SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Justice Shahid Waheed
Justice Naeem Akhter Afghan
Justice Aqeel Ahmed Abbasi
Justice Shakeel Ahmad
Justice Miangul Hassan Aurangzeb

C.A.No.909/2013
(Against order dated 03.06.2013 passed by Peshawar High Court, Peshawar in C.R.677/2007)

Mst. Meraj Bibi & another ...Appellant(s)

Versus

Mst. Zar Gula (decd.) thr. LRs. & others ...Respondent(s)

C.A.No.910/2013
(Against order dated 03.06.2013 passed by Peshawar High Court, Peshawar in C.R.1248/2007)

Mst. Mushtari & another ...Appellant(s)

Versus

Noor Muhammad & others ...Respondent(s)

C.A.No.913/2013
(Against order dated 03.06.2013 passed by Peshawar High Court, Peshawar in C.R.1152/2007)

Mst. Meraj Bibi & another ...Appellant(s)

Versus

Mst. Zojan & others ...Respondent(s)

C.A.No.94-P/2014
(Against order dated 09.06.2014 passed by Peshawar High Court, Mingora Bench, (Dar-ul-Qaza), Swat in C.R.312-M/2012

Ajmal (decd.) thr. LRs. & others ...Appellant(s)

Versus

Mir Ahmad Shah & others ...Respondent(s)

C.A.No.345/2014
(Against order dated 29.11.2013 passed by Peshawar High Court, DI Khan Bench in C.R.152-D/2012)

Falak Sher & others ...Appellant(s)

Versus

Sawan Khan (decd.) thr. LRs. & others ...Respondent(s)

C.A.No.1015/2014
(Against order dated 07.10.2011 passed by Peshawar High Court, Peshawar in C.R.19/2002)

Yaqoob Khan & others ...Appellant(s)

Versus

Wazir Muhammad & others ...Respondent(s)

C.A.No.1574-L/2015
(Against order dated 28.04.2015 passed by Peshawar High Court, Peshawar in C.R.1151-D/2003)

Ghulam Muhammad (decd) through his L.Rs. etc ...Appellant(s)

Versus

Khuda Bakhsh, etc ...Respondent(s)

C.A.No.55-P/2015
(Against order dated 26.01.2015 passed by Peshawar High Court, Peshawar in C.R.254/2009)

Jehanzeb & others ...Appellant(s)

Versus

Shereen & others ...Respondent(s)

C.A.No.2627/2016
(Against order dated 15.11.2016 passed by Lahore High Court, Multan Bench Multan in C.R.541-D/1997)

Mushtaq Ahmad & others ...Appellant(s)

Versus

Allah Bakhsh (decd.) thr. LRs & others ...Respondent(s)

C.A.No.289-P/2018
(Against order dated 19.10.2018 passed by Peshawar High Court, Peshawar in C.R.843-P/2013)

Awal Gul & others ...Appellant(s)

Versus

Lal Rahim & others ...Respondent(s)

C.A.No.1567/2020
(Against order dated 05.10.2020 passed by Peshawar High Court, Peshawar in C.R.37-P/2017)

Saleem Gul and others ...Appellant(s)

Versus

Basir Gul and others ...Respondent(s)

C.P.L.A.No.3142/2015
(Against order dated 22.09.2015 passed by High Court of Balochistan Quetta in C.R.290/2012)

Saifullah & others ...Petitioner(s)

Versus

Abdul Haq & others ...Respondent(s)

C.P.L.A.No.185/2014
(Against order dated 29.11.2013 passed by Peshawar High Court, DI Khan in C.R.37/2010)

Falak Sher & others ...Petitioner(s)

Versus

Sawan Khan (decd.) thr. LRs. & others ...Respondent(s)

C.P.L.A.No.2247/2015
(Against order dated 15.06.2015 passed by Peshawar High Court, Peshawar in C.R.328/2004)

Wahid Gul & others ...Petitioner(s)

Versus

Ghulam Ali (decd) thr. LRs & others ...Respondent(s)

C.P.L.A.No.5161/2017
(Against order dated 11.09.2017 passed by Peshawar High Court, Peshawar in C.R.490-P/2016)

Mashal Khan & others ...Petitioner(s)

Versus

Mir Akbar & others ...Respondent(s)

C.P.L.A.No.1503/2019
(Against order dated 15.01.2019 passed by Lahore High Court, Rawalpindi Bench Rawalpindi in C.R.605-D/2011)

Ahmed Khan (decd) thr. LRs & others ...Petitioner(s)

Versus

Nawab Khan & others ...Respondent(s)

C.P.L.A.No.4798/2017
(Against order dated 17.10.2017 passed by Peshawar High Court, Peshawar in C.R.479-P/2016)

Umar Farooq & others ...Petitioner(s)

Versus

Hamid Ali & others ...Respondent(s)

C.P.L.A.No.1016-L/2021
(Against order dated 11.03.2021 passed by Lahore High Court, Lahore in C.R.16803/2021)

Imtiaz Begum ...Petitioner(s)

Versus

Muhammad Zahid Khan, etc ...Respondent(s)

