

# An Exploration Of The Synergy Between The Law Of Inheritance In The Old Testament And Islam

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**Abstract**—Inheritance which is basic to every social system is not only a universal but an intergenerational concept because every generation is supposed to leave an inheritance to the next generation. The judicial notion of inheritance designating the transfer, transmission or possession of goods given by a testator is attested to, in both the Bible and Islamic law. It denotes or implies specifically succession in possession either by conquest or by bequest. It is a kind of money or objects that a beneficiary receives when a benefactor dies. It is the passing of wealth from one generation to the other. A critical look into both the Old testament and Islamic laws of inheritance reveals a lot of similarities between the laws; but in spite of these similarities, much have not been written on the relationship between old Testament and Islamic laws of inheritance. It is in view of this that this paper examines the synergy between the two laws. Since the study is historical in nature, historical method is employed in its analysis. The findings of this work reveal that despite the differences in the revelation of both the Jewish and Islamic religions, similarities exist in some of their principles, doctrines and practices. The study recommends that openness of mind is needed if the hidden truths of every religion is to be explored.

**Keywords**—*Inheritance, transmission, possession, succession, testator, bequest, benefactor.*

## Introduction

The word “inheritance” is a derivative of an Hebrew word; from its semantic root, it is a word that is interpreted as a stream that is flowing downward; that is the wealth of the father flowing down to the next generation. It is a wealth, property or possessions left by a testator. It is a property received (or to be received) (<https://www.quotescosmos.com>). It is also described as what is given to one as a possession. In the New Testament usage, it is often interpreted as the eternal blessedness of the consummated kingdom of God which is to be expected after the visible return of Christ (<https://www.quotescosmos.com>). In Islam, inheritance signifies a property or funds transferred

from a deceased family member to their loved ones. The declaration a person made prior to his death as well as the arrangements made according to Islamic law after his death in respect of his property or properties is known as “Wasiyyah”. In Islamic legal terminology, inheritance is “Mirath” that is, what is to be divided from the property of the deceased among the successors. The science of Mirath in Shariah according to Abdul Rahman (1997), gives rules which guides as to who inherits and who is to be inherited and what shares go to the heirs. The death of an individual therefore, brings about transfer of his rights and obligations to his successors.

In the Old Testament, the laws concerning the division of inheritance can be categorized into two; the Torah law and the Ordinary law. While ordinary law stipulates that the inheritance belonging to all the descendants of the testator should be divided equally regardless of the type of sex involved, Torah law allows the inheritance to be divided only among male heirs. It therefore implies that women do not inherit from their husbands and daughters do not inherit from their fathers.

In both Jewish and Islamic laws, women occupy a special status; they are exempted from most of the commandments and are not allowed to own properties on their own. Women are considered as part of the properties of their husbands. It is therefore in view of the similarities between the Jewish and Islamic law that this work explores the synergy between the law of inheritance in the Old Testament and Islam.

## The Law of Intestate Succession as Practiced in the Old Testament and Islam

Intestate succession refers to a legal process that comes into play when an individual dies without having in force a valid will or other legal or binding declaration stating how his assets and properties should be distributed. It also includes a situation where a will or declaration has been made, but some parts of the estate of the deceased are neglected. The remaining estate forms the “intestate estate”, the distribution of such assets is therefore determined by the laws of intestacy. The laws of intestacy establish a specific order of priority for the distribution of assets of a deceased. It refers to the body of law (statutory) that determines who is entitled to the property from the

state under the rules of inheritance. The laws of intestate succession vary from culture and they are not static but dynamic due to legislature and judicial decisions. Environment and global trends can also influence intestate laws. The basic law of intestate succession explicitly stated in Numbers 27:8-11: the

*And thou shall speak unto the children of Israel, saying, if a man dies, and has no son, then ye shall cause his inheritance to pass unto his daughter. And if he has no daughter, then ye shall give his inheritance unto his brethren. And if he has no brethren, then ye shall give his inheritance unto his father's brethren. And if his father has no brethren, then ye shall give his inheritance unto his kinsmen that is next to him of his family and he shall possess it; and it shall be unto the children of Israel a statute of judgment, as the Lord commanded Moses.*

From the biblical law of intestate succession as stated above, it is obvious that the sons inherited their fathers' properties upon the demise of the latter. These positions are supported by various Bible passages such as Joshua 17:3-6; Judges 11:1-2; 2 Chronicles 21:1-3; Proverbs 17:2 and Luke 12:13. It is, however, always very difficult to know those to be counted as "sons" according to the above passages for purposes of inheritance. According to Richard(n.d.), biblical traditions, at times, refer to the situation of sons by their fathers' concubines, their wives' maids, by slaves and by harlots. It appears that such sons might therefore inherit if they are not prevented from doing so. Definitely, Jephtah in Judges 11:1-2 would have inherited from his father if his half brothers had not prevented him.

