged as a kinſman through another, ſo as not to prove his conſanguinity, provided the deceaſed perſiſted in that acknowledgement even till he died; then to the perſon, to whom the whole property was left by will; and laſtly to the publick treaſury.

ON IMPEDIMENTS TO SUCCESSION.

IMPEDIMENTS to ſucceſſion *are* four; 1, ſervitude, whether it be perfect or imperfect; 2, homicide, whether puniſhable by retaliation, or expiable; 3, difference of religion; and, 4, difference of country, either actual, as between an alien enemy and an alien

tributary; or qualified, as between a fugitive and a tributary, or between two fugitive enemies from two different ſtates: now a ſtate differs from another by having different forces and ſovereigns, there being no community of protection between them.

ON THE DOCTRINE OF SHARES, AND THE PERSONS ENTITLED TO THEM.

THE *furud*, or ſhares, appointed in the book of Almighty GOD, are ſix: a moiety, a quarter, an eighth, two thirds, one third, and a ſixth, *ſome formed* by doubling, and *ſome* by halving. Now thoſe entitled to theſe ſhares are twelve perſons; four males, who are the father and the true grandfather or other male anceſtor, how high ſoever *in the paternal line*, the brother by the ſame mother, and the huſband; and eight females, who are the wife, and the daughter, and the ſon's daughter, or other female deſcendant how low ſoever, the ſiſter by one father and mother, the ſiſter by the father's ſide, and the ſiſter by the mother's ſide, the mother, and the true grandmother, that is, ſhe who is related to the deceaſed without the intervention of a falſe grandfather. (A falſe male anceſtor is, where a female anceſtor intervenes in the line of aſcent). The father takes in three caſes;

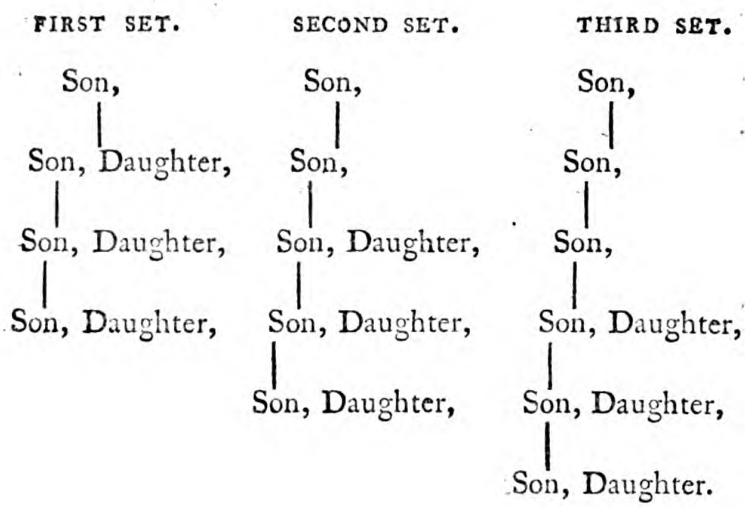
1, an abſolute ſhare, which is a ſixth, and that with the ſon, or ſon's ſon, how low ſoever; 2, a legal ſhare, and a reſiduary portion alſo; and that with a daughter, or a ſon's daughter, how low ſoever in the degree of deſcent; 3. He has a ſimple reſiduary title, on failure of children and ſon's children, or other low deſcendants. The true grandfather has the ſame intereſt with the father, except in four caſes, which we will mention preſently, if it pleaſe GOD; but the grandfather is excluded by the father, *if he be living*; ſince the father is the mean of conſanguinity between the grandfather and the deceaſed. The mother's children alſo take in three caſes: a ſixth is the ſhare of one only; a third, of two, or of more: males and females have an equal diviſion and right; but the mother's children are excluded by children of the deceaſed and by ſon's children, how low ſoever, as well as by the father and the grandfather; as the learned agree. The huſband takes in two caſes; half, on failure of children, and ſon's children, and a fourth, with children or ſon's children, how low ſoever they deſcend.

ON WOMEN.

WIVES take in two caſes; a fourth *goes* to one or more on failure of children, and ſon's children, how low

ſoever; and an eighth with children or ſon's children, in any degree of deſcent. Daughters begotten by the deceaſed take in three caſes: half *goes* to one only, and two thirds to two or more; and, if there be a ſon, the male has the ſhare of two females, and he makes them reſiduaries. The ſon's daughters are like the daughters begotten by the deceaſed; and they may be in ſix caſes: half goes to one only, and two thirds to two or more, on failure of daughters begotten by the deceaſed; with a ſingle daughter of the deceaſed, they have a ſixth, completing, *(with the daughter's half)*, two thirds; but, with two daughters of the deceaſed, they have no ſhare of the inheritance, unleſs there be, in an equal degree with, or in a lower degree than, them, a boy, who makes them reſiduaries. As to the remainder between them, the male has the portion of two females; and all of the ſon's daughters are excluded by the ſon himſelf.

If a man leave three ſon's daughters, ſome of them in lower degrees than others, and three daughters of the ſon of another ſon, ſome of them in lower degrees than others, and three daughters of the ſon's ſon of another ſon, ſome of them in lower degrees than others, as in the following table, this is called the caſe of *taſhbîh*.



Here the eldeſt of the firſt line has none equal in degree with her; the middle one of the firſt line is equalled in degree by the eldeſt of the ſecond; and the youngeſt of the firſt line is equalled by the middle one of the ſecond, and by the eldeſt of the third line; the youngeſt of the ſecond line is equalled by the middle one of the third line, and the youngeſt of the third ſet has no equal in degree.—When thou haſt comprehended this, then we ſay: the eldeſt of the firſt line has a moiety; the middle one of the firſt line has a ſixth together with her equal in degree to make up two thirds; and thoſe in lower degrees never take any thing, unleſs there be a ſon with them, who makes them reſiduaries, both her who is equal to him in degree, and her who is above him; but who is not entitled to a ſhare: thoſe below him are excluded.

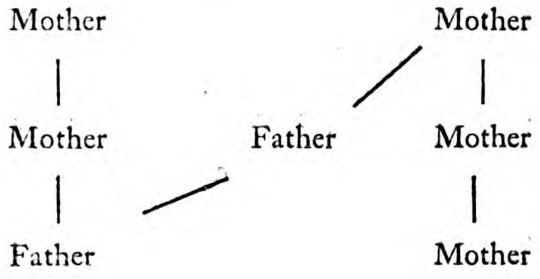
SISTERS by the ſame father and mother may be in five caſes: half goes to one alone; two thirds to two or more; and, if there be brothers by the ſame father and mother, the male has the portion of two females; and the females become reſiduaries through him by reaſon of their equality in the degree of relation to the deceaſed; and they take the reſidue, when they are with daughters or with ſon's daughters, by the ſaying of Him, on whom be bleſſing and peace! "Make ſiſters, with "daughters, reſiduaries."

SISTERS by the ſame father only are like ſiſters by the ſame father and mother, and may be in ſeven caſes: half goes to one, and two thirds to two or more on failure of ſiſters by the ſame father and mother; and, with one ſiſter by the ſame father and mother, they have a ſixth, as the complement of two thirds; but they have no inheritance with two ſiſters by the ſame father and mother, unleſs there be with them a brother by the ſame father, who makes them reſiduaries; and then the reſidue is *diſtributed* among them *by the ſacred rule* "to the male what is equal to the ſhare of two females." The ſixth caſe is, where they are reſiduaries with daughters or with ſon's daughters, as we have before ſtated it.

BROTHERS and ſiſters by the ſame father and mother, and by the ſame father only, are all excluded by the ſon and the ſon's ſon, in how low a degree ſoever, and by the father *alſo*, as it is agreed *among the learned*, and even by the grandfather according to ABU HANIFAH, on whom be the mercy of ALMIGHTY GOD! And thoſe of the half-blood are alſo excluded by the brothers of the whole blood.

THE mother takes in three caſes: a ſixth with a child, or a ſon's child, even in the loweſt degree, or with two brothers and ſiſters or more, by which ever ſide they are related; and a third of the whole on failure of thoſe juſt-mentioned; and a third of the reſidue after the ſhare of the huſband or wife; and this in two caſes, either when there are the huſband and both parents, or the wife and both parents: if there be a grandfather inſtead of a father, then the mother takes a third of the whole property, though not by the opinion of ABU YUSUF, on whom be GOD's mercy! for he ſays, that in this caſe alſo ſhe has only a third of the reſidue. The grandmother has a ſixth, whether ſhe be by the father or by the mother, whether alone or with more, if they be true grandmothers and equal in degree; but they are all excluded by the mother, and the paternal female anceſtors alſo by the father; and, in like manner, by the grandfather,

except the father's mother, even in the higheſt degree; for ſhe takes with the grandfather, ſince ſhe is not *related* through him. The neareſt grandmother, *or female anceſtor*, on either ſide, excludes the more diſtant grandmother, on whichever ſide ſhe be; whether the nearer grandmother be entitled to a ſhare of the inheritance, or be herſelf excluded. When a grandmother has but one relation, as the father's mother's mother, and another has two ſuch relations, or more, as the mother's mother's mother, who is alſo the father's father's mother, according to this table;



then a ſixth is divided between them, according to ABU YUSUF, in moieties, reſpect being had to their perſons; but, according to MUHAMMED, (on whom be GOD's mercy!) in thirds, reſpect being had to the ſides.

ON RESIDUARIES.

RESIDUARIES by relation *to the deceaſed* are three: the reſiduary in his own right, the reſiduary in another's

right, and the reſiduary together with another. Now the reſiduary in his own right is every male, in whoſe line of relation to the deceaſed no female enters; and of this ſort there are four claſſes; the offspring of the deceaſed, and his root; and the offspring of his father and of his neareſt grandfather, a preference being given, I mean a preference in the right of inheritance, according to proximity of degree. The offspring of the deceaſed are his ſons *firſt*; then their ſons, in how low a degree ſoever: then *comes* his root, or his father; then his paternal grandfather, and their paternal grandfathers, how high ſoever; then the offspring of his father, or his brothers; then their ſons, how low ſoever; and then the offspring of his grandfather, or his uncles: then their ſons, how low ſoever. Then the ſtrength of conſanguinity prevails: I mean, he, who has two relations is preferable to him, who has only one relation, whether it be male or female, according to the ſaying of Him, on whom be peace! "Surely, kinſmen by the ſame father and mother ſhall "inherit before kinſmen by the ſame father only:" thus a brother by the ſame father and mother is preferred to a brother by the father only, and a ſiſter by the ſame father and mother, if ſhe become a reſiduary with the daughter, is preferred to a brother by the father only; and the ſon of a brother by the ſame father and mother is preferred

to the ſon of a brother by the ſame father only; and the rule is the ſame in regard to the paternal uncles of the deceaſed; and, after them, to the paternal uncles of his father, and, after them, to the paternal uncles of his grandfather.

THE reſiduaries in another's right are four females; namely, thoſe whoſe ſhares are half and two thirds, and who become reſiduaries in right of their brothers, as we have before mentioned in their different caſes; but ſhe, who has no ſhare among females, and whoſe brother is the heir, doth not become a reſiduary in his right; as in the caſe of a paternal uncle and a paternal aunt.

AS to reſiduaries together with others: ſuch is every female who becomes a reſiduary with another female; as a ſiſter with a daughter, as we have mentioned before. The laſt reſiduary is the maſter of a freedman, and then his reſiduary heirs, in the order before ſtated; according to the ſaying of Him, on whom be bleſſing and peace! "The maſter bears a relation "like that of conſanguinity;" but females have nothing among the heirs of a manumittor, according to the ſaying of Him, on whom be bleſſing and peace! "Women have nothing from their relation to freed-"men, except when they have themſelves manumitted

" a ſlave; or their freedman has manumitted one; " or they have ſold a manumiſſion to a ſlave, or " their vendee has ſold it to his ſlave, or they have " promiſed manumiſſion after their death, or their " promiſee has promiſed it after his death, or unleſs " their freedman or freedman's freedman draw a relation " *to them*."

IF the freedman leave the father and ſon of his manumittor, then a ſixth of the right over the property of the freedman veſts in the father, and the reſidue in the ſon, according to *ABU YUSUF*; but, according to both ABU HANIFAH and MUHAMMED, the whole right veſts in the ſon; and, if a ſon and a grandfather of the manumittor be left, the whole right over the freedman goes to the ſon, as all the learned agree. When a man poſſeſſes as his ſlave a kinſman in a prohibited degree, he manumits him, and his right veſts in him; as if there be three daughters, the youngeſt of whom has twenty *dinàrs*, and the eldeſt, thirty; and they two buy their father for fifty *dinàrs*; and afterwards their father die leaving ſome property; then two thirds of it are divided in thirds among them, as their legal ſhares, and the reſidue goes in fifths to the two who bought their father; three fifths to the eldeſt and two fifths to the youngeſt; which may be ſettled by dividing the whole into forty-five parts.

ON EXCLUSION.

EXCLUSION is of two ſorts: 1. *Imperfect*, or an excluſion from one ſhare, and an admiſſion to another; and this takes place in reſpect of five perſons, the huſband or wife, the mother, the ſon's daughter, and the ſiſter by the ſame father; and an explanation of it has preceded. 2. *Perfect* excluſion: there are two ſets of perſons having a claim to the inheritance: one of which ſets is not excluded entirely in any caſe; and they are ſix perſons, the ſon, the father, the huſband, the daughter, the mother, and the wife; but the other ſet inherit in one caſe and in another caſe are excluded. This is grounded on two principles; one of which is, that "whoever is related to the deceaſed through any perſon, "ſhall not inherit, while that perſon is living;" as a ſon's ſon, with the ſon; except the mother's children, for they inherit with her; ſince ſhe has no title to the whole inheritance: the ſecond *principle* is, "that the neareſt *of blood* muſt take," and who the neareſt is, we have explained *in the chapter* on reſiduaries. A perſon incapable of inheriting doth not exclude any one, *at leaſt* in our opinion; but, according to IBNU MASUUD (may GOD be gracious to him!) he excludes imperfectly; as an infidel, a murderer, and a ſlave. A perſon excluded

may, as all *the learned* agree, exclude *others*; as, *if there be* two brothers or ſiſters or more, on which ever ſide they are, they do not inherit with the father *of the deceaſed*, yet they drive the mother from a third to a ſixth.

ON THE DIVISORS OF SHARES.

KNOW, that the ſix ſhares mentioned in the book of Almighty GOD are of two ſorts: of the firſt are a moiety, a fourth, and an eighth; and of the ſecond ſort are two thirds, a third, and a ſixth, as the fractions are halved and doubled. Now, when any of theſe ſhares occur in caſes ſingly, the diviſor for each ſhare is that number which gives it its name, (except half, which is from two) as a fourth denominated from four, an eighth from eight, and a third from three: when they occur by two or three, and are of the ſame ſort, then each integral number is the proper diviſor to produce its fraction, and alſo to produce the double of that fraction, and the double of that, as ſix produces a ſixth, and likewiſe a third, and two thirds; but, when half, *which is* from the firſt ſort, is mixed with all of the ſecond ſort or with ſome of them, then *the diviſion of the eſtate muſt be* by ſix; when a fourth is mixed with all of the ſecond *ſort*

or with ſome of them, then the diviſion muſt be into twelve; and when an eighth is mixed with all of the ſecond ſort, or with ſome of them, then it muſt be into four and twenty parts.

ON THE INCREASE.

ÂUL, or *increaſe*, is, when ſome fraction remains above the *regular* diviſor, or when the diviſor is too ſmall to admit one ſhare. Know, that the whole number of diviſors is ſeven, four of which have no increaſe, namely, two, three, four, and eight; and three of them have an increaſe. The *diviſor*, ſix, is, therefore, increaſed by the *âûl* to ten, either by odd, or by even, numbers; twelve is raiſed to ſeventeen by odd, not by even, numbers; and twenty-four is raiſed to twenty-ſeven by one increaſe only; as in the caſe, called *Mimberiyya*, (or a caſe anſwered by ALI when he was in the pulpit) which was this, "*A man left* a wife, two daughters, "and both his parents." After this there can be no increaſe, except according to IBN MASÛÛD, (may GOD be gracious to him!) for, in his opinion, the diviſor twenty-four may be raiſed to thirty-one; as *if a man leave* a wife, his mother, two ſiſters by the ſame parents, two ſiſters by the ſame mother only, and a ſon rendered incapable of inheriting.

ON THE EQUALITY, PROPORTION, AGREEMENT, AND DIFFERENCE OF TWO NUMBERS.

THE *temáthul* of two numbers in the equality of one to the other; the *tedákhul* is, when the ſmaller of two numbers exactly meaſures the larger, or exhauſts it; or we call it *tedákhul*, when the larger of two numbers is divided exactly by the ſmaller; or we may define it thus, when the larger exceeds the ſmaller by one number or more equal to it, or equal to the larger; or it is, when the ſmaller is an aliquot part of the larger, as three of nine. The *tawáfuk*, or agreement, of two numbers is, where the ſmaller does not exactly meaſure the larger, but a third number meaſures them both, as eight and twenty, each of which is meaſured by four, and they agree in a fourth; ſince the number meaſuring them is the denominator of a fraction common to both. The *tabáyun* of two numbers is, when no third number whatever meaſures the two diſcordant numbers, as nine and ten. Now the way of knowing the agreement or diſagreement between two different quantities is, that the greater be diminiſhed by the ſmaller quantity on both ſides, once or oftener, until they agree in one point; and if they agree in unit only, there is no numerical agreement be-

tween them ; but, if they agree in any number, then they are *(ſaid to be) mutawáfik* in a fraction, of which that number is the denominator ; if two, in half ; if three, in a third; if four, in a quarter ; and ſo on, as far as ten; and, above ten, they agree in a fraction ; I mean, if the number be eleven, the fraction of eleven, and, if it be fifteen, by the fraction of fifteen. Pay attention to this *rule.*

ON ARRANGEMENT.

IN arranging caſes there is need of ſeven principles ; three, between the ſhares and the perſons, and four between perſons and perſons. Of the three *principles* the firſt is, that, if the portions of all the claſſes be divided among them without a fraction, there is no need of multiplication, as *if a man leave* both parents and two daughters. The ſecond is, that, if the portions of one claſs be fractional, yet there be an agreement between their portions and their perſons, then the meaſure of the number of perſons, whoſe ſhares are broken, muſt be multiplied by the root of the caſe, and its increaſe, it it be an increaſed caſe, as *if a man leave* both parents and ten daughters, or *a woman leave* a huſband, both parents, and ſix daughters. The third *principle* is, that, if their portions leave a fraction, and there be no agree-

ment between thoſe portions and the perſons, then the whole number of the perſons, whoſe ſhares are broken, muſt be multiplied into the root of the caſe, as *if a woman leave* her huſband and five ſiſters by the ſame father and mother. Of the four *other principles* the firſt is, that, when there is a fractional diviſion between two claſſes or more, but an equality between the numbers of the perſons, then the rule is, that one of the numbers be multiplied into the root of the caſe; as if *there be* ſix daughters, and three grandmothers, and three paternal uncles. The ſecond is, when ſome of the numbers equally meaſure the others; then the rule is, that the greater number be multiplied into the root of the caſe; as, *if a man leave* four wives and three grandmothers and twelve paternal uncles. The third is, when ſome of the numbers are *mutawâfik*, or compoſit, with others; then the rule is, that the meaſure of the firſt of the numbers be multiplied into the whole of the ſecond, and the product into the meaſure of the third, if the product of the third be *mutawâfik*, or, if not, into the whole of the third, and then into the fourth, and ſo on, in the ſame manner; after which the product muſt be multiplied into the root of the caſe: as, *if a man leave* four wives, eighteen daughters, fifteen female anceſtors, and ſix paternal uncles. The fourth *principle* is, when the numbers

are *mutabáyan*, or not agreeing one with another; and then the rule is, that the firſt of the numbers be multiplied into the whole of the ſecond, and the product multiplied by the whole of the third, and that product into the whole of the fourth, and the laſt product into the root of the caſe; as, *if a man leave* two wives, ſix female anceſtors, ten daughters, and ſeven paternal uncles.

SECTION.

WHEN thou deſireſt to know the ſhare of each claſs by arrangement, multiply what each claſs has from the root of the caſe by what thou haſt already multiplied into the root of the caſe, and the product is the ſhare of that claſs; and, if thou deſireſt to know the ſhare of each individual in that claſs by arrangement, divide what each claſs has from the principle of the caſe by the number of the perſons in it, then multiply the quotient into the multiplicand, and the product *will be* the ſhare of each individual in that claſs. Another method is, to divide the multiplied number by whichever claſs thou thinkeſt proper, then to multiply the quotient into the ſhare of that ſet, by which thou haſt divided the multiplied number, and the product *will be* the ſhare of each individual in that ſet. Another method is by the way of proportion, which is the cleareſt; and it is, that a proportion be aſcertained for the

ſhare of each claſs from the root of the caſe to the number of perſons one by one, and that, according to ſuch proportion from the multiplied *number*, a ſhare be given to each individual of that claſs.

ON THE DIVISION OF THE PROPERTY LEFT AMONG HEIRS AND AMONG CREDITORS.

IF there be a diſagreement between the property left and the *number ariſing from the* arrangement, then multiply the portion of each heir, according to that arrangement, into the aggregate of the property, and divide the product by the number of the arrangement, but, when there is an agreement between the arrangement and the property left, then multiply the portion of each heir, according to the arrangement into the meaſure of the property, and divide the product by the meaſure of the *number ariſing from the* arrangement: the quotient is the portion of that heir in both methods. This *rule* is in order to know the portion of each individual among the heirs; but, in order to know the portion of each claſs of them, multiply what each claſs has, according to the root of the caſe, into the meaſure of the property left, then divide the product by the meaſure of the caſe, if there be an agreement between

the property left and the caſe; but, if there be a diſagreement between them, then multiply into the whole of the property left, and divide the product by the whole *number ariſing from the* verification of the caſe; and the quotient *will be* the portion of that claſs in both methods. Now, as to the payment of debts, the debts of all the creditors ſtand in the place of the arranging number.

ON SUBTRACTION.

WHEN any one agrees to take a part of the property left, ſubtract his ſhare from *the number ariſing* by the proof, and divide the remainder of the property by the portions of thoſe who remain; as *if a woman leave* her huſband, her mother, and a paternal uncle: now *ſuppoſe that* the huſband agrees to take what was in his power of his bridal gift to the wife; this is deducted from among *the heirs*: then what remains is divided between the mother and the uncle in thirds, according to their legal ſhares; and thus there will be two parts for the mother, and one for the uncle.

ON THE RETURN.

THE return is the converſe of the increaſe; and it *takes place* in what remains above the ſhares of thoſe en-

titled to them, when there is no legal claimant of it: this *ſurplus* is returned to the ſharers according to their rights, except the huſband or the wife; and this is the opinion of all the *Prophet*'s companions, as ÂLI and his followers, may GOD be gracious to them! And our maſters (to whom GOD be merciful!) have aſſented to it: ZAID, the ſon of THÁBIT ſays, that the ſurplus doth not revert, but *goes* to the publick treaſury; and to this opinion have aſſented ÛRWAH and ALZUHRÍ and MÁLIC and ALSHÁFIÎ, may GOD be merciful to them!

NOW the caſes on this head are *in* four diviſions: the firſt of them *is*, when there is in the caſe but one ſort of kinſmen, to whom a return muſt be made, and none of thoſe who are not entitled to a return: then ſettle the caſe according to the number of perſons; as, when the deceaſed has left two daughters, or two ſiſters, or two female anceſtors; ſettle it, therefore, by two. The ſecond *is*, when there are joined in the caſe two or three ſorts of thoſe, to whom a return muſt be made, without any of thoſe, to whom there is no return: then ſettle the caſe according to their ſhares; I mean by two, if there be two ſixths in the caſe; or by three, when there are a third and a ſixth in it; or by four, when there are a moiety and a ſixth in it; or by five, when there are in it two thirds and a ſixth, or half and two ſixths, or half and a third. The

third *is*, when in the firſt caſe, there is *any one* to whom no return can be made: then give the ſhare of him or her, to whom there is no return, according to the loweſt *denominator*, and if the reſidue exactly quadrate with the number of perſons, who are entitled to a return, *it is* well; as *if there be* a huſband and three daughters; but, if they do not agree, then multiply the meaſure *of the number* of the perſons, if there be an agreement between the number of perſons and the reſidue, into the denominator of the ſhares of thoſe, to whom no return is to be made: as *if there be* a huſband, and ſix daughters; if not, multiply the whole number of the perſons into the denominator of the ſhare of thoſe, to whom there is no return; and the product will ſet the caſe right. The fourth is, when, in the ſecond caſe, there are any to whom no return is made: then divide what remains from the denominator of the ſhare of him or them, who have no return, by the caſe of thoſe, to whom a return muſt be made, and, if the remainder quadrate, *it is well*; and this *is* in one form; that is, when a fourth *goes* to the wives, and the reſidue is *diſtributed* in thirds among thoſe entitled to a return; as *if there be* a wife, and a grandmother, and two ſiſters by the mother's ſide: but, if it do not quadrate, then multiply the whole caſe of thoſe, who are entitled to a return, into the denominator of the ſhare of him or

her, who is not entitled to it; and the product will be the denominator of the ſhares of both claſſes; as *if there be* four wives, and nine daughters, and ſix female anceſtors: then multiply the ſhares of thoſe, to whom no return muſt be made, into the caſe of thoſe, who are entitled to a return, and the ſhares of thoſe, to whom a return is to be made, into what remains of the denominator of the ſhare of thoſe, who are not entitled to a return. If there be a fraction in ſome, adjuſt the caſe by the before-mentioned principles.

ON THE DIVISION OF THE PATERNAL GRANDFATHER.

ABUBECR the Juſt, (on whom be the grace of GOD!) and thoſe, who followed him, among the companions *of the Prophet*, ſay, "the brethren of the whole blood and the brethren by the father's ſide inherit not with the grandfather:" this is alſo the deciſion of ABU HANÍFA, (on whom be GOD's mercy!) and judgements are given conformably to it. ZAID the ſon of THÁBIT, indeed, aſſerts, that they *do* inherit with the grandfather, and of this opinion are both *ABU YUSUF and MUHAMMED*, as well as MÁLIC and ALSHAFIÎ According to ZAID, the ſon of THÁBIT (on whom be

GOD's mercy!) the grandfather, with brothers or ſiſters of the whole blood and by the father's ſide, takes the beſt in two caſes, from the *mukáſamah*, or *diviſion*, and from a third of the whole eſtate. The meaning of *mukáſamah* is, that the grandfather is placed in the diviſion as one of the brethren, and the brethren of the half blood enter into the diviſion with thoſe of the whole blood, to the prejudice of the grandfather; but, when the grandfather has received his allotment, then the half blood are removed from the reſt, *as if* diſinherited, and receive nothing; and the reſidue goes to the brethren of the whole blood; except when, among thoſe of the whole blood there is a ſingle ſiſter, who receives her legal ſhare, I mean the whole after the grandfather's allotment: then, if any thing remains, *it goes* to the half blood; if not, they have nothing; and this *is the caſe*, when *a man leaves* a grandfather, a ſiſter by the ſame father and mother, and two ſiſters by the ſame father only: *in this caſe* there remains to thoſe ſiſters a tenth of the eſtate, and the correct denominator *is* twenty; but, if there be, in the preceding caſe, one ſiſter by the ſame father only, nothing remains for her; and if one, entitled to a legal ſhare, be mixed with them, then, after he has received his ſhare, the grandfather has the beſt in three arrangements; either the diviſion,

when *a woman leaves* her huſband, a grandfather, and a brother ; or a third of the reſidue *is given*, when a man leaves a grandfather, a grandmother, and two brothers, and a ſiſter by the ſame father and mother. Or a ſixth of the whole eſtate *is given*, when a man leaves a grandfather and a grandmother, a daughter, and two brothers ; and, when a third of the reſidue is better from the grandfather, and the reſidue has not a complete third, multiply the denominator of the third into the root of the caſe. If a woman leave a grandfather, her huſband, a daughter, her mother, and a ſiſter by the ſame father and mother, or by the ſame father only, then a ſixth is beſt for the grandfather, and the *root of the* caſe is raiſed to thirteen, and the ſiſter has nothing. Know, that ZAID, the ſon of THABIT (on whom be GOD's grace!) has not placed the ſiſter by the ſame father and mother, or by the ſame father, as entitled to a ſhare with the grandfather, except in the caſe, named *acdarîyyah*, and that is, the huſband, the mother, a grandfather, and a ſiſter by the ſame father and mother, or by the ſame father only ; *in which caſe* the huſband *ought to have* a moiety ; the mother, a third ; the grandfather, a ſixth ; and the ſiſter, a moiety; then the grandfather annexes his ſhare to that of the ſiſter, and, a diviſion is made between them *by the rule* " a male has the portion of two females ;" *and this is*, becauſe the diviſion is beſt for the grandfather.

The root is *regularly* ſix, but is increaſed to nine; and a correct diſtribution is made by twenty-ſeven. The caſe is called *acdarîyyah*, becauſe it occurred on *the death of* a woman belonging to the tribe of ACDAR. If, inſtead of the ſiſter, there be a brother or two ſiſters, there is no increaſe, nor *is that caſe* an *acdarîyyah*.

ON SUCCESSION TO VESTED INTERESTS.

IF ſome of the ſhares become veſted inheritances before the diſtribution, as *if a woman leave* her huſband, a daughter, and her mother, and the huſband die, before the eſtate can be diſtributed, leaving a wife and both his parents, *if* then the daughter die leaving two ſons, a daughter, and a *maternal* grandmother, and then the grandmother die leaving her huſband and two brothers, the principle in this *event* is, that the caſe of the firſt deceaſed be arranged, and that the allotment of each heir be *conſidered* as delivered according to that arrangement; that, next, the caſe of the ſecond deceaſed be arranged, and that a compariſon be made between what was in his hands, *or veſted in intereſt*, from the firſt arrangement, and between the ſecond arrangement, in three ſituations; and if, on account of equality, what *is* in his hands from the firſt arrangement quadrate with the ſecond arrangement, then there is no need of multiplication; but, if

it be not right, then ſee whether there be an agreement between the two, and multiply the meaſure of the ſecond arrangement into the whole of the firſt arrangement; and, if there be a diſagreement between them, then multiply the whole of the ſecond arrangement into the whole of the firſt arrangement; and the product *will be* the denominator of both caſes. The allotments of the heirs of the firſt deceaſed muſt be multiplied into the former multiplicand, I mean into the ſecond arrangement or into its meaſure; and the allotments of the heirs of the ſecond deceaſed muſt be multiplied into the whole of what *was* in his hands, or into its meaſure; and, if a third or a fourth die, put the ſecond product in the place of the firſt arrangement, and the third caſe in the place of the ſecond, in working; *and* thus in *the caſe of* a fourth and a fifth, and ſo on to infinity.

ON DISTANT KINDRED.

A DISTANT kinſman *is* every relation, who is neither a ſharer nor a reſiduary. The generality of the *Prophet*'s companions repeat a tradition concerning the inheritance of diſtant kinſmen; and, according to this, our maſters and their followers (may GOD be merciful to them!) have decided; but ZAID, the ſon of THABIT, (on whom be GOD's grace!) ſays: "there is no inhe-

" ritance for the diſtant kindred, but the property *undiſ-*
" *poſed of* is placed in the publick treaſury" ; and with him agree MÁLIC and ALSHAFII, on whom be GOD's mercy! Now theſe diſtant kindred *are* of four claſſes: the firſt claſs is deſcended from the deceaſed ; and they are the daughters' children, and the children of the ſon's daughters. The ſecond ſort *are* they, from whom the deceaſed deſcend; and they are the excluded grandfathers and the excluded grandmothers. The third ſort are deſcended from the parents of the deceaſed ; and they *are* the ſiſters' children and the brothers' daughters, and the ſons of brothers by the ſame mother only. The fourth ſort are deſcended from the two grandfathers and two grandmothers of the deceaſed ; and they are, paternal aunts, and uncles by the ſame mother *only*, and maternal uncles and aunts. Theſe, and all who are related to the deceaſed through them, are among the diſtant kindred. ABÚ SULAIMÁN reports from MUHAMMED the ſon of ALHASAN, *who reported* from ABU HANÍFAH (on whom be GOD's mercy!) that the ſecond ſort are the neareſt of the *four* ſorts, how high ſoever they aſcend ; then the firſt, how low ſoever they deſcend ; then the third, how low ſoever ; and laſtly, the fourth, how diſtant ſoever *their degree :* but ABU YÚSUF and ALHASAN, the ſon of ZIYAD, report from ABU

HANIFAH, (on whom be the mercy of GOD!) that the neareſt of the *four* ſorts is the firſt, then the ſecond, then the third, then the fourth, like the order of the reſiduaries; and this *is* taken *as a rule* for deciſion. According to both *ABU YUSUF and MUHAMMED*, the third ſort has a preference over the maternal grandfather.

ON THE FIRST CLASS.

THE beſt entitled of them to the ſucceſſion is the neareſt of them in degree to the deceaſed; as the daughter's daughter, who is preferred to the daughter of the ſon's daughter; and, if *the claimants* are equal in degree, then the child of an heir is preferred to the child of a diſtant relation; as the daughter of a ſon's daughter is preferred to the ſon of a daughter's daughter; but, if their degrees be equal, and there be not among them the child of an heir, or, if all of them be the children of heirs, then, according to ABU YUSUF (may GOD be merciful to him!) and ALHASAN, ſon of ZIYAD, the perſons of the branches are conſidered, and the property is diſtributed among them equally, whether the condition of the roots, as male or female, agree or diſagree; but MUHAMMED (on whom be GOD's mercy!) conſiders the perſons of the branches, if the ſex of the roots agree, *in which reſpect*

he concurs with the other two; and he conſiders the perſons of the roots, if their ſexes be different, and, he gives to the branches the inheritance of the roots, in oppoſition to the two *lawyers*. For inſtance, when *a man* leaves a daughter's ſon, and a daughter's daughter, *then*, according to ABU YUSUF and ALHASAN, the property is diſtributed between them, *by the rule* " the male has the por-" tion of two females," their perſons being conſidered; and, according to MUHAMMED, in the ſame manner; becauſe the ſexes of the roots agree: and, if *a man* leave the daughter of a daughter's ſon, and the ſon of a daughter's daughter, *then*, according to the two *firſt mentioned lawyers*, the property *is divided* in thirds between the branches, by conſidering the perſons, two thirds of it *being given* to the male, and one third to the female; but, according to MUHAMMED, (on whom be GOD's mercy!) the property *is divided* between the roots, I mean *thoſe* in the ſecond rank, in thirds, two thirds *going* to the daughter of the daughter's ſon, *namely*, the allotment of her father, and one third of it to the ſon of the daughter's daughter, *namely*, the ſhare of his mother. Thus, according to MUHAMMED, (to whom GOD be merciful!) when the children of the daughters are different *in ſex*, the property is divided according to the firſt rank *that* differs among the roots; then the males are arranged

in one claſs, and the females in another claſs, after the diviſion, and what goes to the males is collected and diſtributed according to the higheſt difference, that occurs among their children, and, in the ſame manner, what goes to the females; and thus the operation is continued to the end according to this ſcheme:

S	S	S	D	D	D	D	D	D	D	D	D
D	D	D	D	D	D	D	D	D	D	D	D
S	D	D	S	S	S	D	D	D	D	D	D
D	D	D	S	D	D	S	S	S	D	D	D
D	S	D	D	D	D	S	D	D	S	D	D
D	D	D	D	D	S	D	D	S	D	S	D

Thus MUHAMMED (to whom GOD be merciful!) takes the ſex from the root at the time of the diſtribution, and the number from the branches; as, *if a man* leave two ſons of a daughter's daughter's daughter, and a daughter of a daughter's daughter's ſon, and two daughters of a daughter's ſon's daughter, in this form:

THE DECEASED,

Daughter	Daughter	Daughter
Son	Daughter	Daughter
Daughter	Son	Daughter
Two Daughters	Daughter	Two Sons.