For the Petitioner(s)/ Appellant(s)/ Applicant(s)	:	Mr. Ziaur Rehman Khan, ASC Mr. Altaf Ahmad, ASC Mr. Syed Mastan Ali Shah Zaidi, ASC Mr. Iftikhar ul Haq, ASC Mr. Muhammad Farooq Malik, ASC Mr. Amin Khattak Lachi, ASC Mr. Rizwan Mushtaq, ASC Mr. Muhammad Asif, ASC Mr. Nijaud Din, ASC Mr. Fazal Shah Mohmand, ASC Mr. Muhammad Ali Raza, ASC
For the Respondent(s)	:	Mr. Gul Sadbar Khan, ASC Mr. Khalilullah Khalil, ASC Mr. Attaullah Khan, ASC Mr. Muhammad Waheed, ASC Mr. Syed Rifaqat Hussain Shah, AOR Mr. Abdul Ahad Khan, AOR Mr. Irfan Younis, ASC Mr. Muhammad Ramzan Khalid Joiya, ASC Mr. Nasir Mahmood, ASC
Amicus Curiae	:	Mr. Mehmood Ahmed Bhatti, ASC assisted by Mr. Maqsood Ahmed Bhatti, ASC Mr. Obaid-ur-Rehman Khan, ASC assisted by Mr. Sabih Ahmad Zuberi, ASC and Mr. Bahadur Khosa, ASC
Special Assistance	:	Mr. Muhammad Munir Paracha, Sr. ASC Ch. Masood Jahangir, ASC Mr. Shahzad Shaukat, ASC Mr. Shehryar Rabbani, Law Clerk
Date of Hearing	:	07.10.2026

J U D G M E N T

Shahid Waheed, J:- Can we stop the clock on an inheritance claim? Is there, in our law, any fixed point at which an heir becomes simply "too far out of time" to ask for what Allah Almighty Himself allotted to him? Or does the share wait, patient and undiminished, until the heir comes for it, however many years and however many generations later?

2. That is the anvil on which this Larger Bench must hammer out its answers. On one side of it lies a right that is not the gift of any man. The Holy Qur'an declares:

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا

"For men is a share of what parents and near relatives leave, and for women is a share of what parents and near relatives leave, be it little or much: an appointed share." (Al-Nisa 4:7)

The word “mafrudan” (مَّفْرُوضًا) marks the share as fixed by command, not offered as a favour. On the other side of the anvil lies the equally real claim of society to repose: the widow who bought a plot forty years ago, the cooperative society that built a hundred homes upon land it was told was free, the son who has tilled his father's fields all his life and is now told that the title was never wholly his. The hammer is the Limitation Act, 1908. Our task is to strike so that neither the right nor the repose is shattered.

3. It is a matter of daily experience in our courts that an heir is seldom defeated on the size of his share. He is defeated, more often than not, on the plea that he came too late. The arithmetic of the Holy Qur'an is beyond dispute; the arithmetic of the calendar has become the battlefield. Two lines of authority have grown side by side. One holds that no limitation runs against a co-sharer and that time does not extinguish inheritance. The other holds that the law of limitation applies with full force, particularly where third parties have acquired the land. The courts below have been left to choose between them, and litigants to wonder which

line their case will meet. A right that depends upon which Bench one draws is not a right secured; it is a lottery ticket.

4. It is to end that uncertainty, and to restore order to an area of law that touches almost every Muslim family in this country, that the questions of law were referred to this Larger Bench.

5. Our conclusion, stated at the outset, is this. Time does not run against the heir; it runs against the heir's knowledge of a wrong. The right of an heir, vested at the moment of death, never lapses with time. The remedy is subject to the Limitation Act, 1908, which a court of ordinary civil jurisdiction cannot set aside. But under Article 120, as between co-heirs, time runs only from one moment, to wit, the day an overt act repudiating the heir's title is brought home to the heir's knowledge. Until then no clock starts, whatever the lapse of years, and the heir's successors inherit an unspent claim. Where a stranger has bought for value in good faith and openly taken possession, the heir is charged also with what ordinary diligence would have shown him or her. The clock of limitation is wound by denial and set going by knowledge; neither alone will do.

6. We hasten to add what this judgment is not. It is not a charter for stale and fabricated claims, nor a weapon to unsettle honest purchasers who paid full value with open eyes. Nor is it a rule designed to favour one sex over the other. It is a rule designed to make families whole. The law that protects every rightful heir alike, while keeping the special shield that women need, is the law that keeps the household at peace; and a nation is only as strong as the households of which it is built. We state, at the end of this opinion, a bright-line test by which any court can decide whether an inheritance suit is within time.

7. Now, we turn to the reasons and the questions whose answers underpin the aforementioned conclusions.

These appeals and petitions arise out of suits for declaration, joint possession and partition in which the plaintiffs claimed shares in the estates of their propositi. The defendants pleaded limitation. The record shows that the Courts below, each faithfully following one or another line of this Court's precedent, reached opposite conclusions on materially similar facts. Like cases were not decided alike.

8. The following questions of law were framed for authoritative determination:

(i) Whether a suit for declaration and recovery of a share in inherited property is governed by a specific period of limitation and, if so, from what point of time such period begins to run?

(ii) Whether the right of an heir to inherit property can be defeated merely by lapse of time, particularly where the heir asserts that he was deprived of his share through fraud, misrepresentation, concealment or other unlawful means?

(iii) Where an heir dies without having obtained or asserted his alleged share in the estate of his predecessor, whether his legal heirs can subsequently assert that claim on the ground that the original heir had been unlawfully deprived of his inheritance?

(iv) Whether the mere failure, silence, inaction or delay of an heir in asserting his share during his lifetime amounts to waiver, relinquishment or abandonment of his inheritance, or whether such conclusion

requires proof of a conscious and voluntary relinquishment of the right?

(v) Whether the doctrines of estoppel or acquiescence can operate against an heir, or against his successors, in respect of a right of inheritance; and, if so, what facts and circumstances are necessary to establish such estoppel or acquiescence?

(vi) Where property forming part of an inheritance has subsequently been transferred to a third party for valuable consideration, what is the effect of such transfer upon the rights of an heir or his successor who subsequently challenges the vendor's title?

(vii) What protection, if any, is available to a subsequent bona fide purchaser for valuable consideration who acquired the property without notice of the alleged defect in title and has remained in possession thereof for a considerable period?

(viii) Whether the length of possession of such purchaser, coupled with the conduct of the parties, the nature of the transaction, the payment of consideration, the absence or presence of notice, can affect the maintainability or outcome of a subsequent claim by an heir or his successor?

