

## **Reconciliation between Heirs (Exit) On Estate Division in Inheritance: Its Provisions and Forms in Islamic Jurisprudence**

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**Abstract:** Inheritance is of the most important branches of Islamic law, which every Muslim needs to know to understand his share in the estate left behind by the deceased in accordance with the Islamic law; it is regarded as one of the subject that has not been adequately researched on, in terms of both academic and law. Another most important part of inheritance in Islamic law is the issue of reconciliation between heirs on estate of inheritance to remove one or some of them from the division of the estate in exchange of something paid to him or them; it is of the issues needed by the heirs at all time to divide the estate between them, and to remove the one they do not need to remain with them when the subject matter is real estate, and things that may be affected if are divided based on the principles of inheritance. This issue is of the issues that do not get their adequate share of research; and those who wrote on inheritance among the contemporary scholars only discussed some of its forms and division; for this I wish to discuss this issue from the jurisprudential point of issue. This study adopts inductive and analytical approach to gather the views of scholars and researchers and their evidence and arguments on the matter, and texts related to it and to try to analyzethem to suit our contemporary reality. So, it is considered contracts that move ownership that must be studied by focusing on the pillars and conditions and the most important provisions which are distinct from the rest of contracts that move ownership.

**Key word:** Reconciliation between heirs (exit), heirs, estates, inheritance, Islamic law.

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### **I. INTRODUCTION**

Islam gives inheritance great attention, and works to identify the heirs or those who have right on the deceased's estate to invalidate the practice of the Arabs during the period of ignorance before Islam for giving inheritance to men and adults only and depriving women and the young ones; thus, (Ibn Kathir, 1998). Islam came to invalidate that because it is an injustice, and specifies shares to everyone who is entitled to inherit from the deceased's estate; Allah (swt) said: (Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased Left brothers (or sisters) the mother has a sixth. (The distribution in all cases ('s) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah. And Allah is All-knowing, All-wise.) (Nisa: 11).

### **II. THE CONCEPT OF RECONCILIATION BETWEEN HEIRS (EXIT) ON ESTATE DIVISION IN INHERITANCE AND EXPLANATION OF TERMS RELATED TO ITS MEANING**

The concept is to reconcile between heirs to remove some of them from inheritance in exchange for something to be paid to him or them from the estate or others (al-Ghazali, 2005).

The literal meaning of the concept: the word is used for example to say everyone has removed expense based on the estimate on the expense removed by his partner; also when someone removes his ownership from company to his partner by way of selling (Issawi, 1989).

Technically: It is for some heirs to remove some of them by paying something known. It is agreement of the heirs to remove some of them from their right in inheritance in exchange for something known from the estate or others; it is the contract of qismah: when the exchange taken by the one removed is part of the estate;

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and it is a contract of sale and purchase: when the exchange taken by the person removed is taken not from the estate, the remaining heirs will pay from their own money, rather than waiving his right to the estate (Sibai, 1997).

### **III. ITS RULING:**

It is permissible with consent and reconciliation on the matter; and it is the impact of giving ownership to heir for money that he collected as exchange to his portion in the estate, whether or not he knows what to inherit, and the rest of the heirs will own the share of the heir who accepts the reconciliation (Abu Zahra, 1990).

### **IV. RELATED WORDS:**

a. Literal Meaning of Reconciliation: It is peace as opposed to adversary. Technically: It is an effort to remove dispute. It is broader than the one is inheritance, as it covers inheritance and others (Issawi, 1989).

b. Literal Meaning of Qismah: Which means to divide something between themselves; where everyone takes his share. Technically: Collection of common share in a particular place (Sibai, 1997).

The difference is that in qismah he collects part of the common money, but in reconciliation, an heir collects something in particular, whether from the estate or others.

### **V. RULING:**

It is permissible where there is consent; it is permissible because of the hadith narrated that Abdurrahman bin Auf (ra) divorced his wife Tamadurbint al-asbag al-Kalbiyyah during his death illness, and he died during her *iddah*, and Usman (ra) allowed her to inherit from him together with other three wives, and they reconciled with her on a quarter of eighty-three thousand; it is said of dinars or gold (Abu Zahra, 1990).

### **VI. ESSENCE OF RECONCILIATION BETWEEN HEIRS (EXIT)**

The origin of this concept is making peace between the heirs to take out one of them, but it is a contract of sale if the exchange to be reconciled on is a thing not from the estate (al-Husari, 2001). It is considered contract of qismah and swap if the exchange to be reconciled on is from the estate, it may be a gift or a projection of some, if the exchange to be reconciled on is less than the outstanding share; this is in general. And each case requires its own terms (Hadrami, 1990).