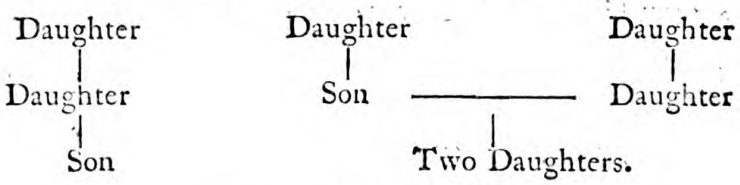
in this caſe according to ABU YUSUF (on whom be

GOD's mercy!) the property is divided among the branches in ſeven parts, by conſidering their perſons; but, according to MUHAMMED, (to whom GOD be merciful!) the property is diſtributed according to the higheſt difference *of ſex*, I mean in the ſecond rank, in ſevenths, by the number of branches in the roots; and, according to him, four ſevenths of it *go* to the daughters of the daughter's ſon's daughter; ſince that is the ſhare of their grandfather, and three ſevenths of it, which are the allotment of the two daughters, are divided between their two children, I mean thoſe in the third rank, in moieties; one moiety to the daughter of the daughter's daughter's ſon, *which* is the ſhare of her father, and the other moiety to the two ſons of the daughter's daughter's daughter, *being* the ſhare of their mother: the correct diviſor of the property is, in this caſe, twenty eight. The opinion of MUHAMMED (on whom be GOD's mercy!) is the more generally received of the two traditions from ABU HANIFAH (to whom GOD be merciful!) in all deciſions concerning the diſtant kindred; and this was the firſt opinion of ABU YUSUF; then he departed *from it*, and ſaid that the roots were by no means to be conſidered.

A SECTION.

OUR learned *lawyers* (on whom be the mercy of GOD!) conſider the *different* ſides in ſucceſſion; except that ABU YUSUF (may GOD be merciful to him!) conſiders the ſides in the perſons of the branches, and MUHAMMED, (on whom be GOD's mercy!) conſiders the ſides in the roots; as, when *a man* leaves two daughters of a daughter's daughter, who *are* alſo the two daughters of a daughter's ſon, and the ſon of a daughter's daughter, according to this ſcheme:

THE DECEASED.



In this caſe, according to ABU YUSUF, the property *is divided* among them in thirds, and then the deceaſed is conſidered as if he had left four daughters and a ſon; two thirds of it, therefore, go to the two daughters, and one third to the ſon: but, according to MUHAMMED (to whom GOD be merciful!) the eſtate *is divided* among them in twenty eight parts, to the two daughters twenty two ſhares (ſixteen in right of their father and ſix ſhares in right of their mother) and to the ſon ſix ſhares in right of his mother.

ON THE SECOND CLASS.

HE among them, who is preferred in the ſucceſſion, is the neareſt of them to the deceaſed, on which ſide ſoever he ſtands; and, in the caſe of equality in the degrees of proximity, then he, who is related to the deceaſed through an heir, is preferred by the opinion of ABU SUHAIL, *ſurnamed* ALFERÁIDI, of ABU FUDAIL ALKHASSÁF, and of ALI, the ſon of ISAI ALBASRI; but, no preference *is given* to him according to ABU SULAIMAN ALJURJÁNI, and ABU ALI AL BAIHATHI ALBUSTI. If their degrees be equal, and there be none among them, who is related through an heir, or, if all of them be related through an heir, then, if the ſex of thoſe, through whom they are related, agree, and their relation be on the ſame ſide, the diſtribution is according to their perſons, but if the ſex of thoſe, to whom they are related, be different, the property is diſtributed according to the firſt rank that differs in ſex, as in the firſt claſs; and, if their relation differ, then two thirds *go* to thoſe on the father's ſide, that *being* the ſhare of the father, and one third *goes* to thoſe on the mother's ſide, that *being* the ſhare of the mother: then what has been allotted to each ſet is diſtributed among them, as if their relation were the ſame.

ON THE THIRD CLASS.

THE rule concerning them is the ſame with that concerning the firſt claſs; I mean, *that* he *is* preferred in the ſucceſſion, who is neareſt to the deceaſed: and, if they be equal in relation, then the child of a reſiduary *is* preferred to the child of a more diſtant kinſman; as, *if a man leave* the daughter of a brother's ſon, and the ſon of a ſiſter's daughter, both of them by *the ſame* father and mother, or by *the ſame* father, or one of them by *the ſame* father and mother, and the other by *the ſame* father *only*: *in this caſe* the whole eſtate *goes* to the daughter of the brother's ſon, becauſe ſhe is the child of a reſiduary; and, if it be by *the ſame* mother *only*, *diſtribution is made* between them *by the rule*, "A male has the ſhare of two "females," *and*, by the opinion of ABU YUSUF (to whom GOD be merciful!) in thirds, according to the perſons, but, by that of MUHAMMED, (may GOD be merciful to him!) in moieties according to the roots; and, if they be equal in proximity, and there be no child of a reſiduary among them, or *if* all of them be children of reſiduaries, or if ſome of them be children of reſiduaries, and ſome of them children of thoſe entitled to ſhares, and their relation differ, then ABU YUSUF (to whom GOD be merciful!) conſiders the ſtrongeſt *in conſanguinity*; but

MUHAMMED (may GOD be merciful to him!) divides the property among the brothers and ſiſters in moieties, conſidering as well the number of the branches, as the ſides in the roots; and what has been allotted to each ſet is diſtributed among their branches, as in the firſt claſs: thus, *if a man leave* the daughter of the daughter of a ſiſter by *the ſame* father and mother, ſhe is preferred to the ſon of the daughter of a brother by the ſame father *only*, according to ABU YUSUF (to whom GOD be merciful!) by reaſon of the ſtrength of relation; but, according to MUHAMMED, (may GOD be merciful to him) the property is divided between them both in moieties by conſideration of the roots. So, when *a man* leaves three daughters of different brothers, and three ſons and three daughters of different ſiſters, *as* in this figure:

THE DECEASED.

Siſter — Siſter —-Siſter-—Brother—Brother—Brother

by the ſame

Mother—-Father—Father—Mother—Father—-Father

and Mother *and* Mother

Son Son Son Daughter Daughter Daughter Daughter Daughter Daughter.

In this caſe, according to ABU YUSUF, the property is divided among the branches of the whole blood, then among the branches by the ſame father, then among the branches by the ſame mother, *according to the rule* "the male has the allotment of two females," in fourths, by conſidering the perſons; but, according to MUHAMMED (to whom GOD be merciful!) a third of the eſtate is divided equally among the branches by the ſame mother, in thirds, by conſidering the equality of their roots in the diviſion of the parents, and the remainder among the branches of the whole blood in moieties, by conſidering in the roots the number of the branches; one half to the daughter of the brother, the portion of the father, and the other between the children of the ſiſter, the male having the allotment of two females, by conſidering the perſons; and *the eſtate* is correctly divided by nine. If *a man* leave three daughters of different brothers' ſons, in this manner:

THE DECEASED.

Daughter — Daughter — Daughter

of a Son of a Brother by the ſame

Father and Mother — Father — Mother

all the property goes to the daughter of the ſon of the

brother by the ſame father and mother, by the unanimous opinion *of the learned*, ſince ſhe is the child of a reſiduary, and hath alſo the ſtrength of conſanguinity.

ON THE FOURTH CLASS.

THE rule as to them *is*, that, when there is only one of them, he has a right to the whole property, ſince there is none to obſtruct him; and, when there are ſeveral, and the ſides of their relation are the ſame, as paternal aunts and paternal uncles by the ſame mother *with the father*, or maternal uncles and aunts, then the ſtronger of them in conſanguinity is preferred, by the general aſſent; I mean, they, who are *related* by father and mother, are preferred to thoſe, who are *related* by the father *only*, and they, who are *related* by the father, are preferred to thoſe, who are *related* by the mother only, whether they be males or females; and, if there be males and females and their relation be equal, then the male has the allotment of two females; as, *if there be* a paternal uncle and aunt both by *one* mother, or a maternal uncle and aunt, both by the ſame father and mother, or by the ſame father, or by the ſame mother only: and if the ſides of their conſanguinity be different, then no regard *is ſhown* to the ſtrength of relation; as, if *there be* a paternal aunt by the ſame father and mother, and a ma-

ternal aunt by the ſame mother, or a maternal aunt by the ſame father and mother, and a paternal aunt by the ſame mother only, then two thirds *go* to the kindred of the father, for they *are* the father's allotment, and one third to the kindred of the mother, for that *is* the mother's allotment; then what is allotted to each ſet is divided among them, as if the place of their conſanguinity were the ſame.

ON THEIR CHILDREN, AND THE RULES CONCERNING THEM.

THE rule as to them *is* like the rule concerning the firſt claſs; I mean, *that* the beſt entitled of them to the ſucceſſion is the neareſt of them to the deceaſed on which ever ſide he is *related*; and, if they be equal in relation, and the place of their conſanguinity be the ſame, then he, who has the ſtrength of blood, is preferred, by the general aſſent; and, if they be equal in degree and in blood, and the place of their conſanguinity be the ſame, then the child of a reſiduary *is* preferred to whoever is not *ſuch*; as, *if a man leave* the daughter of a paternal uncle, and the ſon of a paternal aunt, both of them by *the ſame* father and mother, or by *the ſame* father, all the property goes to the daughter of the paternal uncle; and, if one of

them be by *the ſame* father and mother, and the other by the ſame father only, *then* all the eſtate goes to the claimant, who has the ſtrength of conſanguinity, according to the clearer tradition; *and this* by analogy to the maternal aunt by the ſame father, for though ſhe be the child of a diſtant kinſman, yet ſhe is preferred, by the ſtrength of conſanguinity, to the maternal aunt by the *ſame* mother *only*, though ſhe be the child of an heir; ſince the weight which prevails by itſelf, that is, the ſtrength of conſanguinity, is greater than the weight by another, which is the deſcent from an heir. Some of them (the learned) ſay, *that* the whole eſtate goes to the daughter of the paternal uncle by the ſame father, ſince ſhe is the daughter of a reſiduary; and, if they be equal in degree, yet the place of their relation differ, they have no regard *ſhown* to the ſtrength of conſanguinity, nor to the deſcent from a reſiduary, according to the clearer tradition; by analogy to the paternal aunt by the ſame father and mother, for though ſhe have two bloods, and be the child of an heir on both ſides, and her mother be entitled to a legal ſhare, *yet* ſhe is not preferred to the maternal aunt by the *ſame* father; but two thirds *go* to whoever is related by the father; and there regard is ſhown to the ſtrength of blood; then to the deſcent from a reſiduary; and one third *goes* to who-

ever is related by the mother, and there *too* regard is ſhown to ſtrength of conſanguinity: then, according to ABU YÚSUF, (may GOD be merciful to him!) what belongs to each ſet is divided among the perſons of their branches, with attention to the number of ſides in the branches; and, according to MUHAMMED, (may GOD be merciful to him!) the property is diſtributed by the firſt line, *that* differs, with attention to the number of the branches and of the ſides in the roots, as in the firſt claſs; then this rule is applied to the ſides of the paternal uncles of his parents and their maternal uncles; then to their children; then to the ſide of the paternal uncles of the parents of his parents, and to their maternal uncles; then to their children, as in the *caſe of* reſiduaries.

ON HERMAPHRODITES.

TO the hermaphrodite, *whoſe ſex is quite* doubtful, *is allotted* the ſmaller of two ſhares, I mean the worſe of two conditions, according to ABU HANÍFAH, (may GOD be merciful to him!) and his friends, and this is the doctrine of the generality of the *Prophet*'s companions, (may GOD be gracious to them!) and conformable to it are deciſions *given*; as, when *a man* leaves a ſon, and a daughter, and an hermaphrodite, then the hermaphrodite has the ſhare

of a daughter, ſince that is aſcertained: and according to ÂÁMIR ALSHÂBI, (and this is the opinion of IBNU ÂBBÁS, may GOD be gracious to them both!) the hermaphrodite has a moiety of the two ſhares in the controverſy; but *the two great lawyers* differ in putting in practice the doctrine of ALSHÂBI; *for* ABU YÚSUF ſays, *that* the ſon has one ſhare, and the daughter half a ſhare, and the hermaphrodite three fourths of a ſhare, ſince the hermaphrodite would be entitled to a ſhare, if he were a male, and to half a ſhare, if he were a female, and this *is* ſettled by *his* taking half the ſum of the two portions; or, we may ſay, he takes the moiety which is aſcertained, together with half the moiety which is diſputed, ſo that there come to him three-fourths of a ſhare; for he (ABU YÚSUF) pays attention to the legal ſhare and to the increaſe, and he verifies *the caſe* by nine: or, we may ſay, the ſon has two ſhares, and the daughter one ſhare, and the hermaphrodite a moiety of the two allotments, and that *is* a ſhare and half a ſhare. But MUHAMMED (may GOD be merciful to him!) ſays, that the hermaphrodite would take two fifths of the eſtate, if he were a male, and a fourth of the eſtate, if he were a female, and that he takes a moiety of the two allotments, and that *will give him* one fifth and an eighth by attention to both ſexes; and the caſe is rectified by forty; ſince that

is the product of one of the *numbers in the* two caſes, which is four, multiplied into the other, which is five, and that product multiplied by two *(which is the number of the)* caſes; and then he, who takes any thing by five, *has it* multiplied into four, and he, who takes any thing by four, *has it* multiplied into five; ſo that thirteen ſhares *go* to the hermaphrodite, and eighteen to the ſon, and nine to the daughter.

ON PREGNANCY.

THE longeſt time of pregnancy *is* two years, according to ABU HANÍFAH (may GOD be merciful to him!) and his companions; and according to LAITH, the ſon of SÂD ALFAHMÍ, (may GOD be merciful to him!) three years; and, according to ALSHÁFII, (may GOD be merciful to him!) four years: but according to AL-ZUHRI, (may GOD be merciful to him!) ſeven years: and the ſhorteſt time for it is ſix months. There is reſerved for the child in the womb, according to ABU HANÍFAH (may GOD be merciful to him!) the portion of four ſons, or the portion of four daughters, whichever of the two is moſt; and there is given to the reſt of the heirs the ſmalleſt of the portions; but, according to MUHAMMED (may GOD be merciful to him!) there

is reſerved the portion of three ſons or of three daughters, whichever of the two is moſt: LAITH, ſon of SÂD, (may GOD be gracious to him!) reports this *opinion* from him; but, by another report, *there is reſerved* the portion of two ſons; and one of the two opinions is that of ABU YÚSUF (may GOD be merciful to him!) as HISHÁM reports it from him; but ALKHASSÁF reports from ABU YÚSUF (may GOD be merciful to him!) that there ſhould be reſerved the ſhare of one ſon or of one daughter; and, according to this, deciſions *are made*; and ſecurity muſt be taken, according to his opinion. And, if the pregnancy was by the deceaſed, and *the widow* produce a child at the full *time* of the longeſt period *allowed* for pregnancy, or within it, and the woman hath not confeſſed her having broken her legal term *of abſtinence*, *that child* ſhall inherit, and others may inherit from him; but, if ſhe produce a child after the longeſt *time* of geſtation, he ſhall not inherit, nor ſhall others inherit from him: and if the pregnancy was from another man than the deceaſed, and ſhe, *the kinſwoman*, produce a child in ſix months or leſs, he ſhall inherit; but, if ſhe produce the child after the leaſt period of geſtation, he ſhall not inherit.

NOW the way of knowing the life of the child at the time of its birth, is, that there be found in him that, by which life is proved; as a voice, or ſneezing, or weeping,

or ſmiling, or moving a limb; and, if the ſmalleſt *part* of the child come out, and he then die, he ſhall not inherit; but if the greater *part* of him come out, and then he die, he ſhall inherit: and, if he come out ſtraight *(or with his head firſt)* then his breaſt is conſidered; I mean, if his whole breaſt come out, he ſhall inherit; but if he come out inverted *(or with his feet firſt)* then his navel is conſidered.

THE chief rule in arranging caſes on pregnancy is, that the caſe be arranged by two ſuppoſitions, I mean by ſuppoſing, that the child in the womb is a male, and by ſuppoſing, that it is a female: then, compare the arrangement of both caſes; and, if the numbers agree, multiply the meaſure of one of the two into the whole of the other; and, if they diſagree, then multiply the whole of one of the two into the whole of the other, and the product will be the arranger of the caſe: then multiply the allotment of him, who would have ſomething from the caſe, which ſuppoſes a male, into that of the caſe, which ſuppoſes a female, or into its meaſure; and then that of him, who takes on the ſuppoſition of a female, into the caſe of the male, or into its meaſure, as we have directed concerning the hermaphrodite; then examine the two products of that multiplication; and whether of the two is the leſs, that ſhall be given to ſuch an heir; and the difference between

them muſt be reſerved from the allotment of that heir; and, when the child appears, if he be entitled to the whole of what has been reſerved, it is well; but, if he be entitled to a part, let him take that part, and let the remainder be diſtributed among the *other* heirs, and let there be given to each of thoſe heirs what was reſerved from his allotment: as, when a man has left a daughter and both his parents, and a wife pregnant, then the caſe *is rectified* by twenty-four on the ſuppoſition, that the child in the womb is a male, and by twenty-ſeven on the ſuppoſition, that it is a female: now between the two numbers of the arrangement there is an agreement in a third; and, when the meaſure of one of the two is multiplied into the whole of the other, the product amounts to two hundred and ſixteen, and by that *number* is the caſe verified; and, on the ſuppoſition of its male ſex, the wife takes twenty-ſeven ſhares, and each of the two parents, thirty-ſix; but, on the ſuppoſition of its female ſex, the wife has twenty-four, and each of the parents, thirty-two; and twenty-four are given to the wife, and three ſhares from her allotment are reſerved; and from the allotment of each of the parents are reſerved four ſhares; and thirteen ſhares are given to the daughter; ſince the *part* reſerved in her right *is* the allotment of four ſons, according to ABU HANIFAH, (may GOD be merciful to him!) and when the

ſons are four, then her allotment is one ſhare and four ninths of a ſhare out of four-and-twenty multiplied into nine, and that makes thirteen ſhares; and this *belongs* to her, and the reſidue *is* reſerved, which *amounts to* an hundred and fifteen ſhares. If the widow bring forth one daughter or more, then all the *part* reſerved *goes* to the daughters; and, if ſhe bring forth one ſon or more, then muſt be given to the widow and both parents what was reſerved from their ſhares; and what remains muſt be divided among the children: and, if ſhe bring forth a dead child, then muſt be given to the widow and both parents what was reſerved from their ſhares, and to the daughter a complete moiety, that is, ninety-five ſhares *more*, and the remainder, which is nine ſhares, to the father, ſince he *is* the reſiduary.

ON A LOST PERSON.

A LOST perſon is *conſidered as* living in *regard to* his eſtate; ſo that no one can inherit from him; and his eſtate is reſerved, until his death can be aſcertained; or the term for *a preſumption of it* has paſſed over: now the traditionary opinions differ concerning that term; for, by the clearer tradition, "when, not one of his equals in age remains, judgement may be given of his death;"

but HASAN, the ſon of ZIYÁD, reports from ABU HANÍFAH, (may GOD be merciful to him!) that the term is an hundred and twenty years from the day on which he was born; and MUHAMMED ſays, an hundred and ten years; and ABU YÚSUF ſays, an hundred and five years; and ſome of them, *the learned*, ſay, ninety years; and according to that *opinion* are deciſions *made*. Some of *the learned in the law* ſay, that the eſtate of a loſt perſon muſt be reſerved for the final regulation of the *Imàm*, and the judgement ſuſpended as to the right of another perſon, ſo that his ſhare from the eſtate of his anceſtors muſt be kept, as in the *caſe* of pregnancy; and, when the term *is* elapſed, and judgement given of his death, then his eſtate *goes* to his heirs, *who are* ~~to be found~~, according to the judgement of his deceaſe; and, what was reſerved on his account from the eſtate of his anceſtor, is reſtored to the heir of his anceſtor, from whoſe eſtate that ſhare was reſerved; ſince the loſt perſon *is* dead as to the eſtate of another.

THE principle in arranging caſes concerning a loſt perſon *is*, that the caſe be arranged on a ſuppoſition of his life, and then arranged on a ſuppoſition of his death; and the reſt of the operation *is* what we have mentioned in the chapter of pregnancy.

ON AN APOSTATE.

WHEN an apoſtate *from the faith* has died naturally, or been killed, or paſſed into a hoſtile country, and the *Kádi* has given judgement on his paſſage *thither*, then what he had acquired, at the time of his being a believer, *goes* to his heirs, *who are* believers; and what he has gained ſince the time of the apoſtaſy is placed in the publick treaſury, according to ABU HANÍFAH, (may GOD be merciful to him!) but, according to the two *lawyers*, (ABU YÚSUF *and* MUHAMMED) both the acquiſitions *go* to his believing heirs; and, according to ALSHÁFII, (may God be merciful to him!) both the acquiſitions are placed in the publick treaſury; and what he gained after his arrival in the hoſtile country, that *is* confiſcated by the general conſent: and all the property of a female apoſtate *goes* to her heirs, *who are* believers, without diverſity of opinion among our maſters, to whom God be merciful! but an apoſtate ſhall not inherit from any one, neither from a believer nor from an apoſtate like himſelf, and ſo a female apoſtate ſhall not inherit from any one; except when the people of a whole diſtrict become apoſtates altogether, for then they inherit reciprocally.

ON A CAPTIVE.

THE rule concerning a captive *is* like the rule of other believers in regard to inheritance, as long as he has not departed from the faith; but, if he has departed from the faith, then the rule concerning him *is* the rule concerning an apoſtate; but, if his apoſtaſy be not known, nor his life nor his death, then the rule concerning him *is* the rule concerning a loſt perſon.

ON PERSONS DROWNED, OR BURNED, OR OVERWHELMED IN RUINS.

WHEN a company *of perſons* die, and it is not known which of them died firſt, they are conſidered, as if they had died at the ſame moment; and the eſtate of each of them *goes* to his heirs, *who are* living; and ſome of the deceaſed ſhall not inherit from others: this is the approved *opinion.* But ÂLÍ, and IBNU MASÚÚD ſay, according to one of the traditions from them, *that* ſome of them ſhall inherit from others, except in what each of them has inherited from the companion of his fate.

THE END.

A

COMMENTARY

ON

THE SIRÀJIYYAH.

IN our adminiſtration of juſtice to *Mohammedans* according to their own laws, it will be of no uſe to inquire, what their legiſlator meant by declaring, that *the law of inheritances conſtituted one half of juridical knowledge* *: if he intended any thing more than a ſtrong aſſertion of its importance, he probably had in contemplation the two general modes of acquiring property, *contracts* and *ſucceſſion*, or the agreement of parties and the operation of law; and this explanation of the phraſe, which had occurred to me on my firſt peruſal of it, is alſo ſuggeſted by *Sayyad SHARÍF*, together with a more fanciful interpretation, which *Mávlavi* KÁSIM has adopted, that, *life* and *death* being incident to our probationary ſtate in this world, and the law of *ſucceſſion* manifeſt-

* Page 1.

ly relating to the *dead*, it is properly oppoſed to all other laws, which preſcribe the duties and aſcertain the rights of the *living*; but we merely take notice of the ſentence, that no part of the *Sirájiyyah* may be unexplained, and proceed to the *four* acts, which, on the deceaſe of a *Mohammedan*, are to be ſucceſſively performed by the magiſtrate, or under his authority.

I. A REGARD to publick decency and convenience, as well as to publick religion and health, ſeems in all nations to require, that the bodies of deceaſed perſons be removed out of ſight, with all due ſpeed and ſolemnity, at a moderate expenſe to be defrayed, even before the payment of their juſt debts, out of the property left by them, on which no legal claim, from hypothecation or otherwiſe, had previouſly attached: but the *Muſelman* lawyers, who admit, that the funeral charges muſt in the firſt place be defrayed, aſſign a very whimſical reaſon for ſuch a priority; *becauſe*, they ſay, *the winding-ſheet and other clothes of the dead are analogous to ſuitable apparel worn by the living, and conſequently ſhould not be liable to the claims of a creditor.* The *legal* expenſes of burying a *Mohammedan* are very moderate, both in the *number* and *value* of the clothes, in which the deceaſed is to be wrapped: as more than *three* pieces of cloth for a man, or than *five* pieces for a wo-

man, would be held a prodigal ſuperfluity, and leſs than thoſe, a niggardly deficiency, of expenſe, ſo, if the funeral clothes of AMRU or HINDA were dearer than the veſture uſually worn by them, when alive, it would be a culpable exceſs; and if cheaper, a blameable defect; but, if in fact they had been uſed to wear one ſort of apparel on ſolemn feſtivals, another in viſiting their friends, and a third, in their own houſes, the value of their viſiting dreſs muſt regulate that of their burial, and either extreme would be too prodigal or too parſimonious. Should their debts, indeed, cover the whole of their property, the *legal* expenſe of the funeral muſt be reduced to the *ſufficient* expenſe, as it is called; that is, to *two* pieces of cloth for AMRU and to *three* for HINDA: the names, dimenſions, and uſes of all the cloths uſed in funerals, both for men and for women, are enumerated in *Perſian* by *Máulaví* KÁSIM; but it would be uſeleſs to mention them; and it ſeems only neceſſary to add on this article, that, if deceaſed perſons leave no property whatever, or none without a ſpecial lien on it, the funeral expenſes muſt be paid by ſuch of their relations, as would have been compellable by law to maintain them, when living; and, if there be no ſuch relations, by the publick treaſury, in which there is always an ample fund ariſing from forfeitures and eſcheats.

II. After the burial, all the juſt debts of the deceaſed muſt be paid out of his remaining aſſets, as far as they extend; and, if there be many creditors, they muſt be ſatisfied in equal proportion, except that *a debt of health*, to uſe the *Arabian* phraſe, muſt be diſcharged before a *debt of ſickneſs*; that is, a debt *contracted* or *acknowledged*, while the party was of ſound underſtanding and body, is preferred, when legally proved, to one *acknowledged* in ſickneſs, but of which no other evidence is produced. A religious vow, or promiſe of a charitable donation, as an atonement for ſin, conſtitutes a debt *in conſcience* only; and the ſum thus promiſed muſt be paid out of a third part of the aſſets, after the legal creditors have been ſatisfied, provided that it was bequeathed by will; but, if no will was made, the temporal eſtate ſhall not be charged with a mere debt of religion.

III. The legacies of a *Muſelman*, to the prejudice of his heirs, muſt not exceed *a third part* of the property left by him, and remaining after the diſcharge of his debts: over a third of ſuch reſidue he has abſolute power; and his legatee ſhall receive it immediately, whether a ſpecifick thing or certain ſum of money, or only a fractional part of his eſtate, was bequeathed. This is the opinion of Sharíf; though a diſtinction, which

the text by no means implies, has been taken between a *determinate* and an *indeterminate* legacy.

IV. We come now to the *diſtribution* of his eſtate, remaining after the payment of debts and legacies, among his *heirs* (for ſo we may call them, although *real* and *perſonal* property are undiſtinguiſhed in the laws of the *Arabs*) according to certain rules derived from three ſources, the *Korán*, the genuine ſyſtem of oral traditions from the legiſlator, and thoſe opinions in which the learned and orthodox have generally concurred*: the order, and proportions, in which the property of AMRU or HINDA muſt be diſtributed, conſtitute the principal ſubject of the work, which we have undertaken to explain.

1. The firſt claſs of *heirs* are they, who may be called *ſharers*, becauſe a certain *ſhare* of the eſtate is expreſsly allotted to each of them in the *Korán*, and particularly in the *fourth* chapter of it.

2. Next come they, who may be diſtinguiſhed by the name of *reſiduaries*, becauſe they take the *reſidue* after the *ſhares* have been duly diſtributed; and they are of two ſorts, reſiduaries by *conſanguinity* and reſiduaries

* Page 2.

for *ſpecial cauſe*, the former of whom are preferred in the order of ſucceſſion; the latter are the maſters, or miſtreſſes of enfranchiſed ſlaves, or their *male* reſiduary heirs. If no *ſharers* be living, the *reſiduaries* take the whole; but, if there be ſharers *by conſanguinity* and no reſiduaries, a farther portion of the inheritance *reverts* to them, though never to the widower or to the widow, while any heirs by blood are alive.

3. On failure of the two preceding claſſes, the diſtribution is made among thoſe *next of kin*, who are neither *ſharers* nor *reſiduaries:* they may be called the *diſtant kindred.*

4. Should none of the diſtant kindred be living and capable of inheriting, the eſtate goes (unleſs there be a widow or a widower, who is firſt entitled to *a ſhare*) to him, who may be called the *ſucceſſor by contract*; and of that ſucceſſion it is neceſſary to give an example: if Amru, a man of an unknown deſcent, ſay to Zaid, "Thou art my kinſman, and ſhalt be my ſucceſſor after "my death, *paying for me*, any fine and ranſom to "which I may become liable," and Zaid accept the condition, it is a valid contract by the *Arabian* law; and, if Zaid alſo be a man whoſe deſcent is unknown,

and make the ſame propoſal to AMRU, who likewiſe accepts it, the contract is mutual and ſimilar, and they are *ſucceſſors by contract* reciprocally.

5. IF no ſuch agreement had been made, but if AMRU in his life time had acknowledged ZAID, a man of an unknown pedigree, to be his *brother* or his *uncle*, that is, to be related to him by his *father* or by his *grandfather*; though in truth he had no ſuch relation, and the bare acknowledgement of AMRU cannot be admitted as a proof of it, yet, if AMRU die without retracting his declaration, ZAID is called *the acknowledged kinſman by a common anceſtor*, and ſtands in the *fifth* claſs of ſucceſſors, but takes the eſtate before the general deviſee.

6. LAST of all comes the perſon, to whom the deceaſed had left the whole of his property by a will duly made and proved; for, though the law ſecures to his heirs of the five preceding claſſes *two thirds* of his eſtate, yet it ſo far reſpects his *dominion*, while he lived, over his own property, and his *will* as to the diſpoſal of it after his deceaſe, that it will rather give effect to an intention not ſtrictly conformable to law, (for the *Korán* ſeems to allow *pious bequeſts* only) than ſuffer his eſtate to eſcheat; which muſt be the conſequence of his

dying without a repreſentative. All ſuch eſcheats to the ſovereign go towards a fund for charitable uſes; and according to the ſyſtem of ZAID, the ſon of THABIT, which has been ſhortly explained in a former publication, that fund, if it be *regularly eſtabliſhed*, is entitled to the whole eſtate on failure of reſiduary heirs, without any *return* to the ſharers, and to the entire excluſion of the *four* laſt claſſes; but this doctrine ſeems quite exploded.

BEFORE we proceed to the law of *ſhares*, it is proper to take notice of the four impediments to ſucceſſion; which are ſlavery, homicide, difference of religion, and difference of country, or of allegiance.

1. SLAVERY, by the *Mohammedan* law, is either *perfect* and *abſolute*, as when the ſlave and all, that he can poſſeſs, are wholly at the diſpoſal of his maſter, or *imperfect* and *privileged*, as when the maſter has promiſed the ſlave his freedom on his paying a certain ſum of money by eaſy inſtalments, or, without any payment, after the death of the maſter: a female ſlave, who has borne a child to her maſter, is alſo *privileged*; but in both ſorts of ſlavery, as long as it continues, the ſlave can acquire no property, and conſequently cannot inherit. The *Arabian* cuſtom of allowing a ſlave to cultivate a piece of land, or ſet up a trade, on his own account, ſo that

he may work out his manumiſſion by prudence and induſtry, and by degrees pay the price of his freedom, may ſuggeſt an excellent mode of enfranchiſing the black ſlaves in our plantations, with great advantage to our country and without loſs to their proprietors.

2. HOMICIDE is either *with malice prepenſe* and puniſhable with *death*, or *without proof of malice*, and *expiable* by redeeming a *Muſelman* ſlave, or by faſting two entire months, and by paying the price of blood; or, thirdly, it is *accidental*, for which an expiation is neceſſary. *Malicious homicide*, or *murder* (for, by the beſt opinions, the *Arabian* law on this head nearly reſembles our own) is committed, when a human creature is unjuſtly killed with a weapon, or any dangerous inſtrument likely to occaſion death, as with a ſharp ſtick or a large ſtone, or with fire, which has *the effect*, ſays KĀSIM, *of the moſt dangerous inſtrument*, and, by parity of reaſon, with *poiſon* or by *drowning*; but thoſe two modes of killing are not ſpecified by him; and there is a ſtrange diverſity of opinion concerning them: killing *without proof of malice* is, when death enſues from a beating or blow with a ſlight wand, a thin whip, or a ſmall pebble, or with any thing not ordinarily dangerous: *accidental death* is, when it was neither deſigned nor could have been prevented by ordinary care, as if AMRU were to ſhoot an

arrow at a wild beaſt, and the arrow by accident were to kill ZAID, or if MÁZIN were to fall from his terrace upon ZUHAIR and kill him by his fall; in which caſes the ſlayers would not be permitted to inherit *from the ſlain*. If, however, a man were to dig a pit, or fix a large ſtone, on the field of another, and the owner of the field were to be killed by falling at night into the pit, or running againſt the ſtone, the doer of the illegal act, which was the primary *occaſion* (but not the *cauſe*) of the death, muſt pay the price of blood, but would not, it ſeems, be generally diſabled from inheriting: he ought, one would think, to be incapable of ſucceeding to the property of the deceaſed, whom he deſtroyed, and whom he might have meant to deſtroy, by ſuch a machination.

