

REVISITING THE COMPLEX COMPETITION BETWEEN GRANDFATHER AND COLLATERALS IN ISLAMIC LAW OF INHERITANCE

إعادة النظر في المنافسة المعقدة بين الجد والضمانات في قانون

الميراث الإسلامي خلاصة

ALIYU ALIYU IMAM, Muminat Bidemi SHITTU

Ph.D Student, Department of Islamic Law, Faculty of Law,
University of Ilorin, Kwara, Nigeria.

علي علي امام، مومينات بيديمي شيتو

طالب دكتوراه، قسم القانون الإسلامي، كلية القانون، جامعة الورد، كوارا،
نيجيريا.

Received:19/01/2024 Revised:07/03/2024 Accepted:22/04/2024

تاريخ التقديم:2024/01/19 تاريخ ارسال التعديلات:2024/03/07 تاريخ القبول:2024/04/22

الملخص:

ظل التنافس بين الجد والإخوة في مسائل الميراث قضيةً شائكةً حتى يومنا هذا. وفي حين عكس اختلاف الفقهاء المسلمين تنوع مواقف الصحابة في هذه المسألة، سعى بعض الكتاب المعاصرين إلى تبرير آراء الفقهاء الأوائل بطريقة تفتقر إلى الأسس العلمية الرصينة. ولما كان هذا التوجه قد يُبعد الباحثين وطلبة العلم عن فهم المرونة الفقهية التي تتمتع بها الأوائل عند معالجة هذه القضية، تستعرض هذه الورقة -من خلال المنهج الفقهي- طبيعة التنافس بين الجد والإخوة، وتعيد صياغة الموقف الدقيق للفقهاء الأوائل. وتخلص الدراسة إلى أن المبرر الأقوى لمواقفهم يكمن في طبيعة قرابة الجد وصلته بالمورث، وهي مسألةٌ بقيت، ويجب أن تبقى، دون حسم نهائي.

الكلمات المفتاحية: الجد، الضمانات، المنافسة، الصحابة، قانون الميراث الإسلامي.

Abstract:

The ancient rivalry between the Grandfather and Collaterals in the law of Inheritance remained an issue of concern up till today. While the divergence of Muslim Jurists, evidenced and restated the positions of Saḥābah on the issue, contemporary writers have attempted to justify, albeit inappropriate and without basis, either of the positions maintained by the early jurists. As this attempt may sway researchers and students of knowledge from the exact resilience of the early jurists while deciding this case, this paper through doctrinal approach, review and restate the competition of grandfather and collaterals in summary, prevailing the exact position of early jurists. It found that, there is no better justification for the positions of the early jurists than the closeness and connections of grandfather and collaterals to the deceased heir, which remained and must be left indecisive.

Keywords: Grandfather, Collaterals, Competition, ṣaḥābah, Islamic Law of Inheritance.

INTRODUCTION

The matter of competition between the grandfather and collaterals was left open for the *saṣābah* to decide, by deducing their share from the primary sources of *shari'ah*. This is because, the problem neither arose during the lifetime of the Prophet (SAW), nor was there specific verse from the Qur'ān addressing the situation directly. This then led to the divergence of opinion among the companion of the Prophet and the later jurists up till today.

Deciding between the grandfather and collaterals is then a daunting task, that requires special understanding of the rules of *shari'ah* on inheritance. In fact, some of the *saṣābah* lamented the difficulty in it, and others even discourage people from rushing into deciding the contest. In one report, Caliph Umar bn Khattab (RA) was held to have said that: who so ever attempt to solve the case of grandfather, is making an attempt towards fire.¹ In another report, he said: who so ever like to rush towards the abode of Hell, should decide among grandfather and brothers/sisters. The same report was also recorded from Caliph Ali bn abi-sālib (RA).² Abdullah bn Mas'ūd (RA) was also reported to have said: Ask me any question concerning your obligations, but never ask me about the contest between grandfather and brothers, there is no Allah's blessing in it.³

Notwithstanding the above, when the issue of grandfather and collaterals came up for the first time, before Caliph Abūbakar (RA), he consulted other *saṣābah* for their opinion because of the complex nature of the competition. Different solutions were proffered by the companions and controversy ensued from their various understanding. This paper is an attempt to review, restate and discuss the complex nature of the competition between the grandfather and collaterals on one hand and explain the solution proffered by the jurists. It also expound why the contest has remained a complicated one, in summary and simple detail. This paper is divided into six parts. Apart from this introduction, the next part discussed the right of inheritance of grandfather followed by the explanation on right of inheritance of collaterals. The fourth part discussed the competition between grandfather and collaterals while the fifth part explains the solu-

tions proffered by the *saṣābah* as adopted by Muslim jurists. The last part concludes the discourse.