### **VII. THE GENERAL CONDITIONS ARE:**

c. For the reconciliation to be valid, the estate must be acceptable to that; known, is it is mostly sale in the form of reconciliation, and sale of the known is not acceptable and also to reconciled on it, if it is possible to know the estate; but if that is not possible, it is permissible to reconcile on the unknown, just as if a wife reconciles on her dowry, where she and the heirs do not know the amount. This view is of Maliki, Shafi School of law, and that of Imam Ahmad and some Hanbalis who do not allow reconciliation on the unknown (al-Ghazali, 2005).

The famous view of Hanbalis is the permissibility of reconciliation on the unknown, whether or not it is difficult to know it. The authority of reconciliation on the unknown when it is difficult to know is hadith: (The Prophet (saw) said to two men who argue of legacy of darast: divide, and try to find the truth) (Ibn Hajar, 1999).

But according to Hanafi School of law, the estate is not required to be known on something that does not need to be caught, because it does not require delivery, and the sale of something that the amount is unknown is permissible, as one who acknowledged snatching something, and the owner sold it to the person who acknowledges, it is permissible even if they do not know the amount, and because ignorance here do not lead to dispute, and the evidence of permissibility of this is hadith of Usman (ra) on the reconciliation of Tamadur, the wife of Abdurrahman bin Auf (Makhlouf, 1959).

d. The exchange shall be valuable, known and beneficial money that may be collected; it shall not be unknown in terms of amount and feature, and cannot be as exchange in sale. This is in general, as according to Hanafi and Hanbali Schools of law: if the exchange does not need collection, and no way to be known, like specialist in legacies study, it may be permissible when it is unknown (Ibn Hajar, 1999).

e. Collection in the same place on what is considered exchange, such as reconciliation of currency with another, and where the two reconciled subject matter have usurious element. This is agreed originally, with variation in the details to be mentioned when discussing forms of the reconciliation.

f. The availability of the terms of sale of debt if the estate is debt on others, this is according to those who permit sale of debt to others not the debtor, such as Maliki and Shafi'i Schools of law, and to be careful in using the trick for the permissibility of the reconciliation such as *al-Ibra* and *al-Hiwalah* as said by the Hanafi School of law; more details will come when mentioning the forms (Makhlouf, 1959).

**VIII. SPECIAL CONDITIONS**

g. Those making the reconciliation shall be adult with capacity to contract, as it is mostly considered contract of exchange; therefore, people involved shall be capable of entering into a contract; that is to be sane, not under interdiction; it is not permissible from boy, insane etc. And there must be consent as well (Shalabi, 1990).

h. The wealth to be reconciled on must be possessed by both of them or all of them, or to be guardian; father or grandfather or guardian has the right of reconciliation with respect to the boys money, and agent as well, but with agency's limit; and the one who can reconcile is the owner of what he deals with; but regarding curious person dealing, there is disagreement, some permit it if the owner approves, they are Hanafi and Maliki Schools of law (Makhlouf, 1959), and those who oppose, they are Shafi'i and Hanbali schools of law (al-Ghazali, 2005).

i. The property to be reconciled on must be that which can be exchanged, if not it is not permissible.

**IX. FORMS OF THE RECONCILIATION**

j. the reconciliation to be as exchange of money not from the estate paid by one of the heirs to another (al-Koshki, 1999):

In this case, the heir who paid from his private money will replace the person heirs who accept the reconciliation for what he has been paid, and the share will be given to the heir who paid.

Example/he died and left/daughter, son's daughter, sister, and the legacy is 1200 dinars, and the daughter agrees to give son's daughter something of her own money in exchange for waving her share of the estate.

Daughter	Son's daughter	Sister	Origin of the issue
2/1	6/1	Asabah with other	
3	1	2	

- Per share value =  $1200 \div 6 = 200$  dinars
- Daughter's share =  $3 \times 200 = 600$  dinars
- Son daughter's share =  $1 \times 200 = 200$  dinars
- Sister's share =  $2 \times 200 = 400$  dinars
- Daughter's share will be merged with daughter's share for the exit of the former, it becomes  $600 + 200 = 800$  dinars

k. Reconciliation on estate in exchange for money not the estate to be paid by all heirs to the heir who accept to exit, either by their shares, and either equally among themselves, thus, this form has two sides (Hadrami, 1990):

i. Reconciliation on estate in exchange for money not the estate to be paid by all heirs to the heir who accept to exit by their shares; and in this case the whole estate will be for the heirs who paid the heir who exited, where his share will be divided between the other heirs.

Example/he died and left behind/daughter, son's daughter, sister, and the legacy is 1200 dinars, and the daughter agreed with the sister to exit son's daughter from the estate in exchange of money to pay to her from their personal money based on proportion of their shares.