3. AN unbeliever ſhall never be heir to a believer, nor converſely; but infidel ſubjects may inherit from infidels.

4. THE difference between two ſtates or countries conſiſts in the difference of ſovereigns, by whom protection is given to their reſpective ſubjects, and to whom allegiance is reſpectively due from them: this difference is particularly marked between a country governed by a *Mohammedan* power and a country ruled by a prince of *any other religion*; for they are always, virtually at leaſt,

in a ſtate of warfare, the firſt being called by lawyers *the ſeat of peace*, and the ſecond, *the ſeat of hoſtility*. A difference of country, therefore, which excludes from the right of inheriting, is either *actual* and *unqualified*, as when an *alien enemy* reſides in the *ſeat of hoſtility*, or when an alien has choſen his domicil in the *ſeat of peace*, and pays the tribute exacted from infidels, in which caſe the *tributary* ſhall not be heir to the *alien enemy* dying abroad, nor converſely, becauſe each of them owed a ſeparate allegiance; or the difference is *qualified* *, as when a *fugitive* enemy ſeeks quarter, and obtains a temporary reſidence in the *ſeat of peace*, or when two alien enemies are fugitives from two different hoſtile countries: now, although the *tributary* and the *fugitive* actually live in the ſame kingdom, yet, ſince the fugitive continues a ſubject of the hoſtile power, he remains, *as it were*, under a different government, and there is no mutual right of ſucceſſion between him and the tributary; nor, by ſimilarity of reaſon, between *two fugitives*, who leave two diſtinct hoſtile governments, and obtain quarter for a time in the land of believers, but without any intention of making it their conſtant abode.

IF none of theſe four incapacities preclude the heirs of AMRU from the legal ſucceſſion to his eſtate, which we will ſuppoſe already ſold and reduced to money of

* Page 3.

one denomination, the magiſtrate, or his officer, muſt proceed to the diſtribution of the *ſhares*; and, as they are a *moiety*, a *fourth*, an *eighth*, two *thirds*, one *third*, and a *ſixth*, of the aggregate ſum, it will be convenient at firſt to conſider that ſum as conſiſting of *twenty-four* equal parts, ſo that the ſhares will be, in whole numbers, *twelve*, *ſix*, *three*, *ſixteen*, *eight*, and *four*.

THE *ſharers* are *twelve* perſons, *four* males and *eight* females; but, before we ſpecify their reſpective allotments, it is neceſſary to premiſe, that a *grandfather* and a *grandmother*, according to the *Arabian* idiom, ſignify a *male*, and a *female*, *anceſtor* in any degree; that a *true* grandfather is he, between whom and the deceaſed no female anceſtor intervened; that a *falſe* grandfather is, where the paternal line of aſcent was broken by the intervention of a female; and that a grandmother alſo is called *true*, when no *falſe grandfather* intervened between her and the deceaſed: in ſhort, the only *true line of anceſtry*, according to the *Arabs*, is an uninterrupted ſucceſſion of *paternal* forefathers. The *male* ſharers then are the *father*, the *true grandfather*, the *brother by the ſame mother* only, and the *widower*: the females are the *widow*, the *daughter*, the *female iſſue of the ſon*, the *ſiſter of the whole blood*, the *ſiſter by the ſame father* only, the *ſiſter by the ſame mother* only, the *mother* herſelf, and the *true grandmother*.

We begin with the *males* in the order of the ſhares before enumerated; and, 1. The father of Amru or Hinda takes * a *ſixth* abſolutely, though a *ſon* of the deceaſed be living, or any male deſcendant, who claims wholly through males; but, if there be no ſuch male deſcendant, he becomes *a reſiduary heir*; and, if there be only a *daughter* of the deceaſed, or a *female* deſcendant from the ſon, he firſt has his legal ſhare, or a *ſixth*, and, when her ſhare alſo has been allotted, he claims the reſidue. 2. The true grandfather is excluded from any ſhare by the living father, *through whom* alone the grandfather bore a relation to the deceaſed; and, although a ſimilar reaſon might afterwards be applied to the mother, and operate to the excluſion of her children, yet the father has the additional ſtrength of a double title, both as a *ſharer* and as a *reſiduary*: but, if the father alſo be dead, *his* father, or true paternal anceſtor, has exactly the ſame intereſt, except in four caſes, which will be preſently mentioned. 3. A ſingle half brother, by the ſame mother only, takes a *ſixth*, and two or more ſuch half-brothers, a *third*; provided that the deceaſed left neither children, nor male iſſue of a ſon, nor a father, nor a true grandfather; by any of whom the brothers by the ſame mother are excluded; and this article brings us neceſſarily to one claſs of *female* ſharers; for, *in this inſtance*,

* Page 4.

there is no diſtinction of ſex; both brothers *and ſiſters* by the ſame mother only having an equal right and an equal ſhare in the diſtribution. 4. A *moiety* of HINDA's eſtate, if ſhe die without children, or the iſſue of a deceaſed ſon, goes to her widower AMRU, who, if ſhe leave ſuch iſſue, has no more than a *fourth*.

As examples of the father's rights, let us ſuppoſe AMRU to have died worth two thouſand four hundred pieces of gold, leaving his father ZAID, and either a ſon or a ſon's ſon, OMAR: in this caſe the *four hundred* pieces are the ſhare of ZAID, and OMAR takes the remaining two thouſand; but, if AMRU leave only his father ZAID and either a daughter, or ſon's daughter, LAILA, the father is firſt entitled to the *four hundred* pieces, or *ſixth* part; and, after LAILA has received *twelve* hundred, or a moiety of the eſtate, (which, as we ſhall ſee, is her *ſhare* in this caſe) he takes, as *reſiduary*, the *eight* hundred pieces, which remain; ſo that the property of AMRU is equally divided between them. Should no relation be left but ZAID the father, and LEBÍD the brother, of the deceaſed, LEBÍD is excluded; and the whole eſtate goes to ZAID. If, in the three preceding caſes, the paternal grandfather SÁLIM had been left inſtead of ZAID, his rights would have been preciſely the ſame; and the only difference between

ZAID and SÁLIM will appear from the four following examples. 1. The paternal grandmother would be excluded by ZAID her ſon, but not by his father, her huſband, SÁLIM. 2. If AMRU or HINDA leave a father ZAID, a mother SOLMA, and a widow ZAINEB, or widower HÁRETH, the mother takes a *third* part of what remains after ZAINEB or HÁRETH has received the legal ſhare; but, if SÁLIM be ſubſtituted for ZAID, ſhe would have a right to a third of the *whole aſſets*, according to the prevailing opinion, although ABÙ YÚSUF thought her entitled, even in that caſe, to no more than a third of *the remainder*. 3. The brothers of the whole blood, and thoſe by the ſame father only, are excluded from the inheritance by ZAID the father, but not by the grandfather SÁLIM, as the beſt lawyers agree, diſſenting on this point from their maſter ABÚ HANÍFAH. 4. If AMRU had manumitted his ſlave YÁSMÍN, and died, leaving his father ZAID and a ſon OMAR, a *ſixth* part of the right of ſucceſſion to YÁSMÍN would have veſted, according to ABÙ YÚSUF, in ZAID, but, if the paternal grandfather SÁLIM had been left inſtead of the father, the whole intereſt would have veſted in the ſon: in this caſe that illuſtrious lawyer ultimately diſſented from his maſter and from his fellow-ſtudent MUHAMMED, who were both very juſtly of opinion, that, whether ZAID or SÁLIM were alive on the death of the manumittor, the

whole right of ſucceſſion to the manumittee veſted in OMAR.

LET us proceed to the ſhares of the *females*; and 1. If AMRU die without children, and without any iſſue of a deceaſed ſon, his widow HINDA muſt receive a *fourth* of his aſſets; but her ſhare is an *eighth* only*, if any ſuch iſſue be living: ſhould he leave more widows than one, they take equal parts of ſuch *fourth* or *eighth*; ſo that the legal ſhare of the widower is always in a double ratio to that of the widow or widows: as, if HINDA die worth *twenty four* thouſand zecchins, her ſurviving huſband AMRU muſt be entitled either to *twelve* or to *ſix* thouſand; and if AMRU die with the ſame eſtate, his widow HINDA muſt have either *ſix* or *three* thouſand for her ſole ſhare; or, if ZAINEB and ABLA had alſo been legally married to AMAU, the three widows muſt receive either *two* or *one* thouſand zecchins each, as the caſe may happen. 2. *One daughter* takes a moiety, and *two or more* daughters have *two thirds*, of their father's eſtate; but, if the deceaſed left a ſon, the rule, expreſſed in the *Koràn*, is this: "to one male give the "portion of two females"; and the daughters in that caſe are not properly *ſharers*, but *reſiduary heirs* with the ſon, their part of the inheritance being always in a ſubduple ratio to his part. Thus, if AMRU die worth

* Page 5.

twenty-four thouſand pieces of gold, his only child FATIMA takes twelve thouſand as her *ſhare*; but, if ſhe have three ſiſters, AZZA, LATÍFA, and ZUBAIDA, two thirds of the aſſets, or *ſixteen* thouſand pieces, are equally divided between the four girls; and, if there be a ſon OMAR, he muſt receive, in the firſt caſe, *ſixteen* thouſand, while FÁTIMA has *eight*; and, in the ſecond, *eight* thouſand, while ſhe and her ſiſters take each *four* thouſand, pieces. 3. If OMAR had died before his father, leaving female iſſue, and his father had then died without any daughter of his own, the daughters of OMAR would have had preciſely the ſame ſhares, to which thoſe of AMRU himſelf would have been entitled; but, had FATIMA been living, ſhe would have taken *half* the eſtate, or *twelve* thouſand pieces of gold, and a *ſixth* only, or *four* thouſand, the complement of *two thirds* or *ſixteen* thouſand, would have been equally diſtributed among her nieces. Had FÁTIMA and AZZA been at that time alive, they would have taken their legal ſhare, to the excluſion of their brother's *female* iſſue, unleſs the right of that iſſue had been ſuſtained by a *male* in an *equal*, or a *lower* degree, who would have made them *reſiduaries*, "the *male* taking, by "the rule, the portion of two females"; but a male in a *higher* degree would not have given them that advan-

tage; and, if OMAR himſelf had ſurvived, his daughters would have been wholly excluded. The *ſix* caſes, therefore, or different ſituations, of the female iſſue of OMAR may be thus recapitulated: 1. A ſingle female takes a *moiety*. 2. Two or more have *two thirds*. 3. A *male* in the ſame, or a lower, degree than themſelves, gives them a *reſiduary* right in a ſubduple ratio to his own. 4. With a daughter of AMRU, who is entitled to *half*, they would have only a *ſixth*, to make up the regular ſhare of the female iſſue. 5. They are excluded, if AMRU left more daughters than one, but no male iſſue in any equal, or a *lower*, degree. 6. A ſon alſo of AMRU wholly excludes them. In the three firſt caſes, their legal claims correſpond with thoſe of daughters: but in the three laſt their rights are weaker, becauſe they are in a remoter degree from the deceaſed.

THE pedigree exhibited in the text * is called by the *Arabs* the *taſhbīb*, becauſe, in their opinion, it ſharpens the underſtanding, and captivates the fancy as much as the *compoſition of an elegant love-poem*, which the word literally ſignifies; but, without adopting ſo wild a metaphor, we may truly ſay, that it is very perſpicuous, and that no comment, after what has been premiſed, could render it clearer. An example, however, will

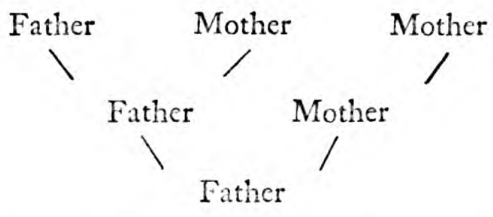
* Page 6.

ſhow more diſtinctly than an abſtract rule, in what manner an eſtate is diviſible, when a *male* deſcendant gives a *residuary* title to a *female* in the ſame, or in a *higher*, degree. Call the only ſurviving male deſcendant OMAR, and ſuppoſe him to be the brother of AMINA, who ſtands loweſt in the firſt ſet of females: here the higheſt female in that ſet muſt receive a *moiety* of the aſſets; the next below her takes a *ſixth* together with the higheſt of the ſecond ſet, as the complement of *two thirds*; and the *residue* muſt be divided into *five* portions, of which OMAR claims *two* and each of the females in the ſame degree, one; but the three females below them are excluded. If OMAR be the brother of ZARÍFA, whom we ſuppoſe the loweſt of the middle ſet, the remaining *third* of the eſtate muſt be diſtributed in *ſevenths*, becauſe there are *five* females, *three* in a higher, and *two* in an equal, degree with OMAR, who muſt always have a double portion; and, if he be the brother of UNAIZA, the loweſt female of the *third* ſet, (who, on the former ſuppoſition, would have been excluded) there will be *ſix* female *residuaries* entitled to portions with OMAR, but in a ſubduple ratio; ſo that, if AMRU died worth *twenty-four* thouſand ducats, the daughter of his ſon takes *twelve* thouſand of them; the two daughters of his ſons' ſons receive each *two* thouſand;

and, the reſidue being *eight*, OMAR is entitled alſo to *two* thouſand ducats, while UNAIZA and the *five* women, who remain, have each *one* thouſand, which they owe to the fortunate exiſtence of OMAR. 4*. The rights of ſiſters by the ſame father and mother, and (5.) thoſe of ſiſters by the ſame father only, are explained in the text with ſufficient clearneſs, but it is proper to obſerve, that the *fifth* caſe of the firſt claſs is compriſed in the *ſeventh* caſe of the ſecond; and that (6.) the ſiſters by the ſame mother have been mentioned in a former ſection. There will be no uſe in repeating the ingenious arguments of IBNU ABBÁS in ſupport of his diſſent on many points from other old lawyers, nor the ſolid anſwers, which have been given to his objections; but a ſtory, told by SHARÍF, may here be repeated, becauſe it conveys an idea of the traditionary *Arabian* law, and ſhows from what ſources our excellent author derived his doctrine: 'HUDHAIL uſed to relate, that ABÚ MÚSA, being 'conſulted on the diſtribution of an heritage among 'a *daughter*, a ſon's *daughter*, and a *ſiſter*, anſwered, '*the firſt muſt have a moiety*; *the ſecond*, *a ſixth*; *and* '*the third*, *what remains*; but "Conſult IBNU MASÚÚD, "added he, and apprize me of his anſwer:" when IBNU 'MASÚÚD was conſulted, he ſaid, that he was pre-'ſent, when MUHAMMED himſelf gave the ſame deci-

* Page 7.

'ſion;' and, when that anſwer was reported to ABU MU-'SA, he ſaid, "you muſt put no queſtions to me, as long "as that illuſtrious lawyer remains with you." 7. * Although the different rights of the mother in different caſes be very clearly explained, yet her title to *a third of the reſidue* may be illuſtrated by two examples: firſt, if ADHRA leave only her huſband WÁMIK, her mother SÔÁDA, and her father MÁZIN, half of her eſtate goes to WÁMIK, a third of the other half, or a ſixth of the whole, to SÔÁDA, and the remainder to MÁZIN; but, ſecondly, if WÁMIK leave only his wife ADHRA, his mother ZAINEB and his father LEBÍD, the widow takes a quarter of his property, while ZAINEB has a third, and LEBÍD two thirds, of the remaining three quarters. 8. In giving an example of the diviſion between two great grandmothers, † we may anticipate in ſome degree the arithmetical part of the work, which will be found extremely clear and ingenious. The pedigree exhibited by SHARÍF is in this form:



Now the paternal grandmother's mother, and the mother of the paternal grandfather, are together entitled to a ſixth, and the paternal grandfather's father to the reſidue,

* Page 8.

† Page 9.

of the eſtate, which ought by the general rule, to be divided into *ſix* parts, becauſe ſix is the denominator of the ſhare; but, to avoid a fraction, we muſt obſerve the proportion of *one*, or the ſixth part, to *two*, or the number of perſons entitled to it; and, ſince *one* and *two* are *prime* to each other, we muſt multiply *two* into *ſix*, and the product is the number of parts into which the property muſt be divided; ſo that of *twelve* cows or horſes the great grandfather will have *ten*, and each of the great grandmothers, *one*.

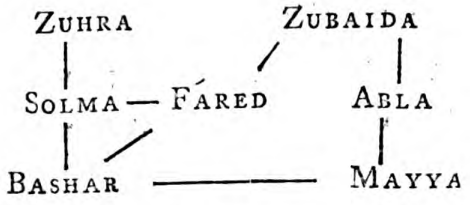
THE great grandfathers are called anceſtors in the *ſecond*, and their fathers, anceſtors in the *third*, degree, and ſo forth; and it muſt be remarked that in theſe tables the number of *female* anceſtors, who inherit with the *males*, is equal to the number of ſuch degrees: thus in the following,

F M M M
F M M
F M
F

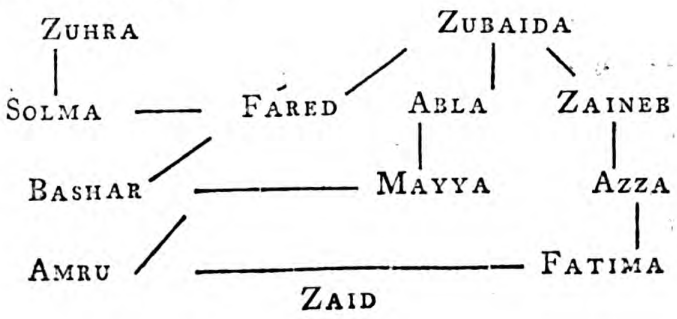
there are *three* great great grandmothers, and the eſtate muſt be divided into *eighteen* parts, becauſe one and three are prime to each other. We ſuppoſe in both pedigrees, that the higheſt line only are left by the deceaſed AMRU; for, by the text, *the neareſt female anceſtor excludes the more diſtant*; and, if he leave his father ZUHAIR, and his paternal grandmother AZZA, with LAILA his maternal

grandmother's mother, ZUHAIR takes the whole inheritance; for he excludes AZZA, and ſhe, being nearer in degree, excludes LAILA.

LET us conclude the ſubject with a caſe put by SHARÍF in illuſtration of the pedigree in the text: ZUBAIDA gave her daughter's daughter MAYYA in marriage to her ſon's ſon BASHAR, and the young pair had a ſon AMRU, who acquired an eſtate, and died: now ZUBAIDA was both paternal and maternal great grandmother of AMRU, and had, therefore, a *double* relation to him; but another woman, named ZUHRA, had married her daughter SOLMA to FÁRED, who was the ſon of ZUBAIDA, brother of ABLA, and father of BASHAR; ſo that ZUHRA was AMRU's paternal grandmother's mother, and had only a ſingle relation; as it will appear by the following arrangement of the family:



The caſe of a *triple* relation will be no leſs evident from the following pedigree:



For, if AMRU, whom in the former caſe we ſuppoſed to be dead without iſſue, had lived and married his couſin FÁTIMA, by whom he had a ſon ZAID, who died leaving property, ZUBAIDA would have a *triple* relation to the deceaſed; firſt, as his maternal great grandmother's mother; ſecondly, as his paternal grandmother's grandmother; and thirdly, as the mother of his paternal great grandfather; but ZUHRA has only a *ſingle* relation to ZAID, as grandmother of his paternal grandfather BASHAR.

IN both theſe caſes a *ſixth* of the aſſets is divided *equally* between the *two* female anceſtors, by the opinion of ABU YUSUF, and, according to one authority, by that of his great maſter alſo; but his fellow-ſtudent MUHAMMED (whoſe arguments, and the anſwers to them, it is needleſs to add) contended, that ZUBAIDA would be entitled in the firſt caſe to *two thirds*, and, in the ſecond, to *three fourths*, of that *ſixth* part, according to the number of modes, in which ſhe was related to AMRU or ZAID.

NO comment could add perſpicuity to the chapter on *reſiduary heirs*, * until we come to the caſes of inheritance from enfranchiſed ſlaves, † where a ſhort elucidation of the text appears neceſſary. If AMRU enfranchiſe NERGIS, and die, leaving a ſon BECR, and a daughter LAILA; then, on the death of NERGIS without *reſiduary* heirs by blood, his property goes wholly to BECR,

* Page 10, 11.

† Page 12.

and LAILA, by the traditionary rule, takes nothing; but, ſuppoſe LAILA herſelf to manumit her black ſlave SUSEN, who then purchaſes a ſlave MISC, and gives him freedom; and ſuppoſe SÚSEN firſt, and MISC afterwards, to die without reſiduary heirs, in this caſe the eſtate of MISC goes to LAILA; nor would there be any difference, if the two manumiſſions had been conditioned to pay a certain ſum of money at a certain time. The caſe of a manumiſſion promiſed on the death of the miſtreſs, has rather more difficulty; but an example will make it clear: LAILA promiſes NERGIS, that, on her death, he ſhall be free; but, by the perſuaſion of a *Chriſtian* friend, ſhe renounces her faith, and ſeeks refuge in a hoſtile country: now *a believer cannot be the ſlave of an infidel*; and the *Mohammedan* judge pronounces accordingly, that NERGIS has gained his freedom; but LAILA, repenting of her apoſtaſy, returns to her native country and her former belief; after which NERGIS dies without heirs: LAILA ſucceeds as reſiduary to her promiſee, as ſhe would have ſucceeded to a ſlave of NERGIS purchaſed after the deciſion of the judge, if a ſimilar promiſe of manumiſſion at his death had been made by the maſter; and if that ſecond promiſee had died without heirs after her repentance and return. Should CÁFÚR, a ſlave of LAILA, marry, with her conſent, MERJÁNA, the freedwoman of AMRU, the ſon of that couple would be born free,

becauſe, in reſpect of freedom or ſlavery, *a child has the condition of its mother*, and he bears a relation to AMRU her manumittor; but, ſhould LAILA give CÁFÚR his freedom, he would *draw* that relation from AMRU, through himſelf, to LAILA, ſo that ſhe would ſucceed to the ſon of CÁFÚR and MERJÁNA, if he died after his parents and without other heirs of the firſt or ſecond claſs: the caſe would be ſimilar, if CÁFÚR being enfranchiſed, had bought a ſlave MISC, and given him in marriage to the freedwoman of ZAID; for, if the iſſue of that marriage had been a ſon, born free, but with a relation to ZAID, and if CÁFUR had then given MISC his liberty, he would have *drawn* from ZAID the relation of his freedman's child, and transferred it, through himſelf, to LAILA his former miſtreſs. This doctrine of a *relation* (as the *Arabs* call it) firſt *veſted* through the mother and then *deveſted* through the father, is founded on a deciſion of OTHMÁN in the caſe of ZUBAIR and RAFÍ.

WE had occaſion before, to mention the difference (according to ABU YUSUF) between the *father*, and the *grandfather*, of the manumittor in regard to their ſucceſſion, with his *ſon*, to the property of a freedman; nor can any thing of moment be added here; but it will be proper to explain at large the concluding caſe in the chapter of *reſiduaries*, which proves, that the relation of enfranchiſement may ariſe by the *act of law* as well as by

the *act of the party*. Let it be premiſed, that marriage is prohibited between kindred of two claſſes; firſt, between all thoſe in aſcending or deſcending lines of conſanguinity, who are called *near*; ſecondly, between brothers and ſiſters, and their iſſue, or between nephews or nieces and aunts or uncles, paternal or maternal, who are called *intermediate*; but, between thoſe of the third, or *diſtant*, claſs, as the firſt or other couſins, there is no prohibition: now, if AMRU or HINDA purchaſe a kinſwoman or kinſman within either of the *prohibited* degrees, the ſlave becomes inſtantly free, and a right of ſucceſſion veſts in the purchaſor, though the maſterſhip began and ended in one moment. Call the three daughters of HÁRETH a ſlave, ZUBAIDA, SÁFIYA, AMINA, who derived freedom from their mother, and two of whom, the firſt and third, purchaſe HÁRETH for fifty pieces of gold: he becomes in that inſtant free; and, if he die leaving property, two thirds of it go to his three daughters as their legal ſhares, and the reſidue belongs to the two, who procured him liberty; three fifths of it to ZUBAIDA, who contributed her *thirty*, and two fifths to AMINA, who added her *twenty*, pieces. To arrange the diſtribution without fractions, begin with *three*, the denominator of the legal ſhare: now *two*, its numerator, is *prime* to the number of ſharers; and *one* is prime alſo to *five*, the number of reſiduary portions; but *thirty* and *twenty* are *compoſed* to one another, ſince *ten*

meaſures thirty by *three* and twenty by *two*; and *five*, the ſum of thoſe tenths, may be conſidered as ſtanding in the place of the number of reſiduaries: again, *five* and *three* are prime to each other, and their product is *fifteen*, which, being multiplied into *three*, the firſt-mentioned denominator, produces *forty five*, the number of equal parcels, into which HÁRETH's eſtate muſt be divided; ſo that *thirty*, or *two thirds*, may be diſtributed in *tens* to the three daughters, and *fifteen* or the reſidue, in *threes* to the *two*, who redeemed their father; ZUBAIDA taking in all *nineteen*, AMINA *ſixteen*, and SÁFIYA, only *ten*, portions of the inheritance. This is the calculation of SHARÍF, and the grounds of it will preſently appear; but the operation might have been ſhortened thus: multiply the denominator of the *legal ſhare* into the number of ſharers, and then multiply the product into the denominator of the *reſiduary portions*.

THE chapter of *excluſion** is very perſpicuous; but the caſe of an *unbelieving* heir having really occurred in the time of ALI, we may inſert it as a monument of early *Arabian* juriſprudence. SOLMA had embraced the new faith, and died, leaving her huſband, and brothers by the ſame mother, who were all three believers, with a *ſon*, who continued an infidel: on a diſpute concerning the inheritance, ALI and ZAID gave a moiety to the widower, conſidering the ſon as actually *dead*, a third to the half brothers,

* Page 13.

and the reſt to ſuch of the reſiduaries as believed in the *Korán*; while IBNU'L MASUÚD inſiſted, that the ſon was *dead* as to the right of inheriting, but alive as to the power of excluding, and thought that he drove the widower from *a moiety* to a *fourth part* only of SOLMA's eſtate; but the former opinion has prevailed, and in a curious book (for which there muſt have been abundant materials) entitled *The Diſſenſions of the Learned*, it is admitted, that, by univerſal aſſent, if AMRU leave a father, who is either a ſlave or an infidel, and a paternal grandfather, who is both free and a believer, the father is conſidered as *dead in law* to all purpoſes, and the grandfather is heir to AMRU.

WE come now to the *Arabian* method of aſcertaining the ſmalleſt number of *parcels*, into which an eſtate can be divided, ſo as to avoid fractions in the legal diſtribution of it: that *number* we call the *denominator*, or diviſor, of the *eſtate*, though the *Arabick* word mean literally *the place of coming out*; and the problem is eaſily ſolved by the following rules: if the two numbers in queſtion be prime, multiply one of them into the other; if they be *compoſit* to each other, multiply the *meaſure* of one into the ſecond, and the product will be the number ſought. The whole ſection * is as clear as it could be made in a verbal tranſlation; and it would be

* Page 14.

ſuperfluous to add examples of all the caſes, which muſt occur to every one, who has attentively peruſed the preceding parts of the work.

A CASE, which aroſe in the reign of OMAR, has given occaſion to ſome debate*: LAILA died, leaving only AMRU her huſband, HINDA her mother, and ABLA her ſiſter of the whole blood. Now the huſband and ſiſter were each entitled to a moiety, and the mother, to a third, of LAILA's property, which, by the rule then eſtabliſhed, could be divided into *ſix* parts only; but ABBAS, a companion of MUHAMMED, being conſulted by the Caliph, propoſed, that the regular diviſor ſhould be ſo *increaſed*, that of *eight* parts AMRU and ABLA might each take *three*, and HINDA *two*. The ſon of ABBAS, whoſe opinions were always rather ingenious than ſolid, was preſent at the deciſion; but, fearing the bad temper of the Caliph, ſuppreſſed at that time his own ſentiments: he thought, that the *ſiſter*, having (as we have ſeen) a weaker right, ſhould bear the loſs, becauſe, *where different rights concur, the weakeſt invariably yields*; and he ſaid, that, if an arithmetician could number the ſands, yet he could never make *two halves* and a *third* equal to a whole; but this opinion has never been adopted, becauſe, although the *ſiſter* may in ſome caſes be removed into a diſtinct claſs of heirs, yet, with a huſband and a mother of the deceaſed, her ſhare is

* Page 15.

ixed by poſitive law, and ſhe cannot by any means be leprived of it; ſo that the ſhares of all the claimants muſt be diminiſhed in *exact proportion*; for inſtance, if the property had been *twenty four* pieces of gold, the mother would claim *eight*, and each of the other heirs, *twelve*; now thoſe claims cannot all be ſatisfied, but eight is to twelve, as *ſix* to *nine*, which will be the reſpective ſhares, according to the deciſion of ABBAS.

EXAMPLES of the diviſor *ſix* increaſed to *ſeven* and to *nine*, or of *twelve* to *thirteen*, *fifteen*, and *ſeventeen*, would appear equally ingenious, but would ſwell this commentary to an immoderate ſize: there are two deciſions, however, deſerving particular notice, becauſe they were made in real cauſes, and have been univerſally approved. ZUBÁIDA left her huſband ADNÁN, with *two ſiſters of the whole blood*, two *ſiſters by the ſame mother only*, and the *mother* herſelf; whoſe legal ſhares, in order as they are mentioned, were a *moiety*, *two thirds*, *a third*, and *a ſixth:* it was impoſſible, therefore, to diſtribute them out of *thirty* pieces, for inſtance, divided into *ſix* equal parcels; but the judge, named SHURAIH, divided the whole eſtate into *ten* parcels, each conſiſting of *three* pieces, and allotted them to the claimants in the proportion of their ſhares; that is to the huſband, *three* parcels, to the ſiſters of the whole blood, *four*; to the half-ſiſters, *two*; and to the mother, *one*; aſſuring ADNÁN, who at

firſt complained of the judgement, that OMAR had made a ſimilar deciſion; and this caſe acquired celebrity among the *Arabs* by the name of SHURAIHIYYA. The next caſe, which was anſwered at once by ALI, while he was haranguing the people in the *mimbar*, or pulpit, at CŪFA, is fully ſtated in the text: the ſhare of the widow was, regularly, an *eighth*; that of the daughters, *two thirds*; and that of each parent, *a ſixth*, all which cannot be diſtributed out of *twenty four* parcels; but ALI pronounced, that the property of the deceaſed ſhould be divided into *twenty ſeven* equal parts, of which the widow ſhould have *three*; the daughters, *ſixteen*; and the two parents, *eight*. It is recorded, that, when the perſon, who conſulted ALI, was much diſſatisfied with his anſwer, and aſked *whether the widow was not legally entitled to an eighth*, the *Caliph* ſaid rapidly, "it is become a *ninth*," and proceeded in his harangue with his uſual eloquence.

THE arithmetical part of the *Sirájiyya* * is very ſimple, and may be found in the firſt pages of all our elementary books; but the difference of the *Arabian* idiom occaſions a little obſcurity. The chapter on primes and meaſures is founded on a ſimple analyſis: when two numbers are compared, they are either equal or unequal; if unequal, either the ſmaller is an aliquot part of the greater, or they have a common meaſure, which muſt either be

* Page 16.

unit alone, or ſome *number*, which the *Arabs* define *a multitude compoſed of units*. When the greateſt common meaſure is found by the rule, they conſider the two numbers as *agreeing* in a fraction, which has that common meaſure for its denominator and unit for its numerator; but the nature of the *Arabick* language makes it impoſſible to expreſs in a ſingle word the fractions leſs than a *tenth*: thus *twenty ſeven* and *twenty four* agree, as they expreſs it, in a third; and a *third* of each number is called its *waſk*, or meaſure, as *nine* of twenty-ſeven, and *eight* of twenty-four. After this explanation of the word, which is tranſlated *the meaſure*, there will be no difficulty in the following caſes.

I. * AMRU leaves only his father and mother and ten daughters: now, by the rule, his eſtate ſhould be divided into *ſix* parts, becauſe the ſhare of each parent is a *ſixth*, and that of all the daughters *two thirds*; but *four* parts cannot be diſtributed, without a fraction, among *ten* perſons; for which reaſon we muſt multiply *five*, which is the meaſure of *ten*, into *ſix*, which is the firſt number of parcels, and the product *thirty* is the number of lots, into which the property of AMRU muſt in fact be divided; each of his parents taking *five* lots, and each of his daughters *two*.

* Page 17.

II. HINDA leaves her huſband, both her parents, and ſix daughters; whoſe legal ſhares are a *fourth*, *two ſixths*, and *two thirds*, of the inheritance: now the regular denominator of the lots would be *twelve*, but it is raiſed to *fifteen*; and ſince *eight* parcels cannot be diſtributed equally among *ſix* daughters, the *meaſure* of ſix, or *three*, is multiplied by fifteen; ſo that of *forty-five* lots *nine* may go to the huſband, *twelve* to the parents, and *twenty-four* to the daughters, in exact proportion to their firſt diſtributive ſhares.

IT will be very eaſy to apply the remaining rules to all the other examples given by SIRÁJ'UDDÍN*; but ſince, in the two laſt caſes, which are not likely to occur, the inheritance muſt be divided into 4320 and 5040 parcels, the calculation, after the *Arabian* mode, in words at length, would be inſufferably tedious, and the reader may make it in figures with little or no trouble. The latter of thoſe two caſes† is, however, ſubjoined; becauſe it will fully explain the ſection, in which no examples are given. SÁAD leaves *two* wives, *ſix* female anceſtors, capable of inheriting together, *ten* daughters, and *ſeven* paternal uncles, whoſe ſhares of *twenty-four* (the *root*, as they call it, of this caſe) are *three*, *four*, *ſixteen*, and *one*; for the uncles can only take what the others leave. Now by obſerving the primes and mea-

* Page 18.

† Page 19.

ſures, and working according to the rule, we come to 210, which muſt be multiplied by *twenty four*, and the product gives the ſmalleſt number of parcels, into which SÁAD's eſtate can be duly divided: the products of that multiplicand (210) by 3, 4, 16, give 630, 840, 3360, which are the allotments of the *wives*, *female anceſtors*, and *daughters*; and the allotment of each ſhare appears at once from the following proportions:

Perſons.	*First Shares.*	MULTIPLICAND.	SHARES OF EACH.
2 :	3 ::	210 :	315.
6 :	4 ::	210 :	140.
10 :	16 ::	210 :	336.

