

**REPUBLIC OF AZERBAIJAN**

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**ABSTRACT**

of the dissertation for the degree of Doctor of Philosophy

**INHERITANCE LAW IN ISLAM  
(BASED ON THE HANAFI SCHOOL)**

Speciality: 7213.01 – Religious study

Field of science: Philosophy

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## GENERAL CHARACTERISTICS OF THE WORK

**Relevance and development of the topic.** Azerbaijan has historically been a country where different nations, religions and great cultures meet. Its natural and geographical area has always attracted the attention of great empires, led to a conflict of interests, as a result, Azerbaijan at different times came under the rule of different empires. One of these empires was the Arab Caliphate, which kept Azerbaijan under its rule for almost four centuries. The strong-willed people of Azerbaijan, in addition to fighting the invaders, were influenced by great cultures, but with their rich culture, they influenced foreigners. Thus, the people of Azerbaijan have made an important contribution to Islamic culture by playing an important role in the study and development of religious sciences in general, and jurisprudence in particular.

Azerbaijan was fully incorporated into the Arab caliphate in the 1930s, and this played a major role in its economic, socio-political and cultural life. With the development of the caliphate, legal relations were formed. The people of Azerbaijan, who have embraced Islam, have trained prominent scholars in the field of jurisprudence, as well as in all fields of Islamic sciences. Among them are the names of Abu Abdullah Muqaddas (10th century), Abu Said Ahmad Hussein oglu Bardai (... -929), Abu Bakr Muhammad Abdullah oglu Abhari (902-986), Yaqub Musa oglu Ardabili (... -991) and other scholars in a number of sources. it is possible to come. At the same time, we can mention the names of the famous jurist of the Miyanaji dynasty, Abulhasan Ali Hasan oglu Miyanaji (... -1079), who lived and created in the XI-XII centuries, and his son - the judge of the city of Hamadan Abu Bakr Muhammad Miyanaji.

The spread of Hanafiism in Maragha and Shafi'iism in Nakhchivan in the 13th and 14th centuries attracts attention. In the XV-XVI centuries, the Garagoyunlus, then the Aghgoyunlus and the Safavid dynasty ruled in Azerbaijan. During this period, scholars of both Hanafi and Jafari law schools lived and created. Muhyiddin Muhammad oglu Bardai (... -1521) and Ahmad Muhammad oglu

Ardabili (... -1585) can be mentioned among the faqihs of this period. As a result of the wars between Shah Abbas and the Ottomans in the XVII-XVIII centuries, we observe the division of our lands and the attacks of the Russian army here. The official language was first Ottoman dialect, then Persian, and Arabic was used only in religious and scientific fields. Sharia courts played an important role in the Azerbaijani khanates, and the faqihs were considered the ruling class. In Nakhchivan, Absheron, Ganja, Lankaran regions Shiite, in Guba, Shamakhi, Karabakh Sunni religion prevailed. Beginning in the 19th century, the khanates came under the auspices of Tsarist Russia, which inevitably had an impact on cultural life. Changes in the socio-political situation and the expansion of the sphere of influence of European-style culture led to the decline of religious sciences. Later, with the advent of Soviet rule and the banning of religious thought, religious education was completely abolished. In 1927, all foundations in the Caucasus were closed, Sharia courts were abolished, and repressions began against well-known religious scholars.

During the years of Soviet Union, the regime pursued a purposeful policy and tried to alienate our people from national and moral values, but failed to achieve this. He tried to forget the religious beliefs of his subjects, including the people of Azerbaijan, in this regard, religious literature was destroyed, mosques were destroyed or turned into warehouses, educated clerics were either shot or sent into exile.

In order to take advantage of this gap created after independence, the government has taken the necessary measures to prevent radical religious movements entering the country, to ensure the proper religious education of the people and the training of highly qualified personnel to do so. Both the opening of the Faculty of Theology within Baku State University in 1993 and the establishment of the Azerbaijan Theological Institute in 2018 by the order of President Ilham Aliyev, as well as the inclusion of the faculty in its structure, or the State Committee on Religious Associations of the Republic of Azerbaijan in 2001, 2017 The establishment of the Foundation for the Propagation of Moral Values

is one of these measures. In addition, demolished mosques are being rebuilt and new large-scale mosques reflecting the national-architectural style are being built so that worshipers can worship freely. In short, the relationships between state and religion in the country is always in the focus of the country's leadership, important steps are being taken to strengthen our political and spiritual independence. In this context, the study of Islamic sciences in general, and the system of inheritance in Islamic law in particular, can be considered very relevant.

As we have noted, the country's leadership has created ample opportunities for the people to return to their spiritual roots and Islamic values. Religious-scientific conferences are organized in the capital and regions to educate the people from the religious point of view, religious-scientific articles are published in the press, and programs on religious topics are broadcast on radio and television. Some religious literature is being translated and new ones are being written. The Holy Quran has been translated by other authors, including a detailed translation of our late academicians Z.M. Bunyadov and V.M. Mammadaliyev, whose research is considered to be one of the source works not only in Azerbaijan but all over the world. It should be noted that a lot of religious and scientific literature is presented to readers both in the native language and in different languages.

In our country, some works related to almost all fields of Islamic sciences, including Islamic law, have been translated and, although few, new ones have been written. The book "Islamic Law" co-authored by well-known Turkish Islamic lawyers Mehmet Akif Aydin, Jalal Erbay, Fahrettin Atar, Rahmi Yaran, Saffet Kose, Bilal Aybakan, Abdullah Kahraman and Azerbaijani scholar, associate professor Mubariz Jamalov [2] fully covers the Islamic legal system.

It should be noted that this book is distinguished by its specificity. The specificity of the book is that it compares all issues in the Islamic legal system in terms of law schools, taking into account the religious environment in Azerbaijan and the modern era. Thus, the meetings of Islamic law schools on the history of Islamic law, imamate, human rights, property law, Islamic family law,

inheritance law, basics of Islamic jurisprudence, criminal law and debt law, such as Hanafi, Jafarism and Shafi'i reflected.

Associate Professor Mubariz Jamalov's book "Islamic Economics" [5] is one of the works that studies the attitude of Islam to economic issues in a modern way. The book provides information on the importance of work and labor in Islam, halal earnings, trade ethics, the basics of trade, the profit margin in trade, and the basic principles of Islamic economics, such as making money. In addition, the concepts of contract, Islamic labor law, zakat, khums and almsgiving have become the subject of discussion in accordance with the requirements of modern times.

