

197468 - He died and left behind a wife, a mother, and his brother's children; how should the estate be divided?

the question

He died and left behind a wife, a mother, and his brother's children.

Detailed answer

If someone dies and leaves behind a wife, a mother and his brother's children, the estate is to be divided as follows.

The wife gets one quarter, because there are no descendants who inherit.

Allah, may He be exalted, says (interpretation of the meaning):

“In that

which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts”

[an-Nisa' 4:12].

The mother gets one third, because there are no descendants who inherit or siblings. Allah, may He be exalted, says (interpretation of the meaning):

“For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; but if the deceased left brothers or (sisters), the mother has a sixth”

[an-Nisa' 4:11].

See: al-Mughni by Ibn Qudaamah (6/169).

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said: She inherits one sixth if the deceased had descendants who inherit or he had a number of brothers or sisters or both, because Allah says (interpretation of the meaning):

“For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; but if the deceased left brothers or (sisters), the mother has a sixth”

[an-Nisa’ 4:11].

It makes no difference whether the siblings are males or females, or both, full siblings or siblings through the father only or through the mother only, and it makes no difference whether they are heirs or are barred from inheriting by the father, as is the apparent meaning of the verse, because Allah has allocated to the mother one third with the father. Then He says (interpretation of the meaning): “but if the deceased left brothers or (sisters), the mother has a sixth” [an-Nisa’ 4:11]. The particle fa (“but” in the phrase fa in kaana lahu ikhwah..., translated here as “but if the deceased left brothers (or sisters)...”) indicates that the second phrase is connected to the first and is to be understood in the light thereof, and siblings do not inherit if the father is present, yet despite that Allah allocated one sixth to the mother in this case. This is the view of the majority of scholars.

End quote from Tasheel al-Faraa’id (1/19)

Whatever is left of the estate goes to the brother’s children, to the males only, because the Prophet (blessings and peace of Allah be upon him) said:

“Give the shares of inheritance to those who are entitled to them, and whatever is left goes to the closest male relative.”

Narrated by al-Bukhaari (6746) and Muslim (1615).

And Allah knows best.