THE laſt act of the *Muſelman* judge is to make an actual diviſion of the eſtate*; and we will ſuppoſe that LAILA, in the caſe anſwered by ABBÁS, had left ZAINEB and ABLA, two ſiſters of the whole blood, with AMRU, her huſband, and HINDA, her mother; and that her property amounted only to *twenty five* gold *mohrs:* now the *root* of the caſe is increaſed, as we have ſeen, from *ſix* to *eight*, which is prime to twenty five; and the products of *two*, the ſhare of each ſiſter, of *three*, the ſhare of the huſband, and of *one*, the ſhare of the mother, multiplied by the number of gold *mohrs*, are 50, 75, and 25, which, divided by *eight*, give the following ſhares: to each ſiſter, 6 *mohrs*, 4 *rupees*; to AMRU, 9 *m.* 6 *r*; to HINDA, 3 *m.* 2 *r.* Had LAILA's eſtate been *fifty* gold *mohrs*, the diſtribution would have been thus:

* Page 20.

	M.	R.
ZAINEB, - - - - -	12,	8.
ABLA, - - - - -	12,	8.
AMRU, - - - - -	18,	12.
HINDA, - - - - -	6,	4.

IT ſeems needleſs to give examples of the ſimple rules for aſcertaining the dividends of each *claſs*; but the paſſage concerning creditors, at the cloſe of the chapter, is made obſcure by extreme brevity, and requires a ſhort illuſtration. Suppoſe the aſſets of AMRU to be *nine* pieces of gold; his debts, *five* pieces to SAAD, and *ten* to AHMED; here the aggregate of the debts, *fifteen*, is compoſit to *nine*, and their *meaſures* are *five*, and *three*; ſo that, by the rule before-mentioned of diſtribution among *heirs*, AHMED will receive *ſix*, and SAAD, *three* pieces; but, had the debtor left *thirteen*, which would have been prime to the amount of both debts, then *fifteen*, ſtanding in the place of the *verification*, as they call it, muſt be the diviſor of the ſeveral products, ariſing from the multiplication of *ten* and *five* into thirteen, and the quotients $8\frac{2}{3}$ and $4\frac{1}{3}$ will be the reſpective dividends of AHMED and SAAD.

THE practice of *ſubtraction* * aroſe from the caſe of ABDUR'RAHMAN and his four wives, decided in the reign of OTHMAN; and the ſection concerning it will

* Page 21.

be made clear by a fuller explanation of the example in the text. We have ſeen, that the widower is entitled to a *moiety*, the mother to a *third*, and the uncle, to the *reſidue*; ſo that, if LAILA's eſtate be divided into *ſix* parcels, the diſtribution may be made without a fraction: but if the widower agree to keep the *mahr*, or nuptial preſent to his wife, which he had never actually paid, inſtead of his *three ſixths* of the whole, the remainder, after deducting the *mahr*, muſt be divided into *three* parts, of which the mother will have *two*, and the uncle, *one*. So, if the mother agree to take a jewel, or other ſpecifick thing, in lieu of her *two ſixths*; or the uncle, a ſlave or a carriage, in the place of his *ſixth* part, the remainder, which, would be *four* parts in the firſt caſe, and *five* in the ſecond, muſt go to the other claimants in proportion to their ſhares. Again; if AMRU leave his mother FÁTIMA, two ſiſters by the ſame mother, LATÍFA and SOLMA, and the ſon of a paternal uncle, SELÍM; here alſo the inheritance muſt be divided, by the rule, into *ſix* parts: now, if the deceaſed left a female ſlave and thirty gold *mohrs*, and, if SOLMA conſented to keep the ſlave inſtead of her legal ſhare, or a *ſixth*, the remainder of the property muſt then be divided into *five* parcels, ſix gold *mohrs* in *each*, of which FÁTIMA and LATÍFA muſt receive each *one* parcel, and SELIM, the *three* parcels, which remain. It is obvious, that, if the firſt calculation were made, in the preceding caſes, on a ſuppoſi-

tion, that the taker of the ſpecifick thing was dead or incapable of inheriting, there would be either a *defect* or an *exceſs* in ſome of the allotments to the other claimants.

THERE is no difficulty in the chapter on the *return**, except what ariſes from the *Arabick* idiom, to which the reader is probably by this time habituated; but it is neceſſary to remark, that, although, by the letter of the *Korán* and the ſtrict rules of law, no *return* can be made to the *widower* or *widow*, yet an equitable practice has prevailed, in modern times, of *returning* to them *on failure of ſharers by blood and of diſtant kindred*. The laſt caſe in the chapter can rarely occur; and the reſult of the calculation (which fills ten pages in the *Perſian* work of *Maulávi* KÁSIM) is, that, of 1440 parcels, the *four* widows take (36×5=) 180; the *nine* daughters, (36×28=) 1008; and the *ſix* female anceſtors, (36×7=) 252; ſo that 45 parts go to each *widow*, 112 to each *daughter*, and 42 to each *female anceſtor*.

THE rights of the *paternal grandfather* have been more diſputed than any other point of *Arabian* law; no fewer than *ſeventy* contradictory deciſions having been made concerning them in the reign of OMAR; but the diſpute is now ſettled among the *Sunnis* according to the opinion of ABU HANIFA; and the chapter on *diviſion* ſeems to have been inſerted merely from reſpect to ABU

* Page 22, 23.

YUSUF and MUHAMMED, who diſſented on this point from their maſter*: it is one of the cleareſt chapters in the *Sirájiyyah*, and will be uſeful to us, if the queſtion ſhould ariſe in a family of *Shiáhs*, who follow, no doubt, the opinions of ALI and ZAID. The caſe called *acdariyya*, which was decided by the ſon of THÁBIT, and has acquired ſuch celebrity in *Irák*, that it is diſtinguiſhed among the lawyers of that country by the epithet of *alghárrà*, or the *luminous*, is a perſpicuous example of the grandfather's diviſion in a *double* ratio with the ſiſter: the conjecture, formerly hazarded by myſelf, that it was named *acdariyya*, becauſe the rules of inheritance are *diſturbed* by it in favour of the grandfather, had occurred, I ſee, to ſome *Arabs*, and is mentioned by SHARIF without diſapprobation.

IT will be neceſſary to illuſtrate by examples the chapter on *ſucceſſion to veſted hereditary intereſts*:† and, firſt, we may ſuppoſe, that ZAID had two wives, named ZAINEB and LATÍFA, and that ZAINEB died poſſeſſed of ſeparate property, leaving her huſband, her mother ZUHRA, and HINDA, her daughter by a former huſband: now the legal ſhares, in order as the ſharers are named, would be a *fourth*, a *ſixth*, and a *moiety*; ſo that regularly the eſtate ſhould be divided into *twelve* parts, but it is here divided into *four*, becauſe there muſt be a *return* to ZUHRA and HINDA, in the proportion of their ſhares, that is

* Page 24, 25, 26. † Page 27.

as *one* to *three*; but, when ZAID has taken his *fourth*, the *three* fourths, which remain, cannot be diſtributed in that proportion; and, ſince *three* and *four* are prime to each other, we therefore multiply *four*, conſidered as the number of perſons entitled to a return, into *four*, the denominator of the huſband's *ſhare*, and the ſquare number anſwers the purpoſe of integral diſtribution; for of *ſixteen* parcels ZAID will be entitled to *four*, ZUHRA to *three*, and HINDA to *nine*.

SUPPOSE next, that ZAID himſelf dies, before any diſtribution actually made, leaving only LATÍFA beforementioned, his mother BASÍRA, and his father ÁBID: here *four* parts of the former inheritance having veſted in him, the diſtribution is eaſy; *one* part going to LATÍFA, as her *fourth*, one alſo to BASÍRA, as her *third of the reſidue*, and *two* parts to ÁBID; in exact proportion to their ſeveral claims on his own eſtate.

THIRDLY, ſuppoſe HINDA to die before any actual diſtribution, leaving the before-named ZUHRA, her grandmother, ZUBAIDA her daughter, and two ſons, HÁTIF and BASHAR: now ſhe had a *veſted intereſt* in *nine* parts out of the *ſixteen*, and, her own eſtate being diviſible into *ſix* parts, we obſerve, that *nine* and *ſix* are compoſit to each other, or agree, as the *Arabian* phraſe is, *in a third*; ſo that a third of ſix, or *two*, muſt be multiplied into *ſixteen*, and the product *thirty two* will be the denominator

for both caſes; for of *thirty two* parts *nine* will veſt in ZUHRA *(ſix* as mother to ZAINEB, and *three* as grandmother to HINDA,) *twelve* in the two ſons, *three* in ZUBAIDA, and *eight* in ZAID's repreſentatives; ſince, to aſcertain the ſhare of each individual, the juſt-mentioned ſhares out of *ſixteen* muſt be multiplied by *two*, and thoſe out of *ſix*, by *three*, which is here called the *meaſure* of HINDA's veſted intereſt.

LET us fourthly ſuppoſe, that ZUHRA alſo dies before any diſtribution, leaving her huſband CÁAB, and two brothers CÁLIB and TÁRIF. Now her own eſtate is arranged by *four*, the huſband taking a *moiety*, and each of the reſiduaries *one fourth*; but *four* and *nine* are prime to each other; and *four*, therefore, multiplied by *thirty two*, produces an *hundred and twenty eight*, the denominator of both caſes: we muſt then multiply by *four* the ſhares out of *thirty two*, and by *nine* the ſhares out of *four*, and the products will be lots of the ſeveral claimants; *eight* parcels going to LATÍFA, *ſixteen* to ABID, *eight* to BASIRA, *forty eight* in moieties to HÁTIF and BASHAR, *twelve* to ZUBAIDA, *eighteen* to CÁAB, and *eighteen* in moieties to CÁLIB and TÁRIF.

WE need only add, that, although the concluſion of the chapter before us be obſcured by its extreme conciſeneſs, yet it plainly means, that "when any number of

" heirs die ſucceſſively before the diſtribution, if the " *ſhares veſted* in the laſt deceaſed do not quadrate with " the *arrangement* of his own eſtate, we muſt conſider " all thoſe, who died before him, as *one deceaſed heir*, " and himſelf as the *ſecond*, and then work by the pre- " ceding rules": to give more examples would be very eaſy, but the reader would find them inſupportably tedious.

ALL controverſies on the claims of the *next of kin*, who are neither *ſharers* nor *reſiduaries*, are now at an end *; for it ſeems to be ſettled, that they ſucceed according to the order preſcribed in our text.

I. ON the *firſt* claſs of diſtant kindred the doctrine of ABU YÚSUF has far more ſimplicity than that of MUHAMMED, in which there is an appearance of intricacy; but an attentive reader will find no difficulty in the caſe reduced to the form of a table, in which the loweſt of the ſix ranks are ſuppoſed to be the claimants of AMRU's eſtate ‡: he will ſee, that ABU YÚSUF would divide that eſtate into *fifteen* parts, giving *one* to each of the female, and *two*, by the rule in the *Koràn*, to each of the male, deſcendants; but that MUHAMMED would arrange it in *ſixty* parts, *twenty-four* of which would go to the repreſentatives of the *three* ſons, and *thirty-ſix* to thoſe of the *nine* daughters; due regard being paid to

* Page 28, 29. † Page 30, 31. ‡ Page 32, 33.

the *double portion* of the male deſcendants, ſo as to bring the ſhares of the *twelve* claimants to the following order from the left hand, *twelve, eight, four; nine, three, ſix; ſix, two, four; three, two, one.* The correctneſs of this method has, it ſeems, obtained it a preference over that of ABU YÚSUF, whoſe practice, however, is followed, on account of its facility, in *Bokhára* and ſome other places; although of the two different traditions from ABU HANÍFA, that reported by MUHAMMED be the more publickly known and the more generally believed.

THE reader would be unneceſſarily fatigued, if we were to exhibit every ſtep of the arithmetical proceſs, by which the eſtate of AMRU muſt be diſtributed, according to the opinion of MUHAMMED, between his *great grandſon* by females only, and his *two great granddaughters*, who have the advantage of a male in the line of deſcent*; nor does the ſection concerning the difference of *ſides* require elucidation.

II. ON the *ſecond* claſs, or the *grandfathers* and *grandmothers*, who are excluded from *ſhares*, we need only ſum up the doctrine of our author in the words of SHARÍF:—"The degrees in this caſe are either equal "or unequal; if *unequal*, the nearer is preferred; if "*equal*, the preference is given to the perſon claiming

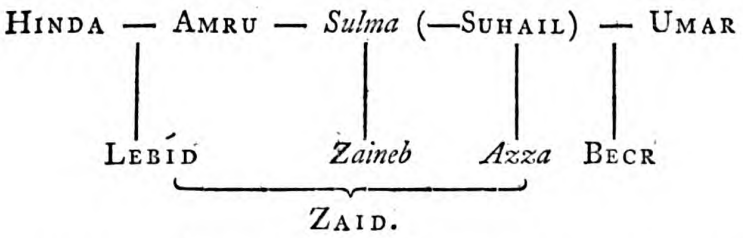
* Page 34.

" *through a ſharer*; if, there be an *equality* in that reſpect,
" the *ſides* muſt be the ſame or different; if different,
" the diſtribution muſt be made in *thirds*, the paternal
" ſide having a *double* allotment; if *the ſame*, the *ſexes*
" of the *roots*, or anceſtors, muſt agree, or not; if they
" agree, the eſtate muſt be diſtributed according to the
" perſons of the *branches*, or claimants; if not, accor-
" ding to the *firſt* rank that differs, as in the preceding
" claſs*."

III. THERE ſeems no difficulty in the chapter † on the third claſs of diſtant kindred; but it muſt be remarked, that the *branches*, as they are called, from *roots* by the ſame *father only* are excluded by the *whole blood*; not thoſe by the ſame *mother only*, who take equally, according to the *Koràn*, in exception to the general rule, without any diſtinction of ſex.

IV. ALTHOUGH the claims of *uncles* and *aunts*, in three caſes, be clearly explained in the text, ‡ yet it may not be improper, to ſubjoin an example from the commentary of *Maulaví* KÁSIM, which the following pedigree will make more intelligible than his dry ſtate of the caſe:

* Page 35. † Page 36, 37, 38. ‡ Page 39.



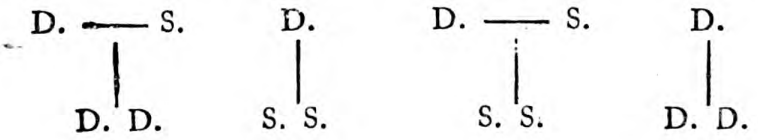
AMRU, having had by HINDA a ſon, named LEBID, married SULMA, by whom he had a daughter, named ZAINEB: after AMRU's death, SULMA married SUHAIL, to whom ſhe produced AZZA, and after his death, ſhe married UMAR, by whom ſhe became the mother of BE'CR: now ZAID was the ſon of LEBID and AZZA; and he died, leaving no heirs but BECR the brother, by the *ſame mother*, of his mother AZZA, and ZAINEB, who was his *paternal* aunt by the *ſame father* AMRU, and his *maternal* aunt by the *ſame mother* SULMA. In this caſe, the property of ZAID muſt be divided into *nine* parcels, of which the *paternal* aunt will have *two thirds*; and the remaining *third* will go to the *maternal uncle* and *aunt* in the ratio of *two* to *one*; ſo that ZAINEB, in her two characters, will be entitled to *ſeven ninths*.

THERE ſeems no neceſſity to expatiate on the *children of uncles and aunts*, or on the *couſins*, as we ſhould call them, in different degrees*; becauſe the text will be ſufficiently perſpicuous to thoſe, who perfectly underſtand the preceding ſections: but, ſince a curious caſe

* Page 40, 41.

is put by SHARIF, I am unwilling to ſuppreſs it; eſpecially as it will throw light on the whole ſubject before us. The *father* of AMRU had a brother, ZAID, and two ſiſters, ZAINEB and AÁISHA, by the ſame father only: his *mother* alſo had a brother, HÁRETH, and two ſiſters by the ſame father, named HINDA and ASIMA: firſt, his father and mother died; then, all his *uncles* and *aunts*, leaving the following iſſue: ZAID left two daughter's daughters, who were alſo the daughters of ZAINEB's ſon; AISHA, two ſons of her daughter; HÁRETH, two daughter's ſons, who were alſo the ſons of the ſons of HINDA; and ASIMA, two daughter's daughters; as in this pedigree:

ZAID. ZAINEB. AÁISHA. HÁRETH. HINDA. ASIMA.



AMRU himſelf afterwards died, with no heirs but the *grandchildren* of his uncles and aunts: In this caſe ABU YUSUF would have divided the inheritance into *thirty* parts; *twenty* for the *paternal* ſide; that is, *five* for each of the ſons, and as many for each of the daughters, who have a double relation; and *ten* for the *maternal* ſide, or *four* for each of the ſons, who are doubly related, and *one* for each of the daughters: but MOHAMMED, having divided AMRU's eſtate into *thirty-ſix* allotments,

would have given *twenty-four* to the paternal, and *twelve* to the maternal, ſide; that is, *ſix* to each of ZAID's granddaughters, as ſuch, and *four* to each of them, as granddaughters of ZAINEB; *two* to each of AÁISHA's grandſons; *three* to each grandſon of HÁRETH, as ſuch; and *two* more to each of them, as grandſons of HINDA; while *one thirty-ſixth* part would have gone to each of ASIMA's female deſcendants. The reaſon of theſe different diſtributions will appear from what has preceded; but the arithmetical proceſſes would fill many pages, and would be thought, I am perſuaded, unneceſſarily prolix.

ON the chapter concerning hermaphrodites,* I ſhall make no particular obſervation; ſince monſtrous births are, I truſt, extremely rare in all countries, and the ſubject is too ſhocking to be diſcuſſed without actual neceſſity; nor will it anſwer, I imagine, any uſeful purpoſe to relate the old *Arabian* ſtories, and ſtrange opinions of ſome lawyers, concerning the longeſt poſſible time of geſtation;† which is now limited, on the authority of AAISHA, one of MOHAMMED's wives, to *two years*; and, though the *Muſelmans* have traditionary accounts of *three*, *four*, or even *five* children produced at one birth, yet the practice, we find, is to reſerve the ſhare of *one* ſon; or that of one *daughter*, if, on ſuppoſition of her birth, the ſum reſerved would be larger.‡ The practice of *reſervation* for the unborn child is well explained by the caſe in the text, to which we may

* Page 42, 43. † Page 44. ‡ Page 45, 46.

now proceed, ſince the reſt of the chapter needs no illuſtration; unleſs it be neceſſary to inform the reader, that a widow ought by law to abſtain for a certain time after her huſband's death, from the careſſes of any other man; and, if ſhe freely confeſs that ſhe has not abſtained, it cannot be certain, that her huſband was the father of a child born more than ſix months after his death. Let us then ſuppoſe AMRU to die, leaving a daughter ZAINEB, his mother ASUMA, his father LEBID, and his wife HINDA enſeint.* So that, if a male child be born, AMRU's eſtate ought regularly to be divided into *twenty-four* parts, but, on the birth of a female, into *twenty-ſeven*; becauſe, in the firſt caſe, the *ſhares* are an *eighth*, for the widow, and a *ſixth* for each of the parents; but, in the ſecond, beſides the ſhares juſt mentioned, the daughters would have *two-thirds* between them, and it would be the caſe of *Mimberiyya*.† Now *three* is the *common* meaſure of *twenty-four* and *twenty-ſeven*, and the ſeveral *meaſures* of thoſe numbers are *eight* and *nine*, either of which, multiplied into the other *whole* number, gives *two hundred and ſixteen* for the product; and that, according to what has preceded, is the number of ſhares into which the inheritance muſt be actually divided. In the firſt caſe HINDA would have *twenty-ſeven* ſhares; LEBID and ASUMA, each *thirty-ſix*; the poſthumous ſon *ſeventy-eight*, and ZAINEB, his ſiſter, *thirty-nine*; but, in the

* P. 47. † P. 15.

ſecond, the widow would have *twenty-four*; and each of the parents, *thirty-two*; while the poſthumous daughter and her ſiſter would divide the remainder between them, each taking *ſixty-four* ſhares. Should *four* poſthumous ſons be born, *ninety-nine* ſhares would go to the widow and both parents; while the remainder would be divided among the children by the rule before mentioned, ZÁINEB receiving *thirteen* parts, and each of her brothers, *twenty-ſix*; but, in the caſe of a miſcarriage, the daughter would be entitled to *a hundred and eight* parts, or a moiety of the whole eſtate, and the *nine* parts remaining would go to LEBID as reſiduary heir.

THE time, at which an abſent perſon is preſumed in law to be dead, has varied, we ſee, in different ages *; but the modern practice I underſtand to be this: if ZAID has been ſo long abſent, that no man can tell whether he be dead or alive, and if *ſeventy* years have elapſed from the day of his birth, he is preſumed to be dead, as to *his own* property, from the end of that term, but, as to his hereditary claims on the property *of another*, from the day of his abſence; ſo that, in the firſt caſe, no perſon, dying within the ſeventy years, could have inherited any part of *his* eſtate; nor, in the ſecond, could he inherit from any one, who died after the day, when he firſt was miſſed. Though the arrangement of an inheritance;

* Page 48, 49.

on which an abſent perſon may have a claim, be ſufficiently clear from what has juſt preceded, yet a feigned caſe in illuſtration of it will not, perhaps, be thought wholly ſuperfluous. If HINDA then die at *Murſhedabád*, leaving AMRU her huſband, with two ſiſters of the whole blood, NÁDIRA and SACÍNA, all reſiding in that city, and a whole brother ZAID, who has long been abſent and unheard of, we muſt conſider what effect his life or his death would have on the inheritance: if he be dead, AMRU muſt have a *moiety* of the eſtate, and the ſiſters *two thirds* between them; and, if he be living, the widower will ſtill have a right to his half, but ZAID will take twice as much as either of the ſiſters. Now, on the firſt ſuppoſition, the aſſets of HINDA muſt be divided, as we have ſhown, into *ſeven* ſhares, of which AMRU muſt have *three*, and each of the ſiſters, *two*; but, on the ſecond, into *eight* parts, *four* of which go to the huſband, and *two* to the brother, while NÁDIRA and SACÍNA can have only *one* a piece; ſo that the widower has an intereſt in ſuppoſing ZAID alive, and the ſiſters, in ſuppoſing him dead: *fifty-ſix*, therefore, or the product of *ſeven* and *eight*, which are *prime* to one another, is the number of ſhares, into which the eſtate muſt be divided; *twenty-four* of them being delivered to AMRU, and *ſeven* to each of the females, as the leaſt ſhares to which they can in either event be ſeverally entitled; if ZAID then return to the city, *four* ſhares more go to

AMRU, and *fourteen* are the right of the brother; but, if his death be proved, or preſumed by lapſe of time, the *eighteen* reſerved ſhares muſt be divided equally between SACÍNA and NÁDIRA, to complete their *two ſevenths*, which the law gives, in that caſe, to each of them. The *Perſian* commentator has added three caſes, in one of which the two firſt diviſors of the aſſets are *compoſit* to each other; but the operation in all of them is too eaſy to require an example.

IN the ſections concerning apoſtates and priſoners of war *, there ſeems to be no obſcurity; but it is proper to add, that, as the law is now ſettled, the heirs of an apoſtate, who were in being at the time of his death, are entitled to their legal ſhares, whether they were born before or after his apoſtaſy; though a huſband or wife cannot ſucceed to an apoſtate, becauſe a change of religion is an immediate diſſolution of the marriage.

WE are now come to the concluding ſection, which cannot be better illuſtrated than by two feigned caſes from the *Perſian* and *Arabian* comments. 1. ZAID and his daughter ABLA were at ſea in the ſame ſhip, together with BASHAR, his brother's ſon, and his great nephew AMRU, ſon of BASHAR: the ſhip was loſt, and all, who were in it, periſhed; ſo that which of them

* Page 50, 51.

firſt died, could never be clearly aſcertained. Now AMRU left behind him a wife and a daughter; and ABLA had an only ſon: in this caſe, by the opinion of ABU HANIFAH and his followers, the four drowned perſons are ſuppoſed to have periſhed in the ſame inſtant, and their ſeveral eſtates go to their ſurviving heirs reſpectively, according to the rules, which have been already explained; but by one of two traditions from ALI, the aſſets of ZAID being equally divided, and ABLA being ſuppoſed to have outlived her father, her ſon takes one moiety in her right, while the other moiety is conceived at firſt to have veſted in BASHAR, and then in AMRU, between whoſe widow and daughter it is diſtributable according to law. 2. KÁSIM and his younger half brother HASAN were drowned in the ſame boat, each leaving a mother, a daughter, and a patron, by whom each of them had been manumitted: then, if each of them left *ninety* pieces of gold on ſhore, the property of each muſt be ſeverally diſtributed, according to the HANIFEANS; the daughter of each taking *half*, or *forty-five* pieces; the mother a *ſixth*, or *fifteen*, and the manumittor, as reſiduary, the *thirty* pieces which remain; but according to ALI, the younger brother HASAN being firſt conſidered as the ſurvivor, that reſidue veſts in him, and is then diſtributed, in the juſt mentioned ratio; *half* of it, or *fifteen*, going to his daughter; a *ſixth*, or *five* pieces, to his mother; and *ten*, the reſidue, to his patron; next,

KÁSIM being ſuppoſed to have ſurvived, the ſame rule is applied to him; ſo that the daughter of each takes on the whole *ſixty*; the mother, *twenty*; and the manumittor, *ten* pieces of gold.

THE END.

ERRORS OF THE PRESS.

TEXT.

P. 16, L. 4, *for* in *read* is.
P. 17, L. 5, from the bottom, *for* it it *read* if it.

COMMENTARY.

P. 58, L. 4, after *me*, omit the comma, *and place it after* ranſom.
P. 68, L. 10, *read* AMRU.
P. 80, L. 5, *before* brothers *read* two.
P. 82, L. 4, *for* this *read* his.
P. 87, L. 7, from the top, *for* ſhare *read* ſharer.
P. 98, L. 12, *read* ſon of HINDA.

ORIGINAL.

P. 6, *b.* laſt line, *read* وَلَآءِ

P. 11, *b.* L. 9, 11, *for* مَافِي *read* بَاقِي

CORRECTIONS.

P. 60, L. 14, *after* allegiance; *add*, the laſt of which diſabilities relates only to ſuch as are not *Muſelmáns*.

P. 62, L. 11, *after* ſeems, *end the paragraph thus*; be diſabled from ſucceeding to the property of the deceaſed, whom he could not in ſtrictneſs be ſaid to have *killed*.

P. 96, L. 13, *after* that, *end the paragraph thus:* although the brothers and ſiſters by the ſame *mother only* take equally, according to the *Korán*, without any diſtinction of ſex, yet that exception to the general rule by no means extends to the *iſſue* of ſuch brothers and ſiſters.

قَدْ طُبِعَ هٰذَا الْكِتَابُ الْمُسَمَّى بِالْفَرَائِضِ السِّرَاجِيَّةْ

بِدَارِ الْأَمَارَةِ بَلْدَةِ كَلْكَتَّةِ الْمَحْمِيَّةْ وَذٰلِكَ بِأَمْرِ

سَرْ وِلْيَمْ يُونْس الَّذِي هُوَ أَحَدُ حُكَّامِ الْمَحْكَمَةِ الْعَالِيَةِ

السُّلْطَانِيَّةْ

فِي سَنَةِ أَلْفٍ وَمِائَتَيْنِ وَوَاحِدٍ مِنَ الْهِجْرَةِ النَّبَوِيَّةْ

تَصْحِيحُ الْكِتَابِ

عَدَدُ الْأَوْرَاقِ	أَلصَّحِيحُ	أَلسَّقِيمُ
١٦	الْإِنَاثَ	الْأَنَاثَ
١٧	إِبْنَيْ بِنْتٍ بِنْتٍ بِنْتٍ	إِبْنَيْنِ بِنْتٌ بِنْتٌ بِنْتٌ
١٧	بِنْتِ ابْنِ بِنْتٍ بِنْتٍ	بِنْتِ ابْنِ بِنْتٌ بِنْتٌ
١٧	بِنْتَيْ بِنْتِ ابْنِ بِنْتٍ	بِنْتَيْنِ بِنْتٌ ابْنِ بِنْتٌ
١٧	الْأَخُ	الْأَخُ
١٧	الرِّوَايَتَيْنِ	الرَّوَايَتَيْنِ
١٧	بِنْتَيْ: بِنْتٍ .... بِنْتٍ إِبْنِ ... بِنْتٍ	بِنْتَيْنِ: بِنْتٌ .... بِنْتٌ ابْنٌ .... بِنْتٌ
١٧	إِبْنٌ --- بِنْتٍ --- بِنْتٍ	ابْنُ بِنْتٌ بِنْتٌ
١٨	أَوْأَحَدُهُمَا	أَوْأَحَدُهُمَا
١٩	مِنِ ابْنِ	مِنْ ابْنِ
١٩	الْأَخُ	الْأَخَ
٢٠	أَلْمَالُ كُلُّهُ	الْمَالَ كُلَّهُ
٢١	وَنِصْفَ سَهْمٍ إِنْ كَانَ	وَنِصْفٌ إِنْ كَانَ
٢٣	ذُكُورَتِهِ	ذَكُورَتِهِ
٢٣	الْأَخِرِ	الْأَخِرِ

قَدْ صُحِّحَ هٰذَا الْكِتَابُ بِعَوْنِ اللّٰهِ تَعَالَى الْمَلِكِ الْوَهَّابِ

تَصْحِيحُ الْكِتَابِ

عَدَدُ الْأَوْرَاقِ	الصَّحِيحُ	السَّقِيمُ
٦	أَعْتَقْنَ	اُعْتَقْنَ
١٢	مَالِكٌ	مَالِكَ
١٢	إِنْ وَافَقَ	أَنْ وَافَقَ
١٣	ثُمَّ اضْرِبْ	ثَمَّ أَضْرِبْ
١٣	أُخْتٍ	أَخْتٍ
١٥	أَبَوَيِ	اَبَوِيَ
١٥	الرَّابِعُ	الرَّابِعْ
١٥	أَنَّ اَقْرَبَ	إِنَّ أَقْرَبَ
١٥	الْبَأْخُوذُ	الْبَأَخُوذْ
١٥	اَوْلَيْهِمْ	أَوْلَهِمْ
١٥	فَإِنَّهَا	فَانَّهَا
١٦	اَوْكَانَ	أَوكَانَ
١٦	صِفَةَ	صِفَةِ
١٦	أَثْلَاثًا	اِثْلَاثًا
١٦	لِلذَّكَرِ	لِلذَّكَرِ
١٦	رَحْبَةُ اللَّهِ	رَحِمَةُ اللَّهِ
١٦	أَثْلَاثًا	اِثْلَاثًا
١٦	وَالْإِنَاثُ	وَالْأَنَاثُ

تَصْحِيحُ الْكِتَابِ

عَدَدُ الْأَوْرَاقِ	أَلصَّحِيحُ	أَلسَّقِيمُ
١٦	الْإِنَاثَ	الْأُنَاثَ
١٧	إِبْنَيْ بِنْتٍ بِنْتٍ بِنْتٍ	إِبْنَيْنِ بِنْتٌ بِنْتٌ بِنْتٌ
١٧	بِنْتِ ابْنِ بِنْتٍ بِنْتٍ	بِنْتِ ابْنِ بِنْتٌ بِنْتٌ
١٧	بِنْتَيْ بِنْتِ ابْنِ بِنْتٍ	بِنْتَيْنِ بِنْتٌ ابْنِ بِنْتٌ
١٧	الْأَخَرُ	الْأَخَرُ
١٧	الرِّوَايَتَيْنِ	الرَّوَايَتَيْنِ
١٧	بِنْتَيْ: بِنْتٍ .... بِنْتٍ إِبْنِ ... بِنْتٍ	بِنْتَيْنِ: بِنْتٌ .... بِنْتٌ ابْنٌ .... بِنْتٌ
١٧	إِبْنٌ --- بِنْتٍ --- بِنْتٍ	ابْنُ بِنْتٌ بِنْتٌ
١٨	أَوْأَحَدُهُمَا	أَوْأَحَدُهُمَا
١٩	مِنِ ابْنِ	مِنْ ابْنِ
١٩	الْأَخَرُ	الْأَخَرَ
٢٠	أَلْمَالُ كُلُّهُ	الْمَالَ كُلَّهُ
٢١	وَنِصْفَ سَهْمٍ إِنْ كَانَ	وَنِصْفٌ إِنْ كَانَ
٢٣	ذُكُورَتِهِ	ذَكُورَتِهِ
٢٣	الْأَخَرِ	الْأَخَرِ

قَدْ صُحِّحَ هٰذَا الْكِتَابُ بِعَوْنِ اللّٰهِ تَعَالَى الْمَلِكِ الْوَهَّابِ

تَصْحِيحُ الْكِتَابِ

عَدَدُ الْأَوْرَاقِ	الصَّحِيحُ	السَّقِيمُ
٦	أَعْتَقْنَ	اعْتَقْنَ
١٢	مَالِكُ	مَالِكَ
١٢	إِنْ وَافَقَ	أَنْ وَافَقَ
١٣	ثُمَّ اضْرِبْ	ثُمَّ أَضْرِبْ
١٣	أُخْتِ	أَخْتِ
١٥	أَبَوَيِ	اَبَوِيَ
١٥	الرَّابِعُ	الرَّابِعُ
١٥	أَنَّ اَقْرَبَ	إِنَّ أَقْرَبَ
١٥	الْبَأْخُوذُ	الْبَأَخُوذُ
١٥	اَوْلَيْهِمْ	أَوْلَهِمْ
١٥	فَإِنَّهَا	فَانَّهَا
١٦	اَوْكَانَ	أَوكَانَ
١٦	صِفَةَ	صِفَةِ
١٦	أَثْلَاثًا	اِثْلَاثًا
١٦	لِلذَّكَرِ	لِلذَّكَرِ
١٦	رَحْبَةُ اللَّهِ	رَحِمَةُ اللَّهِ
١٦	أَثْلَاثًا	اِثْلَاثًا
١٦	وَالْإِنَاثُ	وَالْأَنَاثُ

لَاتَرِثُ مِنْ أَحَدٍ اِلَّا اِذَا ارْتَدَّ أَهْلُ نَاحِيَةٍ بِأَجْمَعِهِمْ فَحِيْنَئِذٍ يَتَوَارَثُوْنَ

بَابُ الْأَسِيْرِ

حُكْمُ الْأَسِيْرِ كَحُكْمِ سَائِرِ الْمُسْلِمِيْنَ فِي الْمِيْرَاثِ مَالَمْ يُفَارِقْ دِيْنَهُ فَإِنْ فَارَقَ دِيْنَهُ فَحُكْمُهُ حُكْمُ الْمُرْتَدِّ فَإِنْ لَمْ يُعْلَمْ رِدَّتُهُ وَلَا حَيَاتُهُ وَلَا مَوْتُهُ فَحُكْمُهُ حُكْمُ الْمَفْقُوْدِ