Associate Professor Sabina Mirzoyeva's textbook "The concept of family in Islam, its legal consequences" [13] is dedicated to Islamic family law. The book provides detailed information about the family in Islam and its legal aspects, as well as the family characteristics of Islamic law.

Several dissertations on Islamic law have been defended in our country. In 1995, Zakiyya Aghababa Abilova defended her dissertation on "Sharaiul-Islam fi masailil-halal wal-haram" by Abulqasim Muhaqqiq Hilli as one of the main sources of the Jafari sect [15]. In 2002, Sabina Asgar Nematzadeh defended her dissertation written by Abulqasim Muhaqqiq Hilli on "The place of Irshadul-Ahzan and Ahkamil-Iman in the history of jurisprudence" [12]. In 2007, Sabina Hamid Mirzoyeva defended her dissertation on "Children's rights in Islam" [14]. In 2011, Nizameddin Vahid oglu Ahmadov defended his dissertation "The main sources of Islamic law (on the Hanafi school of law)" [8]. In 2015, Rubaba Bahadir Shirinova defended her dissertation on "Yusif Dovlatoglu and his work "Manzum fiqh" as a source in the study of the history of Hanafi" [10].

As can be seen, although several dissertations on Islamic law have been defended, the subject of inheritance law has not been addressed. Given all this, we would like to note that the topic of this study on the right to inheritance in Islam is very relevant, and we believe that this research will once again be a source for anyone in our country who addresses the issue of inheritance in Islamic law.

**Object and subject of research.** The object of research is the right of inheritance in Islam from a historical, theoretical and methodological point of view. Inheritance is the science that studies the share of the deceased in the inheritance of the deceased and the calculations related to the shares. The subject of the study is to determine the right of inheritance on the basis of the Hanafi school of law, especially one of the great schools of law in Islam - the conditions of inheritance, the reasons for inheritance, the obstacles to inheritance, the distribution of inheritance among heirs and their shares. It is based on the verses of the Holy Quran and the hadiths narrated from the Prophet.

**Objectives and tasks of the research.** The main purpose of this research is to study the law of inheritance in Islam on the basis of the Hanafi school. In this regard, taking into account the specifics of the subject, first explain the history and sources of inheritance law, the importance of studying the law of inheritance, the terms of inheritance, the terms and conditions of inheritance, the reasons for inheritance (marriage, lineage, inheritance, property), The main purpose is to describe the obstacles (murder, religious differences, country differences, slavery), as well as the distribution of inheritance among the heirs and their shares on tables, to investigate the reasons for differences in the shares of men and women, disputes over inheritance. In addition, one of the main tasks is to disprove the claims of some Western orientalist that the division of inheritance in the Quran is incorrect.

**Research methods.** In the formation of the methodological basis of the research, the traditional methodology of source studies, the method of typological analysis was used on the sources related to the subject of the research. The research used the basic research methods of the humanities, such as text analysis and analysis, observation, classification, comprehension and interpretation. However, in the course of the dissertation, a multidisciplinary method was used, along with the method of jurisprudence, reference was made to the methods and theories of such fields of theology as tafsir, hadith studies, and Islamic history.

**The main provisions of the defense.** The main provisions of

this dissertation are to study the law of inheritance on the basis of the Hanafi school - the conditions of inheritance, the reasons for the right to inherit, the circumstances that prevent inheritance, to determine the distribution of inheritance among heirs and their shares by mathematical calculations. It is based on the verses of the Holy Quran and the hadiths narrated from the Prophet.

**Scientific novelty of the research.** The topic is being studied for the first time in Azerbaijan in the field of religion and Islamic studies. In order to create the basis for the development of the topic, the history of inheritance law pre-Islamic and Islamic period is studied, the sources of inheritance law, the importance of studying inheritance law, terms related to inheritance are explained, reasons for inheritance law, obstacles to inheritance, inheritance conditions the division between heirs and the reasons for the difference in the shares of men and women, controversial issues and criticisms of inheritance are investigated. When dividing the inheritance among the heirs, their shares are described in the tables.

**Theoretical and practical significance of the research.** Undoubtedly, the source of all Islamic sciences, as well as Islamic law, is the Holy Quran. The basis of the rules of Shari'ah in Islamic law is the Quran and the Sunnah of the Prophet, as well as the ijihad of the mujtahids and jurists, that is, qiyas, istihsan, istihab, masalihimursala, and so on. contane. As this research is a collection of shar'i rules on Islamic inheritance law, it can be used by believers who seek to regulate their religious life according to shar'i rules.

In addition, the dissertation can be used in scientific research, teaching Islamic law and jurisprudence in the theological faculties of universities, conducting special courses, writing textbooks, lecturing and training.

**Approbation and application of research.** The dissertation was prepared at the Department of Islamic Sciences of the Faculty of Theology of Baku State University, was widely discussed and defended. The main provisions of the dissertation are in the scientific journals of the BSU Faculty of Theology, in the scientific "State and Religion" journal of the State Committee on Religious Associations of the Republic of Azerbaijan, in the materials of the



republican scientific conference on "Actual problems of Oriental studies" dedicated to the 70th anniversary of academic Vasim Mammadaliyev, in the XVIII republican scientific conference of doctoral students, ways of development of oriental studies were published in the materials of the international scientific conference dedicated to the 70th anniversary of academic V.M. Mammadaliyev, also in Turkey's and Ukraine's journals.

**Name of the organization where the dissertation work is performed.** Baku State University, Faculty of Theology, Department of Islamic Sciences.

**The total volume of the dissertation with the indication of the volume of the structural units of the dissertation separately:** Introduction consists of 14178; Chapter I 61097; Chapter II 81050; Chapter III 55556 symbols. The total volume of the dissertation is 214587 symbols.

## MAIN CONTENT OF THE DISSERTATION

In the introduction to the dissertation prepared by Aliya Samir Mursalova, the relevance of the topic and the novelty of the research are substantiated in all its details. In short, in the introductory part of the dissertation the purpose and tasks are defined by indicating the object of the work, its resources and sources are defined, the level of study of the subject is researched, the theoretical and practical significance is substantiated and the approbation and structure of the dissertation is explained.