Daughter	Son's daughter	Sister	Origin of the issue
2/1	6/1	Asabah with other	
3	1	2	Then the share of the daughter would be distant

- Value per share =  $1200 \div 5 = 240$  dinars
- The share of the daughter =  $3 \times 240 = 720$  dinars
- The share of sister =  $240 \times 2 = 480$  dinars

ii. Reconciliation on estate in exchange for money not the estate to be paid by all heirs to the heir who accept to exit to be paid equally among themselves: in this case the whole estate would be for the heirs who paid the heir who exited, and his share, and the estate would be distributed normally, and the share of the heir who exited would be distributed among the heirs, where male gets share of two women, and not based on weakness as they paid equally, that means male paid same like female, and she is entitled to what the male is entitled to when distributing the share of the heir who exited (Hadrami, 1990).

Example/ he died and left behind/ daughter/ son's daughter, sister, and the estate is 1200 dinars, and the daughter agreed with the sister to exit son's daughter from the estate in exchange for the money to pay to her with their own money equally among themselves.

Daughter	Son's daughter	Sister	Origin of the issue
2/1	6/1	Asabah with other	
3	1	2	3

- Per share value =  $1200 \div 6 = 200$  dinars
- The share of the daughter =  $200 \times 3 = 600$  dinars
- Son daughter's share =  $200 \times 1 = 200$  dinars
- Sister's share =  $200 \times 2 = 400$  dinars
- Then we take the share of the person who exited, who is son's daughter, that is "200" dinar, and divide it equally among daughter and sister, that is  $200 \div 2 = 100$  dinars
- Then daughter's share will become  $600 + 100 = 700$  dinars
- And sister's share will become  $400 + 100 = 500$  dinars

iii. Exit from the estate in exchange from money from the estate (Shalabi, 1990):

Its face is for an heir or more heirs to exit from the estate in exchange for money they collect from the estate, whether this money is in cash or others, and the share of the heir/heirs who exited will be distributed among other heirs.

Example/ he died and left behind/ daughter, son's daughter, sister, and the estate is 1200 dinars and a car, and the heirs agreed that son's daughter to exit from the estate in exchange for her to own the car.

Daughter	Son's daughter	Sister	Origin of the issue
2/1	6/1	Asabah with other	
3	1	2	Then daughter's share would be distant

- Per share value =  $1200 \div 5 = 240$  dinars
- Daughter's share =  $240 \times 3 = 720$  dinars
- Sister's share =  $240 \times 2 = 480$  dinars

### **X. FORMS OF RECONCILIATION BASED ON HANAFI SCHOOL OF LAW:**

l. If the estate is gold and they gave him silver, the reconciliation is acceptable, whether what they gave him is less than his share or more, as they are from different species, and equality is not considered. But it must be collected in the same place as it is exchange (Moses, 1967).

However, the heir who has the remaining estate, if he denies its existence in his hand, then that collection is enough, as it is a guarantee which replaces collection for reconciliation.

The basic principle is that whenever the collection is of different kinds, such as collection for trust or collection for guarantee, one may replace another, but when they differ, the guaranteed may replace other (Makhlouf, 1959).

m. But if the person who has the remaining estate confesses, then the collection must be renewed, and that is to collect where it is possible as it is collection of trust, and cannot replace collection for guarantee.

n. And if the estate is dirhams and dinars, and the exchange of the reconciliation is dirhams and dinars, the reconciliation can be made any how for exchange of different species but must be collected in the same place because of difference in species.

### **XI. FORMS OF RECONCILIATION ACCORDING TO MALIKI SCHOOL OF LAW**

Malikis differentiate where the exchange for the reconciliation is from the same estate and where it is from others (al-Koshki, 1999).

o. Where the exchange for the reconciliation is from the same estate:

i. If she takes gold from the estate as her share from the estate gold or less, or takes dirhams of the estate from the dirhams of the estate or less, and that is like her reconciliation with ten dinars or less and gold eighty in the branch heir as she took her share (one over eight) of dinars or others, and the rest will be like gift to the heirs (al-Koshki, 1999). But it is required that the gold she took must be all present, or the dirhams must be present if she takes from it, regardless of whether or not the rest of the estate is present, as the types she takes from, if a part of it is absent, a form that is prohibited will appear: the requirement to pay price instantly in the sale of something that is absent.

ii. If she takes gold from the estate, plus one dinar on her share. Such as her reconciliation with eleven of eighty present, as she took her share of dinars, and she sold her share of dirhams for the rest of the heirs and

excess supply of dirhams and dinars, and all what is inside of sale and exchange is dinar, as it is not permissible to combine sale and exchange in more than dinar. But it is required in this case for the whole estate of cash and others to be present (Makhlouf, 1959).