فَصْلٌ فِي الْغَرْقَى وَالْحَرْقَى وَالْهَدْمَى

اِذَا مَاتَ جَمَاعَةٌ وَلَا يُدْرَى أَيُّهُمْ مَاتَ أَوَّلًا جُعِلُوْا كَأَنَّهُمْ مَاتُوْا مَعًا فَمَالُ كُلِّ وَاحِدٍ مِنْهُمْ لِوَرَثَتِهِ الْأَحْيَاءِ وَلَا يَرِثُ بَعْضُ الْأَمْوَاتِ مِنْ بَعْضٍ هٰذَا هُوَ الْمُخْتَارُ وَقَالَ عَلِيٌّ وَابْنُ مَسْعُوْدٍ (فِي إِحْدَى الرِّوَايَتَيْنِ عَنْهُمَا بَعْضُهُمْ) يَرِثُ مِنْ بَعْضٍ اِلَّا فِيْمَا وَرِثَ كُلُّ وَاحِدٍ مِنْهُمْ مِنْ صَاحِبِهِ

تَمَّتِ الْفَرَائِضُ السِّرَاجِيَّةُ بِعَوْنِ

اللّٰهِ تَعَالَى

مِن مالِهِ لِأن المفقود ميت في مالِ غيرِهِ الاصل في تصحيح
مسايل المفقود ان تصحح المسئلة على تقدير حياته ثم
تصحح (المسئلة) على تقدير وفاته وبا قي العمل
ماذكر نا في الحمل

فصل في المرتد

اذا مات المرتد او قتل او لحق بدار الحرب وحكم القاضي
بلحوقه فما اكتسبه في حال إسلامه فهو لورثته المسلمين
وما اكتسبه في حال الردة يوضع في بيت المال عند
أبي حنيفة رحمه الله وعندهما الكسبان جميعا لورثته
المسلمين وعند الشافعي رحمه الله الكسبان يوضعان
في بيت المال وما اكتسبه بعد اللحوق بدار الحرب
فهو فيء بالاجماع وكسب المرتدة جميعا لورثتها المسلمين
بلا خلاف بين أصحابنا (رحمهم الله) وأما المرتد فلا يرث
من أحد لا من مسلم ولا من مرتد مثله وكذلك المرتدة

لا ترث

وَالْبَاقِي لِلْأَبِ وَهُوَ تِسْعَةُ أَسْهُمٍ لِأَنَّهُ عَصَبَةٌ

بَابُ الْمَفْقُودِ

الْمَفْقُودُ حَيٌّ فِي مَالِهِ حَتَّى لَا يَرِثَ مِنْهُ أَحَدٌ وَيُوقَفُ مَالُهُ حَتَّى يَصِحَّ مَوْتُهُ أَوْ يَمْضِيَ عَلَيْهِ الْمُدَّةُ، وَاخْتَلَفَتِ الرِّوَايَاتُ فِي تِلْكَ الْمُدَّةِ فَفِي ظَاهِرِ الرِّوَايَةِ أَنَّهُ إِذَا لَمْ يَبْقَ أَحَدٌ مِنْ أَقْرَانِهِ حُكِمَ بِمَوْتِهِ وَرَوَى الْحَسَنُ بْنُ زِيَادٍ عَنْ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى أَنَّ تِلْكَ الْمُدَّةَ مِائَةٌ وَعِشْرُونَ سَنَةً مِنْ يَوْمِ وُلِدَ فِيهِ وَقَالَ مُحَمَّدٌ مِائَةٌ وَعَشْرُ سِنِينَ وَقَالَ أَبُو يُوسُفَ مِائَةٌ وَخَمْسُ سِنِينَ وَقَالَ بَعْضُهُمْ تِسْعُونَ سَنَةً وَعَلَيْهِ الْفَتْوَى وَقَالَ بَعْضُهُمْ مَالُ الْمَفْقُودِ مَوْقُوفٌ إِلَى اجْتِهَادِ الْإِمَامِ وَمَوْقُوفُ الْحُكْمِ فِي حَقِّ غَيْرِهِ حَتَّى يُوقَفَ نَصِيبُهُ مِنْ مَالِ مُوَرِّثِهِ كَمَا فِي الْحَمْلِ فَإِذَا مَضَتِ الْمُدَّةُ وَحُكِمَ بِمَوْتِهِ فَمَالُهُ لِوَرَثَتِهِ الْمَوْجُودِينَ عِنْدَ الْحُكْمِ بِمَوْتِهِ وَمَا كَانَ مَوْقُوفًا لِأَجْلِهِ مِنْ مَالِ مُوَرِّثِهِ يُرَدُّ إِلَى وَارِثِ مُوَرِّثِهِ الَّذِي وُقِفَ ذَلِكَ الْمَوْقُوفُ

لِلْمَرْأَةِ سَبْعَةٌ وَعِشْرُونَ وَلِكُلِّ وَاحِدٍ مِنَ الْأَبَوَيْنِ سِتَّةٌ
وَثَلَاثُونَ وَعَلَى تَقْدِيرِ الْمَسْأَلَةِ لِلْمَرْأَةِ أَرْبَعَةٌ وَعِشْرُونَ وَلِكُلِّ
وَاحِدٍ مِنَ الْأَبَوَيْنِ اثْنَانِ وَثَلَاثُونَ فَيُعْطَى لِلْمَرْأَةِ أَرْبَعَةٌ
وَعِشْرُونَ وَيُوقَفُ مِنْ نَصِيبِهَا ثَلَاثَةُ أَسْهُمٍ وَيُوقَفُ مِنْ نَصِيبِ
كُلِّ وَاحِدٍ مِنَ الْأَبَوَيْنِ أَرْبَعَةُ أَسْهُمٍ وَيُعْطَى لِلْبِنْتِ ثَلَاثَةَ عَشَرَ
سَهْمًا لِأَنَّ الْمَوْقُوفَ فِي حَقِّهَا نَصِيبُ أَرْبَعَةٍ بَنِينَ عِنْدَ
أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ وَإِذَا كَانَ الْبَنُونَ أَرْبَعَةً فَنَصِيبُهَا سَهْمٌ
وَأَرْبَعَةُ أَتْسَاعِ سَهْمٍ مِنْ أَرْبَعَةٍ وَعِشْرِينَ مَضْرُوبٍ فِي تِسْعَةٍ فَصَارَ
ثَلَاثَةَ عَشَرَ سَهْمًا فَهِيَ لَهَا وَالْبَاقِي مَوْقُوفٌ وَهُوَ مِائَةٌ وَخَمْسَةَ
عَشَرَ سَهْمًا فَإِنْ وَلَدَتْ بِنْتًا وَاحِدَةً أَوْ أَكْثَرَ فَجَمِيعُ الْمَوْقُوفِ
لِلْبَنَاتِ وَإِنْ وَلَدَتْ ابْنًا وَاحِدًا أَوْ أَكْثَرَ فَيُعْطَى لِلْمَرْأَةِ وَالْأَبَوَيْنِ
مَا كَانَ مَوْقُوفًا مِنْ نَصِيبِهِمْ وَمَا بَقِيَ يُقْسَمُ بَيْنَ الْأَوْلَادِ
وَإِنْ وَلَدَتْ مَيِّتًا فَيُعْطَى لِلْمَرْأَةِ وَالْأَبَوَيْنِ مَا كَانَ مَوْقُوفًا مِنْ
نَصِيبِهِمْ وَلِلْبِنْتِ إِلَى تَمَامِ النِّصْفِ فَهُوَ خَمْسَةٌ وَتِسْعُونَ سَهْمًا
وَالْبَاقِي

وَالْبَاقِي لِلْأَبِ وَهُوَ تِسْعَةُ أَسْهُمٍ لِأَنَّهُ عَصَبَةٌ

بَابُ الْمَفْقُودِ

الْمَفْقُودُ حَيٌّ فِي مَالِهِ حَتَّى لَا يَرِثَ مِنْهُ أَحَدٌ وَيُوقَفُ مَالُهُ حَتَّى يَصِحَّ مَوْتُهُ أَوْ يَمْضِيَ عَلَيْهِ الْمُدَّةُ، وَاخْتَلَفَتِ الرِّوَايَاتُ فِي تِلْكَ الْمُدَّةِ فَفِي ظَاهِرِ الرِّوَايَةِ أَنَّهُ إِذَا لَمْ يَبْقَ أَحَدٌ مِنْ أَقْرَانِهِ حُكِمَ بِمَوْتِهِ وَرَوَى الْحَسَنُ بْنُ زِيَادٍ عَنْ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ تَعَالَى أَنَّ تِلْكَ الْمُدَّةَ مِائَةٌ وَعِشْرُونَ سَنَةً مِنْ يَوْمِ وُلِدَ فِيهِ وَقَالَ مُحَمَّدٌ مِائَةٌ وَعَشْرُ سِنِينَ وَقَالَ أَبُو يُوسُفَ مِائَةٌ وَخَمْسُ سِنِينَ وَقَالَ بَعْضُهُمْ تِسْعُونَ سَنَةً وَعَلَيْهِ الْفَتْوَى وَقَالَ بَعْضُهُمْ مَالُ الْمَفْقُودِ مَوْقُوفٌ إِلَى اجْتِهَادِ الْإِمَامِ وَمَوْقُوفُ الْحُكْمِ فِي حَقِّ غَيْرِهِ حَتَّى يُوقَفَ نَصِيبُهُ مِنْ مَالِ مُوَرِّثِهِ كَمَا فِي الْحَمْلِ فَإِذَا مَضَتِ الْمُدَّةُ وَحُكِمَ بِمَوْتِهِ فَمَالُهُ لِوَرَثَتِهِ الْمَوْجُودِينَ عِنْدَ الْحُكْمِ بِمَوْتِهِ وَمَا كَانَ مَوْقُوفًا لِأَجْلِهِ مِنْ مَالِ مُوَرِّثِهِ يُرَدُّ إِلَى وَارِثِ مُوَرِّثِهِ الَّذِي وُقِفَ ذَلِكَ الْمَوْقُوفُ

لِلْمَرْأَةِ سَبْعَةٌ وَعِشْرُونَ وَلِكُلِّ وَاحِدٍ مِنَ الْأَبَوَيْنِ سِتَّةٌ
وَثَلَاثُونَ وَعَلَى تَقْدِيرِ الْأُنُوثَةِ لِلْمَرْأَةِ أَرْبَعَةٌ وَعِشْرُونَ وَلِكُلِّ
وَاحِدٍ مِنَ الْأَبَوَيْنِ إِثْنَانِ وَثَلَاثُونَ فَيُعْطَى لِلْمَرْأَةِ أَرْبَعَةٌ
وَعِشْرُونَ وَيُوقَفُ مِنْ نَصِيبِهَا ثَلَاثَةُ أَسْهُمٍ وَيُوقَفُ مِنْ نَصِيبِ
كُلِّ وَاحِدٍ مِنَ الْأَبَوَيْنِ أَرْبَعَةُ أَسْهُمٍ وَيُعْطَى لِلْبِنْتِ ثَلَاثَةَ عَشَرَ
سَهْمًا لِأَنَّ الْمَوْقُوفَ فِي حَقِّهَا نَصِيبُ أَرْبَعَةٍ بَنِينَ عِنْدَ
أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ وَإِذَا كَانَ الْبَنُونَ أَرْبَعَةً فَنَصِيبُهَا سَهْمٌ
وَأَرْبَعَةُ أَتْسَاعِ سَهْمٍ مِنْ أَرْبَعَةٍ وَعِشْرِينَ مَضْرُوبٍ فِي تِسْعَةٍ فَصَارَ
ثَلَاثَةَ عَشَرَ سَهْمًا فَهِيَ لَهَا وَالْبَاقِي مَوْقُوفٌ وَهُوَ مِائَةٌ وَخَمْسَةَ
عَشَرَ سَهْمًا فَإِنْ وَلَدَتْ بِنْتًا وَاحِدَةً أَوْ أَكْثَرَ فَجَمِيعُ الْمَوْقُوفِ
لِلْبَنَاتِ وَإِنْ وَلَدَتْ ابْنًا وَاحِدًا أَوْ أَكْثَرَ فَيُعْطَى لِلْمَرْأَةِ وَالْأَبَوَيْنِ
مَا كَانَ مَوْقُوفًا مِنْ نَصِيبِهِمْ وَمَا بَقِيَ يُقْسَمُ بَيْنَ الْأَوْلَادِ
وَإِنْ وَلَدَتْ مَيِّتًا فَيُعْطَى لِلْمَرْأَةِ وَالْأَبَوَيْنِ مَا كَانَ مَوْقُوفًا مِنْ
نَصِيبِهِمْ وَلِلْبِنْتِ إِلَى تَمَامِ النِّصْفِ فَهُوَ خَمْسَةٌ وَتِسْعُونَ سَهْمًا

وَالْبَاقِي

فالحاصل تصحيح المسئلة ثم اضرب نصيب من كان له شيء
من مسئلة ذكورته في مسئلة انوثته أو في وفقها ثم من كان
له شيء من مسئلة أنوثته في مسئلة ذكورته أو في وفقها
كما ذكرنا في الخنثى ثم انظر في الحاصلين من الضرب
أيهما أقل يعطى لذلك الوارث والفضل بينهما موقوف من
نصيب ذلك الوارث فإذا ظهر الحمل فإن كان مستحقا
لجميع الموقوف فبها وإن كان مستحقا للبعض فيأخذ
ذلك البعض والباقي مقسوم بين الورثة فيعطى لكل
واحد من الورثة ما كان موقوفا من نصيبه كما إذا ترك بنتا
وأبوين وامرأة حاملة فالمسئلة من أربعة وعشرين على
تقدير ان الحمل ذكر ومن سبعة وعشرين على تقدير انه
أنثى وبين عددي تصحيح المسئلتين توافق بالثلث
فاضرب وفق احدهما في جميع الاخر صار الحاصل مائتين
وستة عشر سهما ومنها تصح المسئلة وعلى تقدير ذكورته

ولم تكن المراة اقرت بانقضاء العدة يرث ويورث عنه وان
جاءت بالولد لاكثر من اكثر مدة الحمل لا يرث ولا يورث
عنه وان كان الحمل من غيره وجاءت بالولد لستة اشهر او
اقل يرث وان جاءت بالولد لاكثر من اقل مدة الحمل
لا يرث وطريق معرفة حيوة الحمل وقت الولادة ان يوجد
منه ما يعلم به الحيوة كصوت او عطاس او بكاء او ضحك او
تحريك عضو فان خرج اقل الولد ثم مات لا يرث وان خرج
اكثره ثم مات يرث فان خرج الولد مستقيما فالمعتبر
صدره اعني اذا خرج صدره كله يرث وان خرج منكوسا
فالمعتبر سرته الاصل في تصحيح مسائل الحمل ان
تصحح المسئلة على تقديرين اعني على تقدير ان
الحمل ذكر وعلى تقدير انه انثى ثم تنظر بين تصحيح
المسئلتين فان توافقا فاضرب وفق احديهما في جميع
الاخرى وان تباينا فاضرب كل احديهما في جميع الاخرى

فالحاصل

بَابٌ فِي الْحَمْلِ

أَكْثَرُ مُدَّةِ الْحَمْلِ سَنَتَانِ عِنْدَ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ وَأَصْحَابِهِ وَعِنْدَ لَيْثِ بْنِ سَعْدٍ الْفَهْمِيِّ رَحِمَهُ اللَّهُ ثَلَاثُ سِنِينَ وَعِنْدَ الشَّافِعِيِّ رَحِمَهُ اللَّهُ أَرْبَعُ سِنِينَ وَعِنْدَ الزُّهْرِيِّ رَحِمَهُ اللَّهُ سَبْعُ سِنِينَ وَأَقَلُّهَا سِتَّةُ أَشْهُرٍ وَيُوقَفُ لِلْحَمْلِ عِنْدَ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ نَصِيبُ أَرْبَعَةِ بَنِينَ أَوْ نَصِيبُ أَرْبَعِ بَنَاتٍ أَيُّهُمَا أَكْثَرُ وَيُعْطَى لِبَقِيَّةِ الْوَرَثَةِ أَقَلُّ الْأَنْصِبَاءِ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللَّهُ يُوقَفُ نَصِيبُ ثَلَاثَةِ بَنِينَ أَوْ ثَلَاثِ بَنَاتٍ أَيُّهُمَا أَكْثَرُ رَوَاهُ عَنْهُ لَيْثُ ابْنُ سَعْدٍ رَضِيَ اللَّهُ عَنْهُ وَفِي رِوَايَةٍ أُخْرَى نَصِيبُ ابْنَيْنِ وَإِحْدَى الرِّوَايَتَيْنِ عَنْ أَبِي يُوسُفَ رَحِمَهُ اللَّهُ رَوَاهُ عَنْهُ هِشَامٌ وَرُوِيَ الْخَصَّافُ عَنْ أَبِي يُوسُفَ رَحِمَهُ اللَّهُ أَنَّهُ يُوقَفُ نَصِيبُ ابْنٍ وَاحِدٍ أَوْ بِنْتٍ وَاحِدَةٍ وَعَلَيْهِ الْفَتْوَى وَيُؤْخَذُ الْكَفِيلُ عَلَى قَوْلِهِ وَإِنْ كَانَ الْحَمْلُ مِنَ الْمَيِّتِ وَجَاءَتْ بِالْوَلَدِ لِتَمَامِ أَكْثَرِ مُدَّةِ الْحَمْلِ أَوْ أَقَلَّ مِنْهَا

أَرْبَاعِ سَهْمٍ لِأَنَّ الْخُنْثَى يَسْتَحِقُّ سَهْمًا إِنْ كَانَ ذَكَرًا وَ
نِصْفٌ إِنْ كَانَ أُنْثَى وَهٰذَا مُتَيَقَّنٌ فِي أَخْذِ نِصْفِ مَجْمُوعِ
النَّصِيبَيْنِ أَوْ نَقُولُ يَأْخُذُ النِّصْفَ الْمُتَيَقَّنَ مَعَ نِصْفِ
النِّصْفِ الْمُتَنَازَعِ فِيهِ فَصَارَ لَهُ ثَلَاثَةُ أَرْبَاعِ سَهْمٍ لِأَنَّهُ يَعْتَبِرُ
السَّهْمَ وَالْعَوْلَ وَتَصِحُّ مِنْ تِسْعَةٍ أَوْ نَقُولُ لِلِابْنِ سَهْمَانِ وَلِلْبِنْتِ
سَهْمٌ وَلِلْخُنْثَى نِصْفُ النَّصِيبَيْنِ وَهُوَ سَهْمٌ وَنِصْفُ سَهْمٍ وَقَالَ
مُحَمَّدٌ رَحِمَهُ اللّٰهُ يَأْخُذُ الْخُنْثَى خُمْسَيِ الْمَالِ إِنْ كَانَ ذَكَرًا
وَرُبُعَ الْمَالِ إِنْ كَانَ أُنْثَى فَيَأْخُذُ نِصْفَ النَّصِيبَيْنِ وَذٰلِكَ
خُمْسٌ وَثُمْنٌ بِاعْتِبَارِ الْحَالَيْنِ وَتَصِحُّ مِنْ أَرْبَعِينَ وَهُوَ
الْمُجْتَمَعُ مِنْ ضَرْبِ أَحَدِ الْمَسْأَلَتَيْنِ وَهِيَ الْأَرْبَعَةُ
فِي الْأُخْرَى وَهِيَ الْخَمْسَةُ ثُمَّ الْمَبْلَغُ فِي الْحَالَتَيْنِ فَمَنْ
كَانَ لَهُ شَيْءٌ مِنَ الْخَمْسَةِ فَمَضْرُوبٌ فِي الْأَرْبَعَةِ وَمَنْ كَانَ لَهُ
شَيْءٌ مِنَ الْأَرْبَعَةِ فَمَضْرُوبٌ فِي الْخَمْسَةِ فَصَارَ لِلْخُنْثَى
ثَلَاثَةَ عَشَرَ وَلِلِابْنِ ثَمَانِيَةَ عَشَرَ وَلِلْبِنْتِ تِسْعَةُ أَسْهُمٍ.

بَابٌ فِي

كُلَّ فَرِيقٍ يُقْسَمُ عَلَى ابْدَانِ فُرُوعِهِمْ مَعَ اعْتِبَارِ عَدَدِ
الْجِهَاتِ فِي الْفُرُوعِ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللّٰهُ يُقْسَمُ الْمَالُ
عَلَى اَوَّلِ بَطْنٍ اخْتَلَفَ مَعَ اعْتِبَارِ عَدَدِ الْفُرُوعِ وَالْجِهَاتِ
فِي الْاُصُولِ كَمَا فِي الصِّنْفِ الْاَوَّلِ ثُمَّ يَنْتَقِلُ هٰذَا الْحُكْمُ إِلَى
جِهَةِ عُمُومَةِ اَبَوَيْهِ وَخُؤُولَتِهِمَا ثُمَّ إِلَى اَوْلَادِهِمْ ثُمَّ إِلَى جِهَةِ عُمُومَةِ
اَبَوَيْ اَبَوَيْهِ وَخُؤُولَتِهِمَا ثُمَّ إِلَى اَوْلَادِهِمْ كَمَا فِي الْعَصَبَاتِ

بَابُ الْخُنْثَى

لِلْخُنْثَى الْمُشْكِلِ اَقَلُّ النَّصِيبَيْنِ اَعْنِي اَسْوَءَ الْحَالَتَيْنِ
عِنْدَ اَبِي حَنِيفَةَ رَحِمَهُ اللّٰهُ وَاَصْحَابِهِ وَهُوَ قَوْلُ عَامَّةِ الصَّحَابَةِ
رَضِيَ اللّٰهُ عَنْهُمْ وَعَلَيْهِ الْفَتْوَى كَمَا إِذَا تَرَكَ اِبْنًا وَبِنْتًا وَخُنْثَى
فَلِلْخُنْثَى نَصِيبُ بِنْتٍ لِاَنَّهُ مُتَيَقَّنٌ وَعِنْدَ عَامِرٍ الشَّعْبِي
وَهُوَ قَوْلُ اِبْنِ عَبَّاسٍ رَضِيَ اللّٰهُ عَنْهُمَا لِلْخُنْثَى نِصْفُ
النَّصِيبَيْنِ بِالْمُنَازَعَةِ وَاخْتَلَفَا فِي تَخْرِيجِ قَوْلِ الشَّعْبِي قَالَ
اَبُو يُوسُفَ لِلِابْنِ سَهْمٌ وَلِلْبِنْتِ نِصْفُ سَهْمٍ وَلِلْخُنْثَى ثَلَاثَةٌ

الْعَمِّ وَابْنِ الْعَمَّةِ كَلَاهُمَا لِأَبٍ وَأُمٍّ أَوْ لِأَبٍ الْمَالُ كُلُّهُ لِبِنْتِ

الْعَمِّ وَإِنْ كَانَ أَحَدُهُمَا لِأَبٍ وَأُمٍّ وَالْآخَرُ لِأَبٍ كَانَ الْمَالُ كُلُّهُ

لِمَنْ كَانَتْ لَهُ قُوَّةُ الْقَرَابَةِ فِي ظَاهِرِ الرِّوَايَةِ قِيَاسًا عَلَى

خَالَةٍ لِأَبٍ مَعَ كَوْنِهَا وَلَدَ ذِي الرَّحِمِ تَكُونُ هِيَ أَوْلَى

لِقُوَّةِ الْقَرَابَةِ مِنَ الْخَالَةِ لِأُمٍّ مَعَ كَوْنِهَا وَلَدَ الْوَارِثِ لِأَنَّ التَّرْجِيحَ

بِمَعْنًى فِيهِ وَهُوَ قُوَّةُ الْقَرَابَةِ أَوْلَى مِنَ التَّرْجِيحِ فِي غَيْرِهِ وَهُوَ

الْإِدْلَاءُ بِالْوَارِثِ وَقَالَ بَعْضُهُمُ الْمَالُ كُلُّهُ لِبِنْتِ الْعَمِّ لِأَبٍ لِأَنَّهَا

وَلَدُ الْعَصَبَةِ وَإِنِ اسْتَوَوْا فِي الْقُرْبِ وَلَكِنِ اخْتَلَفَ حَيِّزُ قَرَابَتِهِمْ

لِاعْتِبَارِ هَذَا الْقُوَّةِ الْقَرَابَةَ وَلَا لِوَلَدِ الْعَصَبَةِ فِي ظَاهِرِ الرِّوَايَةِ

قِيَاسًا عَلَى عَمَّةٍ لِأَبٍ وَأُمٍّ مَعَ كَوْنِهَا ذَاتَ الْقَرَابَتَيْنِ وَوَلَدَ الْوَارِثِ

مِنَ الْجِهَتَيْنِ وَأُمِّهَا ذَاتُ فَرْضٍ لَيْسَتْ هِيَ بِأَوْلَى مِنَ الْخَالَةِ

لِأَبٍ لَكِنِ الثُّلُثَيْنِ لِمَنْ يَدْلِي بِقَرَابَةِ الْأَبِ فَيُعْتَبَرُ فِيهِمْ قُوَّةُ

الْقَرَابَةِ ثُمَّ وَلَدُ الْعَصَبَةِ وَالثُّلُثُ لِمَنْ يَدْلِي بِقَرَابَةِ الْأُمِّ وَيُعْتَبَرُ

فِيهِمْ قُوَّةُ الْقَرَابَةِ ثُمَّ عِنْدَ أَبِي يُوسُفَ رَحِمَهُ اللَّهُ مَا أَصَابَ

كُلَّ فَرِيقٍ

لِأَبٍ وَمَنْ كَانَ لِأَبٍ أَوْلَى مِمَّنْ كَانَ لِأُمٍّ ذُكُورًا كَانُوا أَوْ إِنَاثًا
وَإِنْ كَانُوا ذُكُورًا وَإِنَاثًا وَاسْتَوَتْ قَرَابَتُهُمْ فَلِلذَّكَرِ مِثْلُ
حَظِّ الْأُنْثَيَيْنِ كَعَمٍّ وَعَمَّةٍ كِلَاهُمَا لِأُمٍّ أَوْ خَالٍ وَخَالَةٍ كِلَاهُمَا
لِأَبٍ وَأُمٍّ أَوْ لِأَبٍ أَوْ لِأُمٍّ فَإِنْ كَانَ حَيِّزُ قَرَابَتِهِمْ مُخْتَلِفًا فَلَا
اعْتِبَارَ لِقُوَّةِ الْقَرَابَةِ كَعَمَّةٍ لِأَبٍ وَأُمٍّ وَخَالَةٍ لِأُمٍّ أَوْ خَالَةٍ لِأَبٍ وَأُمٍّ
وَعَمَّةٍ لِأُمٍّ فَالثُّلُثَانِ لِقَرَابَةِ الْأَبِ وَهُوَ نَصِيبُ الْأَبِ وَالثُّلُثُ
لِقَرَابَةِ الْأُمِّ وَهُوَ نَصِيبُ الْأُمِّ ثُمَّ مَا أَصَابَ كُلَّ فَرِيقٍ يُقْسَمُ بَيْنَهُمْ
كَمَا لَوِ اتَّحَدَ حَيِّزُ قَرَابَتِهِمْ

فَصْلٌ فِي أَوْلَادِهِمْ وَأَحْكَامِهِمْ

الْحُكْمُ فِيهِمْ كَالْحُكْمِ فِي الصِّنْفِ الْأَوَّلِ أَعْنِي أَوْلَادَهُمْ
بِالْمِيرَاثِ أَقْرَبُهُمْ إِلَى الْمَيِّتِ مِنْ أَيِّ جِهَةٍ كَانَ وَإِنِ اسْتَوَوْا
فِي الْقُرْبِ وَكَانَ حَيِّزُ قَرَابَتِهِمْ مُتَّحِدًا فَمَنْ كَانَ لَهُ قُوَّةُ
الْقَرَابَةِ فَهُوَ أَوْلَى بِالْإِجْمَاعِ وَإِنِ اسْتَوَوْا فِي الْقُرْبِ وَالْقَرَابَةِ وَكَانَ
حَيِّزُ قَرَابَتِهِمْ مُتَّحِدًا فَوَلَدُ الْعَصَبَةِ أَوْلَى مِمَّنْ لَا يَكُونُ كَبِنْتٍ

أَثْلَاثًا بِاعْتِبَارِ اسْتِوَاءِ أُصُولِهِمْ فِي قِسْمَةِ الْآبَاءِ وَالْبَاقِي بَيْنَ فُرُوعِ بَنِي الْأَعْيَانِ أَنْصَافًا بِاعْتِبَارِ عَدَدِ الْفُرُوعِ فِي الْأُصُولِ نِصْفُهُ لِبِنْتِ الْأَخِ نَصِيبُ أَبِيهَا وَالنِّصْفُ الْآخَرُ بَيْنَ وَلَدَيِ الْأُخْتِ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ بِاعْتِبَارِ الْأَبْدَانِ وَتَصِحُّ مِنْ تِسْعَةٍ وَلَوْ تَرَكَ ثَلَاثَ بَنَاتِ بَنِي إِخْوَةٍ مُتَفَرِّقِينَ بِهَذِهِ الصُّورَةِ

بنت ابن اخ لاب وام	بنت ابن اخ لاب	بنت ابن اخ لام

الْمَالُ كُلُّهُ لِبِنْتِ ابْنِ الْأَخِ لِأَبٍ وَأُمٍّ بِالِاتِّفَاقِ لِأَنَّهَا وَلَدُ الْعَصَبَةِ وَلَهَا أَيْضًا قُوَّةُ الْقَرَابَةِ

فَصْلٌ فِي الصِّنْفِ الرَّابِعِ

الْحُكْمُ فِيهِمْ أَنَّهُ إِذَا انْفَرَدَ وَاحِدٌ مِنْهُمْ اسْتَحَقَّ الْمَالَ كُلَّهُ لِعَدَمِ الْمُزَاحِمِ وَإِذَا اجْتَمَعُوا وَكَانَ حَيِّزُ قَرَابَتِهِمْ مُتَّحِدًا كَالْعَمَّاتِ وَالْأَعْمَامِ لِأُمٍّ أَوِ الْأَخْوَالِ وَالْخَالَاتِ فَالْأَقْوَى مِنْهُمْ أَوْلَى بِالْإِجْمَاعِ أَعْنِي مَنْ كَانَ لِأَبٍ وَأُمٍّ أَوْلَى مِمَّنْ كَانَ لِأَبٍ وَمَنْ

وَبَعْضُهُمْ أَوْلَادُ أَصْحَابِ الْفَرَائِضِ (وَاخْتَلَفَتْ قَرَابَتُهُمْ)

فَأَبُو يُوسُفَ رَحِمَهُ اللّٰهُ يَعْتَبِرُ الْأَقْوٰى وَمُحَمَّدٌ رَحِمَهُ اللّٰهُ يَقْسِمُ

الْمَالَ عَلَى الْإِخْوَةِ وَالْأَخَوَاتِ نِصْفَيْنِ مَعَ اعْتِبَارِ عَدَدِ الْفُرُوعِ

وَالْجِهَاتِ فِي الْأُصُولِ فَمَا أَصَابَ كُلَّ فَرِيقٍ يَقْسِمُ بَيْنَ فُرُوعِهِمْ

كَمَا فِي الصِّنْفِ الْأَوَّلِ كَبِنْتِ بِنْتِ الْأُخْتِ لِأَبٍ وَأُمٍّ أَوْلَى مِنْ

ابْنِ بِنْتِ الْأُخْتِ لِأَبٍ عِنْدَ أَبِي يُوسُفَ رَحِمَهُ اللّٰهُ لِقُوَّةِ الْقَرَابَةِ

وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللّٰهُ يُقْسَمُ الْمَالُ بَيْنَهُمَا نِصْفَيْنِ بِاعْتِبَارِ

الْأُصُولِ كَمَا إِذَا تَرَكَ ثَلَاثَ بَنَاتِ أُخْوَةٍ مُتَفَرِّقِينَ وَثَلَاثَ

بَنِينَ وَثَلَاثَ بَنَاتِ أَخَوَاتٍ مُتَفَرِّقَاتٍ بِهٰذِهِ الصُّورَةِ

أخ لاب وام أخ لاب أخ لام أخت لاب وام أخت لاب أخت لام

بنت بنت بنت ابن بنت ابن بنت ابن بنت

عِنْدَ أَبِي يُوسُفَ يُقْسَمُ كُلُّ الْمَالِ بَيْنَ فُرُوعِ بَنِي الْأَعْيَانِ ثُمَّ

بَيْنَ فُرُوعِ بَنِي الْعَلَّاتِ ثُمَّ بَيْنَ فُرُوعِ بَنِي الْأَخْيَافِ لِلذَّكَرِ

مِثْلُ حَظِّ الْأُنْثَيَيْنِ أَرْبَاعًا بِاعْتِبَارِ الْأَبْدَانِ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ

اللّٰهُ يُقْسَمُ ثُلُثُ الْمَالِ بَيْنَ فُرُوعِ بَنِي الْأَخْيَافِ عَلَى التَّسْوِيَةِ

بِهِمْ يُقْسَمُ الْمَالُ عَلَى أَوَّلِ بَطْنٍ اخْتَلَفَ كَمَا فِي الصِّنْفِ
الْأَوَّلِ وَإِنِ اخْتَلَفَتْ قَرَابَتُهُمْ فَالثُّلُثَانِ لِقَرَابَةِ الْأَبِ وَهُوَ نَصِيبُ
الْأَبِ وَالثُّلُثُ لِقَرَابَةِ الْأُمِّ وَهُوَ نَصِيبُ الْأُمِّ ثُمَّ مَا أَصَابَ كُلَّ
فَرِيقٍ يُقْسَمُ بَيْنَهُمْ كَمَا لَوِ اتَّحَدَتْ قَرَابَتُهُمْ

فَصْلٌ فِي الصِّنْفِ الثَّالِثِ

الْحُكْمُ فِيهِمْ كَالْحُكْمِ فِي الصِّنْفِ الْأَوَّلِ أَعْنِي أَوْلَاهُمْ
بِالْمِيرَاثِ أَقْرَبُهُمْ إِلَى الْمَيِّتِ وَإِنِ اسْتَوَوْا فِي الْقُرْبِ فَوَلَدُ
الْعَصَبَةِ أَوْلَى مِنْ وَلَدِ ذَوِي الْأَرْحَامِ كَبِنْتِ ابْنِ أَخٍ وَابْنِ
بِنْتِ أُخْتٍ كِلَاهُمَا لِأَبٍ وَأُمٍّ أَوْ لِأَبٍ أَوْ أَحَدُهُمَا لِأَبٍ وَأُمٍّ وَالْآخَرُ
لِأَبٍ الْمَالُ كُلُّهُ لِبِنْتِ ابْنِ الْأَخِ لِأَنَّهَا وَلَدُ الْعَصَبَةِ وَلَوْ كَانَ
لِأُمٍّ بَيْنَهُمَا لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ عِنْدَ أَبِي يُوسُفَ رَحِمَهُ
اللَّهُ ثَلَاثًا بِاعْتِبَارِ الْأَبْدَانِ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللَّهُ أَنْصَافًا
بِاعْتِبَارِ الْأُصُولِ وَإِنِ اسْتَوَوْا فِي الْقُرْبِ وَلَيْسَ فِيهِمْ وَلَدُ عَصَبَةٍ
أَوْ كَانَ كُلُّهُمْ أَوْلَادَ الْعَصَبَاتِ أَوْ كَانَ بَعْضُهُمْ أَوْلَادَ الْعَصَبَاتِ