**The first chapter of the dissertation is called "Fundamentals of inheritance law in Islam"** and consists of nine sections. The first chapter consists of: history of inheritance,<sup>1</sup> sources of inheritance law, importance of studying inheritance law,<sup>2</sup> lexical and terminological meanings of inheritance terms, definition

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<sup>1</sup> "Vərəsəlik hüququnun tarixi barədə", Dövlət və Din № 8(37), Bakı, 2015, s. 24-29

<sup>2</sup> "İslam hüququnda və Azərbaycan Qanunvericiliyində vəərəsəlik və onu öyrənmənin əhəmiyyəti", Doktorantların və Gənc Tədqiqatçıların XVIII Respublika Elmi Konfransının Materialları, Bakı, 2013, s. 291-294

and sentence of inheritance,<sup>3</sup> pillars of inheritance law, conditions of inheritance, reasons for inheritance, obstacles to inheritance.

It is known that Islam came to the Arabs in a Bedouin way of life, at a time when they could not read or write, and there were no schools or madrasas. They studied all the sciences orally from generation to generation and memorized their knowledge.<sup>4</sup> The Shari'ah rules came from the religion of Ishmael and Abraham, which were distorted and abrogated by the Arabs.<sup>5</sup> Just as the Arabs did not have general rulings, there were no sharia and accident courts. When a dispute or conflict arose between them, they would turn to the chief of the tribe or to the priest, and they would rule according to habit, custom and tradition instead of law.<sup>6</sup> There was no specific method for the execution of the sentence, and in most cases primitive methods such as swearing, mutual cursing, horoscopes, and so on. In this case, the authority of the ruler or the owner of the right played a big role.<sup>7</sup> It is impossible to speak of justice because the one who was strong at that time was right. During the period of ignorance, the Arabs used the rules of the Sami Ummah in the distribution of inheritance. These rulings bypassed daughters, mothers, wives, and sisters, meaning that women were not entitled to an inheritance.<sup>8</sup> The Bedouin Arabs, regardless of their blood relationship, could bequeath as much of their property to whomever they wished. The eldest sons of the deceased were considered heirs. Women, girls and boys who could not bear arms could not inherit. If Muris does not have elder sons, his brother,

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<sup>3</sup> “Наследственное право в Аврамических религиях”, Актуальные проблемы философии и социологии Научно-практический журнал. Выпуск № 14, Украина, 2016, стр. 74-77

<sup>4</sup> سيد محمد بن الحسن الحجوى النعالبى. الفكر السامى في تاريخالفقه السلامى، الرباط، فاس: مطبعة ادارة المعارف، ١٩١٨، ج 1، 3 ص

<sup>5</sup> سيد محمد بن الحسن الحجوى النعالبى. الفكر السامى في تاريخالفقه السلامى، الرباط، فاس: مطبعة ادارة المعارف، ١٩١٨، ج 1، 4 ص

<sup>6</sup> Joseph. Schacht. İslam hukukuna giriş. Trc. Dağ. Mehmet. Şener Abdülkadir. Ankara: Ankara Üniversitesi İlahiyat Fakültesi Yayınları, 1986, s. 17-21

<sup>7</sup> Karaman. Hayreddin. İslam Hukuku Tarihi. İstanbul: İz Yayıncılık, 2004, s. 43

<sup>8</sup> “Əhli sünənə və imamiyyə məzhəbinə görə qızın övladlarının varisliyi”, İlahiyyat fakültəsinin Elmi Məcmuəsi № 24, 2015, s. 139-145

uncle, cousin's children, and so on male relatives were considered heirs. In addition, it was possible to inherit by concluding a contract of adoption, brotherhood or inheritance.<sup>9</sup>

After the revelation of the Holy Quran and the spread of Islam, meetings full of errors and mistakes remained in the age of ignorance. In the 3rd year of the Hegira (625 A.D.), after the battle of Uhud, Sa'd ibn al-Rabi's wife, one of the Ansar, came to the Prophet. The Prophet said: "*Allah will judge in this matter.*" For this reason, verses 11-12 of Surah "an-Nisa" of the Holy Quran are revealed. The Prophet called the children's uncles and said: "*Give two-thirds of the inheritance to Sad's two daughters, give one-eighth to their mothers, and the rest is yours.*"<sup>10</sup> The legal system came into being with the revelation of verses concerning judgments. Those who were engaged in this field were called faqihs. The jurist was a person who knew the laws of the state and dealt with the law of Islam and other religions individually and in general. Thus, Roman and Persian laws were forgotten.<sup>11</sup>

The first and main source of all Islamic sciences, as well as Islamic law, is the Holy Quran.<sup>12</sup> The three verses in the Quran define the basic dimensions and foundations of Islamic inheritance law.<sup>13</sup> The main provisions regarding the division of inheritance in the law of inheritance are explained in detail in verses 11, 12 and 176 of Surah "an-Nisa". Verse 7 of this surah deals with the general assessment of the inheritance and its fair distribution. Verses 11 and 12 of the Surah deal with the detailed distribution of shares.

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<sup>9</sup> Karaman. Hayreddin. İslam Hukuku Tarihi. İstanbul: İz Yayıncılık, 2004, s. 43

<sup>10</sup> Tirmizi. Sünen-i Tirmizi tercemesi. Trcm. Abdullah Parlıyan. Konya: Adım Matbaacılık, 2004, c. II, s. 187; Ahmet ibn Hanbel. Müsned. İstanbul: Çağrı Yayınları, 1981, c. III, s. 352; Karaman. Hayreddin. İslam Hukuku Tarihi. İstanbul: İz Yayıncılık, 2004, s. 81

<sup>11</sup> سيد محمد بن الحسن الحجوى النعالبى. الفكر السامى في تاريخالفقه السلامى، الرباط، فاس: مطبعة ادارة المعارف، ج 1، ص 6

<sup>12</sup> Antalya. Gökhan. Miras Hukuku. İstanbul: Vedat Kitapçılık, 2015, s. 16; Keskinoglu. Osman. Fıkıh tarihinde İslam hukuku. Ankara: Diyanet İşleri Başkanlığı, 1984, s. 8

<sup>13</sup> İlmihal. Algül Hüseyin ve diğerleri. Ankara: Türkiye Diyanet Vakfı Yayınları, 2004, c. II, s. 246

At the end of verse 12 of Surah “an-Nisa”, the Quran interprets brothers as brothers, mothers, and fathers, and in verse 176 as brothers with both parents or the same father, and if the deceased has no children, the brothers' share of the inheritance is revealed.