9. During the course of arguments, it was brought to our notice that in some cases, before us, customary law is

also involved. The propositus died before the enactment of the relevant Muslim Personal Law (Shariat) Application Act of his Province, and in matters of succession he, or his tribe, followed custom. The question therefore arose whether, in such cases, the matter is to be deemed past and closed. The question is of real importance, for a great deal of the agricultural land of this country still descends along lines first drawn by custom. It was accordingly brought within the scope of this reference, and learned counsel and the amici were invited to address us on it. We frame it as follows:

(ix) Where the propositus, a Muslim, died before the commencement of the Muslim Personal Law (Shariat) Application Act in force in his Province or area, and succession to his estate was then governed by custom, whether the devolution of his estate under custom is to be treated as a transaction past and closed; whether the Shariat Application Laws, by their own terms, reopen that devolution; what is the position, in each Province and area, of a limited estate held by a female under custom on its termination by law; and from what date, if at all, does a cause of action accrue to an heir who claims under Muslim Personal Law?

10. The submissions fell into three broad positions.

11. The first position was that limitation does not touch inheritance. It was submitted that inheritance is a divine right which no man-made law can curtail; that Article 120 of the Limitation Act,1908 was designed for declaratory suits under section 42 of the Specific Relief Act, 1877 and was never meant to extinguish inherited title; that no limitation runs against a co-sharer; that a successor inherits

his predecessor's unasserted share; and that section 41 of the Transfer of Property Act, 1882 yields to Muslim law by virtue of section 2 of that Act.

12. The intermediate position was that inheritance vests on death and mutation creates no title; that limitation, where attracted, begins upon an effective denial known to the heir; that successors inherit a subsisting share but cannot revive one already barred; and that waiver, estoppel and acquiescence require clear proof of their constituent facts. One learned amicus (Mr. Obaid-ur-Rehman Khan, ASC) recommended that relinquishment be recognised only through a registered written instrument recording that the heir first received his share and then gave it up, on the model of takharuj.

13. The third position was that limitation applies with full force. It was submitted that limitation goes to the remedy and not to the existence of the right; that it is recognised by Islamic law (the Majalla, Articles 1660, 1663, 1669 and 1670) and by statute; that where an heir has not sought a remedy against an apparent deprivation in his lifetime, waiver, estoppel and acquiescence apply; and that exempting inheritance from limitation would create a separate jurisprudence of pleading, evidence and presumption, and would leave every title in the land permanently provisional.

14. Several categorisations of inheritance claims were also offered. One submission divided the field into four classes: claims against title founded on custom; claims on termination of limited estates; claims of heirs excluded from the list of heirs; and claims met by an instrument set up in defence. Another divided inheritance claims by the nature of the property (agricultural land with mutations, and other immovable property without) and by the nature of the exclusion (a reduced share, no share, or an assertion of sole heirship). On question (ix), it was urged on one side that

custom had done its work before the Shariat Application Laws arrived, and that what custom finally settled cannot now be unsettled; and on the other that the Legislature in Khyber Pakhtunkhwa made its law expressly retrospective, and that in the Punjab the Legislature itself chose, by section 2-A, which customary acquisitions to confirm and which to undo.

15. It was, however, correctly pointed out that, once the facts that actually decided the reported cases are accounted for, three conflicts of principle remain: (a) whether waiver, estoppel and acquiescence can operate among co-heirs at all; (b) whether a predecessor's failure to sue affects his successor's claim; and (c) whether the law of limitation is "not attracted" in inheritance cases at large. To these, question (ix) adds a fourth: (d) whether, for a propositus who died under custom, the Shariat Application Laws revive a claim, and from when. We resolve each in the course of this opinion.

16. The question of limitation cannot be answered in the abstract. Its answer depends on what record of title exists, who maintains it, and what act can bring an exclusion to an heir's notice. These differ with the class of land, and a rule that ignores the difference will be wrong somewhere. The legal position may therefore be elaborated by classifying inherited immovable property into the following three categories.

17. The first is agricultural land in settled areas. In settled districts the record of rights is prepared and maintained under the Land Revenue Act, 1967. On a landowner's death, the revenue staff are bound to enter and attest a mutation of inheritance, and the entry passes into the periodical record (jamabandi). Entries carry a rebuttable presumption of truth under section 52. Three features follow. There is always an official entry, so disputes usually begin with a mutation which omits an heir or understates a

share. The mutation is made by the State, often without notice to absent or female heirs, so its existence says little about any heir's knowledge. And the jamabandi is re-prepared periodically, so a wrong entry recurs, like an echo of the original error.

18. The second is urban property. Urban property is rarely the subject of a mutation of inheritance. Title is evidenced by registered deeds, by the transfer records of development authorities, cantonment boards and cooperative housing societies, and by property-tax records. Transfer to heirs is made, if at all, on a decree, succession certificate, letters of administration, or affidavits and indemnities. Urban property therefore commonly remains joint for long periods with no adverse entry at all. Exclusion usually occurs through an affirmative act, such as a transfer obtained on an affidavit omitting an heir, or a registered sale or gift. Such acts are overt but are frequently procured by concealment.

19. The third is land in areas where no settlement has taken place. Where no settlement operation has prepared a record of rights, land is held by possession, customary arrangement and oral tradition. There is no fiscal entry which could even arguably operate as a denial. Exclusion of heirs, especially women, typically rests on custom enforced by possession. The first written record of exclusion, if any, is the first record of rights prepared on settlement.

20. To effectively resolve the questions under discussion, it is deemed appropriate to enumerate in tabular form hereunder the various situations in which disputes ordinarily arise along with the legal character evoked thereby. In the table below A is the *propositus*, B the heir in possession, C the excluded heir, D, E and F transferees, and Y the successor of C.