RIGHT OF INHERITANCE OF GRANDFATHER UNDER ISLAMIC LAW

Grandfather under Islamic law of inheritance, is referred to a true grandfather.⁴ He is related to the deceased through his father and there is no female intercession between them.⁵ Grandfather is one of the Ascendant heirs that is deemed to have the right to inherit his deceased grandchild. Although, there is no direct evidence from the Qur'ān that address the grandfather as an entitled heir to the deceased grandson. However, the interpretation of the Qur'ān relating to the share of father (...for parents, a sixth share of inheritance to each if the deceased left children...) has been interpreted to include the grandfather, how high so ever.⁷ In this regard, the grandfather will step into the shoe of the Father in the distribution of estate of his grandchild in the absence of the father.⁸

Flowing from the above, the grandfather inherits like father in three instances and he is treated differently from father in another three instances.⁹ This is highlighted as follows:

1. The grandfather takes 1/6 of the whole estate when inheriting alongside the male descendants of the deceased.
2. The grandfather takes 1/6 and residue in the absence of the male descendants of the deceased. He will still take the share alongside the daughter or daughter of son.
3. The grandfather takes all the residue of the estate if there is no descendant for the deceased.¹⁰

The share of the grandfather is different from that of father in the below three circumstance:

1. The grandfather does not step into the shoe of the father in the Umariyyah case.¹¹

4 The Distribution of Estate in Islam, Oniye, 78; Al-Mirāth, Ali-Lakhyi, 78

5 Al-Mawārith, As-sabūni, 81.

6 Surah al-Niasa', 4:11.

7 See Interpretation of Meanings of the Noble Qur'ān in the English Language, Hilali and Khan; The Exegesis of the Grand Holy Qur'ān, Al-Sharif (1/)

8 The Distribution of Estate in Islam, Oniye, 78; Notes of the Basic Principles of Islamic Law of Succession, Arikewuyo, 59.

9 Theoretical Aspects of Mirāth, Arikewuyo and AbdurRahman, 64-65.

10 Here he take 1/6 first, the reminder goes to bait al-maal. But where there is none, the rest goes back to the father.

11 Umariyyah case is a situation where a deceased is survived by a Father, Mother and either of the spouses (Husband or Wife). The mother in that circumstance contrary to her normal share of 1/3, takes 1/3 of reminder to abide by the rule of a male taking double share of a female. See Al-Mawārith, As-sabūni, 81.

1 Al-Mawārith, As-sabūni, 81.

2 Al-Mirāth, Ali-Lakhyi, 82.

3 Al-Mawārith, As-sabūni, 81.

2. Where the father is alive, the grandfather is not considered at all in the distribution of the estate.¹²
3. There is divergent of opinions as to whether the grandfather will exclude the germane and consanguine brother or not.¹³ In the case of the father, it is a matter of unanimity that the father will exclude all the brothers of the deceased.

RIGHT OF INHERITANCE OF COLLATERALS UNDER ISLAMIC LAW

Collaterals are brothers and sisters of the deceased connected either through the father, mother or both. A brother or sister who have the same parents with the deceased is called The Germane/ Full Brother or Sister.¹⁴ Where the connection with the deceased is only as regard the same father but different mother, the brother or sister is referred to as Consanguine/ Half Brother or Sister.¹⁵ Uterine Brother/ Sister is used where the relationship with the deceased is only limited to the same mother.¹⁶

In the Islamic law of inheritance, Germane and Consanguine are not Quranic sharers/heirs but residuary heir because, no specific share is allotted to them.¹⁷ They therefore inherit as *Asābah* in the third category, in the absence of descendants and ascendant of the deceased who occupied the first and second category of *Asābah*.¹⁸ Uterine brothers and sisters on the other hand are Quranic heirs and are entitled to take 1/6 and 1/3 respectively, as the case may be.¹⁹ There is unanimity of Muslim jurists on the above conclusion.²⁰ They held that, the reference to brothers/sisters in Surah al-Nisa' verse 12 is a reference to Uterine Brothers and Sisters because, the inheritance of Germane and Consanguine brothers and sisters have been decided in Surah al-Nisa' verse 174.²¹

It must be noted that, in the discussion of the competition between grandfather and collaterals, Uterine Brothers and Sisters are not part of the consideration. This is because, they are Quranic heirs and their

share as stipulated by the Qur'an cannot be affected in whatever way except as may be provided by the text. Aside this, Muslim jurists are unanimous that the grandfather will exclude the Uterine relation.²² Hence, further reference to Collaterals in this discourse exclude Uterine Brothers and Sisters.