وَبَعْضُهُمْ

عند ابي يوسف المال بينهم اثلاثا وصار البيت كانه ترك
اربع بنات وابنا فيكون ثلثاه للبنتين وثلثه للابن وعند
محمد رحمه الله المال بينهم على ثمانية وعشرين سهما
للبنتين اثنان وعشرون سهما ستة عشر من قبل أبيهما
وستة اسهم من قبل أمهما وللابن ستة اسهم من قبل أمه

فصل في الصنف الثاني

اولاهم بالميراث اقربهم الى الميت من اي جهة كان
وعند الاستواء (في درجات القرب) فمن كان يدلي الى
الميت (بوارث فهو أولى) عند أبي سهيل الفرائضي و
أبي فضيل الخصاف وعلي ابن عيسى البصري ولا تفضيل
له عند ابي سليمان الجرجاني وابي علي البيهقي البستي
وان استوت منازلهم وليس فيهم من يدلي بوارث او كان
كلهم يدلون بوارث فان اتفقت صفة من يدلون واتحدت
قرابتهم فالقسمة على ابدانهم وان اختلفت صفة من يدلون

أَبِيهَا وَالنِّصْفُ الْآخَرُ لِابْنَيْ بِنْتِ بِنْتِ الْبِنْتِ نَصِيبُ أُمِّهِمَا

وَتَصِحُّ مِنْ ثَمَانِيَةٍ وَعِشْرِينَ وَقَوْلُ مُحَمَّدٍ رَحِمَهُ اللَّهُ أَشْهَرُ

الرِّوَايَتَيْنِ عَنْ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ فِي جَمِيعِ أَحْكَامِ

ذَوِي الْأَرْحَامِ وَهُوَ قَوْلُ أَبِي يُوسُفَ الْأَوَّلُ ثُمَّ رَجَعَ فَقَالَ

لَا عِبْرَةَ لِلْأُصُولِ الْبَتَّةَ

فَصْلٌ

عُلَمَاؤُنَا رَحِمَهُمُ اللَّهُ يَعْتَبِرُونَ الْجِهَاتِ فِي التَّوْرِيثِ غَيْرَ أَنَّ

أَبَا يُوسُفَ رَحِمَهُ اللَّهُ يَعْتَبِرُ الْجِهَاتِ فِي أَبْدَانِ الْفُرُوعِ وَ

مُحَمَّدٌ رَحِمَهُ اللَّهُ يَعْتَبِرُ الْجِهَاتِ فِي الْأُصُولِ كَمَا إِذَا تَرَكَ

بِنْتَيْ بِنْتِ بِنْتٍ وَهُمَا أَيْضًا بِنْتَا ابْنِ بِنْتٍ وَابْنَ بِنْتِ بِنْتٍ

بِهَذِهِ الصُّورَةِ

مي		
بِنْتٌ	بِنْتٌ	بِنْتٌ
بِنْتٌ	ابْنٌ	بِنْتٌ
	بِنْتَيْنِ	ابْنٌ
		عِنْدَ

وَكَذٰلِكَ مُحَمَّدٌ رَحِمَهُ اللّٰهُ يَأْخُذُ الصِّفَةَ مِنَ الْأَصْلِ حَالَةَ

الْقِسْمَةِ وَالْعَدَدَ مِنَ الْفُرُوعِ كَمَا إِذَا تَرَكَ ابْنَيْ بِنْتِ بِنْتٍ

بِنْتٍ وَبِنْتَ ابْنِ بِنْتٍ بِنْتٍ وَبِنْتَيْ بِنْتِ ابْنِ بِنْتٍ بِهٰذِهِ الصُّوْرَةِ

بِنْتٌ	بِنْتٌ	بِنْتٌ
بِنْتٌ	بِنْتٌ	اِبْنٌ
بِنْتٌ	اِبْنٌ	بِنْتٌ
اِبْنَيْنِ	بِنْتٍ	بِنْتَيْنِ

عِنْدَ أَبِي يُوْسُفَ رَحِمَهُ اللّٰهُ يُقْسَمُ الْمَالُ بَيْنَ الْفُرُوعِ أَسْبَاعًا

بِاعْتِبَارِ أَبْدَانِهِمْ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللّٰهُ يُقْسَمُ الْمَالُ عَلَى

أَعْلَى الْخِلَافِ أَعْنِي فِي الْبَطْنِ الثَّانِي أَسْبَاعًا بِاعْتِبَارِ

عَدَدِ الْفُرُوعِ فِي الْأُصُولِ فَعِنْدَهُ أَرْبَعَةُ أَسْبَاعِهِ لِبِنْتَيْ بِنْتِ

ابْنِ الْبِنْتِ إِذْ هِيَ نَصِيْبُ جَدِّهِمَا وَثَلَاثَةُ أَسْبَاعِهِ وَهُوَ

نَصِيْبُ الْبِنْتَيْنِ يُقْسَمُ عَلَى وَلَدَيْهِمَا أَعْنِي فِي الْبَطْنِ

الثَّالِثِ أَنْصَافًا نِصْفُهُ لِبِنْتِ ابْنِ بِنْتِ الْبِنْتِ نَصِيْبُ

الْأُصُولِ أَعْنِي فِي الْبَطْنِ الثَّانِي انْلَا ثَالِثَاهُ لِبِنْتِ ابْنِ
الْبِنْتِ نَصِيبُ أَبِيهَا وَثُلُثُهُ لِابْنِ بِنْتِ الْبِنْتِ نَصِيبُ أُمِّهِ
وَكَذٰلِكَ عِنْدَ مُحَمَّدٍ رَحِمَهُ اللّٰهُ اِذَا كَانَ أَوْلَادُ الْبَنَاتِ
مُخْتَلِفَةً يُقْسَمُ الْمَالُ عَلَى أَوَّلِ بَطْنٍ اخْتَلَفَ فِي الْأُصُولِ
ثُمَّ يُجْعَلُ الذُّكُورُ طَائِفَةً وَالْإِنَاثُ طَائِفَةً أُخْرَى بَعْدَ الْقِسْمَةِ
فَمَا أَصَابَ الذُّكُورَ يُجْمَعُ وَيُقْسَمُ عَلَى الْخِلَافِ الَّذِي
وَقَعَ فِي أَوْلَادِهِمْ وَكَذٰلِكَ مَا أَصَابَ الْإِنَاثَ وَهٰكَذَا يُعْمَلُ

إِلَى أَنْ يَنْتَهِيَ بِهٰذِهِ الصُّورَةِ

ميت

بنت	بنت	بنت	بنت	بنت	بنت	بنت	بنت	بنت	ابن	ابن	ابن
بنت	بنت	بنت	بنت	بنت	بنت	بنت	بنت	بنت	بنت	بنت	بنت
بنت	بنت	بنت	بنت	بنت	بنت	بنت	بنت	بنت	ابن	بنت	بنت
بنت	بنت	بنت	بنت	بنت	بنت	ابن	ابن	ابن	بنت	بنت	بنت
بنت	بنت	بنت	بنت	بنت	بنت	بنت	ابن	ابن	بنت	بنت	بنت
بنت	بنت	بنت	ابن	بنت	بنت	بنت	بنت	بنت	بنت	ابن	بنت
بنت	ابن	بنت	ابن	بنت	بنت	بنت	بنت	بنت	بنت	بنت	بنت

وَكَذٰلِكَ

الْوَارِثِ أَوْلَى مِنْ وَلَدِ ذَوِي الْأَرْحَامِ كَبِنْتِ بِنْتِ الِابْنِ
أَوْلَى مِنِ ابْنِ بِنْتِ الْبِنْتِ وَإِنِ اسْتَوَتْ دَرَجَاتُهُمْ وَلَمْ يَكُنْ
فِيهِمْ وَلَدُ الْوَارِثِ أَوْ كَانَ كُلُّهُمْ وَلَدَ الْوَارِثِ فَعِنْدَ
أَبِي يُوسُفَ رَحِمَهُ اللَّهُ وَالْحَسَنِ بْنِ زِيَادٍ يُعْتَبَرُ أَبْدَانُ
الْفُرُوعِ وَيُقْسَمُ الْمَالُ عَلَيْهِمْ سَوَاءٌ اتَّفَقَتْ صِفَةُ الْأُصُولِ
فِي الذُّكُورَةِ وَالْأُنُوثَةِ أَوِ اخْتَلَفَتْ وَمُحَمَّدٌ رَحِمَهُ اللَّهُ
يَعْتَبِرُ أَبْدَانَ الْفُرُوعِ إِنِ اتَّفَقَتْ صِفَةُ الْأُصُولِ مُوَافِقًا لَهُمَا
وَيَعْتَبِرُ أَبْدَانَ الْأُصُولِ إِنِ اخْتَلَفَتْ صِفَاتُهُمْ وَيُعْطِي الْفُرُوعَ
مِيرَاثَ الْأُصُولِ مُخَالِفًا لَهُمَا كَمَا إِذَا تَرَكَ ابْنَ بِنْتٍ وَبِنْتَ بِنْتٍ
عِنْدَهُمَا الْمَالُ بَيْنَهُمَا لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ بِاعْتِبَارِ
الْأَبْدَانِ وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللَّهُ كَذَلِكَ لِأَنَّ صِفَةَ الْأُصُولِ
مُتَّفِقَةٌ وَلَوْ تَرَكَ بِنْتَ ابْنِ بِنْتٍ وَابْنَ بِنْتِ بِنْتٍ عِنْدَهُمَا
الْمَالُ بَيْنَ الْفُرُوعِ أَثْلَاثًا بِاعْتِبَارِ الْأَبْدَانِ ثُلُثَاهُ لِلذَّكَرِ
وَثُلُثُهُ لِلْأُنْثَى وَعِنْدَ مُحَمَّدٍ رَحِمَهُ اللَّهُ عَلَيْهِ الْمَالُ بَيْنَ

يَنْتَهِي إِلَى جَدِّي الْبَيِّتِ أَوْ جَدَّتَيْهِ وَهِيَ الْعَمَّاتُ وَالْأَعْمَامُ
لِأُمٍّ وَالْأَخْوَالُ وَالْخَالَاتُ فَهَؤُلَاءِ وَكُلُّ مَنْ يُدْلِي إِلَى الْمَيِّتِ
بِهِمْ مِنْ ذَوِي الْأَرْحَامِ رَوَى أَبُو سُلَيْمَانَ عَنْ مُحَمَّدِ ابْنِ
الْحَسَنِ عَنْ أَبِي حَنِيفَةَ رَحِمَهُمُ اللَّهُ إِنَّ أَقْرَبَ الْأَصْنَافِ
الصِّنْفُ الثَّانِي وَإِنْ عَلَوْا ثُمَّ الْأَوَّلُ وَإِنْ سَفَلُوا ثُمَّ الثَّالِثُ
وَإِنْ نَزَلُوا ثُمَّ الرَّابِعُ وَإِنْ بَعُدَ وَاوَرَوَى ابُو يُوسُفَ وَالْحَسَنُ
بْنُ زِيَادٍ عَنْ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ أَنَّ أَقْرَبَ الْأَصْنَافِ
الصِّنْفُ الْأَوَّلُ ثُمَّ الثَّانِي ثُمَّ الثَّالِثُ ثُمَّ الرَّابِعُ كَتَرْتِيبِ الْعَصَبَاتِ
وَهُوَ الْمَأْخُوذُ لِلْفَتْوَى وَعِنْدَهُمَا الصِّنْفُ الثَّالِثُ مُقَدَّمٌ
عَلَى الْجَدِّ أَبِ الْأُمِّ لِأَنَّ عِنْدَهُمَا كُلَّ وَاحِدٍ مِنْهُمْ أَوْلَى مِنْ
فَرْعِهِ وَفَرْعُهُ أَوْلَى مِنْ أَصْلِهِ

فَصْلٌ فِي الصِّنْفِ الْأَوَّلِ

أَوْلَاهُمْ بِالْمِيرَاثِ أَقْرَبُهُمْ إِلَى الْمَيِّتِ كَبِنْتِ الْبِنْتِ فَإِنَّهَا
أَوْلَى مِنْ بِنْتِ بِنْتِ الِابْنِ وَإِنِ اسْتَوَوْا فِي الدَّرَجَةِ فَوَلَدُ
الْوَارِثِ

ثَالِثٌ أَوْ رَابِعٌ فَاجْعَلِ الْمَبْلَغَ الثَّانِيَ مَقَامَ الْأَوَّلِ وَالثَّالِثَ مَقَامَ الثَّانِي فِي الْعَمَلِ ثُمَّ فِي الرَّابِعِ وَالْخَامِسِ كَذَلِكَ إِلَى غَيْرِ النِّهَايَةِ

بَابُ ذَوِي الْأَرْحَامِ

وَذُو الرَّحِمِ هُوَ كُلُّ قَرِيبٍ لَيْسَ بِذِي سَهْمٍ وَلَا عَصَبَةٍ كَانَتْ عَامَّةُ الصَّحَابَةِ يُوَرِّثُونَ ذَوِي الْأَرْحَامِ وَبِهِ قَالَ أَصْحَابُنَا وَمَنْ تَابَعَهُمْ رَحِمَهُمُ اللَّهُ تَعَالَى وَقَالَ زَيْدُ بْنُ ثَابِتٍ رَضِيَ اللَّهُ عَنْهُ لَا يُوَرِّثُ ذَوِي الْأَرْحَامِ وَيُوضَعُ الْمَالُ فِي بَيْتِ الْمَالِ وَبِهِ قَالَ مَالِكٌ وَالشَّافِعِيُّ رَحِمَهُمَا اللَّهُ تَعَالَى وَذَوِي الْأَرْحَامِ أَصْنَافٌ أَرْبَعَةٌ الصِّنْفُ الْأَوَّلُ يَنْتَمِي إِلَى الْمَيِّتِ وَهُمْ أَوْلَادُ الْبَنَاتِ وَأَوْلَادُ بَنَاتِ الِابْنِ وَالصِّنْفُ الثَّانِي يَنْتَمِي إِلَيْهِمُ الْمَيِّتُ وَهُمُ الْأَجْدَادُ السَّاقِطُونَ وَالْجَدَّاتُ السَّاقِطَاتُ وَالصِّنْفُ الثَّالِثُ يَنْتَمِي إِلَى أَبَوَيِ الْمَيِّتِ وَهُمْ أَوْلَادُ الْأَخَوَاتِ وَبَنَاتُ الْإِخْوَةِ وَبَنُو الْإِخْوَةِ لِأُمٍّ وَالصِّنْفُ الرَّابِعُ

وأم فمات الزوج قبل القسمة عن امرأة وأبوين ثم مات
البنت عن ابنين وبنت وجدة ثم مات الجدة عن زوج
وأخوين الأصل فيه أن تصحح مسئلة البيت الأول وتعطي
سهام كل وارث من (هذا) التصحيح ثم تصحح مسئلة
البيت الثاني وتنظر بين ما في يده من التصحيح الأول
وبين التصحيح الثاني إلى ثلاثة أحوال فإن استقام بسبب
الباقي ما في يده من التصحيح الأول على التصحيح
الثاني فلا حاجة إلى الضرب وإن لم يستقم فانظر إن كان
بينهما موافقة فاضرب وفق التصحيح الثاني في جميع
التصحيح الأول وإن كان بينهما مباينة فاضرب كل
التصحيح الثاني في كل التصحيح الأول فالبالغ مخرج
المسئلتين فسهام ورثة البيت الأول يضرب في المضروب
أعني في التصحيح الثاني أو في وفقه وسهام ورثة البيت
الثاني يضرب في كل ما في يده أو في وفقه وإن مات

ثالث

صَحِيحٌ فَاضْرِبْ مَخْرَجَ الثُّلُثِ فِي أَصْلِ الْمَسْأَلَةِ فَإِنْ تَرَكَتْ

جَدًّا وَزَوْجًا وَبِنْتًا وَأُمًّا وَأُخْتَيْ أَبٍ وَأُمٍّ أَوْ لِأَبٍ فَالسُّدُسُ خَيْرٌ

لِلْجَدِّ وَتَعُولُ الْمَسْأَلَةُ إِلَى ثَلَاثَةَ عَشَرَ وَلَا شَيْءَ لِلْأُخْتِ

وَاعْلَمْ أَنَّ زَيْدَ بْنَ ثَابِتٍ رَضِيَ اللَّهُ عَنْهُ لَا يَجْعَلُ الْأُخْتَ

لِأَبٍ وَأُمٍّ أَوْ لِأَبٍ صَاحِبَةَ فَرْضٍ مَعَ الْجَدِّ الْأَبِ فِي الْمَسْأَلَةِ

الْأَكْدَرِيَّةِ وَهِيَ زَوْجٌ وَأُمٌّ وَجَدٌّ وَأُخْتٌ لِأَبٍ وَأُمٍّ أَوْ لِأَبٍ لِلزَّوْجِ

النِّصْفُ وَلِلْأُمِّ الثُّلُثُ وَلِلْجَدِّ السُّدُسُ وَلِلْأُخْتِ النِّصْفُ

ثُمَّ يَضُمُّ الْجَدُّ نَصِيبَهُ إِلَى نَصِيبِ الْأُخْتِ فَيَقْسِمَانِ لِلذَّكَرِ

مِثْلُ حَظِّ الْأُنْثَيَيْنِ لِأَنَّ الْمُقَاسَمَةَ خَيْرٌ لِلْجَدِّ أَصْلُهَا مِنْ سِتَّةٍ

وَتَعُولُ إِلَى تِسْعَةٍ وَتَصِحُّ مِنْ سَبْعَةٍ وَعِشْرِينَ إِنَّمَا سُمِّيَتْ

أَكْدَرِيَّةً لِأَنَّهَا وَاقِعَةٌ فِي امْرَأَةٍ مِنْ بَنِي أَكْدَرَ وَلَوْ كَانَ

مَكَانَ الْأُخْتِ أَخٌ أَوْ أُخْتَانِ فَلَا عَوْلَ وَلَا أَكْدَرِيَّةَ

بَابُ الْمُنَاسَخَةِ

وَلَوْ صَارَ بَعْضُ الْأَنْصِبَاءِ مِيرَاثًا قَبْلَ الْقِسْمَةِ كَزَوْجٍ وَبِنْتٍ

أَنْ يَجْعَلَ الْجَدَّ فِي الْقِسْمَةِ كَأَحَدٍ مِنَ الْإِخْوَةِ وَ

بَنُو الْعَلَّاتِ يَدْخُلُونَ فِي الْقِسْمَةِ مَعَ بَنِي الْأَعْيَانِ

إِضْرَارًا لِلْجَدِّ فَإِذَا أَخَذَ الْجَدُّ نَصِيبَهُ فَبَنُو الْعَلَّاتِ يَخْرُجُونَ

مِنَ الْبَيْنِ خَائِبِينَ بِغَيْرِ شَيْءٍ وَالْبَاقِي لِبَنِي الْأَعْيَانِ

إِلَّا إِذَا كَانَتْ مِنْ بَنِي الْأَعْيَانِ أُخْتٌ وَاحِدَةٌ أَخَذَتْ

فَرْضَهَا أَعْنِي الْكُلَّ بَعْدَ نَصِيبِ الْجَدِّ فَإِنْ بَقِيَ شَيْءٌ

فَلِبَنِي الْعَلَّاتِ وَإِلَّا فَلَا شَيْءَ لَهُمْ وَذَلِكَ كَجَدٍّ وَأُخْتٍ

لِأَبٍ وَأُمٍّ وَأُخْتَيْنِ لِأَبٍ فَبَقِيَ لِلْأُخْتَيْنِ لِأَبٍ عُشْرُ الْمَالِ وَ

تَصِحُّ مِنْ عِشْرِينَ وَلَوْ كَانَتْ فِي هَذِهِ الْمَسْأَلَةِ أُخْتٌ لِأَبٍ

لَمْ يَبْقَ لَهَا شَيْءٌ وَإِذَا اخْتَلَطَ بِهِمْ ذَوُو سَهْمٍ فَلِلْجَدِّ هَهُنَا أَفْضَلُ

الْأُمُورِ الثَّلَاثَةِ بَعْدَ فَرْضِ ذِي سَهْمٍ أَمَّا الْمُقَاسَمَةُ كَزَوْجٍ

وَجَدٍّ وَأَخٍ وَأَمَّا ثُلُثُ مَا يَبْقَى كَجَدٍّ وَجَدَّةٍ وَأَخَوَيْنِ وَأُخْتٍ

لِأَبٍ وَأُمٍّ وَأَمَّا سُدُسُ جَمِيعِ الْمَالِ كَجَدٍّ وَجَدَّةٍ وَبِنْتٍ وَأَخَوَيْنِ

وَإِذَا كَانَ ثُلُثُ الْبَاقِي خَيْرًا لِلْجَدِّ وَلَيْسَ لِلْبَاقِي ثُلُثٌ

صَحِيحٌ

مَخْرَجِ فَرْضِ مَنْ لَا يُرَدُّ عَلَيْهِ فَالْمَبْلَغُ مَخْرَجُ فُرُوضِ

الْغَرِيقَيْنِ كَأَرْبَعِ زَوْجَاتٍ وَتِسْعِ بَنَاتٍ وَسِتِّ جَدَّاتٍ

ثُمَّ اضْرِبْ سِهَامَ مَنْ لَا يُرَدُّ عَلَيْهِ فِي مَسْأَلَةِ مَنْ يُرَدُّ عَلَيْهِ

وَسِهَامَ كُلِّ مَنْ يُرَدُّ عَلَيْهِ فِيمَا بَقِيَ مِنْ مَخْرَجِ فَرْضِ

مَنْ لَا يُرَدُّ عَلَيْهِ فَإِنِ انْكَسَرَ عَلَى الْبَعْضِ صَحَّحَ وَاذَا

الْمَسْأَلَةَ بِالْأُصُولِ الْمَذْكُورَةِ

بَابُ مُقَاسَمَةِ الْجَدِّ

قَالَ أَبُو بَكْرٍ الصِّدِّيقُ رَضِيَ اللَّهُ عَنْهُ وَمَنْ تَابَعَهُ مِنَ

الصَّحَابَةِ بَنُو الْأَعْيَانِ وَبَنُو الْعَلَّاتِ لَا يَرِثُونَ مَعَ الْجَدِّ وَهَذَا

قَوْلُ أَبِي حَنِيفَةَ رَحِمَهُ اللَّهُ وَبِهِ يُفْتَى وَقَالَ زَيْدُ بْنُ ثَابِتٍ

يَرِثُونَ مَعَ الْجَدِّ وَهُوَ قَوْلُهُمَا وَقَوْلُ مَالِكٍ وَالشَّافِعِيِّ

رَحِمَهُمُ اللَّهُ تَعَالَى وَعِنْدَ زَيْدِ بْنِ ثَابِتٍ رَحْمَةُ اللَّهِ تَعَالَى

عَلَيْهِ لِلْجَدِّ مَعَ بَنِي الْأَعْيَانِ وَالْعَلَّاتِ أَفْضَلُ الْأَمْرَيْنِ

مِنَ الْمُقَاسَمَةِ وَمِنْ ثُلُثِ جَمِيعِ الْمَالِ وَتَفْسِيرُ الْمُقَاسَمَةِ

إِذَا كَانَ فِيهَا نِصْفٌ وَسُدُسٌ أَوْ مِنْ خَمْسَةٍ إِذَا كَانَ فِيهَا
ثُلُثَانِ وَسُدُسٌ أَوْ نِصْفٌ وَسُدُسَانِ أَوْ نِصْفٌ وَثُلُثٌ وَالثَّالِثُ
أَنْ يَكُونَ مَعَ الْأَوَّلِ مَنْ لَا يُرَدُّ عَلَيْهِ فَاعْطِ فَرْضَ مَنْ لَا يُرَدُّ
عَلَيْهِ مِنْ أَقَلِّ مَخَارِجِهِ فَإِنِ اسْتَقَامَ الْبَاقِي عَلَى رُؤُسِ
مَنْ يُرَدُّ عَلَيْهِ فَبِهَا كَزَوْجٍ وَثَلَاثِ بَنَاتٍ وَإِنْ لَمْ يَسْتَقِمْ فَاضْرِبْ
وَفْقَ رُؤُسِهِمْ فِي مَخْرَجِ فَرْضِ مَنْ لَا يُرَدُّ عَلَيْهِ إِنْ وَافَقَ
رُؤُسَهُمُ الْبَاقِي كَزَوْجٍ وَسِتِّ بَنَاتٍ وَإِلَّا فَاضْرِبْ كُلَّ
عَدَدِ رُؤُسِهِمْ فِي مَخْرَجِ فَرْضِ مَنْ لَا يُرَدُّ عَلَيْهِ فَالْمَبْلَغُ مِنْهَا
تَصِحُّ الْمَسْئَلَةُ وَالرَّابِعُ أَنْ يَكُونَ مَعَ الثَّانِي مَنْ لَا يُرَدُّ عَلَيْهِ
فَاقْسِمْ مَا بَقِيَ مِنْ مَخْرَجِ فَرْضِ مَنْ لَا يُرَدُّ عَلَيْهِ عَلَى
مَسْئَلَةِ مَنْ يُرَدُّ عَلَيْهِ فَإِنِ اسْتَقَامَ الْبَاقِي فَبِهَا وَهٰذَا فِي
صُورَةٍ وَاحِدَةٍ وَهِيَ أَنْ يَكُونَ لِلزَّوْجَاتِ الرُّبُعُ وَيَكُونَ
الْبَاقِي بَيْنَ أَهْلِ الرَّدِّ أَثْلَاثًا كَزَوْجَةٍ وَجَدَّةٍ وَأُخْتَيْنِ
لِأُمٍّ وَإِنْ لَمْ يَسْتَقِمْ فَاضْرِبْ جَمِيعَ مَسْئَلَةِ مَنْ يُرَدُّ عَلَيْهِ فِي
مَخْرَجِ

وهو فيها فضل عن فرض ذوي الفروض ولا مستحق له

يرد (ذلك) على ذوي الفروض بقدر حقوقهم إلا على

الزوجين وهو قول عامة الصحابة (كعلي ومن تابعه)

رضي الله عنهم وبه أخذ أصحابنا رحمهم الله وقال زيد

بن ثابت لا يرد الفاضل (بل هو) لبيت المال وبه أخذ

عروة والزهري ومالك والشافعي رحمهم الله تعالى

ثم مسائل الباب أقسام اربعة احدها ان يكون في

المسئلة جنس واحد ممن يرد عليه عند عدم من لا يرد

عليه فاجعل المسئلة من رؤسهم كما إذا ترك (الميت)

بنتين أو أختين أو جدتين فاجعل المسئلة من اثنين

والثاني إذا اجتمع في المسئلة جنسان أو ثلاثة أجناس

ممن يرد عليه عند عدم من لا يرد عليه فاجعل المسئلة

من سهامهم أعني من اثنين ان كان في المسئلة سدسان

أو من ثلاثة إذا كان فيها ثلث وسدس أو من أربعة

وَفْقَ التَّرِكَةِ ثُمَّ اقْسِمِ الْمَبْلَغَ (الْحَاصِلَ) عَلَى وَفْقِ
الْمَسْأَلَةِ إِنْ كَانَ بَيْنَ التَّرِكَةِ وَالْمَسْأَلَةِ مُوَافَقَةٌ وَإِنْ كَانَ
بَيْنَهُمَا مُبَايَنَةٌ فَاضْرِبْ فِي كُلِّ التَّرِكَةِ ثُمَّ اقْسِمِ الْحَاصِلَ
عَلَى جَمِيعِ (تَصْحِيحِ) الْمَسْأَلَةِ فَالْخَارِجُ نَصِيبُ ذَلِكَ
الْغَرِيمِ فِي الْوَجْهَيْنِ وَأَمَّا فِي قَضَاءِ الدُّيُونِ فَدَيْنُ
كُلِّ غَرِيمٍ بِمَنْزِلَةِ التَّصْحِيحِ

فَصْلٌ فِي التَّخَارُجِ

مَنْ صَالَحَ عَلَى شَيْءٍ مِنَ التَّرِكَةِ فَاطْرَحْ سِهَامَهُ مِنَ
التَّصْحِيحِ ثُمَّ اقْسِمْ مَا فِي التَّرِكَةِ عَلَى سِهَامِ الْبَاقِينَ
كَزَوْجٍ وَأُمٍّ وَعَمٍّ فَصَالَحَ الزَّوْجُ عَلَى مَا فِي ذِمَّتِهِ لِلزَّوْجَةِ
مِنَ الْمَهْرِ وَخَرَجَ مِنَ الْبَيْنِ فَيُقْسَمُ مَا فِي التَّرِكَةِ بَيْنَ
الْأُمِّ وَالْعَمِّ أَثْلَاثًا بِقَدْرِ سِهَامِهِمَا وَحِ يَكُونُ (سَهْمَانِ لِلْأُمِّ وَ
سَهْمٌ وَاحِدٌ لِلْعَمِّ)

بَابُ الرَّدِّ الرَّدُّ ضِدُّ الْعَوْلِ

وَهُوَ

وهو فيها فضل عن فرض ذوي الفروض ولا مستحق له
يرد (ذلك) على ذوي الفروض بقدر حقوقهم إلا على
الزوجين وهو قول عامة الصحابة (كعلي ومن تابعه)
رضي الله عنهم وبه أخذ أصحابنا رحمهم الله وقال زيد
بن ثابت لا يرد الفاضل (بل هو) لبيت المال وبه اخذ
عروة والزهري ومالك والشافعي رحمهم الله تعالى
ثم مسائل الباب أقسام اربعة احدها ان يكون في
المسئلة جنس واحد ممن يرد عليه عند عدم من لا يرد
عليه فاجعل المسئلة من رؤسهم كما إذا ترك (الميت)
بنتين أو أختين أو جدتين فاجعل المسئلة من اثنين
والثاني إذا اجتمع في المسئلة جنسان أو ثلاثة أجناس
ممن يرد عليه عند عدم من لا يرد عليه فاجعل المسئلة
من سهامهم أعني من اثنين ان كان في المسئلة سدسان
أو من ثلاثة إذا كان فيها ثلث وسدس أو من أربعة

وَفْقَ التَّرِكَةِ ثُمَّ اقْسِمِ الْمَبْلَغَ (الْحَاصِلَ) عَلَى وَفْقِ
الْمَسْأَلَةِ إِنْ كَانَ بَيْنَ التَّرِكَةِ وَالْمَسْأَلَةِ مُوَافَقَةٌ وَإِنْ كَانَ
بَيْنَهُمَا مُبَايَنَةٌ فَاضْرِبْ فِي كُلِّ التَّرِكَةِ ثُمَّ اقْسِمِ الْحَاصِلَ
عَلَى جَمِيعِ (تَصْحِيحِ) الْمَسْأَلَةِ فَالْخَارِجُ نَصِيبُ ذَلِكَ
الْغَرِيمِ فِي الْوَجْهَيْنِ وَأَمَّا فِي قَضَاءِ الدُّيُونِ فَدَيْنُ
كُلِّ غَرِيمٍ بِمَنْزِلَةِ التَّصْحِيحِ

فَصْلٌ فِي التَّخَارُجِ

مَنْ صَالَحَ عَلَى شَيْءٍ مِنَ التَّرِكَةِ فَاطْرَحْ سِهَامَهُ مِنَ
التَّصْحِيحِ ثُمَّ اقْسِمْ مَا فِي التَّرِكَةِ عَلَى سِهَامِ الْبَاقِينَ
كَزَوْجٍ وَأُمٍّ وَعَمٍّ فَصَالَحَ الزَّوْجُ عَلَى مَا فِي ذِمَّتِهِ لِلزَّوْجَةِ
مِنَ الْمَهْرِ وَخَرَجَ مِنَ الْبَيْنِ فَيُقْسَمُ مَا فِي التَّرِكَةِ بَيْنَ
الْأُمِّ وَالْعَمِّ أَثْلَاثًا بِقَدْرِ سِهَامِهِمَا وَحِ يَكُونُ (سَهْمَانِ لِلْأُمِّ وَ
سَهْمٌ وَاحِدٌ لِلْعَمِّ)

بَابُ الرَّدِّ الرَّدُّ ضِدُّ الْعَوْلِ

وَهُوَ

وهو فيها فضل عن فرض ذوي الفروض ولا مستحق له

يرد ذلك على ذوي الفروض بقدر حقوقهم إلا على

الزوجين وهو قول عامة الصحابة كعلي ومن تابعه

رضي الله عنهم وبه أخذ أصحابنا رحمهم الله وقال زيد

بن ثابت لا يرد الفاضل بل هو لبيت المال وبه أخذ

عروة والزهري ومالك والشافعي رحمهم الله تعالى

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عليه فاجعل المسئلة من رؤسهم كما إذا ترك البيت

بنتين أو أختين أو جدتين فاجعل المسئلة من اثنين

والثاني إذا اجتمع في المسئلة جنسان أو ثلاثة أجناس

ممن يرد عليه عند عدم من لا يرد عليه فاجعل المسئلة

من سهامهم أعني من اثنين ان كان في المسئلة سدسان

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وَفْقِ التَّرِكَةِ ثُمَّ اقْسِمِ الْمَبْلَغَ (الْحَاصِلَ) عَلَى وَفْقِ

الْمَسْأَلَةِ إِنْ كَانَ بَيْنَ التَّرِكَةِ وَالْمَسْأَلَةِ مُوَافَقَةٌ وَإِنْ كَانَ

بَيْنَهُمَا مُبَايَنَةٌ فَاضْرِبْ فِي كُلِّ التَّرِكَةِ ثُمَّ اقْسِمِ الْحَاصِلَ

عَلَى جَمِيعِ (تَصْحِيحِ) الْمَسْأَلَةِ فَالْخَارِجُ نَصِيبُ ذَلِكَ

الْغَرِيمِ فِي الْوَجْهَيْنِ وَأَمَّا فِي قَضَاءِ الدُّيُونِ فَدَيْنُ

كُلِّ غَرِيمٍ بِمَنْزِلَةِ التَّصْحِيحِ

فَصْلٌ فِي التَّخَارُجِ

مَنْ صَالَحَ عَلَى شَيْءٍ مِنَ التَّرِكَةِ فَاطْرَحْ سِهَامَهُ مِنَ

التَّصْحِيحِ ثُمَّ اقْسِمْ مَا فِي التَّرِكَةِ عَلَى سِهَامِ الْبَاقِينَ

كَزَوْجٍ وَأُمٍّ وَعَمٍّ فَصَالَحَ الزَّوْجُ عَلَى مَا فِي ذِمَّتِهِ لِلزَّوْجَةِ