No.	Situation	Typical Record	Legal Character of What Has Happened to C's Right
1.	Property lies joint; B in possession; no adverse entry	None, or a correct mutation	Nothing; C is a co-owner in constructive possession.
2.	Wrong inheritance mutation omitting C or reducing her share; property still joint	Mutation and jamabandi entries	Threatened denial only.
3.	B stops paying C her share of produce or rent	Same, or none	Not in itself a denial; relevant to knowledge.
4.	C demands her share, and B refuses	Any	Actual denial from the refusal.
5.	B physically excludes C, claiming to be sole owner	Any	Actual denial from the exclusion.
6.	B sets up a gift, sale, relinquishment or settlement from C or from A	Deed or transfer mutation	Actual denial; the transaction must first be proved.
7.	B sells C's share to D and delivers possession	Sale deed or sale mutation	Actual denial; third-party interest arises.
8.	D resells to E, F or a housing society; development follows	Chain of deeds or mutations	Actual denial; questions of section 41, estoppel and accommodation.
9.	C sues shortly after the sale	As in 7 or 8	Within time on any view.
10.	C dies without suing; Y sues	Any	Depends on what C knew and whether time expired in C's lifetime.
11.	Propositus died before the Shariat Application Laws; heirs excluded by custom	Customary mutation	Governed by the provincial Shariat Application Law and question (ix).
12.	Limited estate under custom terminated by statute	Mutation in favour of limited owner	Succession to the last full owner opens on termination.
13.	C is a defendant in partition proceedings	Any	Title may always be defended; a barred share cannot be allotted.
14.	Unsettled area; the first record of rights records C's exclusion	Settlement record	First threatened denial.

21. The situations differ in the event that is said to start the time, not in the nature of the right. That is the key that unlocks the apparent conflict in the authorities. The

right of C is the same right in every row; what changes is whether, and when, someone has done something to it that C knows about.

22. Before we go any further, it is important to accentuate that Article 2A, Article 227 of the Constitution and section 4 of the Enforcement of Shariah Act, 1991 require that the law of inheritance and its remedies also be understood in the light of the Holy Qur'an and the Sunnah. We therefore begin where the right itself begins. The translations below are renderings of the sense.

23. The fixed shares (Al-Nisa 4:11):

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ ۖ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۖ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُن لَّهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۗ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا ۚ فَرِيضَةً مِّنَ اللَّهِ ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

“Allah directs you concerning your children: for the male, the like of the portion of two females. If there are only daughters, two or more, theirs is two-thirds of what he leaves; if only one, hers is half. For his parents, to each a sixth of what he leaves, if he has a child; if he has no child and his parents inherit, his mother has a third; if he has brothers, his mother has a sixth; after any bequest he made or any debt. Your parents and your children: you do not know which of them is nearer to you in benefit. An obligation from Allah. Truly Allah is All-Knowing, All-Wise.”

24. Spouses and kalala (Al-Nisa 4:12):

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ ۚ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمُ الرُّبُعُ مِمَّا تَرَكْنَ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ ۚ وَلَهُنَّ الرُّبُعُ مِمَّا تَرَكْتُمْ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ ۚ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكْتُم ۚ مِّن بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ ۗ وَإِن كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوِ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ ۚ فَإِن كَانُوا أَكْثَرَ مِن ذَٰلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ ۚ وَصِيَّةً مِّنَ اللَّهِ ۗ وَاللَّهُ عَلِيمٌ حَلِيمٌ

“For you is half of what your wives leave if they have no child; if they have a child, yours is a fourth of what they leave, after any bequest they made or debt. For them is a fourth of what you leave if you have no child; if you have a child, theirs is an eighth of what you leave, after any bequest you made or debt. If a man or woman whose heritage is in question leaves neither parent nor child, but has a brother

or sister, each has a sixth; if more, they share in a third; after any bequest made or debt, without harm being caused. A command from Allah; and Allah is All-Knowing, Forbearing."

The phrase غَيْرَ مُضَارٍّ (ghayra mudarrin without harm being caused) forbids any disposition designed to defeat the heirs.

25. These are the limits of Allah (Al-Nisa 4:13–14):

تِلْكَ حُدُودُ اللَّهِ ۚ وَمَن يُطِعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِن تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ۚ وَذَٰلِكَ الْفَوْزُ الْعَظِيمُ ۝ وَمَن يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مُّهِينٌ

"These are the limits set by Allah. Whoever obeys Allah and His Messenger, He will admit him to gardens beneath which rivers flow, abiding therein; that is the great success. And whoever disobeys Allah and His Messenger and transgresses His limits, He will admit him to a fire, abiding therein, and for him is a humiliating punishment."

26. Kalala (Al-Nisa 4:176), opening words: يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ — "They ask you for a ruling. Say: Allah gives you a ruling concerning kalala." That Allah Himself undertook to answer the question of distribution, rather than leaving it to the family, is itself a lesson: the shares are not a matter for family negotiation.

27. Women are not to be inherited against their will (Al-Nisa 4:19): يَا أَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَن تَرِثُوا النِّسَاءَ كَرْهًا — "O you who believe, it is not lawful for you to inherit women against their will."

28. The property of orphans (Al-Nisa 4:10): إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا ۖ وَسَيَصْلَوْنَ سَعِيرًا — "Those who consume the property of orphans unjustly only consume fire into their bellies, and they will burn in a blaze."

29. Property not to be consumed by falsehood (Al-Nisa 4:29; Al-Baqarah 2:188):

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ إِلَّا أَن تَكُونَ تِجَارَةً عَن تَرَاضٍ مِّنكُمْ — O you who believe, do not consume one another's property by falsehood, except by trade with mutual consent." (4:29)

وَلَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنتُمْ تَعْلَمُونَ — "And do not consume one another's property by falsehood, nor offer it to the authorities so that you may consume a portion of other people's property sinfully while you know." (2:188)

The words 'an taradin "عَن تَرَاضٍ" ("with mutual consent") are the Qur'anic foundation for the rule that property leaves its owner only by his free consent. The second verse is a warning addressed, in terms, to the misuse of courts and officials: the record procured from a functionary is condemned in the same breath as the property taken by it.