THE COMPETITION BETWEEN GRANDFATHER AND COLLATERALS

Grandfather and Collaterals are connected to the deceased through a male intersection.²³ The intersection, who happened to be the Father (who is already deceased) of the deceased, is also the father to the collaterals, but a son to the grandfather. Both the grandfather and collaterals are residuary heirs. While the grandfather step into the shoe of the father, the collaterals are directly connected to 'the shoe' in the same line of inheritance.²⁴ One may therefore conclude that, the provisions of the Qur'an indicating that: 'out of your parent and children, you do not know which is nearer to you in benefit'²⁵ is extended to their representative (Grandfather and Collaterals) while deciding their Inheritance.

The above will become clearer when the parable presented by the two *saābah* are considered. When Za'id bn Thābit (RA) was consulted by Caliph Umar bn Khassāb (RA), Za'id (RA) explains that: The grandfather is like a main trunk of a tree, while the father is the main branch, the collaterals are sub-branches. Hence, the sub-branches are close to each other and are attached to the main branch which is also attached to the trunk. The main branch is therefore in between the trunk and the sub-branches. In the wisdom of Caliph 'Ali bn Abī sālib (RA), he mentioned that, the grandfather is like a sea which has a river (Father) and many other channels or canals (Collaterals) emerging out of the river, to exemplify the connections between grandfather and collaterals to the deceased heir, which is the father.²⁶

Considering the above, deciding the inheritance of grandfather alongside collaterals does not form part of the resolute decision among the Muslim jurists. In fact, the *saābah* from the early days are not

12 Al-Mawāriṭh, As-sabūni, 81.

13 This is part of the crux in this discourse and shall be adumbrated in a separate section in this paper.

14 The Distribution of Estate in Islam, Oniye, 61 and 64.

15 The Distribution of Estate in Islam, Oniye, 66 and 67.

16 The Distribution of Estate in Islam, Oniye, 70.

17 See Notes of the Basic Principles of Islamic Law of Succession, Arikewuyo, 31-33.

18 Al-Mīrāth, Ali-Lakhyi, 67-68.

19 Surah al-Nisa' (4) Verse 12.

20 Al-Fiqs 'alā Mazāhib al-'arba'a, Al-Jaza'iri, (3/398).

21 Al-Mīrāth, Ali-Lakhyi, 67-68; Theoretical Aspects of Mīrāth, Arikewuyo and Abdur-Rahman, 59, 67.

22 Al-Mīrāth, Ali-Lakhyi, 83.

23 Al-Mawāriṭh, As-sabūni, 81..

24 See Al-Mīrāth, Ali-Lakhyi, 78.

25 Surah al-Nisa' (4) Verse 12.

26 Al-Mabsut, Al-Saraksi (29/181)

unanimous on the issue.²⁷ This may be because the Prophet (SAW) did not specifically decide upon the inheritance of grandfather and collaterals in his lifetime. The competition up till recent time, remained a complex problem because of the divergence of opinion.²⁸ The first case of competition between grandfather and collaterals occurred during the reign of Caliph Abubakar (RA), who because of its novelty and intricate nature, had to seek the opinion of some of the *saṣābah* in resolving the legal tussle. The involvement of the *saṣābah* led to the various opinions on the issue.²⁹ A careful dissection of their positions on the issue can be categorised under two broad headings³⁰ as discussed below:

a- The Collaterals (Germane, consanguine brothers and their sisters) are excluded by the grandfather.

This is the position of Caliph Abubakar (RA), supported by Abdullah bn Umar (RA), Abdullah bn Abbas (RA), Abu Zaid al-Khudri (RA), Mu'az bn Jabal (RA) and Abu Musa al-Ashari (RA). This view was later adopted by Imam Abu Hanifa, Ibn Taymiyyah, Ibn Qayyim and one of the View of Hanbali School.³¹

The argument of this group is centred on the fact that, the grandfather is just like a father in his absence, since the father himself will deprive the collaterals from inheriting, the grandfather who step into his shoes and will also prevent the collaterals from inheriting. To buttress their point, they held that, there are several provisions of the Qur'an where grandfather is given the status of father. Apart from that, under the law of *qisas*, the father who kill his son shall not be killed and the same rule applies to the grandfather where he killed his grandson.³²

Lastly, a father is not allowed to marry his deceased or divorced son's wife and the same rule applies to the grandfather.³³ All the above suggests that grandfather is always treated as a father under Islamic law and should be accorded the same status under

the distribution of estate in the contest between the grandfather and collaterals.

b- The Collaterals (Germane, consanguine brothers and their sisters) are not excluded by the grandfather but inherit together with them.