The hadiths of the Prophet Muhammad also address the issue of inheritance. A hadith narrated from the Messenger of Allah states: *“Learn and teach this science. This science is half of religion. It will be a science that my ummah will first of all forget and abandon.”*<sup>14</sup>

It is narrated on the authority of Abdullah ibn' Umar that the Prophet said that it is not permissible for a Muslim to sleep for two nights without putting his will under his head when he has something he wants to make.<sup>15</sup>

The inheritance system is a multifaceted and mixed field, depending on how much the heir will receive, under what conditions and circumstances the heir may have that share, the degree of importance of relatives, and so on.

In Islamic law, the institution of inheritance, like other areas of law, consists of special rules and a system of exceptions established by God to regulate humanity and prevent anarchy. In Islam, half of the science of inheritance is genealogy (the Quran and the Sunnah), and the other half is analogy.<sup>16</sup>

The word "inheritance" is of Arabic origin (ورث) and is derived from the root "v-r-s", which means "to inherit, to bequeath", or even to "produce, give, call, give birth".<sup>17</sup> From the same root, inheritance (الارث) - property transferred from the dead to the alive,<sup>18</sup>

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<sup>14</sup> Qısa İslam Ensiklopediyası. Bakı: Elm və təhsil, 2012, c. I, s. 59

<sup>15</sup> Buhari. Ebu Abdullah Muhammed ibn İsmail. Sahih-i Buhari muhataşı tecrid-i sarih ve şerhi. Trcm. M.Uğur. M.Cemal Safoğlu. Ankara: Gaye Matbaacılık, 1987, c. VIII, s. 203; Müslim. Ebu'l-Hüseyn ibnu'l-Haccac. Sahih-i Müslim tercüme ve şerh. Trcm. Ahmed Davudoğlu. İstanbul: Bakoğlu Matbaası, 1983, c. VIII, s. 167; Tirmizi. Sünen-i Tirmizi tercemesi. Trcm. Abdullah Parlıyan. Konya: Adım Matbaacılık, 2004, c. VIII, s. 168

<sup>16</sup> عبد العزيز محمد السلطان. الكنوز المليية في الفرائض الجالية، إسكندرية: طبع على نفقة جامعة ، هـ 1321، ص 3-4

<sup>17</sup> Баранов. Х.К. Большой арабско-русский словарь. Москва: Издательство «Русский язык», 2002, 2 т., стр. 881

<sup>18</sup> احمد فهمي أبو منة. أسباب الارث و موانعه في الفقه الاسلامي، -1982-1981، ص 2

inheritance (الميراث) - heir, muwarris (المورث) - a dead person, tawarus (التوارث) - inheritance, (الوارث) - heir, right and share holder. Miras is one of the masdar of the Arabic "inheritance".<sup>19</sup> The word means "to be permanent, to acquire certain characteristics of one's lineage, to take possession of one's property after one's death," and is used to mean "property left by the deceased."<sup>20</sup> The heirs (الوارث) are the relatives of the deceased whose parents are the ones whose inheritance is established by evidence, the muris (المورث) is the one who is known to have died or inherited,<sup>21</sup> and the mawrus (الموروث) is the heirs of the deceased, property and wealth. Together, these three forms are the basis of the legacy.<sup>22</sup> In addition, the word "faraiz" (الفرائض) is used in the sources of Islamic law to the words mentioned earlier. The word "faraiz" is also of Arabic origin (فرض) and is derived from the root "frz". used.<sup>23</sup> In the Quran and the Sunnah of the Prophet, this word is used, along with other meanings, in the sense of inheritances for heirs.

There are several definitions of inheritance as a term in classical Islamic law sources. For example, inheritance means the transfer of property from one to another through substitution (khilaf).<sup>24</sup> The means of exchange is used here in the sense of the transfer of goods from one to another by contract, and in some cases the transfer of property from one to another is also possible through the performance of a contract. Substitution can be compulsory or voluntary, so compulsory substitution is called inheritance,

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<sup>19</sup> Баранов. Х.К. Большой арабско-русский словарь. Москва: Издательство «Русский язык», 2002, 2 т., стр. 881

<sup>20</sup> Camalov. Mübariz. İslam iqtisadiyyatı. Bakı: "Bakı Universiteti" nəşriyyatı, 2014, s. 97

<sup>21</sup> Ayiter. Nuşin. Miras Hukuku, Ankara: Sevinç Matbaası, Hukuk Fakültesi Yayınları, N 39, III baskı, 1974, s. 6

<sup>22</sup> Yıldırım. Celal. Kaynaklarıyla İslam Fıkhı. Konya: Uysal Kitapevi, 1980, s. 217-218; محمد الشحات الجندي. الميراث في الشريعة الإسلامية، القاهرة: دار الفكر العربي، 59 ص

<sup>23</sup> Баранов. Х.К. Большой арабско-русский словарь. Москва: Издательство «Русский язык», 2002, 2 т., стр. 590

<sup>24</sup> مريم أحمد الداغستاني. المواريث في الشريعة الإسلامية على المذاهب الأربعة و العمل عليه في المحاكم المصرية، القاهرة، ٢٠٠١م، 4 ص

voluntary substitution is called a will.<sup>25</sup> Inheritance is a term that refers to the ownership of certain (known) persons and groups within a certain number and size of property and rights left by the deceased. The science that studies this subject is also called the right of inheritance. In Islamic law, inheritance does not depend on the will of the muris, but is algebraically fixed by the rules of the religion.<sup>26</sup> Muris can manage his property as he wishes while he is alive, but he cannot deprive his heirs of the inheritance.<sup>27</sup>