To further corroborate the above submission, we can see from the biblical record in Gen 30 that Jacob had several sons by the maids of his wives; Rachel and Leah, respectively, Bilhah and Zilpah. It is apparent from the record that Rachel considered the arrangement with Bilhah as equivalent to what one might refer to as surrogate motherhood. She confidently made a declaration to Jacob thus: "Here is my maid, Bilhah; go into her, that she may bear upon my knees and even I may have children through her"(Gen 30:3). This might be one of the reasons why she regarded the sons subsequently born to Bilhah as her own and she, Rachel, single handedly and contrary to popular tradition named them, Dan and Naphtali (30:6-8). Leah also gave names to the sons Jacob had by her maid, Zilpah, Gad and Asher (30:11-13). It became transparently clear that Rachel and Leah gave their maids to Jacob to raise children through them (Gen 30:4, 9). This implies that they acted as wives and served as maids. Their position as wives appears secondary while their status as maids, primary. Though Genesis narratives simply described Bilhah and Zilpah as Rachel and Leah's maids, there was no record that their children, Dan, Naphtali, Gad or Asher received an inheritance from Jacob. Nevertheless, these four were among the "sons" whom Jacob blessed or charged shortly before his death as recorded in Genesis 49:1-33 (Richard, n.d.).

Their inclusion among those Jacob blessed might therefore suggest that they were to receive their "inheritances" along with other brothers. If all Joseph's brothers were to inherit from Jacob as Genesis 48:5-6 appears to suggest, Dan, Naphtali, Gad and Asher might not probably be excluded. According to Joshua 13:24-28; 19:24-48, it is evident that subsequent biblical traditions report that their descendants received "inheritances" in form of tribal allotments.

As presented in Gen 16:1-3, the story about Sarai, Abram, Hagar and Ishmael appears to be in conformity with Nuzi custom where a childless wife could "raise" children by simply giving her maid to her husband. It appears that Hagar was not content to serve merely as a surrogate mother according to Gen 16:4-6 but acted rather as a wife and mother in her own right. Unlike what transpired in Jacob's family where Rachel named the children born by Bilhah, her maid, Hagar, not Sarai named her son, Ishmai (Gen 16:11). This might be the reason Ishmael was expressly described as Hagar's son in Gen 21:9, 10, 13 as well as Abram's son in Gen 16:15-16, 21:11. The implication is that Ishmael would inherit from Abraham. In order to prevent this, Sarah instructed Abraham to send Hagar and Ishmael away. It is apparent from the story above that the legal wife has the authority to deny the son born by her maid right to inherit, most especially when the surrogate mother arrogates to herself, wifely status. The legitimate sons also have the right to deny their father's son by a harlot right to inherit.

The Jewish law of interstate succession also allows a slave to serve as a surrogate father to ensure the continuity of family line where the family has no sons to inherit. According to 1 Chronicles 2:34-35, a man described as Sheshan, has no son but daughters. He gave one of his daughters in marriage to his slave in order to perpetuate the family line. The son of this marriage became the father that led the continuing succession of male descendants who later inherited all the properties the man (Sheshan) had to pass down to his successive generations. The story of Abraham in Genesis 15:3 further attests to the fact that a slave can become the heir of a sonless father. We see Abraham in the above passage entertaining fear that Eliezer would become his heir. Yahweh allayed Abraham's fear by assuring him that the slave born in his house would not be his heir but his own son would be his heir. Abraham must have been aware of the practice in Nuzi custom where a slave could be adopted as the heir in case of childlessness (<https://www.bibletools.org>).

According to the law of intestate succession as stated in Num 27:8, "If a man has no son, his inheritance shall pass to his daughter", the question one should ask here is who among the daughters would inherit since Numbers 27:8 refers to his "daughter". One may, however, infer from the passage's reference to "daughter" that it probably suggests the older or oldest would inherit. The question of who would inherit becomes transparently

clear through the accompanying narrative, Numbers 27:1-7 and Joshua 17:3-6, that all the five daughters of Zelophehad were to, and did inherit their father's property.