Those that championed this opinion include Zaid bn Thabit (RA), Caliph Ali bn abi-salib (RA) and Abdullah bn Mas'ud (RA). The view was however adopted by the majority of the Muslim jurists consisting of Imam Mālik bn Anas, Imam Shafi'i and the most famous view of Imam Ahmad bn Hanbal. Imam Abu Yusuf and Muhammad Ashybbani also subscribe to this view.³⁴

This group also argued that before the death of Caliph Umar bn Khattab (RA), he had adopted their position after having discussion with both Caliph Uthman bn Affan (RA) and Zaid bn Thabit (RA) on different occasion. Both of them speak in parables to Caliph Umar (RA). He then later consulted Caliph Ali bn abi-salib (RA) who supported the view of Zaid bn Thabit (RA). Caliph Umar (RA) later gave a sermon to people quoting the parable of Zaid bn Thabit (RA) allowing the collaterals to inherit alongside the grandfather.³⁵

The argument of this group is that, although it is admitted that, the grandfather steps into the shoe of the father, the grandfather does not have the full power of the father in certain circumstance. They held that, grandfather cannot prevent the mother from taking her 1/3 of the whole estate like the father did in the *Umariyyatayn* case³⁶ to allow the rule of 'a male portion is equal to that of two female' in Surah al-Baqarah Verse 11. They also held that, father can exclude his mother (Father's mother) from inheritance but grandfather does not have that capacity. Lastly, father cannot be excluded totally in the distribution of estate while the grandfather is always excluded by the presence of father. They therefore concluded that, since grandfather does not have the full capacity like the father, he cannot disinherit the collaterals because they are connected to the deceased through the same chain.³⁷

27 Notes of the Basic Principles of Islamic Law of Succession, Arikewuyo, 59; Al-Mawārith, As-sabūni, 81.

28 Notes of the Basic Principles of Islamic Law of Succession, Arikewuyo, 59; An Appraisal of Some Instances of Competition Between Grandfather and Collaterals Under Islamic Law of Succession, Yaro, 91-96.

29 Al-Mirāth, Ali-Lakhyi, 78.

30 Theoretical Aspects of Mirāth, Arikewuyo and AbdurRahman, 71; The Distribution of Estate in Islam, Oniye, 80.

31 Al-Qawanīn Al-Fiqhiyyah, Ibn Juzaiy, 390; Al-Mughni, Ibn Qudamah (6/215-218); Al-Mughni Al-M Al-Shiribni (3/21-23); Bidāyat Al-Mujtahid, Ibn Rushd (2/349); Al-Mabsut, Al-Saraksi (29/182); Al-Mawārith, As-Ṭabūni, 82-83; Notes of the Basic Principles of Islamic Law of Succession, Arikewuyo, 59.

32 Al-Mirāth, Ali-Lakhyi, 84.

33 Al-Mirāth, Ali-Lakhyi, 78.

34 Al-Qawanīn Al-Fiqhiyyah, Ibn Juzaiy, 390; Iqd Al-Jawahir, Ibn Shash, (3/445-447); Al-Mughni, Ibn Qudamah (6/215-218); sassiyah al-Dasūqi, Al-Dasūqi, (4/412-413); Bidāyat Al-Mujtahid, Ibn Rushd (2/350); Al-Mabsut, Al-Saraksi (29/182); Al-Mawārith, As-sabūni, 82-82; Notes of the Basic Principles of Islamic Law of Succession, Arikewuyo, 59.

35 Al-Tarika wa-al-Mirāth fi-al-Islam, Ibn Yusuf, 212-213; Al-Mughni, Ibn Qudamah (6/216); Al-Mabsut, Al-Saraksi (29/181).

36 Al-Mawārith, As-sabūni, 48-49.

37 Theoretical Aspects of Mirāth, Arikewuyo and AbdurRahman, 64-65; The Distribution of Estate in Islam, Oniye, 79-80.

Contemporary application of Shari'ah in various jurisdictions of Muslim states, Muslim Majority and Shari'ah practicing states (including those limited to personal law) usually follows the official madhab adopted by each state.³⁸ For example, in Nigeria, the official madhab recognised and made applicable as law is the Maliki School of Law.³⁹ Other places like Algeria, Bahrain, Kuwait etc. also adopt Maliki jurisprudence.⁴⁰ In fact, the adoption of Maliki Jurisprudence is predominant in the North and West Africa states.⁴¹ For Hanafi school, the followers of the school have spread across the world and are predominant in Asia and the Middle East. Places like Pakistan, Indian, Afghanistan, Turkey, Egypt etc. are known for the adoption and application of Hanafi jurisprudence.⁴² Yemen, Syria, Malaysia, Indonesia and particularly South East Asia countries and East Africa Countries adopt Shafihi as the official madhab⁴³ while Hanbali School dominates the Saudi Arabia Qatar etc.⁴⁴

The case of inheritance of grandfather and collaterals is though a unique situation, have not derailed from the usual circumstance of adopting the official position of each school in question. Contemporary practice regarding the inheritance of grandfather and collaterals have therefore favoured allowing both the grandfather and collaterals to inherit concurrently, by the states that adopt Maliki, Shafihi and Hanbali jurisprudence as their official madhab, following the majority of the jurists position. While states adopting Hanafi school allows only grandfather to inherit, excluding the collaterals in all circumstances. The above is regarded as a solution to the impending conundrum in the estate distribution concerning the duo. The next excerpt explains the resolution to the competition between grandfather and collaterals.