30. Devouring inheritance (Al-Fajr 89:19): وَتَأْكُلُونَ التُّرَاثَ أَكْلًا لَّمًّا — "And you devour inheritance, devouring it altogether." The classical commentators read this as a reproach of those who took the shares of women and orphans.

31. Trusts and justice (Al-Nisa 4:58; Al-Nahl 16:90): إِنَّ اللَّهَ يَأْمُرُكُمْ أَن تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُم بَيْنَ النَّاسِ أَن تَحْكُمُوا بِالْعَدْلِ "Allah commands you to render trusts to those entitled to them, and when you judge between people, to judge with justice." (4:58) إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ وَإِيتَاءِ ذِي الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنكَرِ وَالْبَغْيِ — "Allah commands justice, good conduct and giving to near relatives, and forbids indecency, wrongdoing and oppression." (16:90)

32. The Sunnah confirms and applies the text. The first reported inheritance case in Islam is the case of the daughters of Sa'd ibn al-Rabi' (Jami' al-Tirmidhi, No. 2092; Sunan Abi Dawud, No. 2891; Sunan Ibn Majah, No. 2720):

جَاءَتِ امْرَأَةُ سَعْدِ بْنِ الرَّبِيعِ بِابْنَتَيْهَا مِنْ سَعْدٍ إِلَى رَسُولِ اللَّهِ ﷺ فَقَالَتْ: يَا رَسُولَ اللَّهِ، هَاتَانِ ابْنَتَا سَعْدِ بْنِ الرَّبِيعِ، قُتِلَ أَبُوهُمَا مَعَكَ يَوْمَ أُحُدٍ شَهِيدًا، وَإِنَّ عَمَّهُمَا أَخَذَ مَالَهُمَا فَلَمْ يَدَعْ لَهُمَا مَالًا، وَلَا تُنْكَحَانِ إِلَّا لَهُمَا مَالٌ. قَالَ: يَقْضِي اللَّهُ فِي ذَلِكَ. فَنَزَلَتْ آيَةُ الْمِيرَاثِ، فَبَعَثَ رَسُولُ اللَّهِ ﷺ إِلَى عَمِّهِمَا فَقَالَ: «أَعْطِ ابْنَتَيْ سَعْدٍ الثُّلُثَيْنِ، وَأَعْطِ أُمَّهُمَا الثُّمُنَ، وَمَا بَقِيَ فَهُوَ لَكَ

"The wife of Sa'd ibn al-Rabi' came to the Messenger of Allah (peace be upon him) with her two daughters by Sa'd and said: O Messenger of Allah, these are the daughters of Sa'd ibn al-Rabi', whose father was martyred with you at Uhud. Their

uncle has taken their property and left them nothing, and they cannot be married unless they have property. He said, “Allah will decide this.” Then the verse of inheritance was revealed, and the Messenger of Allah sent for their uncle and said: Give the two daughters of Sa'd two-thirds, give their mother one-eighth, and what remains is yours.”

This is the first reported case of a male relative excluding female heirs under custom. The remedy ordered was not a reprimand; it was restitution of the shares. And the uncle was not stripped of everything: what remained was his. The very first inheritance decree in Islam was a balancing decree.

33. Every rightful person has been given his due (Sunan Abi Dawud, No. 2870; Jami' al-Tirmidhi, No. 2120; Sunan Ibn Majah, No. 2713): إِنَّ اللَّهَ قَدْ أَعْطَى كُلَّ ذِي حَقٍّ حَقَّهُ، فَلَا وَصِيَّةَ لِوَارِثٍ — “Allah has given everyone who has a right his right; so there is no bequest for an heir.”

34. Give the shares to those entitled (Sahih al-Bukhari, No. 6732; Sahih Muslim, No. 1615): أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَهُوَ لِأَوْلَى رَجُلٍ ذَكَرٍ — "Give the fixed shares to those entitled to them; what remains is for the nearest male." The imperative alhiqu is an instruction to act, not merely a statement of entitlement.

35. Usurpation of land (Sahih Muslim, No. 1610; to like effect Sahih al-Bukhari, No. 2453): مَنْ أَخَذَ شِبْرًا مِنَ الأَرْضِ ظُلْمًا فَإِنَّهُ يُطَوَّقُهُ يَوْمَ الْقِيَامَةِ مِنْ سَبْعِ أَرَضِينَ — "Whoever takes a hand-span of land unjustly, it will be hung around his neck on the Day of Resurrection from seven earths."

36. The sanctity of property (Sahih al-Bukhari, No. 67; Sahih Muslim, No. 1679): فَإِنَّ دِمَاءَكُمْ وَأَمْوَالَكُمْ وَأَعْرَاضَكُمْ بَيْنَكُمْ حَرَامٌ، كَحُرْمَةِ يَوْمِكُمْ هَذَا، فِي شَهْرِكُمْ هَذَا، فِي بَلَدِكُمْ هَذَا — "Your blood, your property and your honour are sacred to one another, like the sanctity of this day of yours, in this month of yours, in this land of yours."

37. No property without consent (Musnad Ahmad; Sunan al-Daraqutni): لَا يَحِلُّ مَالُ امْرِئٍ مُسْلِمٍ إِلَّا بِطِيبِ نَفْسٍ مِنْهُ — "The

property of a Muslim is not lawful except with his willing consent."

38. The wrongdoer acquires nothing (Sunan Abi Dawud, No. 3073): لَيْسَ لِعِرْقِ ظَالِمٍ حَقٌّ — "The root of a wrongdoer has no right." That is, one who plants or builds on another's land acquires nothing by it.

39. Burden of proof (Jami' al-Tirmidhi, No. 1341): الْبَيِّنَةُ عَلَى الْمُدَّعِي، وَالْيَمِينُ عَلَى الْمُدَّعَى عَلَيْهِ — "Proof is upon the claimant, and the oath upon the one against whom the claim is made."