First of all, this chapter explains the pillars of the law of inheritance – bequest, heirs, and inheritance, also the conditions of inheritance - the death of the heir, the survival of the heir and the absence of obstacles. In order for the rules of inheritance to be applied, the heir, that is, the testator, must be dead and the heir must be alive at the time of his death, and there must be no circumstance that prevents him from inheriting.<sup>28</sup> The deceased's dowry shall be transferred to his heirs after deducting the expenses of supplies and takf, paying the debts in a certain order, and fulfilling his will, provided that it does not exceed one-third of the dowry.<sup>29</sup>

This chapter also examines the reasons for the right to inherit - marriage, lineage, patron, state property and contractual inheritance. These reasons<sup>30</sup> are necessary to have an heir.<sup>31</sup> The first three

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<sup>25</sup> احمد فهمى أبو منة. أسباب الارث و موانعه في الفقه الاسلامى،-، ١٩٨١-١٩٨٢، ص 4

<sup>26</sup> Oğuzman. Kemal. Miras Hukuku. İstanbul: Filiz Kitabevi, 1995, s. 54; İlmihal. Algül Hüseyin ve diğerleri. Ankara: Türkiye Diyanet Vakfı Yayınları, 2004, II cild, s. 246

<sup>27</sup> Karaman. Hayreddin. Yeni Gelişmeler Karşısında İslam hukuku. İstanbul: İza Yayıncılık. IV baskı, 2011, s. 160

<sup>28</sup> مریم أحمد الداغستانی. الموارث في الشريعة الإسلامية على المذاهب الأربعة و العمل عليه في المحاكم المصرية، القاهرة، ٢٠٠١م، 10 ص ؛ نصير فرير محمد روخيل. فقه الموارث والوصية في الشريعة الإسلامية ، مصر: المكتبة التوفيقية، 30ص

محمد الشحات الجندي. الميراث في الشريعة الإسلامية، القاهرة: دار الفكر العربي، 68 ص

<sup>29</sup> Aydın. Mehmet Akif. Celal. Erbay və d. İslam hüququ. Trc. M.M.Camalov. Bakı: Nurlar, 2013, s. 247-249

<sup>30</sup> Aydın. Mehmet Akif. Celal. Erbay və d. İslam hüququ. Trc. M.M.Camalov. Bakı: Nurlar, 2013, s. 242-244; Joseph. Schacht. İslam hukukuna giriş. Trc. Dağ. Mehmet. Şener Abdülkadir. Ankara: Ankara Üniversitesi İlahiyat Fakültesi

reasons create a bond between the muris and the heir, which, according to some schools, includes property and contractual inheritance.<sup>32</sup>

Finally, in this chapter, there are cases that prevent inheritance.<sup>33</sup> In order for someone to inherit from a dead person, he must meet the conditions of that person's inheritance at the time of his death. If there is one of these obstacles, the person cannot receive his share of the inheritance.<sup>34</sup> Obstacles to inheritance in Islamic inheritance law include murder, religious differences, country differences, and slavery.<sup>35</sup>

**Chapter II of the dissertation is entitled "Distribution and shares in the law of inheritance."** The second chapter consists of eight sections: division and shares, heirs and shares, ashabul-faraiz, asaba, zawil-arham, calculation of inheritance, hajb, rare inheritance fees.

Efforts have been made to give all relatives as much of the inheritance as possible in Islamic inheritance law.<sup>36</sup> On the other hand, the balance between the shares of the heirs and the

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محمد الشحات الجندي. الميراث في الشريعة الإسلامية، القاهرة: دار الفكر العربي، 1986، s. 176؛ نصير فريز محمد روخيل. فقه المواريث والوصية في الشريعة الإسلامية، مصر: المكتبة التوفيقية، 28 ص

احمد فهمي أبو منة. أسباب الارث و موانعه في الفقه الاسلامي، 8 مريم 1981-1982، 44-43 ص ؛ 31 أحمد الداغستاني. المواريث في الشريعة الإسلامية على المذاهب الاربعة و العمل عليه في المحاكم المصرية، القاهرة، 2001م، 8 ص

32 احمد فهمي أبو منة. أسباب الارث و موانعه في الفقه الاسلامي 1982-1981، ص 149-153

33 "İslam hüququ (Hənəfi məzhəbi əsasında) və Azərbaycan Respublikasının Qanunvericiliyinə görə miras almağa mane olan hallar", İlahiyyat fakültəsinin Elmi Məcmuəsi № 20, 2013, s. 85-92

34 Uzunpostalcı. Mustafa. Hukuk ve İslam hukuku. Konya: S.Ü. İlahiyyat Fakültesi, 1988, s. 98

35 محمد الشحات الجندي. الميراث في الشريعة الإسلامية، القاهرة: دار الفكر العربي، 173 ص ؛ محمد جواد مغنية. فقه الامام جعفر الصادق، قم: مؤسسة أنصاريان، 2003، 196 ص ؛ فقه الامام جعفر الصادق ، قم: مؤسسة أنصاريان، 2003، 196 ص ؛ مريم أحمد الداغستاني. المواريث في الشريعة الإسلامية على المذاهب الاربعة و العمل عليه في المحاكم المصرية، القاهرة، 2001م، 12 ص

Cürcani. Seyyid Şerif Ebu'l-Hasan Ali b. Muhammed. Şerhu'l-Feraizi's-Siraciyye. İstanbul: Mahmut Bey Matbaası, 1322, s. 9

36 İlmihal. Algül Hüseyin ve diğerleri. Ankara: Türkiye Diyanet Vakfı Yayınları, 2004, II c., s. 247

responsibilities within the family was also taken into account. According to the Hanafi school, the heirs of the deceased are divided into three classes:<sup>37</sup> the ashabul-faraiz, the asaba<sup>38</sup> and the zawil-arham.<sup>39</sup>

The ashabul-faraiz (اصحاب الفرائض) are the shareholders and heirs, defined both in the Quran and in the Sunnah and in the community (Sunnah).<sup>40</sup> Of the twelve obligatory owners, three men (father, grandfather, brother from one mother), seven women (daughter, son's daughter, sister, mother, grandmother, father's sister, mother's sister) by lineage, and two (husband and wife) by cause heirs. The share of these heirs can only increase with rejection (radd) and decrease with offspring (owl). Assumed heirs are listed as follows: wife / husband, mother / father, daughter, son's daughter, grandfather / grandmother, sister and brother.<sup>41</sup> Except for the first five, especially the others, the others sometimes do not get any share in the inheritance.