RESOLVING THE COMPLEX COMPETITION BETWEEN GRANDFATHER AND COLLATERALS

Considering the divergence of the Muslim jurists

38 The Background and Formation of the Four Schools of Islamic Law, Eirini Kakoulidou, pp. 7, 10 and 12.

39 Section 277 of the Constitution of the Federal Republic of Nigeria 1999 (as amended); *Alkamawa V Bello & Anor* (1998) LPELR-424 (SC) pp. 13-14.

40 Shari'ah: The Islamic Law, AbdurRahman I. Doi, 93.

41 The Practice of Muslim Family Law in Nigeria, M. A. Ambali, 213.

42 The Hanafi School of Islamic Jurisprudence Literature: A Historical Account, Suud Sarim Karimullah and Arif Sugitjanata, (2003/2) 1, p.13; Shari'ah: The Islamic Law, AbdurRahman I. Doi, 93.

43 Shari'ah: The Islamic Law, AbdurRahman I. Doi, 107; The Practice of Muslim Family Law in Nigeria, M. A. Ambali, 213.

44 The Background and Formation of the Four Schools of Islamic Law, Eirini Kakoulidou, p. 12.

thereof, scholars have classified the situations of inheritance of grandfathers and collaterals into two broad categories: (1) The inheritance of grandfather alongside the collaterals in the absence of all other Quranic heirs like husband, wife mother, daughter etc. and (2) The inheritance of grandfather alongside the collaterals in the presence of other Quranic heirs.⁴⁵ The situations are elaborated below.

Inheritance of grandfather alongside collaterals in the absence of Quranic heirs

Where the grandfather is inheriting alongside the collaterals in the absence of other Quranic heirs, the grandfather has two options according to the jurists. He either takes 1/3 of the net estate or share together with collaterals as if he is one of them (whether germane brother or sister or consanguine brother or sister). Sharing as collaterals by grandfather is referred to as sharing muqasimah. Here, the grandfather takes the same share as either germane brother or consanguine brother but takes double share of germane sister or consanguine sister, following the rule of 'the male has a double share of female' in surah al-Nisa verse 11.⁴⁶

The jurist held that the grandfather has right to choose whichever is better for him among the two options. It is noted that, where the grandfather is inheriting alongside less than two germane or consanguine brothers or four sisters, sharing muqasimah is better for the grandfather. The moment the number of the brother increased to three or the grandfather is sharing along with five or more sisters, 1/3 of the net estate is better for the grandfather than muqasimah.⁴⁷

Inheritance of grandfather alongside collaterals in the presence of Quranic heirs

The options available for the grandfather when inheriting alongside the collaterals in the presence of other Quranic heirs is different from the one discussed above. Under this heading, jurists held that, the grandfather has three options and he is to choose whichever is considered better for him. Here, the grandfather either share muqasimah with collaterals, take 1/3 of the remaining estate after the Quranic heirs have taken their portions or take 1/6 of the net estate.⁴⁸

It is noted that, determining the most better share of

45 Al-Mughni, Ibn Qudamah (6/218); Al-Mabsut, Al-Saraksi (29/183).

46 Al-Mawarīth, As-sabūni, 83-84.

47 Al-Mirāth, Ali-Lakhyi, 88-89

48 Al-Mirāth, Ali-Lakhyi, 91.

the grandfather among the above mentioned options (muqasimah, 1/3 of R or 1/6) is not an easy task. No rule has been laid to be able to discover the better portion at a glance. In this wise, proper calculation has to be done considering each of the options before choosing the better portion for the grandfather. It is however a paramount condition for grandfathers inheritance that, it should in all cases not less than 1/6 being the least of his inheritance according to the text.⁴⁹

Other Circumstances of Inheritance of Grandfather and Collaterals

The resolution of the competition among grandfather and collaterals discussed above were not only the circumstances of the complex problem between them. In fact, the above resolution has been held, to have some salient effect of giving leverage to the collaterals and portraying them as been close to the deceased than the grandfather.⁵⁰ Contrary to the above position, it is argued that, the resolution rather maintained an equilibrium in its favours. While the collaterals are placed in almost the same level as grandfather, the grandfather is given leverage to choose the better inheritance for himself in all circumstance. He cannot inherit less than 1/6 in all circumstances, being the least granted by the text; and he either takes the same share with collaterals or share more than them. This is notwithstanding the fact that, he was held to have the same connection at almost the same level with the collaterals. Although the first opinion excluding collaterals in the presence of grandfather favours grandfather than the present one, the later opinion in our view balanced the situation with more stronger positions.⁵¹