40. The debtor's soul (Jami' al-Tirmidhi, No. 1078): نَفْسُ الْمُؤْمِنِ مُعَلَّقَةٌ بِدَيْنِهِ حَتَّى يُقْضَى عَنْهُ — "The soul of the believer is held suspended by his debt until it is paid on his behalf." The estate is charged first with funeral expenses, then debts, then valid bequests within one-third; only then is it distributed. The tradition shows that the administration of an estate is a duty owed to the dead as much as to the living, and that it does not admit of indefinite postponement.

41. The classical jurists drew from these texts a body of doctrine that bears directly on limitation. All four Sunni schools hold that the estate passes to the heirs on death, subject to funeral expenses, debts and valid bequests, and that the heir's ownership arises by operation of law (jabran), without acceptance. Inheritance enters the heir's ownership without, and even against, his will; this is the distinguishing feature of irth as against acquisition by contract (al-Marghinani, al-Hidayah, Kitab al-Fara'id; al-Sarakhsi, al-Mabsut, Kitab al-Fara'id). This Court adopted the principle in Ghulam Ali v. Mst. Ghulam Sarwar Naqvi (PLD 1990 SC 1), holding that the estate vests in the heirs immediately, in definite shares, with no intermediary, whether they like it or shun it.

42. Non-renunciation. The Hanafi jurist Ibn Nujaym records in al-Ashbah wa al-Naza'ir:

لَوْ قَالَ الْوَارِثُ: تَرَكْتُ حَقِّي، لَمْ يَبْطُلْ حَقُّهُ، إِذِ الْمِلْكُ لَا يَبْطُلُ بِالتَّرْكِ

"If an heir says, 'I have abandoned my right', his right does not lapse, for ownership is not extinguished by abandonment." Ibn 'Abidin (Radd al-Muhtar) records the same rule, and Ibn Qudamah (al-Mughni, Kitab al-Fara'id) states it for the Hanbali school. The share, once vested, is a corporeal thing owned ('ayn), not a bare claim; and a release (ibra') operates upon debts and claims, not upon specific property owned. One cannot "waive" a field.

43. Lawful exit. The jurists recognise takharuj: an agreement by which an heir, for consideration, withdraws from the estate in favour of the others. Being, in substance, a sale or exchange of a vested share, it requires a known share, free consent, and consideration. It is the opposite of a bare renunciation. Title can pass from an heir only by a recognised mode of transfer after vesting: hiba with offer, acceptance, and delivery of possession; sale; exchange; or takharuj.

44. Lapse of time. The schools distinguish the right (haqq) from the hearing of the claim (sama' al-da'wa). The governing maxim is: الحَقُّ لا يَسْقُطُ بِتَقَادُمِ الزَّمَانِ — "A right is not extinguished by lapse of time." The letter of Caliph 'Umar to Abu Musa al-Ash'ari on the conduct of judges is cited for the proposition that a right is ancient and that nothing annuls it. Within that frame:

a) The later Hanafi jurists accepted that the ruler may direct judges not to hear claims after a fixed period, to suppress stale and fabricated claims. Ibn 'Abidin explains that such a direction bars the hearing, not the right; that a claim is heard if the defendant admits it; and that time does not run during a lawful excuse.

b) The Majalla. Article 1660 fixed fifteen years for the hearing of, among others, claims to inheritance. Article 1663 excluded periods of lawful excuse,

including minority, insanity, absence, and the claimant's fear of the power of his opponent. Articles 1669–1670 combined the periods of a predecessor and his heir. Article 1674 restated that a right is not extinguished by lapse of time.

c) As noticed in Maqbool Ahmad v. Hakoomat-e-Pakistan (1991 SCMR 2063), the Ottoman order preceding the Majalla excepted waqf and inheritance from the fifteen-year rule. The tradition is thus not uniform even within the Hanafi school.

d) The Maliki doctrine of hiyaza: possession by a stranger for about ten years, in the presence and with the silence of the claimant, bars the claim. Possession by relatives and co-heirs is treated differently. Mere possession does not suffice; a much longer period, or acts of ownership such as sale, gift, demolition or construction in the claimant's presence without objection, is required. Co-heirs are presumed to tolerate one another's possession out of kinship (Khalil, al-Mukhtasar, with al-Dardir's commentary).

e) The Shafi'i and Hanbali schools recognise no extinctive prescription of private rights as such. The owner's silence confers nothing on the possessor.

45. Sale by a non-owner. Under Hanafi and Maliki law, a sale of another's property without authority (bay' al-fuduli) is suspended (mawquf) on the owner's ratification. Under the later Shafi'i view and one Hanbali view, it is void. On no view does it bind the owner without his consent.

46. There is a further strand of the Islamic teaching which, though it has received little attention in our reported cases, goes to the very root of the disputes before us, namely, the duty to distribute promptly. We propose to dilate

upon it in some detail to enable the legislature to consider appropriate legislation thereon. We do so for the reason that its theme is of universal application and bears directly on the conditions in which disputes are born. We state hereunder the reasons underpinning the duty to distribute promptly.

47. First, the texts contain no fixed calendar for distribution, but they leave no doubt about its urgency. Once the funeral rites are complete and debts and bequests are settled, the estate belongs to the heirs, and every day of postponement is a day on which one Muslim is holding the property of another without a distribution that the law commands. The Holy Qur'an has fixed the shares precisely so that there should be nothing left to negotiate and therefore nothing to wait for. Delay is not neutral. It is a departure from both the objective and the spirit of the law of inheritance.