مِنَ الْمَهْرِ وَخَرَجَ مِنَ الْبَيْنِ فَيُقْسَمُ مَا فِي التَّرِكَةِ بَيْنَ

الْأُمِّ وَالْعَمِّ أَثْلَاثًا بِعَدَدِ سِهَامِهِمَا وَحِ يَكُونُ (سَهْمَانِ لِلْأُمِّ وَ

سَهْمٌ وَاحِدٌ لِلْعَمِّ)

بَابُ الرَّدِّ الرَّدُّ ضِدُّ الْعَوْلِ

وَهُوَ

عَلَيْهِمِ الْمَضْرُوبَ فَالْحَاصِلُ نَصِيبُ كُلِّ وَاحِدٍ مِنْ أَحَادِ

ذٰلِكَ الْفَرِيقِ وَوَجْهٌ آخَرُ وَهُوَ طَرِيقُ النِّسْبَةِ وَهُوَ الْأَوْضَحُ

فَهُوَ أَنْ يُنْسَبَ سِهَامُ كُلِّ فَرِيقٍ مِنْ أَصْلِ الْمَسْئَلَةِ إِلَى

عَدَدِ رُؤُسِهِمْ مُفْرَدًا ثُمَّ يُعْطَى بِمِثْلِ تِلْكَ النِّسْبَةِ مِنَ

الْمَضْرُوبِ لِكُلِّ وَاحِدٍ مِنْ أَحَادِ ذٰلِكَ الْفَرِيقِ

فَصْلٌ فِي قِسْمَةِ التَّرِكَاتِ بَيْنَ الْوَرَثَةِ وَالْغُرَمَاءِ

إِنْ كَانَ بَيْنَ التَّرِكَةِ وَالتَّصْحِيحِ مُبَايَنَةٌ فَاضْرِبْ سِهَامَ كُلِّ

وَارِثٍ مِنَ التَّصْحِيحِ فِي جَمِيعِ التَّرِكَةِ ثُمَّ اقْسِمِ الْمَبْلَغَ عَلَى

التَّصْحِيحِ وَإِذَا كَانَ بَيْنَ التَّصْحِيحِ وَالتَّرِكَةِ مُوَافَقَةٌ

فَاضْرِبْ سِهَامَ كُلِّ وَارِثٍ مِنَ التَّصْحِيحِ فِي وَفْقِ التَّرِكَةِ

ثُمَّ اقْسِمِ الْمَبْلَغَ عَلَى وَفْقِ التَّصْحِيحِ فَالْخَارِجُ نَصِيبُ ذٰلِكَ

الْوَارِثِ فِي الْوَجْهَيْنِ هٰذَا إِنَّمَا هُوَ لِمَعْرِفَةِ نَصِيبِ كُلِّ

فَرْدٍ مِنَ الْوَرَثَةِ وَأَمَّا لِمَعْرِفَةِ نَصِيبِ كُلِّ فَرِيقٍ مِنْهُمْ

فَاضْرِبْ مَا كَانَ لِكُلِّ فَرِيقٍ مِنْ أَصْلِ الْمَسْئَلَةِ فِي

الْأَعْدَادِ فِي جَمِيعِ الثَّانِي ثُمَّ يُضْرَبُ مَا بَلَغَ فِي جَمِيعِ
الثَّالِثِ ثُمَّ مَا بَلَغَ فِي جَمِيعِ الرَّابِعِ ثُمَّ يُضْرَبُ مَا اجْتَمَعَ
فِي أَصْلِ الْمَسْأَلَةِ كَامْرَأَتَيْنِ وَسِتِّ جَدَّاتٍ وَعَشَرَةِ بَنَاتٍ
وَسَبْعَةِ أَعْمَامٍ

فَصْلٌ

وَإِذَا أَرَدْتَ أَنْ تَعْرِفَ نَصِيبَ كُلِّ فَرِيقٍ مِنَ التَّصْحِيحِ
فَاضْرِبْ مَا كَانَ لِكُلِّ فَرِيقٍ مِنْ أَصْلِ الْمَسْأَلَةِ فِيمَا ضَرَبْتَهُ
فِي أَصْلِ الْمَسْأَلَةِ فَمَا حَصَلَ كَانَ نَصِيبَ ذَلِكَ الْفَرِيقِ
وَإِذَا أَرَدْتَ أَنْ تَعْرِفَ نَصِيبَ كُلِّ وَاحِدٍ مِنْ أَحَادِ ذَلِكَ
الْفَرِيقِ مِنَ التَّصْحِيحِ فَاقْسِمْ مَا كَانَ لِكُلِّ فَرِيقٍ مِنْ
أَصْلِ الْمَسْأَلَةِ عَلَى عَدَدِ رُؤُسِهِمْ ثُمَّ اضْرِبِ الْخَارِجَ فِي
الْمَضْرُوبِ فَالْحَاصِلُ نَصِيبُ كُلِّ وَاحِدٍ مِنْ أَحَادِ ذَلِكَ
الْفَرِيقِ وَوَجْهٌ آخَرُ أَنْ تَقْسِمَ الْمَضْرُوبَ عَلَى أَيِّ شِئْتَ
ثُمَّ تَضْرِبَ الْخَارِجَ فِي نَصِيبِ الْفَرِيقِ الَّذِي قَسَمْتَ

عَلَيْهِمْ

أَصْلِ الْمَسْئَلَةِ كَزَوْجٍ وَخَمْسِ أَخَوَاتٍ لِأَبٍ وَأُمٍّ وَأَمَّا الْأَرْبَعَةُ

فَأَحَدُهَا أَنْ يَكُونَ الْكَسْرُ عَلَى طَائِفَتَيْنِ أَوْ أَكْثَرَ وَلَكِنْ

بَيْنَ أَعْدَادِ رُؤُسِهِمْ مُبَايَنَةٌ فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَحَدَ

الْأَعْدَادِ فِي أَصْلِ الْمَسْئَلَةِ مِثْلَ سِتِّ بَنَاتٍ وَثَلَاثِ جَدَّاتٍ

وَثَلَاثَةِ أَعْمَامٍ وَالثَّانِي أَنْ يَكُونَ بَعْضُ الْأَعْدَادِ فِي بَعْضِهِ

مُتَدَاخِلًا فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَكْثَرَ الْأَعْدَادِ فِي

أَصْلِ الْمَسْئَلَةِ كَأَرْبَعِ زَوْجَاتٍ وَثَلَاثِ جَدَّاتٍ وَاثْنَيْ

عَشَرَ عَمًّا وَالثَّالِثُ أَنْ يُوَافِقَ بَعْضُ الْأَعْدَادِ بَعْضًا فَالْحُكْمُ

فِيهَا أَنْ يَضْرِبَ وَفْقَ أَحَدِ الْأَعْدَادِ فِي جَمِيعِ الثَّانِي ثُمَّ

مَا بَلَغَ فِي وَفْقِ الثَّالِثِ إِنْ وَافَقَ الْمَبْلَغَ الثَّالِثَ وَإِلَّا

فَالْمَبْلَغُ فِي جَمِيعِ الثَّالِثِ ثُمَّ فِي الرَّابِعِ كَذَلِكَ ثُمَّ يَضْرِبُ

الْمَبْلَغَ فِي أَصْلِ الْمَسْئَلَةِ كَأَرْبَعِ زَوْجَاتٍ وَثَمَانِي عَشَرَةَ بِنْتًا

وَخَمْسَ عَشَرَةَ جَدَّةً وَسِتَّةِ أَعْمَامٍ وَالرَّابِعُ أَنْ تَكُونَ الْأَعْدَادُ

مُتَبَايِنَةً لَا يُوَافِقُ بَعْضُهَا بَعْضًا فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَحَدَ

الي العشرة وفيها وراء العشرة يتوا فقان بجزء أعني في
أحد عشر بجزء من أحد عشر وفي خمسة عشر بجزء من
خمسة عشر فاعتبر هذا

باب التصحيح

يحتاج في تصحيح المسائل الي سبعة أصول ثلاثة منها
بين السهام والرؤس وأربعة منها بين الرؤس والرؤس أما
الثلاثة فاحدها ان كان سهام كل فريق منقسمة عليهم
بلا كسر فلا حاجة الي الضرب كأبوين وبنتين والثاني
هو أن ينكسر علي طائفة واحدة تصيبهم ولكن بين سهامهم
ورؤسهم موافقة فيضرب وفق عدد رؤس من انكسر
عليهم السهام في أصل المسئلة وعولها ان كانت عائلة
كأبوين وعشر بنات او زوج وأبوين وست بنات والثالث
ان ينكسر سهامهم ولا يكون بين سهامهم ورؤسهم موافقة
فيضرب كل عدد رؤس من انكسر عليهم السهام في
أصل

أَصْلِ الْمَسْئَلَةِ كَزَوْجٍ وَخَمْسِ أَخَوَاتٍ لِأَبٍ وَأُمٍّ وَأَمَّا الْأَرْبَعَةُ

فَأَحَدُهَا أَنْ يَكُونَ الْكَسْرُ عَلَى طَائِفَتَيْنِ أَوْ أَكْثَرَ وَلَكِنْ

بَيْنَ أَعْدَادِ رُؤُسِهِمْ مُمَاثَلَةٌ فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَحَدَ

الْأَعْدَادِ فِي أَصْلِ الْمَسْئَلَةِ مِثْلُ سِتِّ بَنَاتٍ وَثَلَاثِ جَدَّاتٍ

وَثَلَاثَةِ أَعْمَامٍ وَالثَّانِي أَنْ يَكُونَ بَعْضُ الْأَعْدَادِ فِي بَعْضِهِ

مُتَدَاخِلًا فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَكْثَرَ الْأَعْدَادِ فِي

أَصْلِ الْمَسْئَلَةِ كَأَرْبَعِ زَوْجَاتٍ وَثَلَاثِ جَدَّاتٍ وَاثْنَيْ

عَشَرَ عَمًّا وَالثَّالِثُ أَنْ يُوَافِقَ بَعْضُ الْأَعْدَادِ بَعْضًا فَالْحُكْمُ

فِيهَا أَنْ يُضْرَبَ وَفْقُ أَحَدِ الْأَعْدَادِ فِي جَمِيعِ الثَّانِي ثُمَّ

مَا بَلَغَ فِي وَفْقِ الثَّالِثِ إِنْ وَافَقَ الْمَبْلَغَ الثَّالِثَ وَإِلَّا

فَالْمَبْلَغُ فِي جَمِيعِ الثَّالِثِ ثُمَّ فِي الرَّابِعِ كَذَلِكَ ثُمَّ يُضْرَبُ

الْمَبْلَغُ فِي أَصْلِ الْمَسْئَلَةِ كَأَرْبَعِ زَوْجَاتٍ وَثَمَانِي عَشَرَةَ بِنْتًا

وَخَمْسَ عَشَرَةَ جَدَّةً وَسِتَّةِ أَعْمَامٍ وَالرَّابِعُ أَنْ تَكُونَ الْأَعْدَادُ

مُتَبَايِنَةً لَا يُوَافِقُ بَعْضُهَا بَعْضًا فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَحَدَ

الي العشرة وفيما وراء العشرة يتوا فقان بجزء أعني في
أحد عشر بجزء من أحد عشر وفي خمسة عشر بجزء من
خمسة عشر فاعتبر هذا

باب التصحيح

يحتاج في تصحيح المسائل الي سبعة أصول ثلاثة منها
بين السهام والرؤس وأربعة منها بين الرؤس والرؤس أما
الثلاثة فاحدها إن كان سهام كل فريق منقسمة عليهم
بلا كسر فلا حاجة إلي الضرب كأبوين وبنتين والثاني
هو أن ينكسر علي طائفة واحدة تصيبهم ولكن بين سهامهم
ورؤسهم موافقة فيضرب وفق عدد رؤس من انكسر
عليهم السهام في أصل المسئلة وعولها ان كانت عائلة
كأبوين وعشر بنات أو زوج وأبوين وستّ بنات والثالث
ان ينكسر سهامهم ولا يكون بين سهامهم ورؤسهم موافقة
فيضرب كل عدد رؤس من انكسر عليهم السهام في
أصل

أَوْنَقُولُ (تَدَاخُلُ الْعَدَدَيْنِ) هُوَ أَنْ يَكُونَ أَكْثَرُ الْعَدَدَيْنِ
مُنْقَسِمًا عَلَى الْأَقَلِّ قِسْمَةً صَحِيحَةً أَوْنَقُولُ هُوَ إِنْ زَيْدَ عَلَى
الْأَقَلِّ مِثْلُهُ أَوْأَمْثَالُهُ فَيُسَاوِي الْأَكْثَرَ أَوْنَقُولُ أَنْ يَكُونَ
الْأَقَلُّ جُزْءَ الْأَكْثَرِ مِثْلُ ثَلَاثَةٍ وَتِسْعَةٍ وَتَوَافُقُ الْعَدَدَيْنِ أَنْ
لَا يُعِدَّ أَقَلَّهُمَا الْأَكْثَرَ وَلَكِنْ يُعِدُّهُمَا عَدَدٌ ثَالِثٌ كَالثَّمَانِيَةِ
مَعَ الْعِشْرِينَ يُعِدُّهُمَا أَرْبَعَةٌ فَهُمَا مُتَوَافِقَانِ بِالرُّبْعِ لِأَنَّ
الْعَدَدَ الْعَادَّ لَهُمَا مَخْرَجُ جُزْءِ الْوِفْقِ وَتَبَايُنُ الْعَدَدَيْنِ
أَنْ لَا يُعِدَّ الْعَدَدَيْنِ (الْمُخْتَلِفَيْنِ) مَعًا عَدَدٌ ثَالِثٌ (أَصْلًا)
كَالتِّسْعَةِ مَعَ الْعَشَرَةِ وَطَرِيقُ مَعْرِفَةِ الْمُوَافَقَةِ وَالْمُبَايَنَةِ بَيْنَ
الْمِقْدَارَيْنِ الْمُخْتَلِفَيْنِ أَنْ يُنْقَصَ مِنَ الْأَكْثَرِ بِمِقْدَارِ
الْأَقَلِّ مِنَ الْجَانِبَيْنِ مَرَّةً أَوْمِرَارًا حَتَّى اتَّفَقَا فِي دَرَجَةٍ
وَاحِدَةٍ فَإِنِ اتَّفَقَا فِي وَاحِدٍ فَلَا وِفْقَ بَيْنَهُمَا وَإِنِ اتَّفَقَا فِي
عَدَدٍ فَهُمَا مُتَوَافِقَانِ فِي ذَلِكَ الْعَدَدِ فَفِي الِاثْنَيْنِ
بِالنِّصْفِ وَفِي الثَّلَاثَةِ بِالثُّلُثِ وَفِي الْأَرْبَعَةِ بِالرُّبْعِ هَكَذَا

اَلْعَوْلُ أَنْ يَزِيدَ عَلَى الْمَخْرَجِ شَيْءٌ مِنْ أَجْزَائِهِ إِذَا ضَاقَ

الْمَخْرَجُ عَنْ فَرْضٍ اِعْلَمْ أَنَّ مَجْمُوعَ الْمَخَارِجِ سَبْعَةٌ أَرْبَعَةٌ

مِنْهَا لَا تَعُولُ وَهِيَ الْاِثْنَانِ وَالثَّلَاثَةُ وَالْاَرْبَعَةُ وَالثَّمَانِيَةُ

وَثَلَاثَةٌ مِنْهَا قَدْ تَعُولُ أَمَّا السِّتَّةُ فَتَعُولُ اِلَى عَشَرَ وِتْرًا أَوْ شَفْعًا

وَأَمَّا اِثْنَا عَشَرَ فَهِيَ تَعُولُ اِلَى سَبْعَةَ عَشَرَ وِتْرًا لَا شَفْعًا

وَأَمَّا أَرْبَعَةٌ وَعِشْرُونَ فَاِنَّهَا تَعُولُ اِلَى سَبْعَةٍ وَعِشْرِينَ عَوْلًا

وَاحِدًا فِي الْمَسْأَلَةِ الْمِنْبَرِيَّةِ وَهِيَ اِمْرَأَةٌ وَبِنْتَانِ وَأَبَوَانِ

وَلَا يَزِيدُ عَلَى هٰذَا اِلَّا عِنْدَ اِبْنِ مَسْعُودٍ رَضِيَ اللّٰهُ عَنْهُ

فَاِنَّ عِنْدَهُ تَعُولُ (أَرْبَعَةٌ وَعِشْرُونَ) اِلَى اِحْدَى وَثَلَاثِينَ

(كَامْرَأَةٍ وَأُمٍّ وَأُخْتَيْنِ لِأَبٍ وَأُمٍّ وَأُخْتَيْنِ لِأُمٍّ وَابْنٍ مَحْرُومٍ)

بَابُ مَعْرِفَةِ التَّمَاثُلِ وَالتَّدَاخُلِ

وَالتَّوَافُقِ وَالتَّبَايُنِ بَيْنَ الْعَدَدَيْنِ

تَمَاثُلُ الْعَدَدَيْنِ كَوْنُ أَحَدِهِمَا مُسَاوِيًا لِلْآخَرِ

وَتَدَاخُلُ الْعَدَدَيْنِ أَنْ يُعَدَّ أَقَلُّهُمَا الْأَكْثَرَ أَيْ يُفْنِيهِ

أَوْ تَقُولُ

عَلَيْهِمِ الْمَضْرُوبَ فَالْحَاصِلُ نَصِيبُ كُلِّ وَاحِدٍ مِنْ أَحَادِ

ذَلِكَ الْفَرِيقِ وَوَجْهٌ آخَرُ وَهُوَ طَرِيقُ النِّسْبَةِ وَهُوَ الْأَوْضَحُ

فَهُوَ أَنْ يُنْسَبَ سِهَامُ كُلِّ فَرِيقٍ مِنْ أَصْلِ الْمَسْئَلَةِ إِلَى

عَدَدِ رُؤُسِهِمْ مُفْرَدًا ثُمَّ يُعْطَى بِمِثْلِ تِلْكَ النِّسْبَةِ مِنَ

الْمَضْرُوبِ لِكُلِّ وَاحِدٍ مِنْ أَحَادِ ذَلِكَ الْفَرِيقِ

فَصْلٌ فِي قِسْمَةِ التَّرِكَاتِ بَيْنَ الْوَرَثَةِ وَالْغُرَمَاءِ

إِذَا كَانَ بَيْنَ التَّرِكَةِ وَالتَّصْحِيحِ مُبَايَنَةٌ فَاضْرِبْ سِهَامَ كُلِّ

وَارِثٍ مِنَ التَّصْحِيحِ فِي جَمِيعِ التَّرِكَةِ ثُمَّ اقْسِمِ الْمَبْلَغَ عَلَى

التَّصْحِيحِ وَإِذَا كَانَ بَيْنَ التَّصْحِيحِ وَالتَّرِكَةِ مُوَافَقَةٌ

فَاضْرِبْ سِهَامَ كُلِّ وَارِثٍ مِنَ التَّصْحِيحِ فِي وَفْقِ التَّرِكَةِ

ثُمَّ اقْسِمِ الْمَبْلَغَ عَلَى وَفْقِ التَّصْحِيحِ فَالْخَارِجُ نَصِيبُ ذَلِكَ

الْوَارِثِ فِي الْوَجْهَيْنِ هَذَا إِنَّمَا هُوَ لِمَعْرِفَةِ نَصِيبِ كُلِّ

فَرْدٍ مِنَ الْوَرَثَةِ وَأَمَّا لِمَعْرِفَةِ نَصِيبِ كُلِّ فَرِيقٍ مِنْهُمْ

فَاضْرِبْ مَا كَانَ لِكُلِّ فَرِيقٍ مِنْ أَصْلِ الْمَسْئَلَةِ فِي

الْأَعْدَادِ فِي جَمِيعِ الثَّانِي ثُمَّ يُضْرَبُ مَا بَلَغَ فِي جَمِيعِ
الثَّالِثِ ثُمَّ مَا بَلَغَ فِي جَمِيعِ الرَّابِعِ ثُمَّ يُضْرَبُ مَا اجْتَمَعَ
فِي أَصْلِ الْمَسْأَلَةِ كَامْرَأَتَيْنِ وَسِتِّ جَدَّاتٍ وَعَشَرَةِ بَنَاتٍ
وَسَبْعَةِ أَعْمَامٍ

فَصْلٌ

وَإِذَا أَرَدْتَ أَنْ تَعْرِفَ نَصِيبَ كُلِّ فَرِيقٍ مِنَ التَّصْحِيحِ
فَاضْرِبْ مَا كَانَ لِكُلِّ فَرِيقٍ مِنْ أَصْلِ الْمَسْأَلَةِ فِيمَا ضَرَبْتَهُ
فِي أَصْلِ الْمَسْأَلَةِ فَمَا حَصَلَ كَانَ نَصِيبَ ذَلِكَ الْفَرِيقِ
وَإِذَا أَرَدْتَ أَنْ تَعْرِفَ نَصِيبَ كُلِّ وَاحِدٍ مِنْ أَحَادِ ذَلِكَ
الْفَرِيقِ مِنَ التَّصْحِيحِ فَاقْسِمْ مَا كَانَ لِكُلِّ فَرِيقٍ مِنْ
أَصْلِ الْمَسْأَلَةِ عَلَى عَدَدِ رُؤُسِهِمْ ثُمَّ اضْرِبِ الْخَارِجَ فِي
الْمَضْرُوبِ فَالْحَاصِلُ نَصِيبُ كُلِّ وَاحِدٍ مِنْ أَحَادِ ذَلِكَ
الْفَرِيقِ وَوَجْهٌ آخَرُ أَنْ تَقْسِمَ الْمَضْرُوبَ عَلَى أَيِّ شِئْتَ
ثُمَّ تَضْرِبَ الْخَارِجَ فِي نَصِيبِ الْفَرِيقِ الَّذِي قَسَمْتَ
عَلَيْهِمِ

أَصْلِ الْمَسْئَلَةِ كَزَوْجٍ وَخَمْسِ أَخَوَاتٍ لِأَبٍ وَأُمٍّ وَأَمَّا الْأَرْبَعَةُ

فَأَحَدُهَا أَنْ يَكُونَ الْكَسْرُ عَلَى طَائِفَتَيْنِ أَوْ أَكْثَرَ وَلَكِنْ

بَيْنَ أَعْدَادِ رُؤُسِهِمْ مُمَاثَلَةٌ فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَحَدَ

الْأَعْدَادِ فِي أَصْلِ الْمَسْئَلَةِ مِثْلُ سِتِّ بَنَاتٍ وَثَلْثِ جَدَّاتٍ

وَثَلَاثَةِ أَعْمَامٍ وَالثَّانِي أَنْ يَكُونَ بَعْضُ الْأَعْدَادِ فِي بَعْضِهِ

مُتَدَاخِلًا فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَكْثَرَ الْأَعْدَادِ فِي

أَصْلِ الْمَسْئَلَةِ كَأَرْبَعِ زَوْجَاتٍ وَثَلَاثِ جَدَّاتٍ وَاثْنَيْ

عَشَرَ عَمًّا وَالثَّالِثُ أَنْ يُوَافِقَ بَعْضُ الْأَعْدَادِ بَعْضًا فَالْحُكْمُ

فِيهَا أَنْ يُضْرَبَ وَفْقُ أَحَدِ الْأَعْدَادِ فِي جَمِيعِ الثَّانِي ثُمَّ

مَا بَلَغَ فِي وَفْقِ الثَّالِثِ إِنْ وَافَقَ الْمَبْلَغَ الثَّالِثَ وَإِلَّا

فَالْمَبْلَغُ فِي جَمِيعِ الثَّالِثِ ثُمَّ فِي الرَّابِعِ كَذَلِكَ ثُمَّ يُضْرَبُ

الْمَبْلَغُ فِي أَصْلِ الْمَسْئَلَةِ كَأَرْبَعِ زَوْجَاتٍ وَثَمَانِي عَشَرَةَ بِنْتًا

وَخَمْسَ عَشَرَةَ جَدَّةً وَسِتَّةِ أَعْمَامٍ وَالرَّابِعُ أَنْ تَكُونَ الْأَعْدَادُ

مُتَبَايِنَةً لَا يُوَافِقُ بَعْضُهَا بَعْضًا فَالْحُكْمُ فِيهَا أَنْ يَضْرِبَ أَحَدَ

اِلَي الْعَشَرَةِ وَفِيهَا وَرَاءَ الْعَشَرَةِ يَتَوَافَقَانِ بِجُزْءٍ أَعْنِي فِي
أَحَدَ عَشَرَ بِجُزْءٍ مِنْ أَحَدَ عَشَرَ وَفِي خَمْسَةَ عَشَرَ بِجُزْءٍ مِنْ
خَمْسَةَ عَشَرَ فَاعْتَبِرْ هٰذَا

بَابُ التَّصْحِيحِ

يُحْتَاجُ فِي تَصْحِيحِ الْمَسَائِلِ اِلَي سَبْعَةِ أُصُولٍ ثَلَاثَةٌ مِنْهَا
بَيْنَ السِّهَامِ وَالرُّؤُسِ وَأَرْبَعَةٌ مِنْهَا بَيْنَ الرُّؤُسِ وَالرُّؤُسِ أَمَّا
الثَّلَاثَةُ فَاَحَدُهَا اِنْ كَانَ سِهَامُ كُلِّ فَرِيقٍ مُنْقَسِمَةً عَلَيْهِمْ
بِلَا كَسْرٍ فَلَا حَاجَةَ اِلَي الضَّرْبِ كَأَبَوَيْنِ وَبِنْتَيْنِ وَالثَّانِي
هُوَ اَنْ يَنْكَسِرَ عَلَي طَائِفَةٍ وَاحِدَةٍ تُصِيبُهُمْ وَلٰكِنْ بَيْنَ سِهَامِهِمْ
وَرُؤُسِهِمْ مُوَافَقَةٌ فَيُضْرَبُ وَفْقُ عَدَدِ رُؤُسٍ مِنَ انْكَسَرَ
عَلَيْهِمُ السِّهَامُ فِي أَصْلِ الْمَسْئَلَةِ وَعَوْلُهَا اِنْ كَانَتْ عَائِلَةً
كَأَبَوَيْنِ وَعَشْرِ بَنَاتٍ اَوْ زَوْجٍ وَأَبَوَيْنِ وَسِتِّ بَنَاتٍ وَالثَّالِثُ
اَنْ يَنْكَسِرَ سِهَامُهُمْ وَلَا يَكُونُ بَيْنَ سِهَامِهِمْ وَرُؤُسِهِمْ مُوَافَقَةٌ
فَيُضْرَبُ كُلُّ عَدَدِ رُؤُسٍ مَنِ انْكَسَرَ عَلَيْهِمُ السِّهَامُ فِي
أَصْلِ

أَوْنَقُولُ (تَدَاخُلُ الْعَدَدَيْنِ) هُوَ أَنْ يَكُونَ أَكْثَرُ الْعَدَدَيْنِ

مُنْقَسِمًا عَلَى الْأَقَلِّ قِسْمَةً صَحِيحَةً أَوْنَقُولُ هُوَ إِنْ زَيْدَ عَلَى

الْأَقَلِّ مِثْلُهُ أَوْأَمْثَالُهُ فَيُسَاوِي الْأَكْثَرَ أَوْنَقُولُ أَنْ يَكُونَ

الْأَقَلُّ جُزْءَ الْأَكْثَرِ مِثْلَ ثَلَاثَةٍ وَتِسْعَةٍ وَتَوَافُقُ الْعَدَدَيْنِ أَنْ

لَا يُعِدَّ أَقَلَّهُمَا الْأَكْثَرَ وَلَكِنْ يُعِدُّهُمَا عَدَدٌ ثَالِثٌ كَالثَّمَانِيَةِ

مَعَ الْعِشْرِينَ يُعِدُّهُمَا أَرْبَعَةٌ فَهُمَا مُتَوَافِقَانِ بِالرُّبْعِ لِأَنَّ

الْعَدَدَ الْعَادَّ لَهُمَا مَخْرَجُ جُزْءِ الْوِفْقِ وَتَبَايُنُ الْعَدَدَيْنِ

أَنْ لَا يُعِدَّ الْعَدَدَيْنِ (الْمُخْتَلِفَيْنِ) مَعًا عَدَدٌ ثَالِثٌ أَصْلًا

كَالتِّسْعَةِ مَعَ الْعَشَرَةِ وَطَرِيقُ مَعْرِفَةِ الْمُوَافَقَةِ وَالْمُبَايَنَةِ بَيْنَ

الْمِقْدَارَيْنِ الْمُخْتَلِفَيْنِ أَنْ يُنْقَصَ مِنَ الْأَكْثَرِ بِمِقْدَارِ

الْأَقَلِّ مِنَ الْجَانِبَيْنِ مَرَّةً أَوْمِرَارًا حَتَّى اتَّفَقَا فِي دَرَجَةٍ

وَاحِدَةٍ فَإِنِ اتَّفَقَا فِي وَاحِدٍ فَلَا وِفْقَ بَيْنَهُمَا وَإِنِ اتَّفَقَا فِي

عَدَدٍ فَهُمَا مُتَوَافِقَانِ فِي ذَلِكَ الْعَدَدِ فَفِي الِاثْنَيْنِ

بِالنِّصْفِ وَفِي الثَّلَاثَةِ بِالثُّلُثِ وَفِي الْأَرْبَعَةِ بِالرُّبْعِ هٰكَذَا

أَلْعَوْلُ أَنْ يَزِيدَ عَلَى الْمَخْرَجِ شَيْءٌ مِنْ أَجْزَائِهِ إِذَا ضَاقَ

الْمَخْرَجُ عَنْ فَرْضٍ إِعْلَمْ أَنَّ مَجْمُوعَ الْمَخَارِجِ سَبْعَةٌ أَرْبَعَةٌ

مِنْهَا لَا تَعُولُ وَهِيَ الْإِثْنَانِ وَالثَّلَاثَةُ وَالْأَرْبَعَةُ وَالثَّمَانِيَةُ

وَثَلَاثَةٌ مِنْهَا قَدْ تَعُولُ أَمَّا السِّتَّةُ فَتَعُولُ إِلَى عَشَرَ وِتْرًا أَوْ شَفْعًا

وَأَمَّا اثْنَا عَشَرَ فَهِيَ تَعُولُ إِلَى سَبْعَةَ عَشَرَ وِتْرًا لَا شَفْعًا

وَأَمَّا أَرْبَعَةٌ وَعِشْرُونَ فَإِنَّهَا تَعُولُ إِلَى سَبْعَةٍ وَعِشْرِينَ عَوْلًا

وَاحِدًا فِي الْمَسْأَلَةِ الْمِنْبَرِيَّةِ وَهِيَ امْرَأَةٌ وَبِنْتَانِ وَأَبَوَانِ

وَلَا يَزِيدُ عَلَى هٰذَا إِلَّا عِنْدَ ابْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ

فَإِنَّ عِنْدَهُ تَعُولُ أَرْبَعَةٌ وَعِشْرُونَ إِلَى إِحْدَى وَثَلَاثِينَ

كَامْرَأَةٍ وَأُمٍّ وَأُخْتَيْنِ لِأَبٍ وَأُمٍّ وَأُخْتَيْنِ لِأُمٍّ وَابْنٍ مَحْرُومٍ

بَابُ مَعْرِفَةِ التَّمَاثُلِ وَالتَّدَاخُلِ

وَالتَّوَافُقِ وَالتَّبَايُنِ بَيْنَ الْعَدَدَيْنِ

تَمَاثُلُ الْعَدَدَيْنِ كَوْنُ أَحَدِهِمَا مُسَاوِيًا لِلْآخَرِ

وَتَدَاخُلُ الْعَدَدَيْنِ أَنْ يُعَدَّ أَقَلُّهُمَا الْأَكْثَرَ أَيْ يُفْنِيهِ

أَوْ تَقُولُ

أَوْنَقُولُ (تَدَاخُلُ الْعَدَدَيْنِ) هُوَ أَنْ يَكُونَ أَكْثَرُ الْعَدَدَيْنِ

مُنْقَسِمًا عَلَى الْأَقَلِّ قِسْمَةً صَحِيحَةً أَوْنَقُولُ هُوَ إِنْ زَيْدَ عَلَى

الْأَقَلِّ مِثْلُهُ أَوْأَمْثَالُهُ فَيُسَاوِي الْأَكْثَرَ أَوْنَقُولُ أَنْ يَكُونَ

الْأَقَلُّ جُزْءَ الْأَكْثَرِ مِثْلُ ثَلَاثَةٍ وَتِسْعَةٍ وَتَوَافُقُ الْعَدَدَيْنِ أَنْ

لَا يُعِدَّ أَقَلَّهُمَا الْأَكْثَرَ وَلَكِنْ يُعِدُّهُمَا عَدَدٌ ثَالِثٌ كَالثَّمَانِيَةِ

مَعَ الْعِشْرِينَ يُعِدُّهُمَا أَرْبَعَةٌ فَهُمَا مُتَوَافِقَانِ بِالرُّبُعِ لِأَنَّ

الْعَدَدَ الْعَادَّ لَهُمَا مَخْرَجُ جُزْءِ الْوِفْقِ وَتَبَايُنُ الْعَدَدَيْنِ

أَنْ لَا يُعِدَّ الْعَدَدَيْنِ (الْمُخْتَلِفَيْنِ) مَعًا عَدَدٌ ثَالِثٌ (أَصْلًا)

كَالتِّسْعَةِ مَعَ الْعَشَرَةِ وَطَرِيقُ مَعْرِفَةِ الْمُوَافَقَةِ وَالْمُبَايَنَةِ بَيْنَ

الْمِقْدَارَيْنِ الْمُخْتَلِفَيْنِ أَنْ يُنْقَصَ مِنَ الْأَكْثَرِ بِمِقْدَارِ

الْأَقَلِّ مِنَ الْجَانِبَيْنِ مَرَّةً أَوْمِرَارًا حَتَّى اتَّفَقَا فِي دَرَجَةٍ

وَاحِدَةٍ فَإِنِ اتَّفَقَا فِي وَاحِدٍ فَلَا وِفْقَ بَيْنَهُمَا وَإِنِ اتَّفَقَا فِي

عَدَدٍ فَهُمَا مُتَوَافِقَانِ فِي ذَلِكَ الْعَدَدِ فَفِي الِاثْنَيْنِ

بِالنِّصْفِ وَفِي الثَّلَاثَةِ بِالثُّلُثِ وَفِي الْأَرْبَعَةِ بِالرُّبُعِ هٰكَذَا

أَلْعَوْلُ أَنْ يَزِيدَ عَلَى الْمَخْرَجِ شَيْءٌ مِنْ أَجْزَائِهِ إِذَا ضَاقَ

الْمَخْرَجُ عَنْ فَرْضٍ إِعْلَمْ أَنَّ مَجْمُوعَ الْمَخَارِجِ سَبْعَةٌ أَرْبَعَةٌ