Although these shares are confirmed by verses, they are not fixed. The parts of the inheritance change depending on whether the heirs in the above-mentioned groups are alone or together. Each part of the variable inheritance is called a "case". In the Faraiz books, the number of shares in each of them is counted individually, and the total number of these cases reaches forty.<sup>42</sup> This is called 40 cases.<sup>43</sup>

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<sup>37</sup> Keskinoglu. Osman. Fıkıh tarihinde İslam hukuku. Ankara: Diyanet İşleri Başkanlığı, 1984, s. 254

<sup>38</sup> "İslam hüququnda Əsəbə varisliyi", Dövlət və Din № 12(41), Bakı, 2015, s. 36-43

<sup>39</sup> "Hanefi mezhebindeki Zevi'l-erham sınıfının Caferi fıkhı açısından mukayeseli tahlili", Sosyal Bilimler Enstitüsü Dergisi, Sayı 3, 2017, s. 1-12

<sup>40</sup> مریم أحمد الداغستانی. الموارث في الشريعة الإسلامية على المذاهب الأربعة والعمل عليه في المحاكم المصرية، القاهرة، 2001م، 22 ص

<sup>41</sup> أحمد فهمي أبو منة. أسباب الإرث و موانعه في الفقه الاسلامي.-، 1982-1981، ص 50-83

<sup>42</sup> Aktan. Hamza. Mukayeseli İslam Miras Hukuku. İstanbul: İşaret Yayınları, 1991, s. 87-89; Ayiter. Nuşin. Miras Hukuku, Ankara: Sevinç Matbaası, Hukuk Fakültesi Yayınları, N 39, III baskı, 1974, s. 331-332; Cürcani. Seyyid Şerif Ebu'l-Hasan Ali b. Muhammed. Şerhu'l-Feraizi's-Siraciyye. İstanbul: Mahmut Bey Matbaası, 1322, s. 24; Şaban. Zekiyüddin. İslam Hukuk İlminin Esasları.



In Islamic law, the group of heirs, called asaba (العصبة), includes relatives whose share in the inheritance is not known in the Quran and Sunnah, but who receive all of the inheritance left on the land after certain heirs receive their dues. The proof of inheritance is the hadith narrated by Ibn Abbas to the Prophet: *"Give your share to the owners, it is the closest man left on earth."*<sup>44</sup>

The heirs who do not belong to the class of ashab al-faraiz and asaba and whose shares are not known<sup>45</sup> in advance belong to the group of zawil-arham (ذوى الارحام). In Arabic, (ذو) means "zu", (رحم) and (رحيم) mean "mercy", the root of the word is zu-rahm, and it includes relatives who are close to the path of mercy (blood bond). In Islamic inheritance law, the term refers to the heirs who have a female between the zawil-arham muris. Like the daughters of Muris, the daughters of his sisters or brothers, the corrupt grandparents, the uncles and aunts. There is a difference of opinion among the mujtahids on the conditions under which those who are close to the deceased can inherit from the Prophet in the absence of the relatives of the deceased. According to Abu Haneefah, zawil-arham can be inherited, as evidenced by the Book and the Sunnah.

In this chapter, after determining the shares of the heirs, the rules of calculation of the inheritance are based on various arbitrary issues and the distribution of shares with clear examples is carried out on them. In this section, the distribution of inheritance among heirs is explained on theoretical examples and practical issues.

In addition, the topic of hajb, which is considered an important issue of inheritance, is clarified in this chapter. Hajb (الحجب) is the presence of one of the heirs and the other does not inherit at all or receives a part of it.

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Ankara: TDV Yayınları, 1990, s. 273-274; Keskinoglu. Osman. Fıkıh tarihinde İslam hukuku. Ankara: Diyanet İşleri Başkanlığı, 1984, s. 255

<sup>43</sup> "İslam vərəsəlik hüququnda 40 hal", İlahiyyat fakultəsinin Elmi Məcmuəsi № 22, 2014, s. 107-113

<sup>44</sup> Karaman. Hayreddin. Anahatlarıyla İslam Hukuku. İstanbul: Ensar Neşriyyatı, 2007, 3 c., s. 403

<sup>45</sup> Aktan. Hamza. İslam Miras Hukuku. İstanbul: İşaret Yayınları, Bilimsel Araştırmalar Dizisi, 1991, I baskı, s. 88

**Chapter III of the dissertation, entitled "Controversial Issues and Criticism in Islamic Inheritance Law",** consists of five sections: controversial issues,<sup>46</sup> differences between men and women in inheritance law, critical criticism of the division of inheritance by some Western orientalist, grandfather's legacy, and an important testament.

One of the controversial issues in Islam is the claim that men are superior to women, that there is inequality between men and women, and that this division of inheritance is explained by giving one part to a woman and two parts to a man.<sup>47</sup> The truth is that giving one part to a woman and two parts to a man has nothing to do with giving preference to a man over a woman. On the contrary, during the period of ignorance, Islam protected the children and women who had been wronged and deprived of their rights by giving them a share of the inheritance. Giving a woman half of the share of the inheritance that a man will receive is not for all the circumstances that a woman can have as an heir, but only if the woman is the heir with her brother as a child of the parents. Or it is known that there is no general rule that gives a woman half of a man's inheritance. Therefore, it is not correct to claim that giving a woman half of the share given to a man as a heir is a single ruling, regardless of the woman's condition. If muris has more than two daughters, then two-thirds of the inheritance is theirs. If the muris has a daughter, then he can receive half of the inheritance ("an-Nisa" 4/11). If a parent's child dies and his or her children remain, then each parent is given 1/6, the share of the mother and father is the same and equal. If the muris has no children left, the mother gets

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<sup>46</sup> "İslam və rəsəlik hüququnda ixtilafli məsələlər", İlahiyyat Fakültəsinin Elmi Məcmuəsi № 26, Bakı, 2016, s. 185-197

<sup>47</sup> "İslam qanunları qarşısında qadın və kişi arasındakı fərqlər", akad. V.M. Məmmədəliyevin 70 illik yubileyinə həsr olunmuş "Şərqsünəşliğin Aktual Problemləri" mövzusunda Respublika Elmi Konfransı, Bakı, 2012, s. 364-365; "İslam miras hüququnda qadınla kişinin paylarının fərqli olmasına bir təhlil" Azərbaycan Şərqsünəşliq Elminin İnkişaf yolları akad. V.M. Məmmədəliyevin anadan olmasının 70 illiyinə həsr olunmuş Beynəlxalq Elmi Konfransın Materialları, Bakı, 2013, s. 793-795

1/3. If the deceased has brothers, the mother gets 1/6 (“an-Nisa” 4/11). The deceased husband leaves 1/4 of the inheritance to his childless wife. If the muris has a child, his wife receives 1/8 (“al-Nisa” 4/12).