Rachel and Leah in Genesis 31:14-16 desired to receive an inheritance from their "father's house" even when they were aware that their father had sons. The attitudes of Rachel and Leah can be explained in the context of the "Hurrian" custom. According to the Hurrian custom, if a man desired to appoint a son-in-law as his principal heir, he would turn over to him his household gods. After the man's death, appearance in court with the household gods would be accepted as a proof of such a disposition. In view of this, the theft of Laban's household god by Rachel implied that she was trying to secure all of Laban's properties for her husband having understood that the custom that daughters could not inherit the father's properties as long as her father has sons (<https://lawcf.org>).

In intertestamental literature, precisely in the book of Tobit, we read about a man known as Tobias who inherited the properties of his father-in-law after his demise instead of Sarah their only child who was Tobias' wife (Tobit 14:12-13). We may infer from this that perhaps only unmarried daughters of sonless father inherited from their fathers.

Cognizance must, however, be given to the fact that the thrust of interstate succession in the Old Testament is about the perpetuation of the family line. This might be one of the reasons another provision was added concerning heiresses in Numbers 36:8 thus:

*Every daughter who possesses an inheritance in any tribe of the people of Israel shall be wife to one of the family of the tribe of her father, so that every one of the people of Israel may possess the inheritance of his fathers.*

The clear implication according to Richard (n.d.), is that when a woman who had inherited her father's property married, the inherited property then became her husband's. If the husbands are within the tribes of Israel, each tribe would preserve its own original inheritance.

The law of interstate succession in Numbers 27 does not make any provision for the widows but there are various passages in the Old Testament that suggest that widows inherit their husband's properties. One of such texts is Ruth 4:3. Here, record shows that Naomi sold the parcel of land which belonged to Elimelech, her late husband. One can infer from this act that the land must have been bequeathed to her by her husband. It is also probable that the land must have been given to her by operation of the law upon the death of her husband.

Evidences also abound in 2 Kings 4:1-7 and 2 Kings 8:1-6 that widows inherited their deceased husband's properties. 2 Kings 4: 1-7 records the encounter of Elisha with a widow. He helped her by

causing her "cruise" of oil to keep flowing until it produced enough to pay off her debts. One can infer from this story that the woman must have inherited the debts from her late husband. It is also very obvious that the widow inherited her husband's family house and continued to live there with her son. 2 Kings 4:8-37, refers to a woman whose husband was old but 2 Kings 8:1-6 does not mention the husband. We can therefore reasonably infer from this that the husband had died and the woman inherited his properties.

### Law of Succession in Islam

In Islamic legal terminology, inheritance is "Mirath". The science of Mirath in Shariah gives rules which guide as to who inherits and who is to be inherited and what shares go to the heirs (Abdul, 1997).

The transmissible rights include all rights to property as well as rights connected to property; and other dependent rights, such as debts, right to compensation and so on. There are also the transmissible obligations those which are capable of being satisfied out of the deceased's estate. What is left after the last needs of the deceased have been satisfied, namely; after the payment of funeral expenses, and the discharge of his obligations and debts, is to be distributed according to the law of Mirath as defined in the Quranic injunctions.

The law of intestate succession in Islam appears more explicit than the Old Testament law. There are three conditions of inheritance in Islam which must be satisfied.

- The death of Prepositus.
- The survival of heirs at the time of death.
- The relationship which justify inheritance.

The death of Prepositus according to Quranic injunctions must be actual and clear by real death or by the decree of the court in the case of missing person. Scholars are not unanimous in their opinion as regard the sharing of inheritance of a missing person. While some are of the opinion that descendants of a missing person should wait for seven years before his properties can be shared, some argue that they should wait for one hundred and twenty years.