- p. If the exchange for the estate is not from the estate, the rule of the reconciliation differs according to different situations, namely (Makhlouf, 1959):
- i. If the estate is silver and gold, and the heirs reconciled with her with gold out of the estate, or with silver out of that of the estate, this reconciliation is not valid, whether what she takes is less or more as this is ribafadl, and there is ribanasi<sup>7</sup> if part or whole of the estate is absent, as is the same rule with cash with exchanged with cash.
  - ii. If the estate is dirham and others, or gold and others, it is permissible to reconcile with gold out of the gold of the estate, or with silver not from the silver of the estate, on condition that sale and exchange do not meet in more than one dinar.

## **XII. SHAFI' SCHOOL OF LAW**

Shafi'is differentiate in exit of heirs between where the reconciliation between them is of approval or denial; if it is of the former and the exchange is not from the reconciled item, it is a sale that has conditions of sale contract, such as condition of collection where they share the same reasons of riba, and requirement of equality where it is usurious species and others. And if there is reconciliation in some items, then it is a gift to some, and conditions of gift are applicable (Ghandour, 2005).

This is for reconciliation for approval; but where it is for denial, it is invalid according to them, but they excluded from the invalidity of the reconciliation that of the heirs amongst them for necessity, but it is required to be given from the same estate and no other, regardless of whether the reconciliation is equal or there is inequality (al-Ghazali, 2005).

## **XIII. HANBALI SCHOOL OF LAW**

Hanbalis do not mention forms of exit, according to them it is based on general rules of reconciliation which may be sale or gift or discharge (Abu Zahra, 1990). The exchange may be of the same species or not; if it is from same species it is fulfillment to it, and if not it is fulfillment to others and leaving for others: either as a way of discharge or gift. And if the exchange is of different species, it is sale that has requirements of sale contract, and exchange conditions must be observed if it is cash to cash. It is required where the reconciliation is that of denial that he shall not take more than his right as excess has no return, and this is injustice, but if he takes from different species it is sale on the plaintiff and he believes to receive return, and for the defendant is discharge as he paid money to redeem his right and lift harm (Hadrami, 2001).

## **XIV. THE EMERGENCE OF DEBT ON THE DECEASED AFTER RECONCILIATION**

If an heir reconciles with others and exited them, then something emerges on the deceased, either another property or debt: if it is new property, the most famous is that it does not fall within the reconciliation that is completed between the heirs; but would be divided amongst all; in another view it will be part of the reconciliation and no case may be brought. And it is the same where after reconciliation general discharge appears, and then another property appears, the most famous is to listen to a case based on the view that it does not enter into reconciliation (Makhlouf, 1959). This is if the remaining heirs confess that the property is part of the estate, but if not the case may not be heard after the discharge. And if the property that appears is debt, based on the view that it does not enter reconciliation, it is permissible and the debt would be divided between all, and based on the view that it enters, the reconciliation is invalid as if the debt appears at the time of the reconciliation. And if the reconciliation falls on the whole estate is invalid as if the debt appears at the time of the reconciliation, this is the Hanafis' view and the principles of other schools keep pace with this. Details should be referred in (Reconciliation – Discharge – Case – Division) (Makhlouf, 1959).

## **XV. RECONCILIATION OF MUSA LAHU (LEGATEE) WITH SOMETHING FROM THE ESTATE**

Musa lahu (legatee) may reconcile with the heirs on his share and has same rule with reconciliation with the heirs with one of them, and the aforementioned conditions on reconciliation must be observed for considering the exchange as cash or others, and less than what he deserves or equal or more than, and considering the conditions of exchange or careful about riba and other conditions (Hadrami, 1990). On how to reconcile between the heirs and musalahu (legatee), Ibn Abidin says: Musa lahu(legatee) with certain amount is like heir. It is like this: A man makes a will for another with a house and the former dies and left behind a son and daughter and the son and daughter reconcile with the musalahu(legatee) with the house on hundred dirhams, Abu Yusuf said: If the hundred dirhams are from their money out of the estate, they share the house together,

each one gets half, and if the reconciliation is from the money they inherit from their father, the money between them is one third, as the hundred dirhams is also on one third (Sibai, 1997).

## **XVI. CONCLUSION**

After this study, we can come up with several results, namely:

- 1- Reconciliation (exit) is a permissible contract by agreement of scholars if there is consent between the parties to it, it is of contracts of exchange and people have been performing it since the era of companions until now, especially in real estate.
- 2- Exit is different from sale of the estate as it is only between the heirs; but sale of the estate may be done between someone else and the heirs.
- 3- Faces of exit are many and ways of division are also many because of the difference of formula used.
- 4- Form is not a condition in exit, but it is a requirement for documentation of the contract.
- 5- Need calls for exit to discharge responsibility and remove strife and discord among heirs.

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