The above solutions however, does not entirely resolve the rivalry between grandfather and collaterals in the law of inheritance. It was in consequence that, further exertion were made to boost the position of grandfather where he co-exist with either the germane brother or consanguine brother alongside the uterine and Quranic heirs.⁵² The solution adopted in this regards are known as: The Doctrine of Akdari-

yyah, The Doctrine of Malikiyyah and The Doctrine of Shibhu Malikyyah. The doctrines further created certain exceptions from the general rules of inheritance to cater for the specific situation of the grandfather.⁵³

Al-Mas'alah al-Akdariyyah (Akdariyyah Case)⁵⁴

This case is named Akdariyyah because it concerns the estate of a deceased from an Arab tribe known as Banu Akdar. It was Zaid bn Thabit (RA) that attended to the case. The situation was tensed to the extent that he had to deviate from his initial principles to settle the case.⁵⁵ The principles are:

1. That the share of grandfather should in no case be less than 1/6 of the net estate.
2. That Germane Sister should never be excluded by grandfather.
3. That Germane Sister should not be given her Quranic Share in the presence of Grandfather.
4. That there should not be awl in the case involving grandfather and collaterals.

The case involved a Husband, Mother, Grandfather and Full Sister as heirs of a deceased. According to the general rule, the grandfather has the option of choosing muqasima or 1/3 of remainder after the Quranic heirs have taken their portion or take 1/6 of the net estate, whichever is better. Consider the calculation below:

		6
2/ 1	H	3
1/3	M	2
1/6	GF	1
A	GS	0

1/6 of Net Estate

		6	X 3	18
2/ 1	H	3	X3	9
1/3	M	2	X3	6

49 Al-Mawārith, As-sabūni, 87.

50 See Grandfather and Collaterals in Competition: A Knotty Problem in Islamic Law of Intestate Succession, Ismael; Salient Effect of Maliki's Solution to The Problem of 'Grand Father and Collaterals in Competition', Ismael, 155-156.

51 See Al-Mawārith, As-sabūni, 83-84.

52 Salient Effect of Maliki's Solution to The Problem of 'Grand Father and Collaterals in Competition', Ismael, 156.

53 See Al-Mirāth, Ali-Lakhyi, 100-104.

54 Al-Qawānīn Al-Fiqhiyyah, Ibn Juzayy, 390; Iqd Al-Jawahir, Ibn Shash, (3/445-447); Al-Mughni, Ibn Qudamah (6/223-224); sassiyah al-Dasūqi, Al-Dasūqi, (4/413); Bidāyat Al-Mujtahid, Ibn Rushd (2/351); Al-Mabsut, Al-Saraksi (29/183); Al-Rahbiyyah, Al-Mardāni, 108; Jawahir al-Iklīl, Adb-Samih (2/339-340).

55 Al-Mirāth, Ali-Lakhyi, 100.

1/3R	GF	1	X3	1
A	GS			2

Muqasima

		6	X 3	18
2/ 1	H	3	X3	9
1/3	M	2	X3	6
MQ	GF	1	X3	2
	GS			1

1/3 of Remainder

If we consider the above calculation, it is clear that, if the grandfather is given 1/6 of the net estate, the Germane Sister will get nothing, where the grandfather takes muqasima, the grandfather will be entitled to 2/18 and where he takes 1/3 of Remainder, his share will be 1/18.

All the three options went against the laid down rules. Therefore, a new solution was propounded to the effect that, the germane sister should take her Quranic share of 1/2 while the grandfather takes 1/6. There will be awl. After the addition of awl, the grandfather and germane sister will now combine their portion and share on ration 2:1. Imam Malik, Ahmad bn Ambal and Shafi’i followed this opinion.⁵⁶

On the other hand, Imam Abu Hanifa ruled that there is no akdariyyah case because the grandfather will exclude the germane sister in the circumstance.⁵⁷

Consider the calculation below:

		6	9	9X3	27
2/ 1	H	3	3	X 3	9
1/3	M	2	2	X 3	6
1/6	GF	1	4	4X3	8
1/2	GS	3		(12)	4

Al-Mas’alah al-Malikiyyah (Maliki Case)⁵⁸

Under this case, a woman died leaving her husband, mother, grandfather, two uterine brothers/sisters and consanguine brother. Ordinarily, the uterine ought to have been excluded from inheritance by the grandfather. However, rather than exclude them, the grandfather allows them to initially take their

56 Notes of the Basic Principles of Islamic Law of Succession, Arikewuyo, 61; Al-Mirath, Ali-Lakhyi, 101.
 57 Al-Mirath, Ali-Lakhyi, 101.
 58 sassiyah al-Dasūqi, Al-Dasūqi, (4/414); Jawahir al-Iklil, Adb-Samih (2/340).