مِنْهَا لَا تَعُولُ وَهِيَ الْإِثْنَانِ وَالثَّلَاثَةُ وَالْأَرْبَعَةُ وَالثَّمَانِيَةُ

وَثَلَاثَةٌ مِنْهَا قَدْ تَعُولُ أَمَّا السِّتَّةُ فَتَعُولُ إِلَى عَشَرَ وِتْرًا أَوْ شَفْعًا

وَأَمَّا اثْنَا عَشَرَ فَهِيَ تَعُولُ إِلَى سَبْعَةَ عَشَرَ وِتْرًا لَا شَفْعًا

وَأَمَّا أَرْبَعَةٌ وَعِشْرُونَ فَإِنَّهَا تَعُولُ إِلَى سَبْعَةٍ وَعِشْرِينَ عَوْلًا

وَاحِدًا فِي الْمَسْأَلَةِ الْمِنْبَرِيَّةِ وَهِيَ امْرَأَةٌ وَبِنْتَانِ وَأَبَوَانِ

وَلَا يَزِيدُ عَلَى هٰذَا إِلَّا عِنْدَ ابْنِ مَسْعُودٍ رَضِيَ اللّٰهُ عَنْهُ

فَإِنَّ عِنْدَهُ تَعُولُ أَرْبَعَةٌ وَعِشْرُونَ إِلَى إِحْدَى وَثَلَاثِينَ

كَامْرَأَةٍ وَأُمٍّ وَأُخْتَيْنِ لِأَبٍ وَأُمٍّ وَأُخْتَيْنِ لِأُمٍّ وَابْنٍ مَحْرُومٍ

بَابُ مَعْرِفَةِ التَّمَاثُلِ وَالتَّدَاخُلِ

وَالتَّوَافُقِ وَالتَّبَايُنِ بَيْنَ الْعَدَدَيْنِ

تَمَاثُلُ الْعَدَدَيْنِ كَوْنُ أَحَدِهِمَا مُسَاوِيًا لِلْآخَرِ

وَتَدَاخُلُ الْعَدَدَيْنِ أَنْ يُعَدَّ أَقَلُّهُمَا الْأَكْثَرَ أَيْ يُفْنِيهِ

أَوْ تَقُولُ

تَعَالَي نَوْعَا نِ اْلاَوَّلُ النِّصْفُ وَالرُّبْعُ وَالثُّمُنُ وَالثَّانِي
الثُّلُثَانِ وَالثُّلُثُ وَالسُّدُسُ عَلَي التَّنْصِيْفِ وَالتَّضْعِيْفِ
فَاِذَا جَاءَ فِي الْمَسَائِلِ مِنْ هٰذِهِ الْفُرُوْضِ اَحَادُ اَحَادُ
فَمَخْرَجُ كُلِّ فَرْضٍ سَمِّيْهُ اِلَّا النِّصْفُ فَاِنَّهُ مِنَ الْاِثْنَيْنِ
كَالرُّبْعِ مِنْ اَرْبَعَةٍ وَالثُّمُنُ مِنْ ثَمَانِيَةٍ وَالثُّلُثُ مِنْ
ثَلَاثَةٍ وَاِذَا جَاءَ مَثْنَي اَوْ ثُلَاثُ وَهُمَا مِنْ نَوْعٍ وَاحِدٍ فَكُلُّ
عَدَدٍ يَكُوْنُ مَخْرَجًا لِلْجُزْءِ فَذٰلِكَ الْعَدَدُ اَيْضًا مَخْرَجٌ
لِضِعْفِ ذٰلِكَ الْجُزْءِ وَلِضِعْفِ ضِعْفِهِ كَالسِّتَّةِ هِيَ
مَخْرَجٌ لِلسُّدُسِ وَلِضِعْفِهِ وَاِذَا اخْتَلَطَ النِّصْفُ مِنَ النَّوْعِ
الْاَوَّلِ بِكُلِّ الثَّانِي اَوْ بِبَعْضِهِ فَهُوَ مِنْ سِتَّةٍ وَاِذَا اخْتَلَطَ
الرُّبْعُ بِكُلِّ الثَّانِي اَوْ بِبَعْضِهِ فَهُوَ مِنْ اِثْنَيْ عَشَرَ وَاِذَا
اخْتَلَطَ الثُّمُنُ بِكُلِّ الثَّانِي اَوْ بِبَعْضِهِ فَهُوَ مِنْ اَرْبَعَةٍ وَ
عِشْرِيْنَ

بَابُ الْعَوْلِ

وَالْأَبُ وَالزَّوْجُ وَالْبِنْتُ وَالْأُمُّ وَالزَّوْجَةُ وَفَرِيقٌ يَرِثُونَ
بِحَالٍ وَيُحْجَبُونَ بِحَالٍ وَهٰذَا مَبْنِيٌّ عَلَى أَصْلَيْنِ أَحَدُهُمَا هُوَ أَنَّ كُلَّ مَنْ يُدْلِي إِلَى الْمَيِّتِ بِشَخْصٍ لَا يَرِثُ مَعَ
وُجُودِ ذٰلِكَ الشَّخْصِ كَابْنِ الِابْنِ مَعَ الِابْنِ سِوَى
أَوْلَادِ الْأُمِّ فَإِنَّهُمْ يَرِثُونَ مَعَهَا لِانْعِدَامِ اسْتِحْقَاقِهَا جَمِيعَ
التَّرِكَةِ وَالثَّانِي الْأَقْرَبُ فَالْأَقْرَبُ كَمَا ذَكَرْنَا فِي
الْعَصَبَاتِ وَالْمَحْرُومُ لَا يَحْجُبُ عِنْدَنَا وَعِنْدَ ابْنِ مَسْعُودٍ
رَضِيَ اللّٰهُ عَنْهُ يَحْجُبُ حَجْبَ النُّقْصَانِ كَالْكَافِرِ
وَالْقَاتِلِ وَالرَّقِيقِ وَالْمَحْجُوبُ يَحْجُبُ بِالْإِتِّفَاقِ
كَالِاثْنَيْنِ مِنَ الْإِخْوَةِ وَالْأَخَوَاتِ فَصَاعِدًا مِنْ أَيِّ جِهَةٍ
كَانَا فَإِنَّهُمَا لَا يَرِثَانِ مَعَ الْأَبِ لٰكِنْ يَحْجُبَانِ الْأُمَّ مِنَ
الثُّلُثِ إِلَى السُّدُسِ

بَابُ مَخَارِجِ الْفُرُوضِ

اِعْلَمْ أَنَّ الْفُرُوضَ السِّتَّةَ الْمَذْكُورَةَ فِي كِتَابِ اللّٰهِ
تَعَالَى

الْمُعْتِقِ وَابْنُهُ سُدُسُ الْوَلَاءِ لِلْأَبِ وَالْبَاقِي لِلِابْنِ
وَعِنْدَهُمَا كُلُّهُ لِلِابْنِ وَلَوْ تَرَكَ ابْنَ الْمُعْتِقِ وَجَدَّهُ
فَالْوَلَاءُ كُلُّهُ لِلِابْنِ بِالْإِتِّفَاقِ وَمَنْ مَلَكَ ذَا رَحِمٍ مَحْرَمٍ
مِنْهُ عَتَقَ عَلَيْهِ وَيَكُونُ وَلَاءُهُ لَهُ كَثَلَاثِ بَنَاتٍ لِلصُّغْرَى
عِشْرُونَ دِينَارًا وَلِلْكُبْرَى ثَلَاثُونَ دِينَارًا فَاشْتَرَتَا أَبَاهُمَا
بِالْخَمْسِينَ ثُمَّ مَاتَ الْأَبُ وَتَرَكَ شَيْئًا مِنَ الْمَالِ فَالثُّلُثَانِ
بَيْنَهُنَّ أَثْلَاثًا بِالْفَرْضِ وَالْبَاقِي بَيْنَ مُشْتَرَتَيِ الْأَبِ
أَخْمَاسًا ثَلَاثَةٌ أَخْمَاسٍ لِلْكُبْرَى وَخُمْسَاهُ لِلصُّغْرَى
تَصِحُّ مِنْ خَمْسَةٍ وَأَرْبَعِينَ

بَابُ الْحَجْبِ

اَلْحَجْبُ عَلَى نَوْعَيْنِ حَجْبُ نُقْصَانٍ وَهُوَ حَجْبٌ عَنْ سَهْمٍ
إِلَى سَهْمٍ وَذَلِكَ لِخَمْسَةٍ نَفَرٍ لِلزَّوْجَيْنِ وَالْأُمِّ وَبِنْتِ الِابْنِ
وَالْأُخْتِ لِأَبٍ وَقَدْ مَرَّ بَيَانُهُ وَحَجْبُ حِرْمَانٍ وَالْوَرَثَةُ فِيهِ
فَرِيقَانِ فَرِيقٌ لَا يُحْجَبُونَ بِحَالٍ الْبِنْتُ وَهُمْ سِتَّةٌ الِابْنُ

وَابْنُ الْأَخِ لِأَبٍ وَأُمٍّ أَوْلَى مِنَ ابْنِ الْأَخِ لِأَبٍ وَكَذَلِكَ

الْحُكْمُ فِي أَعْمَامِ الْمَيِّتِ ثُمَّ فِي أَعْمَامِ أَبِيهِ ثُمَّ فِي أَعْمَامِ

جَدِّهِ أَمَّا الْعَصَبَةُ بِغَيْرِهِ فَأَرْبَعٌ مِنَ النِّسْوَةِ وَهُنَّ اللَّاتِي

فَرْضُهُنَّ النِّصْفُ وَالثُّلُثَانِ يَصِرْنَ عَصَبَةً بِإِخْوَتِهِنَّ

كَمَا ذَكَرْنَا فِي حَالَاتِهِنَّ وَمَنْ لَا فَرْضَ لَهَا مِنَ الْإِنَاثِ

وَأَخُوهَا عَصَبَةٌ لَا تَصِيرُ عَصَبَةً بِأَخِيهَا كَالْعَمِّ وَالْعَمَّةِ

الكلالة للعم دون العمة

وَأَمَّا الْعَصَبَةُ مَعَ غَيْرِهِ فَكُلُّ أُنْثَى تَصِيرُ عَصَبَةً مَعَ أُنْثَى

أُخْرَى كَالْأُخْتِ مَعَ الْبِنْتِ كَمَا ذَكَرْنَا وَآخِرُ الْعَصَبَاتِ

مَوْلَى الْعَتَاقَةِ ثُمَّ عَصَبَتُهُ عَلَى التَّرْتِيبِ الَّذِي ذَكَرْنَا

لِقَوْلِهِ عَلَيْهِ الصَّلٰوةُ وَالسَّلَامُ الْوَلَاءُ لُحْمَةٌ كَلُحْمَةِ النَّسَبِ

وَلَا شَيْءَ لِلْإِنَاثِ مِنْ وَرَثَةِ الْمُعْتِقِ لِقَوْلِهِ عَلَيْهِ الصَّلٰوةُ

وَالسَّلَامُ لَيْسَ لِلنِّسَاءِ مِنَ الْوَلَاءِ (شَيْءٌ) إِلَّا مَا اعْتَقْنَ

أَوْ اعْتَقَ مَنْ اعْتَقْنَ أَوْ كَاتَبْنَ أَوْ كَاتَبَ مَنْ كَاتَبْنَ

أَوْ دَبَّرْنَ أَوْ دَبَّرَ مَنْ دَبَّرْنَ أَوْ جَرَّ وَلَاءَ مُعْتَقِهِنَّ وَلَوْ تَرَكَ أَبَا

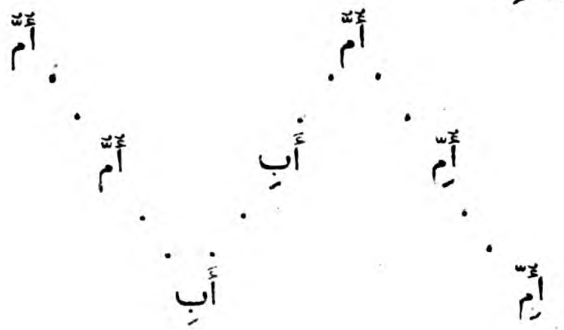
الْمُعْتِقِ

بَابُ الْعَصَبَاتِ

اَلْعَصَبَاتُ النَّسَبِيَّةُ ثَلَاثَةٌ عَصَبَةٌ بِنَفْسِهِ وَ عَصَبَةٌ بِغَيْرِهِ
وَعَصَبَةٌ مَعَ غَيْرِهِ أَمَّا الْعَصَبَةُ بِنَفْسِهِ فَكُلُّ ذَكَرٍ لَا يَدْخُلُ
فِي نِسْبَتِهِ إِلَى الْمَيِّتِ أُنْثَى وَهِيَ أَرْبَعَةُ أَصْنَافٍ جُزْءُ الْمَيِّتِ
وَأَصْلُهُ وَجُزْءُ أَبِيهِ وَجُزْءُ جَدِّهِ الْأَقْرَبُ فَالْأَقْرَبُ يُرَجَّحُونَ
بِقُرْبِ الدَّرَجَةِ أَعْنِي بِهِ أَوْلَاهُمْ بِالْمِيرَاثِ جُزْءُ الْمَيِّتِ
أَيِ الْبَنُونَ ثُمَّ بَنُوهُمْ وَإِنْ سَفَلُوا ثُمَّ أَصْلُهُ أَيِ الْأَبُ ثُمَّ الْجَدُّ
أَبُ الْأَبِ وَإِنْ عَلَا ثُمَّ جُزْءُ أَبِيهِ أَيِ الْأُخْوَةِ ثُمَّ بَنُوهُمْ
وَإِنْ سَفَلُوا ثُمَّ جُزْءُ جَدِّهِ أَيِ الْأَعْمَامِ ثُمَّ بَنُوهُمْ وَإِنْ سَفَلُوا
ثُمَّ يُرَجَّحُونَ بِقُوَّةِ الْقَرَابَةِ أَعْنِي بِهِ ذَا الْقَرَابَتَيْنِ أَوْلَى
مِنْ ذِي قَرَابَةٍ وَاحِدَةٍ ذَكَرًا كَانَ أَوْ أُنْثَى لِقَوْلِهِ
عَلَيْهِ السَّلَامُ إِنَّ أَعْيَانَ بَنِي الْأَبِ وَالْأُمِّ يَتَوَارَثُونَ دُونَ
بَنِي الْعَلَّاتِ كَالْأَخِ لِأَبٍ وَأُمٍّ أَوْلَى مِنَ الْأَخِ لِأَبٍ وَالْأُخْتُ
لِأَبٍ وَأُمٍّ إِذَا صَارَتْ عَصَبَةً مَعَ الْبِنْتِ أَوْلَى مِنَ الْأَخِ لِأَبٍ

فِي الدَّرَجَةِ وَيَسْقُطْنَ كُلُّهُنَّ بِالْأُمِّ وَالْأَبَوِيَّاتُ أَيْضًا
بِالْأَبِ وَكَذٰلِكَ بِالْجَدِّ الَّامِ الْأَبِ وَإِنْ عَلَتْ فَإِنَّهَا تَرِثُ
مَعَ الْجَدِّ لِأَنَّهَا لَيْسَتْ مِنْ قِبَلِهِ وَالْجَدَّةُ الْقُرْبَى مِنْ أَيِّ
جِهَةٍ كَانَتْ تَحْجُبُ الْجَدَّةَ الْبُعْدَى مِنْ أَيِّ جِهَةٍ
كَانَتْ وَارِثَةً كَانَتِ الْقُرْبَى أَوْ مَحْجُوبَةً وَإِذَا كَانَتِ
الْجَدَّةُ ذَاتَ قَرَابَةٍ وَاحِدَةٍ كَأُمِّ أُمِّ الْأَبِ وَالْأُخْرَى ذَاتَ
قَرَابَتَيْنِ أَوْ أَكْثَرَ كَأُمِّ أُمِّ الْأُمِّ وَهِيَ أَيْضًا أُمُّ أَبِ الْأَبِ

بِهٰذِهِ الصُّورَةِ



يُقْسَمُ السُّدُسُ بَيْنَهُمَا عِنْدَ أَبِي يُوسُفَ رَحْمَةُ اللّٰهِ عَلَيْهِ
أَنْصَافًا بِاعْتِبَارِ الْأَبْدَانِ وَعِنْدَ مُحَمَّدٍ رَحْمَةُ اللّٰهِ عَلَيْهِ
أَثْلَاثًا بِاعْتِبَارِ الْجِهَاتِ

بَابُ

مَعَهُنَّ أَخٌ لِأَبٍ فَيُعَصِّبُهُنَّ وَيَكُونُ الْبَاقِي بَيْنَهُنَّ لِلذَّكَرِ
مِثْلُ حَظِّ الْأُنْثَيَيْنِ وَالسَّادِسَةُ أَنْ يَصِرْنَ عَصَبَةً مَعَ الْبَنَاتِ
أَوْ مَعَ بَنَاتِ الِابْنِ لِمَا ذَكَرْنَا وَبَنُو الْأَعْيَانِ وَبَنُو الْعَلَّاتِ
كُلُّهُمْ يَسْقُطُونَ بِالِابْنِ وَابْنِ الِابْنِ وَإِنْ سَفَلَ وَبِالْأَبِ
بِالْإِتِّفَاقِ وَبِالْجَدِّ عِنْدَ أَبِي حَنِيفَةَ رَحِمَهُ اللّٰهُ تَعَالَى
وَيَسْقُطُ بَنُو الْعَلَّاتِ أَيْضًا بِالْأَخِ لِأَبٍ وَأُمٍّ وَأَمَّا لِلْأُمِّ فَأَحْوَالٌ
ثَلَاثٌ السُّدُسُ مَعَ الْوَلَدِ أَوْ وَلَدِ الِابْنِ وَإِنْ سَفَلَ أَوْ مَعَ الِاثْنَيْنِ
مِنَ الْإِخْوَةِ وَالْأَخَوَاتِ فَصَاعِدًا مِنْ أَيِّ جِهَةٍ كَانَا
وَثُلُثُ الْكُلِّ عِنْدَ عَدَمِ هَؤُلَاءِ الْمَذْكُورِينَ وَثُلُثُ مَا بَقِيَ
بَعْدَ فَرْضِ أَحَدِ الزَّوْجَيْنِ وَذٰلِكَ فِي مَسْأَلَتَيْنِ زَوْجٍ
وَأَبَوَيْنِ أَوْ زَوْجَةٍ وَأَبَوَيْنِ وَلَوْ كَانَ مَكَانَ الْأَبِ جَدٌّ فَلِلْأُمِّ
ثُلُثُ جَمِيعِ الْمَالِ إِلَّا عِنْدَ أَبِي يُوسُفَ رَحِمَهُ اللّٰهُ فَإِنَّ لَهَا
أَيْضًا ثُلُثَ الْبَاقِي وَلِلْجَدَّةِ السُّدُسُ لِأُمٍّ كَانَتْ أَوْ لِأَبٍ
وَاحِدَةً كَانَتْ أَوْ أَكْثَرَ إِذَا كُنَّ ثَابِتَاتٍ مُتَحَاذِيَاتٍ

وبالاخت لاب وام اذا صارت عص

الْاَوَّلِ اَلنِّصْفُ وَلِلْوَسْطَي مِنَ الْفَرِيْقِ الْاَوَّلِ مَعَ
مَنْ يُوَازِيْهَا السُّدُسُ تَكْمِلَةً لِلثُّلُثَيْنِ وَلَا شَيْءَ
لِلسُّفْلِيَّاتِ اَصْلًا اِلَّا اَنْ يَكُوْنَ مَعَهُنَّ غُلَامٌ فَيُعَصِّبُهُنَّ
مَنْ كَانَتْ بِحَذَائِهِ وَمَنْ كَانَتْ فَوْقَهُ لِمَنْ لَمْ يَكُنْ
ذَاتَ سَهْمٍ وَيُسْقِطُ مَنْ دُوْنَهُ وَاَمَّا الْاَخَوَاتُ لِاَبٍ وَاُمٍّ
فَاَحْوَالٌ خَمْسٌ اَلنِّصْفُ لِلْوَاحِدَةِ وَالثُّلُثَانِ لِلْاِثْنَيْنِ
فَصَاعِدًا وَمَعَ الْاَخِ لِاَبٍ وَاُمٍّ لِلذَّكَرِ مِثْلُ حَظِّ الْاُنْثَيَيْنِ
فَيَصِيْرُ بِهِ عَصَبَةً لِاسْتِوَائِهِمْ فِي الْقَرَابَةِ اِلَى الْمَيِّتِ
وَلَهُنَّ الْبَاقِيْ مَعَ الْبَنَاتِ اَوْ بَنَاتِ الْاِبْنِ لِقَوْلِهِ عَلَيْهِ الصَّلٰوةُ
وَالسَّلَامُ اِجْعَلُوا الْاَخَوَاتِ مَعَ الْبَنَاتِ عَصَبَةً وَالْاَخَوَاتُ
لِاَبٍ كَالْاَخَوَاتِ لِاَبٍ وَاُمٍّ وَلَهُنَّ اَحْوَالٌ سَبْعٌ اَلنِّصْفُ
لِلْوَاحِدَةِ وَالثُّلُثَانِ لِلْاِثْنَتَيْنِ فَصَاعِدًا عِنْدَ عَدَمِ الْاَخَوَاتِ
لِاَبٍ وَاُمٍّ وَلَهُنَّ السُّدُسُ مَعَ الْاُخْتِ لِاَبٍ وَاُمٍّ تَكْمِلَةً
لِلثُّلُثَيْنِ وَلَا يَرِثْنَ مَعَ الْاُخْتَيْنِ لِاَبٍ وَاُمٍّ اِلَّا اَنْ يَكُوْنَ
مَعَهُنَّ

اَلْغَرِيْقُ الْاَوَّلُ وَالْغَرِيْقُ الثَّانِيْ وَالْغَرِيْقُ الثَّالِثُ

اِبْنٌ . . . . . اِبْنٌ . . . . . اِبْنٌ

اِبْنٌ بِنْتٌ . . . . . اِبْنٌ . . . . . اِبْنٌ

اِبْنٌ بِنْتٌ . . . . اِبْنٌ بِنْتٌ . . . . . اِبْنٌ

اِبْنٌ بِنْتٌ . . . . . اِبْنٌ بِنْتٌ . . . . . اِبْنٌ بِنْتٌ

اِبْنٌ بِنْتٌ . . . . . اِبْنٌ بِنْتٌ

اِبْنٌ بِنْتٌ

اَلْعُلْيَا مِنَ الْغَرِيْقِ الْاَوَّلِ لَايُوَازِيْهَا اَحَدٌ وَالْوُسْطَى

مِنَ الْغَرِيْقِ الْاَوَّلِ تُوَازِيْهَا الْعُلْيَا مِنَ الْغَرِيْقِ الثَّانِيْ

وَالسُّفْلَي مِنَ الْغَرِيْقِ الْاَوَّلِ تُوَازِيْهَا الْوُسْطَي

مِنَ الْغَرِيْقِ الثَّانِيْ وَالْعُلْيَا مِنَ الْغَرِيْقِ الثَّالِثِ

وَالسُّفْلَي مِنَ الْغَرِيْقِ الثَّانِيْ تُوَازِيْهَا الْوُسْطَي

مِنَ الْغَرِيْقِ الثَّالِثِ وَالسُّفْلَي مِنَ الْغَرِيْقِ الثَّالِثِ

لَايُوَازِيْهَا اَحَدٌ اِذَا عَرَفْتَ هٰذَا فَنَقُوْلُ لِلْعُلْيَا مِنَ الْغَرِيْقِ

أَوْ وَلَدِ الْإِبْنِ وَإِنْ سَفَلَ وَأَمَّا لِبَنَاتِ الصُّلْبِ فَأَحْوَالٌ ثَلٰثٌ

النِّصْفُ لِلْوَاحِدَةِ وَالثُّلُثَانِ لِلْإِثْنَيْنِ فَصَاعِدًا وَمَعَ الْإِبْنِ

لِلذَّكَرِ مِثْلُ حَظِّ الْأُنْثَيَيْنِ وَهُوَ يُعَصِّبُهُنَّ وَبَنَاتُ الْإِبْنِ

كَبَنَاتِ الصُّلْبِ وَلَهُنَّ أَحْوَالٌ سِتٌّ النِّصْفُ لِلْوَاحِدَةِ

وَالثُّلُثَانِ لِلْإِثْنَيْنِ فَصَاعِدًا عِنْدَ عَدَمِ بَنَاتِ الصُّلْبِ

وَلَهُنَّ السُّدُسُ مَعَ الْوَاحِدَةِ الصُّلْبِيَّةِ تَكْمِلَةً لِلثُّلُثَيْنِ

وَلَا يَرِثْنَ مَعَ الصُّلْبِيَّتَيْنِ إِلَّا أَنْ يَكُونَ بِحَذَائِهِنَّ أَوْ أَسْفَلَ

مِنْهُنَّ غُلَامٌ فَيُعَصِّبُهُنَّ وَالْبَاقِي بَيْنَهُنَّ لِلذَّكَرِ مِثْلُ

حَظِّ الْأُنْثَيَيْنِ وَيَسْقُطْنَ كُلُّهُنَّ بِالْإِبْنِ وَلَوْ تَرَكَ ثَلٰثَ

بَنَاتِ ابْنٍ بَعْضُهُنَّ أَسْفَلُ مِنْ بَعْضٍ وَثَلَاثَ بَنَاتِ ابْنِ

ابْنٍ آخَرَ بَعْضُهُنَّ أَسْفَلُ مِنْ بَعْضٍ وَثَلَاثَ بَنَاتِ ابْنِ

ابْنِ ابْنٍ آخَرَ بَعْضُهُنَّ أَسْفَلُ مِنْ بَعْضٍ بِهٰذِهِ الصُّوْرَةِ

(وَتُسَمَّى مَسْأَلَةَ التَّشْبِيْبِ)

وَالتَّعْصِيبُ مَعَ ذٰلِكَ مَعَ الْإِبْنَةِ أَوِ ابْنَةِ الْإِبْنِ وَإِنْ سَفَلَتْ

وَالتَّعْصِيبُ الْمَحْضُ وَذٰلِكَ عِنْدَ عَدَمِ الْوَلَدِ وَوَلَدِ الْإِبْنِ

وَإِنْ سَفَلَ وَالْجَدُّ الصَّحِيحُ كَالْأَبِ إِلَّا فِي أَرْبَعِ مَسَائِلَ

وَسَنَذْكُرُهَا إِنْشَاءَ اللّٰهُ تَعَالَى وَيَسْقُطُ الْجَدُّ بِالْأَبِ

لِأَنَّ الْأَبَ أَصْلٌ فِي قَرَابَةِ الْجَدِّ إِلَى الْمَيِّتِ وَأَمَّا الْأَوْلَادُ الْأُمِّ

فَأَحْوَالُ ثَلٰثٍ السُّدُسُ لِلْوَاحِدِ وَالثُّلُثُ لِلْإِثْنَيْنِ فَصَاعِدًا

ذُكُورُهُمْ وَإِنَاثُهُمْ فِي الْقِسْمَةِ وَالْإِسْتِحْقَاقِ سَوَاءٌ

وَيَسْقُطُونَ بِالْوَلَدِ وَوَلَدِ الْإِبْنِ وَإِنْ سَفَلَ وَبِالْأَبِ

وَبِالْجَدِّ بِالْاِتِّفَاقِ وَأَمَّا لِلزَّوْجِ فَحَالَتَانِ النِّصْفُ

عِنْدَ عَدَمِ الْوَلَدِ وَوَلَدِ الْإِبْنِ وَإِنْ سَفَلَ وَالرُّبُعُ

مَعَ الْوَلَدِ أَوْ وَلَدِ الْإِبْنِ وَإِنْ سَفَلَ

فَصْلٌ فِي النِّسَاءِ

وَلِلزَّوْجَاتِ حَالَتَانِ الرُّبُعُ لِلْوَاحِدَةِ فَصَاعِدًا عِنْدَ عَدَمِ

الْوَلَدِ وَوَلَدِ الْإِبْنِ وَإِنْ سَفَلَ وَالثُّمُنُ مَعَ الْوَلَدِ

Defining the Wife
والحد الصحيح هو الذي لا يدخل
في نسبته إلى الميت أم

وَالذِّمِيِّ أَوْحُكْمًا كَالْمُسْتَأْمَنِ وَالذِّمِيِّ أَوِالْحَرْبِيَّيْنِ

مِنْ دَارَيْنِ مُخْتَلِفَيْنِ وَالدَّارُ إِنَّمَا تَخْتَلِفُ

بِاخْتِلَافِ الْمَنْعَةِ وَالْمَلِكِ لِانْقِطَاعِ الْعِصْمَةِ فِيمَا بَيْنَهُمْ

بَابُ مَعْرِفَةِ الْفُرُوضِ وَمُسْتَحِقِّيهَا

اَلْفُرُوضُ الْمُقَدَّرَةُ فِي كِتَابِ اللَّهِ تَعَالَى سِتَّةُ النِّصْفُ

وَالرُّبُعُ وَالثُّمُنُ وَالثُّلُثَانِ وَالثُّلُثُ وَالسُّدُسُ عَلَى

التَّضْعِيفِ وَالتَّنْصِيفِ وَأَصْحَابُ هٰذِهِ السِّهَامِ اثْنَيْ عَشَرَ

نَفَرًا أَرْبَعَةٌ مِنَ الرِّجَالِ وَهُمُ الْأَبُ وَالْجَدُّ الصَّحِيحُ

وَإِنْ عَلَا وَالْأَخُ لِأُمٍّ وَالزَّوْجُ وَثَمَانٍ مِنَ النِّسَاءِ وَهُنَّ الزَّوْجَةُ وهو اب الاب

وَالْبِنْتُ وَبِنْتُ الِابْنِ وَإِنْ سَفَلَتْ وَالْأُخْتُ لِأَبٍ وَأُمٍّ

وَالْأُخْتُ لِأَبٍ وَالْأُخْتُ لِأُمٍّ وَالْأُمُّ وَالْجَدَّةُ الصَّحِيحَةُ

وَهِيَ الَّتِي لَا يَدْخُلُ فِي نِسْبَتِهَا إِلَى الْمَيِّتِ جَدٌّ فَاسِدٌ

أَمَّا لِلْأَبِ فَأَحْوَالٌ ثَلٰثٌ اَلْفَرْضُ الْمُطْلَقُ وَهُوَ السُّدُسُ

وَذٰلِكَ مَعَ الِابْنِ اَوِابْنِ الِابْنِ وَإِنْ سَفَلَ وَالْفَرْضُ

وَالتَّعْصِيبُ

جماع إمام

بِالْكِتَابِ وَالسُّنَّةِ وَ اِجْمَاعِ الْأُمَّةِ فَيُبْدَاءُ بِأَصْحَابِ
الْفَرَائِضِ وَهُمُ الَّذِيْنَ لَهُمْ سِهَامٌ مُقَدَّرَةٌ فِيْ كِتَابِ
اللّٰهِ تَعَالَي ثُمَّ بِالْعَصَبَاتِ مِنْ جِهَةِ النَّسَبِ وَالْعَصَبَةُ
كُلُّ مَنْ يَأْخُذُ مِنَ التَّرِكَةِ مَا أَبْقَتْهُ أَصْحَابُ الْفَرَائِضِ
وَعِنْدَ الْإِنْفِرَادِ يَحْرُزُ جَمِيْعَ الْمَالِ ثُمَّ بِالْعَصَبَةِ مِنْ
جِهَةِ السَّبَبِ وَهُوَ مَوْلَى الْعَتَاقَةِ ثُمَّ عَصَبَتُهُ ثُمَّ الرَّدُّ / على الترتيب
عَلَي ذَوِي الْفُرُوْضِ النَّسَبِيَّةِ بِقَدْرِ حُقُوْقِهِمْ ثُمَّ ذَوِي
الْأَرْحَامِ ثُمَّ مَوْلَي الْمُوَالَاةِ ثُمَّ الْمُقَرُّ لَهُ بِالنَّسَبِ عَلَي الْغَيْرِ
بِحَيْثُ لَمْ يَثْبُتْ نَسَبُهُ مِنْ ذٰلِكَ الْغَيْرِ اِذَا مَاتَ الْمُقِرُّ / باقراره
مُصِرًّا عَلَي إِقْرَارِهِ ثُمَّ الْمُوْصَي لَهُ بِجَمِيْعِ الْمَالِ ثُمَّ بَيْتُ الْمَالِ

فَصْلٌ فِي الْمَوَانِعِ مِنَ الْإِرْثِ

اَلْمَانِعُ مِنَ الْإِرْثِ اَرْبَعَةٌ الرِّقُّ وَافِرًا كَانَ أَوْنَاقِصًا وَالْقَتْلُ
الَّذِيْ يَتَعَلَّقُ بِهِ وُجُوْبُ الْقِصَاصِ اَوِ الْكَفَّارَةِ وَاخْتِلَافُ
الدِّيْنَيْنِ وَاخْتِلَافُ الدَّارَيْنِ إِمَّا حَقِيْقَةً كَالْحَرْبِيِّ

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِيْمِ

اَلْحَمْدُ لِلّٰهِ رَبِّ الْعٰلَمِيْنَ حَمْدَ الشَّاكِرِيْنَ وَالصَّلٰوةُ

عَلٰى خَيْرِ الْبَرِيَّةِ مُحَمَّدٍ وَاٰلِهِ الطَّيِّبِيْنَ قَالَ رَسُوْلُ اللّٰهِ

صَلَّى اللّٰهُ عَلَيْهِ وَسَلَّمَ تَعَلَّمُوا الْفَرَائِضَ وَعَلِّمُوْهَا النَّاسَ

فَاِنَّهَا نِصْفُ الْعِلْمِ قَالَ عُلَمَاؤُنَا رَحِمَهُمُ اللّٰهُ يَتَعَلَّقُ

بِتَرِكَةِ الْمَيِّتِ حُقُوْقٌ اَرْبَعَةٌ مُرَتَّبَةٌ اَلْاَوَّلُ يُبْدَءُ بِتَجْهِيْزِهٖ

وَتَكْفِيْنِهٖ بِلَا تَبْذِيْرٍ وَلَا تَقْتِيْرٍ ثُمَّ يُقْضٰى دُيُوْنُهٗ مِنْ

جَمِيْعِ مَا بَقِيَ مِنْ مَالِهٖ ثُمَّ تُنْفَذُ وَصَايَاهُ مِنْ ثُلُثِ

مَا بَقِيَ بَعْدَ الدَّيْنِ ثُمَّ يُقْسَمُ الْبَاقِيْ بَيْنَ وَرَثَتِهٖ

بِالْكِتَابِ