48. Second, delay has social consequences. While the estate lies undivided, the heir in possession, usually the eldest or most powerful male, comes to regard it as his own; the others come to regard him with suspicion. Brothers who stood shoulder to shoulder at their father's funeral stand on opposite sides of a courtroom a generation later. The weakest heirs, widows, daughters, minors and orphans, are the ones who wait longest and lose most, because they have the least power to compel distribution. And heirs die waiting. The widow who should have received her eighth dies without it; her share must then be traced through her own estate to her own heirs. What could have been one simple distribution becomes a chain of successive distributions, which the jurists call munasakhat, and each link in that chain multiplies the parties, the shares and the opportunities for error and fraud.

49. Third, delay has economic consequences. Undivided property is dead capital. No heir will invest in land

he may lose on partition; no heir can sell, mortgage or improve a share he cannot identify. Houses fall into disrepair, fields are under-cultivated, businesses are stripped. The produce is consumed by the one in possession, and the estate is mixed with his personal property until the two can no longer be told apart. By the time the claim is made, the value has moved, sometimes up and sometimes down, and the question of what is owed becomes as contested as the question of who owns.

50. Fourth, delay has religious consequences. The debt of the deceased may remain unpaid, holding his soul in suspension; his lawful bequest may remain unexecuted; the share of the orphan is consumed, which the Holy Qur'an likens to swallowing fire. The heir in possession, who may have begun with no worse sin than procrastination, finds that with each passing year he is holding more of what is not his.

51. Fifth, delay has legal consequences. Evidence perishes, witnesses to the pedigree die, documents are lost, revenue records are re-written. Successive deaths multiply the heirs to a point where the litigation becomes unmanageable. Strangers acquire interests. And the plea of limitation, which would have had no foothold had the estate been distributed promptly, becomes the principal defence. Delay is the soil in which the plea of limitation grows.

52. The lesson we draw is that the law of inheritance is best protected not at the end of the story, by litigation, but at the beginning, by prompt and correct distribution. The cure for stale inheritance claims is not a sharper bar of limitation; it is an estate distributed on time. That conviction informs the directions with which we close this opinion.

53. From all of this, six conclusions follow:

a) The heir's title vests on death by divine command and cannot be lost by abandonment, silence or bare renunciation.

b) A share leaves the heir only by a recognised transfer made with free consent: sale, gift, exchange, or takharuj.

c) Islam does not forbid the State to regulate the hearing of stale claims. But the dominant classical technique bars the hearing, not the right, and excludes periods of lawful excuse.

d) Among those excuses is fear of a powerful opponent, which in our society describes the position of most excluded women.

e) Possession by a co-heir is presumed to be with the tolerance of the others. Something more, namely an act of ownership inconsistent with their title done in their knowledge, is required before their silence carries any consequence.

f) Distribution is a duty to be performed promptly. The heir in possession who delays it holds the shares of the others as a matter of trust, and the law should look to him, not to the excluded heir, to explain the delay.

54. We now turn to the Constitution and the relevant statutes. Article 2A of the Constitution provides:

> "2A. The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly."

The Objectives Resolution includes the clause:

> "Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah;"

55. Article 227(1) provides:

> "227. (1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and

no law shall be enacted which is repugnant to such Injunctions."

56. Article 203D(1) and (3)(b) provide:

"203D(1) The Court may, either of its own motion or on the petition of a citizen of Pakistan or the Federal Government or a Provincial Government, examine and decide the question whether or not any law or provision of law is repugnant to the Injunctions of Islam, as laid down in the Holy Quran and the Sunnah of the Holy Prophet, hereinafter referred to as the Injunctions of Islam. .....
.....

(3) If the Court decides that any law or provision of law is repugnant to the Injunctions of Islam, ...

(b) such law or provision shall, to the extent to which it is held to be so repugnant, cease to have effect on the day on which the decision of the Court takes effect."

57. Article 203G provides:

"203G. Save as provided in Article 203F, no court or tribunal, including the Supreme Court and a High Court, shall entertain any proceeding or exercise any power or jurisdiction in respect of any matter within the power or jurisdiction of the Court."

58. Article 24(1) provides:

"24. (1) No person shall be compulsorily deprived of his property save in accordance with law."

An heir excluded by a mutation he never saw has been deprived of his property; whether it was "in accordance with law" is the question every inheritance suit asks.

59. Section 4 of the Enforcement of Shari'ah Act, 1991 (X of 1991) provides:

"4. Laws to be interpreted in the light of Shari'ah. — For the purpose of this Act —

> (a) while interpreting the statute-law, if more than one interpretation is possible, the one consistent with the Islamic principles and jurisprudence shall be adopted by the Court; and
>
> (b) where two or more interpretations are equally possible, the interpretation which advances the Principles of Policy and Islamic provisions in the Constitution shall be adopted by the Court."

60. The history of the law of succession in this country is the history of a long retreat by custom before the Shariah, achieved not in one step but province by province, statute by statute, over a period of nearly fifty years. Question (ix) cannot be answered without tracing that retreat in each territory.

61. In the Punjab, section 5 of the Punjab Laws Act, 1872 made custom the first rule of decision in questions of succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, family relations, wills, gifts and partitions, and Muhammadan law the rule only where no custom was proved. Section 27 of the NWFP Law and Justice Regulation, 1901 (Regulation VII of 1901) reproduced that provision for the Frontier (now Khyber Pakhtunkhwa):

> 27. **Decisions in certain cases to be according to native law.-** In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, partitions, or any religious usage or institution, the rule of decision shall be—
>
> a) any custom applicable to the parties concerned, which is not contrary to justice, equity or good conscience, and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority;
>
> b) the Muhammadan law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus,

> except in so far as such law has been altered or abolished by legislative enactment, or is opposed to the provisions of this Regulation, or has been modified by any such custom as is above referred to."

Under this regime, agricultural land commonly passed to male agnates, and widows and daughters took at most a limited estate for life or until remarriage, with the reversion in the male collaterals. The Punjab Limitation (Custom) Act, 1920 (Pb. I of 1920) and the Punjab Custom (Power to Contest) Act, 1920 (Pb. II of 1920) regulated the period for, and the right to bring, the suits of descendants, collaterals and reversioners contesting alienations of ancestral land and alienations by limited owners.