Quranic share out of the share to force the consanguine brother to take nothing. The grandfather then after the initial sharing exclude the uterine and he would add the share of the uterine to his own under the principle of ‘he who excludes, excludes for his own benefit.⁵⁹ The example of the calculation is given thus:

		6
2/ 1	H	3
1/6	M	1
1/3	GF	2
EX	2UB	EX
A	CB	0

It is clear that the distribution does not follow the rule laid down as sharing formula for grandfather and collaterals in the presence of Quranic heirs, rather, the case was adjusted to boost the chance of the grandfather over collateral.

Al-Mas’alah Shibhu al-Malikiyyah (Quasi Maliki Case)⁶⁰

This case is name Quasi Maliki Case because the heirs involve are similar to that of Maliki’s Case. The major difference is the presence of germane brother instead of consanguine brother. Here, the heirs are husband, mother, grandfather, two uterine brothers and germane brother.⁶¹ Ordinarily, the uterine is excluded by the grandfather while the germane brother share along with the grandfather. To however boost the share of the grandfather in this scenario, the germane brother is treated as uterine brother just as in himariyyah case and they are both excluded. The calculation is as follows:

		6
2/ 1	H	3
1/6	M	1
1/3	GF	2
EX	2UB	
EX	GB	

CONCLUSION

The discourse above shows how complex the competition between the grandfather and collaterals is.

59 Salient Effect of Maliki’s Solution to The Problem of ‘Grand Father and Collaterals in Competition’, Ismael, 156.
 60 Al-Bahjah, Al-Tasuli, (2/407); sassiyah al-Dasūqi, Al-Dasūqi, (4/414).
 61 It should be noted that, the absence of grandfather in this case will turn the case to that of Al-Mas’alah al-Himariyyah i.e. the Donkey Case decided by Caliph umar bn Khattab (RA). See Al-Mirath, Ali-Lakhyi, 103.

Muslims jurists are divided on the issue resulting into two camp of inclusion and anti-inclusion camp. The camp that allows collaterals to share alongside grandfather gave rules to enable them share together and balance the situation among them. It is clear, with the further exception to the rules, leading to the Maliki's solutions on the issue that, the competition is a difficult and tricky one. The connection of both the grandfather and collaterals to the deceased is the father, the son of the grandfather and the father of the collaterals.

One major reason that calls for this difficulty in settling the competition between grandfather and collaterals, is the absence of a direct authority from the Qur'an on the issue on one hand and the nonexistence of any guidance from the Prophet (SAW) before his death. On this, Caliph Umar (RA) was held to have declared that...There are three things I liked that the messenger of Allah (PBUH) might have put decisive definition upon which we would depend (in our judgment): how much is the inheritance of a grandfather, the inheritance of a deceased person among whose heirs there is no father or son, and many types of usury.⁶²

It is however clear beyond doubt that, the early exertion by the sasābah as adopted by the jurists has resolved the situation from the realm of argument. Standards have been set and later jurists have identified the most preferred position. What is left is adoption and enforcement of the position. It is in this wise that, As-sabūni clarifies that, the Majority opinion is the preferred position. It is more likely the correct position as it is close to justice. Because of the strength of the authorities in support of this position, it has been adopted in various Islamic states court to have satisfied the overall objective of Islamic law.⁶³ This paper therefore also prefers and adopt he position that allows the grandfather and collaterals to inherit concurrently according to the laid down guidelines.

Disclosure of Conflict of Interest if any

The author declares no conflict of interest related to this research

62 The Exegesis of the Grand Holy Qur'an, Al-Sharif(1/) 441.

63 Al-Mawārith, As-sabūni, 83.

Source of Funding

This research received no funding and was conducted as part of the author's academic work.

Acknowledgement

The author expresses his appreciation to the Faculty of Communication and Media at King Abdulaziz University for their support.

Open Access:

This article is licensed under a Creative Commons Attribution- Noncommercial 4.0 International License, which permits use, sharing, adaptation, distribution, and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license, and indicate if changes were made. The images or other third-party material in this article are included in the article's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the article's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this license, visit

<https://creativecommons.org/licenses/by-nc/4.0/>.