In Islam, inheritance is divided according to the needs and responsibilities of individuals. The livelihood of the mother, wife, daughter or sister does not belong to her, but to her son, husband, father or brother. A woman is not obliged to provide for others except herself. The man is the official guardian of the family and responsible for all members. It is clear from this that according to the rule "*Blessing is due to responsibility*", a man who is responsible for providing for women (wife, mother, sister, daughter) is given twice the share of a woman who does not have such responsibility. A woman has the right to spend her property as she wishes. Even if a woman is rich, she does not have to contribute to the family.<sup>48</sup> If a man and a woman are given an equal share, the balance is disturbed against the man because the man provides for the family and the woman has no such responsibility, which is an injustice to the man. If a woman is single, she is not obliged to look after anyone. When she gets married, she does not have the burden of alimony, she will receive charity and alimony from her husband, according to tradition, gold and so on, will have gifts such as items. The man will spend the inheritance he received from his father on marriage expenses, charity and family allowance.<sup>49</sup> If he has a single sister, he has to help her.

In the end, it can be concluded that the woman does not receive half of the share that the man will receive, the shares vary according to the persons with whom the woman shares in the inheritance.

Issues such as more or less shares in the division of inheritance through offspring (owl) and rejection (radd), the fact that some heirs

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<sup>48</sup> Özcan. Ruhi. İslam Hukukunda Hısımlık Nafakası. İzmir: Çağlayan Yayınları, 1996, s. 68-84; Keskinoglu. Osman. Fıkıh tarihinde İslam hukuku. Ankara: Diyanet İşleri Başkanlığı, 1984, s. 229

<sup>49</sup> Сюкияйнен. Леонид Рудольфович. Ислам и права человека в диалоге культур и религий. Москва: Садра, 2014, стр. 77

do not have enough shares, and the unaccounted determination of the shares mentioned in the inheritance verses have become the main targets of criticism for many Western orientalis. They call this a mathematical or an algebraic error in the Quran. It should be noted that the subject of criticism, which is presented as a problem, has been known since the early days of Islam, the purpose is clear, there exist a way out. In some cases, when we try to divide the shares by the number in the verses, there is not enough property in the inheritance, and the image is more than a denominator. The way out of this situation is to take the sum of the copies as a denominator, and this method of calculation, known from time immemorial, is called "owl", if the sum of the parts in the inheritance law is more than the denominator, the problem is solved by accepting the sum of the denominators. It is not mentioned in the Quran or Sunnah. It is a jurisprudential subject added by the Sahabas to the right of inheritance. The evidence for death is an example of the analogy of circumcision. If the relatives of the Sahabas of the Prophet do not have the nerve to receive the rest of the property after receiving their share, it is said that it is "radd"<sup>50</sup> to give that property to the obligated owners according to their share. With the rejection, the shares of the assumed holders increase, and the total shares are less than the denominator of the issue. Rejection is the right of the obligors only on the basis of lineage, and therefore the ashatur-rad refers to the heirs other than the spouses who are considered as the companions. Some of these solutions are based on hadiths and some on ijtihad.

Known in modern times as the most obvious problem of Islamic inheritance law, it is a well-known reason and wisdom that the children of a child who is not alive when the muris dies do not inherit. When a grandfather (father's father) of a child (son of a father) who died before his grandfather dies, if the grandfather has other sons (uncles of that grandson), they inherit in the first place because they are closer to the muris's grandson, and the grandson is deprived of inheritance. This grandson is called "grandfather

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<sup>50</sup> Yıldırım. Celal. Kaynaklarıyla İslam Fıkhı. Konya: Uysal Kitapevi, 1980, s. 236

orphan".

This issue, which is not explicitly mentioned as a term or a problem in classical jurisprudence books, is addressed in the form of the appearance of a son with the appearance of his son, the appearance of an uncle with the appearance of a cousin, and the appearance of a brother with the appearance of a brother's son.<sup>51</sup> Relatives who do not have heirs are referred to as "relatives who cannot inherit because they have been hajb," and some scholars say that they accept the importance of a will.<sup>52</sup>

After the second half of the XX century, the legacy of the grandfather began to be seen as a problem by most Islamic jurists, and in addition to legalizing it in Islamic countries, the issue of inheritance was regulated by "important will" and "caliphate".<sup>53</sup>

In some Islamic countries, based on the views of the tabi'een scholars regarding the settlement of the issue of ancestral inheritance on the basis of an important testament, the validity of the testamentary command in verse 180 of Surah "al-Baqara" has been amended to apply to non-heirs.<sup>54</sup> After the revelation of the verse of will ("al-Baqarah", 180), the verses of inheritance ("an-Nisa", 7, 11-12, 176) were revealed, which explained the shares to be given to the parents and relatives of the property left by the muris. As a result, both the testament and the inheritance verses excluded some of the common people, while others were able to receive a share through both the inheritance and the will. This situation has created

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<sup>51</sup> محمد بن احمد بن ابي سهل ابو بكر السرخسي . كتاب المبسوط ، مصر: مطبعة السعادة، 1906، ج 29 ، ص 14 ؛ أبو محمد موفق الدين عبد الله بن أحمد ابن قدامة، المغني، الرياض: دار عالم اكتب للطباعة و النشر و التوزيع، 1992، ج 9، ص 12، ص 63؛ أحمد بن علي الرازي الجصاص، أحكام القرآن، بيروت: مطبعة الاوقاف الاسلامية في دار الخلافة العلمية العالمية، 1917، ج 2، ص 84-85

<sup>52</sup> محمد بن احمد بن ابي سهل ابو بكر السرخسي . كتاب المبسوط ، مصر: مطبعة السعادة، 1906، ج 29، ص 17، 142 ص ح ؛ أبو يعلى محمد بن الحسين بن محمد بن الفراء، كتاب التمام، الرياض، دار العاصمة، 1994، ج 9، ص 314

