



FACULTY OF JURIDICAL SCIENCES

COURSE:

Semester

SUBJECT:

SUBJECT CODE:

NAME OF FACULTY:

Lecture-1



LECTURE 1: General Principles of Inheritance

1. Nature of heritable property: The meaning of heritable property is that property which is available to the legal heirs for inheritance. After the death of a Muslim, his properties are used for paying funeral expenses, debts and wills. After the payment of these expenses, the remaining property is called heritable property.

For the purpose of inheritance, the Muslim Law does not make any difference between corporeal and incorporeal or movable and immovable property. Any property which is in the ownership of the deceased at the time of his death would be considered as heritable property.

2. Joint or Ancestral property: Unlike Hindu law, the Islamic law of Inheritance does not recognize the concept of joint family or coparcenaries property. Whenever, a Muslim dies, his properties will pass on his heirs in definite share of which the heir becomes the absolute owner. Similarly, on the death of such legal heir, the property owned by him will devolve among his legal heirs and this same process continues. Unlike Hindu law, there is no provision for Ancestral or Joint-family property. And there is also not distinction between Self-acquired or ancestral property.

3. Birthright under the Muslim Inheritance Law: Inheritance opens only after the death of a Muslim. Muslim law follows the principle of '*nemo est haeres viventis*' i.e. nobody can become an heir to a living person. It means the legal right to inheritance of property will only arise when the death of a deceased person will take place and not upon the birth of a child.

4. Doctrine of Representation: This Doctrine is a well-known principle recognized by the Roman, English and Hindu laws of inheritance. According to this principle of Representation, the son of a predeceased son represents his father for the purpose of inheritance. The Islamic law of inheritance does not recognize this Doctrine. It is because under Muslim law the nearer ones will exclude the remoter ones.

5. Rights of Females: Under the Muslim law of Inheritance, both men and women have given equal rights. On the death of an ancestor, nothing can restrict both girl and boy child to become the legal heirs of the inheritable property. However, it is generally found that the quantum of share of female heir is half of that of the male heirs. The reason behind this is that under Muslim law a female shall receive Mehr and maintenance from her husband during marriage ceremony. Whereas, a male will only have the property of the ancestors for Inheritance and male have the duty of maintaining their wife and children.

6. Rights of a Widow: Under the Shia law, a Muslim widow who does not have any children shall be entitled to inherit one-fourth share of the property of the deceased husband. However, a widow with children or grandchildren is entitled to one-eighth of the deceased husband's property. In cases where a Muslim man gets married during a period when he is suffering from some mental illness and without consummating the marriage, then the widow shall not be entitled to any right over her deceased husband's property. However, in case if her ill husband divorces her and subsequently, he dies from that illness, then the widow is entitled to a share of her husband's property until she remarries.

7. Rights of Inheritance of a child in womb: Under Muslim law, a child in the womb of a mother at the time of his/her father's death shall only entitle to inherit the property if he or she is born alive. In case, if the child is born dead then the share, which vested in him, will cease to exist and it will be presumed that it has never existed.

8. Right of Inheritance of the stepchildren: The stepchildren are not entitled to any right to inherit the property of their stepparents. Similarly, the stepparents are also not entitled to inherit the property from stepchildren. However, the stepchild is competent to inherit the property of his Natural Father or Natural Mother. Moreover, the stepbrothers (or stepsisters) can inherit each other's property.

9. Escheat: It refers to the transfer of right to the government to take ownership of estate assets or unclaimed property. It occurs when a Muslim person dies with no wills and no heirs, then the property of a deceased shall go to the government. The State is then considered the ultimate heir of Property.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.			
2.			

3.			
4.			
5.			

Answers: 1-(),2-(), 3-(),4-(),5-()