References

- Al-Bahjah Fī Sharh al-Tuhfa, Abu Hussain Ali bn Abd al-Salām Al-Tasuli, Cairo: n.p. 1951, Vol. 2.
- Al-Fiqh 'alā Mazāhib al-'arba'a, Abd al-Rahmān Al-Jazā'iri, Dar al-Fijr Li-lturathi: Cairo 2013, Vol. 3.
- Al-Mabsut, Abubakar Muhammad bn Ahmad bn Abu Sahl, Shams-uddin Al-Saraksi, n.p.: Cairo, 1342 AH, Vol. 29.
- Al-Mawārith fī Shari'ah al-Islamiyah fī-Doui al-Kitāb wa-Sunnah, Muhammad 'Aliyy As-Ṣabūni, Dār As-Ṣabūni: Makkah 2002.
- Al-Mirāth: Justice of Islam in the Rules of Inheritance, Sala-uddin Haidar Ali-Lakhyi, Al-Maktabah Al-Muhammedia: Pakistan, 2011.
- Al-Mughni al-Muhtaj Sharḥ al-Minhaj Li-Nawawi, Muhammad al-Khatīb al-Shirbini, n.p. Cairo, 1308H.
- Al-Mughni, Adbullah bn Ahmad bn Muhammad, Ibn Quda

- mah, n.p.@ Cairo 1969, Vol. 6.
- Al-Qawanīn Al-Fiqhiyyah, Muhammad bn Ahmad Ibn Ju zaiy, n.p.: Fa's-Morocco, n.d.
- Al-Rahbiyyah Fi 'ilm al-Fara'id, Muhammad bn Muham mad Sabt Al-Mardāni, n.p.: Damascus, 1988.
- Al-Tarika wa-al-Mīrāth fi-al-Islam, Ibn Yusuf, 212-213; An Appraisal of Some Instances of Competition Between Grandfather and Collaterals Under Islamic Law of Succes sion, G. I. Yaro, International Journal of Innovative Legal and Political Studies Vol. 8, Issue 3, 2020, 91-96.
- Bidāyat Al-Mujtahid, Abu Walid Ahmad bn Muhammad Ibn Rushd al-Hafidh, Cairo, 1966, Vol. 2.
- Grandfather and Collaterals in Competition: A Knotty Prob lem in Islamic Law of Intestate Succession, Ismael I. Ismael, Journal of International and Comparative Law, Vol. 4, 2000.
- Ḥaṣḥiyah al-Dasūqi 'alā al-Sharḥ al-kabīr, Shams al-Din Muhammad bn Arfah Al-Dasūqi, n.p.: Cairo, n.d., Vol. 4.
- Interpretation of Meanings of the Noble Qur'ān in the English Language 'A Summarized Version of At-Tabari, Al-Qurtabi, and Ibn Khathir with comments from Ṣaḥīḥ Al-Bukhari', Al-Hilali Muhammad Taqiuddin and Khan Mu hammad Muhsin, Dar-us-Salam Publication; Riyadh-Saudi Arabia, 1996.
- Iqd Al-Jawahir al-Thamina Fi Mazhabi A'alim al-Madina, Jalal-udin Abdullah bn Njam Ibn Shash, n.p.: Beirut, 1995, Vol. 3.
- Jawahir al-Iklīl, A'abi Saleh bin Adb-Samih, n.p.: Cairo, 1346H, Vol. 2.
- Notes of the Basic Principles of Islamic Law of Succession, Arikewuyo Nafiu Ahmad, Al-Huda Grafic Print: Ilorin, 2020.
- Salient Effect of Maliki's Solution to The Problem of 'Grand Father and Collaterals in Competition', Ismael Saka Ismael, I.U.I.U Journal of Comparative Law, Vol. 1, 2000.
- Sharī'ah: The Islamic Law, AbdurRahman I. Doi, Ta Ha Publishers: London, 1984.
- The Background and Formation of the Four Schools of Islamic Law, Eirini Kakoulidou, https://www.academia.edu/2310961/The_background_and_formation_of_the_Four_Schools_of_Islamic_Law.
- The Distribution of Estate in Islam: The Law and Practice, M. A. Oniye, Kewudamilola Pub. Ventures: Ilorin, 2001.
- The Exegesis of the Grand Holy Qur'ān (Trans: Ibn Kathir H, Tafsir Qur'ān al-az'im), M. M. Al-Sharif, Dar-al-Qutub-al-Ilmiyyah; Lebanon, Vol. 1, 2006.
- The Hanafi School of Islamic Jurisprudence Literature: A Historical Account, Suud Sarim Karimullah and Arif Sugitiantana, Journal of Islamic History and Manuscript, Volume 2(1), 2003.
- The Practice of Muslim Family Law in Nigeria, M. A. Am bali, Tamaza Publishing Co.: Zaria, 1999.
- Theoretical Aspects of Mīrāth, N. A. Arikewuyo and I. O. AbdurRahman, ed. N. A. Arikewuyo et al, A New Guide to the Principles and Practice of Mirath in Nigeria, Centre for Islamic Heritage, Al-Hikma University: Ilorin, 2022).