<sup>53</sup> "İslam vərəsəlik hüququnda Xələfiyyə", Bakı Dövlət Universiteti Şərqsünəslıq fakültəsinin 95 illik yubileyinə həsr olunmuş "Şərqsünəslıqın aktual problemləri" mövzusunda Respublika Elmi Konfransının Materialları, Bakı, 2017 s. 183-184

<sup>54</sup> مريم أحمد الداغستاني. المواريث في الشريعة الإسلامية على المذاهب الأربعة و العمل عليه في المحاكم المصرية، القاهرة، 2001م، ص 144؛ مجدى فتحى السيد. جدول المواريث، طنطا: دار الصحابة للتراث، 1990م، ج 2، ص 455-456

an injustice against those who simply inherit. That is why it was necessary to establish a connection between the two verses that would eliminate injustice. For this purpose, the will made by the muris (in the name of persons other than those who are entitled to the inheritance) was limited to 1/3 of the property.

**Conclusion.** The study on on "Inheritance law in Islam (based on the Hanafi school)" leads to the following conclusions:

1. The word "inheritance" is of Arabic origin (ورث) and is derived from the root "irs, miras, muwarris, tavarus, heir, heir" and so on. It has been researched that words such as "faraiz" and "taraka" are used in the law of inheritance [13, 129-142].

2. The history of the right to inherit in Islam. It has been established that it belongs to the 3rd (m. 625), its sources are the Holy Quran, the Sunnah of the Prophet and the community, and the importance of learning the right of inheritance has been extensively studied through the hadiths narrated from the Prophet [3, 291-294; 6, 24-29].

3. Also, the pillars that exist to be heirs - bequest, heir and inheritance; reasons - marriage, lineage, patron, state property and contractual inheritance; conditions - death of the heir, survival of the heir and absence of obstacles; circumstances that prevent it from being obtained - murder, religious differences, country differences, slavery, etc. has been studied sequentially [2, 85-92].

4. According to the shares they received from the heirs, the heirs were divided into groups of ashabul-faraiz, asaba and zawil-arham, and it was determined who these groups of heirs consisted of [5, 107-113; 7, 36-43].

5. All heirs in the right of inheritance are regulated according to the degree of superiority of the Hanafi school, and in the distribution of inheritance among the heirs, it is established that the priority is given first to the companions, then to the asaba, and finally to the zawil-arham [11, 1-12; 8, 139-145].

6. The shares of the heirs were calculated in an explanatory and special way by constructing theoretical issues.

7. In order to make it easier to understand, the groups of heirs and their defined shares are given in the form of schedules. These

schedules are based on the share of the heirs, gender, degree of closeness to the heir, and who is deprived of the inheritance.

8. Exceptions in the law of Islamic inheritance - the inheritance of the captive, the mawlal-muwalat, al-muqarru lah min an-nasabi alal-ghayr, hunsa, Musa lah bima zadeh alas-sulus are systematically investigated.

9. It has been analyzed that the claims of Western orientalist that the division of inheritance in the Quran is incorrect are baseless [10, 185-197].

10. The methods of solving the problems of owl and radd, which are the objects of criticism, are illustrated in the form of schedules and it is determined that they do not contradict the method of calculation in the Quran [10, 185-197].

11. Problems with the legacy of the grandfather, one of the most controversial issues, have been investigated and its solutions have been clearly explained. It has been proven that these methods do not contradict the Quran [12, 183-184].

12. The claim of gender inequality in inheritance law has also been thoroughly investigated and proved to be unfounded. It has been explained that a fair distribution of shares between husband and wife is based on family responsibilities [1, 364-365; 4, 793-795].

**The main provisions of the dissertation are reflected in the following articles of the doctoral student:**

- 1) "Differences between men and women in the face of Islamic law", Republican Scientific Conference on "Actual Problems of Oriental Studies" dedicated to the 70th anniversary of academician V.M. Mammadaliyev, Baku, 2012, p. 364-365
- 2) "Islamic law (on the basis of Hanafi school) and hinders preventing inheritance according to the Legislation of the Republic of Azerbaijan", Scientific Journal of the Faculty of Theology № 20, 2013, p. 85-92
- 3) "Inheritance and the importance of studying it in Islamic law and legislation of Azerbaijan", Materials of the XVIII

Republican Scientific Conference of Doctoral Students and Young Researchers, Baku, 2013, p. 291-294

- 4) "An analysis of the differences between men and women in Islamic heritage law" Proceedings of the International Scientific Conference dedicated to the 70th anniversary of the development of Azerbaijan Oriental Studies Acad. V.M. Mammadaliyev, Baku, 2013, p. 793-795
- 5) "40 circumstances in Islamic inheritance law", Scientific Journal of the Faculty of Theology № 22, 2014, p. 107-113
- 6) "About the history of the right of inheritance", State and Religion № 8 (37), Baku, 2015, p. 24-29.
- 7) "Inheritance of Asaba in Islamic law", State and Religion № 12 (41), Baku, 2015, p. 36-43.
- 8) "Inheritance of a daughter's children according to Ahl-Sunnah and Imamiyyah", Scientific Journal of the Faculty of Theology № 24, 2015, p. 139-145
- 9) "Inheritance Law in Abrahamic Religions", Actual problems of philosophy and sociology Scientific and practical journal. Issue No. 14, Ukraine, 2016, pp. 74-77
- 10) "Comparative analysis of the Zevi'l-erham class of the Hanafi school from the point of view of Jafari fiqh", Journal of the Turkish Institute of Social Sciences, Issue 3, Erzurum, 2017, p. 1-12
- 11) "Caliphate in Islamic heritage law", Proceedings of the Republican Scientific Conference on "Actual Problems of Oriental Studies" dedicated to the 95th anniversary of the Faculty of Oriental Studies of Baku State University, Baku, 2017 p. 183-184
- 12) "Controversial issues in Islamic inheritance law", Scientific Journal of the Faculty of Theology No. 26, Baku, 2016, p. 185-197
- 13) "The concept of law in the Abrahamic religions" Azerbaijan Theological Institute, Journal of Religious Studies № 1, Baku, 2018, p. 129-142





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