Another condition also states that it has to be proven that the heir or heirs are surviving at the time of the death of the Prepositus, before he or they are allowed to inherit (Abdul, 1997). In the case of an embryo, Abdul (1997) explains it will not inherit unless it is born alive. His share should be put aside pending his delivery but the share which is to be kept should be the share of a male child. In a situation where all the people died at the same time, and there is no way to determine who died first and who died later, then their estate should be inherited by their relatives who are surviving. The law of intestate succession is elaborately stated thus:

*Allah thus commands you concerning your children: the share of the male is like that of two females. If (the heirs of the deceased are) more than two daughters, they shall have two-thirds of the inheritance; and if there is only one daughter, then she shall have half the inheritance. If the deceased has any offspring, each of his parents shall have a sixth of the inheritance; and if the deceased has no child and his parents alone inherit him, then one-third shall go to his mother; and if the deceased has brothers and sisters, then one-sixth shall go to his mother. All these shares are to be given after payment of the bequest he might have made or any debts outstanding against him. (Surah An-Nisa 4:11-14) (Islamicstudies.info).*

Just like the law of intestate succession in the Old Testament, Islam also recognizes and prioritizes the share of the son. While daughters cannot get inheritance where sons are available, Islam teaches that "the share of the male is like that of two females". While the Old Testament is silent about the category of people that cannot inherit, Islam itemizes four categories of people that cannot inherit thus:

- a. A fugitive slave who has fled away from his master.
- b. One who has murdered one's predecessor intentionally or unintentionally.
- c. One who professes a religion other than Islam.
- d. One living in Darul-iharb cannot inherit the property of one living in Darul-islam and vice versa (<https://ww.illum.edu.ng>).

Munazza (n.d.), specifies six heirs who will always inherit if they survive the deceased. These are: husband, wife, son, daughter, father and mother. Munazza (n.d.), explains further that a husband is entitled to half his deceased wife's estate if she has no children. If she has children, he is entitled to a quarter share. A wife is entitled to a quarter share of her deceased husband's estates if she has no children, If she has children, she is entitled to one eighth.

Mashood (2021) explains that the three essential elements for the application of Islamic law of inheritance are: the deceased (muwarrith), the estate (tariahah) and the heir. According to him, Hanafi jurisprudence classifies heirs into three main specific classes which are: Quranic heirs, Agnatic heirs and Uterine heirs while, Shi'ah jurisprudence classifies them generally into heirs by blood relationship (nasab) and heirs by marriage (sabab). While explaining the importance of inheritance in Islam, Murtala (2022) emphasizes that a human being's feet will not depart the presence of his Lord, on the day of resurrection until he is questioned about five things: His lifetime-how he spent it. His youth (his body)- how did he utilize it?; his wealth- how did he earn it and how did he spend it? And what did he do in regard to what he knew?

From the foregoing, it can be submitted that the law of intestate succession in Islam appears more comprehensive than that of the Old Testament. Islamic law takes care of the sharing formula to be adopted for all categories of heirs. The Old Testament law is silent about it.

### **Levirate Marriage**

The law of levirate marriage is stated in Deuteronomy 25:5-10 as follows:

*If brethren dwell together and one of them die, and have no child, the wife of the dead shall not marry without unto a stranger; her husband's brethren shall go in unto her and take her, and take her to him, to wife and perform the duty of an husband unto her. And it shall be, that the firstborn which she beareth shall succeed in the name of his brother which is dead that his name be not cut out of Israel.*

The major emphasis of the law of levirate marriage as stated above appears to be on perpetuating the sonless deceased brother's name in Israel. Richard (n.d.), explains further that it is building up the deceased "brother's house" by providing him a "son". Though the law does not directly and explicitly refer to property or inheritance, yet it is very obvious that one of its functions according to Deuteronomy 25:6, is to ensure the retention of ancestral property within the family or clan. The story of Judah and Tamar in Gen 38:8, lends credence to the idea of surviving brother's responsibility to "raise up" offspring for the deceased but is also silent about the issue of property and inheritance. A similar issue is also recorded in the book of Ruth where Naomi had evidently inherited Elimelech property (Ruth 4:3). According to this text, Naomi sold the parcel of land owned by her late husband which implied that she had inherited it as earlier stated. Since it had been an established tradition in Israel that the property of a sonless brother must be redeemed, his next of kin must therefore marry the wife. This explains the rationale behind Boaz and Ruth's marriage.

Another section of the law allows the surrogate son to inherit all the properties of the surrogate father if the later predecease him. This probably explains why Boaz initially declined to redeem the property (Ruth 4:6). Another observable feature of levirate marriage in Ruth is the idea or practice of substituting for a widow who is old and beyond child-bearing years. Since Naomi in our text above had passed child-bearing age, Ruth was presented as the substitute; in fact, Naomi initiated Ruth's marriage to Boaz. Ruth became the biological mother of Obed, the son of levirate marriage but Obed according to Ruth 4:14-15 is Naomi's surrogate son and indirectly that of Elimelech.

