

## **Quadrant II – Transcript**

**Paper Code: FML0510**

**Module Name: Classification of heirs under Hanafi and Itna Ashria schools and their shares and distribution of property**

**Module No: 17**

---

welcome students. The program is BA.LL.B the subject law semester. First year, degree, semester two, third year, BA.LL.B semester 5 paper code FML 0215 and FML. 051 Course title Family Law 2. Unit two inheritance module name classification of heirs under Hanafi and Itna Asharia laws, and their shares and distribution of property.

I am Pearl Monteiro from VM Salgaocar College of Law, Miramar, Goa. The outline of this module is the classification of heirs under Hanafi and Itna Asharia law schools and their shares and distribution of property. The learning outcome is that you will be able to understand the classification of heirs as under Hanafi and Itna Asharia School and their shares and distribution of property. You will also be able to enumerate the heirs under the Hanafi and Itna Asharia School and their shares and distribution of property.

Now Hanafi is another name for Sunni and Itna Asharia is another name for Shia, so the law would be the Shia or the Sunni or the Hanafi or the Itna Asharia. Now why there is a difference in these two systems is because they both were following the customary law of inheritance, and later on they superimposed the Koranic principles, which resulted in different interpretations, and that is the result of having different inheritance laws for both these schools.

Now under the Sunni or the Hanafi law, the inheritance goes as follows. The sharers, the residuaries, the distant kindred, and in the absence the state by escheat. Now sometimes it is necessitated to have a mathematical formula for the distribution of assets, and this is done by the doctrine of Aul or the doctrine of Raad which we will see a bit later.

Now the sharers are also known as the Koranic heirs, as they mentioned in the Quran, and their shares also are mentioned there. Now these shares vary according to different circumstances. They are 12 in number. There is the wife. Her share is  $\frac{1}{8}$  or  $\frac{1}{4}$ .  $\frac{1}{4}$  in case there are no children and  $\frac{1}{8}$  in case there are children. And even if there is more than one wife together, their share will be  $\frac{1}{4}$  or  $\frac{1}{8}$ , as the case may be.

Then we have the husband whose share is half in the absence of children and  $\frac{1}{4}$  in the presence of children, the daughter gets a share of half and if there is more than one daughter, they get the share of two third. Now in the presence of son, the daughter becomes a residuary, so she is a sharer only when there is no son.

Similarly, the son's daughter. Also, the share is likewise as the daughter, the full sister, the Consanguine sister, the uterine brother, uterine sister, mother, true grandmother, father and true Grand father. Now the true grandmother and the true Grand father only inherit in the absence of mother and father. And. The residuaries are of three types. They are the ascendants, descendants and the collaterals. Now the descendants are the son, the son, son, how low so ever the ascendants are the father and in his absence the true Grand Father, the true Grand Father doesn't inherit in the presence of Father. The collaterals are the full brother, the full sister, the Consanguine brother Consanguine sister, full brother son Consanguine. Brother son full paternal uncle, Consanguine, paternal

uncle. Full paternal uncle, son Consanguine. Paternal uncle son. Now the distant kindred also can be descendants, ascendants and collaterals. Now the distant kinder the descendants are the daughters children, how low so ever. And the sons, daughters, children, how low so ever. The Ascendants are the false Grand Father, how high so ever, and the false grandmother how high so ever. The collaterals are the descendants of parents. The full brothers daughters, descendants, Consanguine brothers daughters descendants uterine brothers daughters descendants, daughters of full brothers sons daughters of Consanguine brothers sons children of sisters full Consanguine as well as uterine descendants of immediate grandparents. Full consanguine and uterine paternal uncles daughters daughters of full and Consanguine paternal uncles sons. The paternal aunts, the maternal aunts, uncles and their children and the descendants of remoter grandparents. Now the distribution of assets among the distant kindred is done according to a few principles. The descendants are preferred to the ascendants and the ascendants are preferred to the collaterals. That means in the presence of descendants, the ascendants or the collaterals will not inherit and in the presence of ascendants, the collaterals will not inherit. When all are descendants, the fewer degrees of dissent are preferred, so that that means to say the grandson would be preferred to the great grandson. And if the degrees of dissent are equal, the children of sharers and residuaries are preferred as compared to the children of the more distant kindred. Now the order of preference is as follows. The first is the daughters children. Second, the sons, daughters, children, and last the daughters grandchildren.

Now as far as the Shia or Itna Sharia law is concerned, there are some main principles as well as classification of heirs It is a bit different as well as a bit similar to the Sunni school. Now there are two main principles. They are nisab or blood relationship and sabab or special cause. Now the classification of heirs

are the heirs by marriage and the heirs of consanguinity. Regarding the heirs of marriage, there are only one that is the husband and or wife, as the case may be.

The classification of the heirs by consanguinity are parents. The children and lineal descendants. How low so ever. The grandparents, true and false, how high so ever, brothers, sisters, and their descendants, paternal uncles, aunts of the deceased of his parents and grandparents, how high so ever and their descendants. How low so ever.

The maternal aunts and uncles. And also we must note that heirs in earlier group, exclude the heirs in the later group, as in both categories. Group inherit simultaneously. Now in Shia law we must note that there is only sharers and residuary's there is no distant kindred as we find in the Sunni law. Those who are all who are not sharers are residuary's. For example, the paternal and maternal grandparents are residuary's.

Now, what happens when we have shares which are fixed and allotted by the Quran is sometimes. The sum total of the shares either exceeds or is less than unity. That is to say, sometimes the property is too much as compared to the claims. So sometimes the property is too little as compared to the claims. Now to balance the claims as well as the property, two doctrines are put forward, one is the doctrine of Aul and the other is the doctrine of Raad.

Now the doctrine of Aul states that when the sum total of the shares allotted to the various heirs in accordance. With, the entitlement exceeds the unity, then the doctrine of Aul lays down that the share of each heir should be proportionately reduced. This is done by reducing the fractional shares to be the

common denominator. Since this is done by increasing the denominator, the doctrine is called increase, though in fact the shares are proportionately reduced. Now, the doctrine of raad is just the opposite. It is the doctrine of return. If, after the distribution of assets among the sharers, some residue is left, and there are no residuearies to take it, then the balance is distributed among the sharers in the same proportion as their shares.

Now there is a little difference in the Shia law. Now in the Shia law in the doctrine of all they reduce the shares only of the daughter or the sister whereas in the Sunni law they reduce everybody share. Now as far as the doctrine of raad is concerned, in the Shia law any remote heir stops the return to the spouse. The mother is not entitled to return in the presence of siblings or descendants and the Uterine siblings are not entitled to return in the presence of full siblings. This disqualification or condition is not there in the Sunni law.

Thank you.