Intestate succession under Islamic law is a religious law, based on the principle and idea that there must be standing or compulsory rules for the transfer of property from generation to generation. Islam recognizes two types of successions which

include: Testamentary and Intestate. Testamentary refers to the situation where the inheritance of property is carried out according to the will of the deceased. When the deceased dies without leaving a will, and hence, the succession is executed according to the general rules, it is known as the Intestate succession.

The position of Islam in respect to levirate marriage is very simple. According to Islamic law, the wife of one's brother is not unmarriageable to him forever, rather, as soon as the marriage between her and her husband ends either through divorce or death and her "Iddah" (waiting period) lapses, it becomes permissible for the brother of her ex-husband to marry her. The widow is free to marry anyone or even to remain unmarried after the death of her husband. There is no restriction upon her, except for observing the mourning period (<https://islamstockexchange.com>). The concept of a levirate marriage is not permissible in Islam (<https://islam.qa.org>).

From the foregoing, we can see that the Old Testament in an attempt to ensure the continuity of the family or the generation line, levirate marriage was instituted. Study reveals also that Islamic law makes no provision for levirate marriage as the wife of the deceased is allowed to marry anyone she wishes or she may even decide to leave the family since marriage is not compulsory.

### **The Nexus between Old Testament Law of Inheritance and Islamic Law**

Inheritance law in the Old Testament and Islam can be explained thus:

The firstborn son inherited a double portion of the entire father's possession; Islamic law also stipulated that the share of a male child is like that of two females.

The daughters in the Old Testament law of inheritance were entitled to an inheritance provided there were no sons in the family. Islamic law of inheritance regardless of the number of sons makes provision for daughters but the share of the sons will be greater than that of the daughters.

The brothers or more distant kinsmen were recognized in case there were no direct heirs in the Old Testament law but in no case should an estate pass from one tribe to another. In Islamic law of inheritance, distant kinsmen can also inherit but while emphasis is on people outside the tribe, that is, people outside the tribe of Israel cannot inherit, Islam stipulates that one who professes a religion other than Islam cannot inherit.

While a fugitive slave cannot inherit in Islamic law, the Old Testament law makes provision for a slave to act as a surrogate father for the purpose of perpetuating the family's wealth.

### **Conclusion**

As we can see from the study, intestate succession is a legal process that comes into play when someone dies without leaving behind a valid will or other legally binding document that states how his assets and property should be distributed.

The whole law of inheritance in the Old Testament can be summarized thus: the oldest son had a right to a double share of his father's possessions, the sons of concubines could not inherit unless they were adopted (Gen 25:5-6). Daughters did not inherit unless there were no male heirs and the daughters married within the same clan (Num 7:1-8). A widow did not inherit but could be in charge of her husband's property until her sons reach maturity age (Ruth 4:9, 2 Kings 8:3-6). If she had no male descendant, the property of the late husband will pass to his brothers or nearest male relatives, and she would return to her father's house (Gen 38:11), or she would remain attached to her husband's family by a levirate marriage (Deut 25:5-10, Ruth 2:20; 3:12).

The laws regulating inheritance in Islam are simply based on the principle that property which belonged to the deceased should be shared among the marital relatives that have the strongest claim to be benefitted by it and in proportion to the strength of such claim. So when the deceased has many benefactors, the estate will be distributed among the benefactors or claimants in such orders or proportions as are most in harmony with the natural strength of their claims.

While Old Testament law of inheritance gives more recognition to the sons of the deceased and that daughters cannot inherit except there are no sons, Islam teaches that daughters including widows can inherit as long as the widow remained with late husband till the point of death. The widow that had divorced the late husband therefore has nothing to inherit in Islam.

While Islam is so detailed as regard the sharing formula to be used for each of the inheritors, apart from the double portion that should be given to the first son of the deceased, Old testament law does not provide any sharing formula.

Considering the areas of convergence and divergence in both the Old Testament law of inheritance and that of Islam, one can easily submit that the Old Testament laws of inheritance as used by the Ancient Jews and as stated in the study appears more stringent and rigorous than that of Islam most especially, where no provision is made for the widow of the deceased. One can, therefore, recommend that the laws be revisited to be in conformity with the present reality.

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