62. The NWFP Muslim Personal Law (Shariat) Application Act, 1935 (VI of 1935), in force from 6th of December 1935, was the first statute in the subcontinent to displace custom in succession for agricultural land as well as other property. Sections 2 and 3 provided:

> "2. Decision in certain cases to be according to Muslim Personal Law.— In questions regarding succession, special property of females, betrothal, marriage, divorce, dower, guardianship, minority, bastardy, family relations, wills, legacies, gifts or any religious usage or institution including waqf (trust and trust property), the rule of decision shall be the Muslim Personal Law (Shariat), in cases where the parties are Muslims.
>
> "3. Repeal of provision of previous law.— On and from the day of the enforcement of this Act, section 27 of the North-West Frontier Province Law and Justice Regulation (No. VII of 1901) shall be repealed in so far as the Muslims are concerned."

63. By the NWFP Muslim Personal Law (Shariat) Application (Amendment) Act, 1950, sub-section (2) was added to section 3:

> "(2) Whenever a question relating to the succession upon the death of a Muslim arises in any court, the rule of decision shall, whether

> such death has taken place before or after the commencement of this Act, be the Muslim Personal Law (Shariat)."

By NWFP Act II of 1953, sub-section (2) was substituted:

> "(2) Whenever a question relating to the succession upon the death of a Muslim arises in any court, the rule of decision shall be the Muslim Personal Law (Shariat) as if that law had been applicable at the time of such death."

The Frontier Legislature thus did what no other legislature in the subcontinent did. It reached back across the whole of the customary era and declared that every Muslim who had died there should be deemed to have died under the Shariah. The retrospective effect of section 3(2) was upheld by this Court in Muzaffar Khan v. Mst. Roshan Jan (PLD 1984 SC 394) and Habibullah Jan v. Muhammad Hassan Khan (PLD 1991 SC 93): in a dispute regarding succession, a deceased Muslim is deemed to have died under Muslim Personal Law even if his death occurred before 6th of December 1935.

64. The two decisions of this Court deserve closer attention, for they are the foundation of everything we say about Khyber Pakhtunkhwa. In Muzaffar Khan v. Mst. Roshan Jan (PLD 1984 SC 394), one Ali Mardan had died in 1923 and Muhammad Aslam Khan had taken his land under custom. In 1966 Aslam Khan gifted the land to his sisters, and in 1972 his uncle, claiming a reversioner, sued to have the gift declared void under custom. The High Court, following Sahib Jan, had held that Aslam Khan's title had matured by limitation against the Muslim law heirs of Ali Mardan. This Court dismissed the uncle's appeal on a different ground. It quoted with approval the account in Sahib Jan of the retrospective operation of section 3(2), and held that the Act of 1935 is to be given retrospective effect, so that whenever a dispute comes before a court as to the succession of a deceased Muslim, he is deemed to have died under Muslim law even if he died before the Act came into

force. It held further that, by Article 203D(3)(b) of the Constitution, the words "subject to the provisions of any enactment for the time being in force" in section 2 of the Act of 1962 ceased to have effect as soon as the decision of the Shariat Appellate Bench took effect on 30th of June 1983, whether or not a province had amended its laws; and that, in consequence, a collateral could no longer challenge an alienation by the holder of the land inherited under custom. We draw from the words of section 3(2) a further consequence which the Court in Muzaffar Khan did not need to state. The sub-section is not confined to deaths after 6th of December 1935. It applies "whenever a question relating to the succession upon the death of a Muslim arises in any court". And it directs that the question be decided "as if that law had been applicable at the time of such death". That is a legal fiction and a legal fiction must be carried to its logical end. When a statute tells us to imagine a state of affairs, it tells us also to imagine its inevitable consequences; we may not allow our imagination to stop short of them. If the propositus is deemed to have died under the Shariah, then his shariah heirs are deemed to have taken their shares at his death; the heirs who took the whole under custom are deemed to have taken only their own shariah shares; and the reversionary expectations that custom created are deemed never to have existed.

65. In Habibullah Jan v. Muhammad Hassan Khan (PLD 1991 SC 93), this Court reaffirmed that construction, holding that the Act of 1935 is to be given retrospective effect and that, whenever a dispute comes before a court as to the succession of a deceased Muslim, he is deemed to have died under Muslim Law even if he died before the Act came into force. The succession in that case had opened in 1936 and 1944, after the Act; the court held that custom had then ceased to be the rule of the decision, that a party could not rely on a decision given in his favour under custom before the Act, and that the regulation of 1901 had created no right

or privilege which section 6 (c) of the General Clauses Act, 1897 could preserve. The two decisions together settle three propositions, binding on every court under Article 189 of the Constitution. First, in Khyber Pakhtunkhwa a devolution under custom is not, by reason only of its antiquity, a transaction past and closed: whenever the question arises before a court, the propositus is deemed to have died under Muslim Law. Secondly, from 30th of June 1983, the words "subject to the provisions of any enactment for the time being in force" in section 2 of the Act of 1962 ceased to have effect, so that custom can no longer be invoked to restrict or challenge what the shariah allows. Thirdly, where succession opened after 6th of December 1935, neither a customary mutation nor a decision given under custom can stand as a source of title against the shariah heirs, and those who took under custom acquired no right which the displacement of custom could preserve. What neither decision had to decide, because it was not argued in that form, is the question that divides the courts below today: from what date the heir so deemed to own must sue, and whether the coming into force of the amendment, or the repeal of 1962, started or stopped any clock. That is the question we will answer. In Muzaffar Khan, the High Court's view of that question was left undisturbed, the appeal being decided on another ground but our answer will be built on Muzaffar Khan and Habibullah Jan, not around them: a share which, by the statutory fiction, is deemed to have vested at the death cannot be treated as lost merely because no suit was filed in the years after the deeming provision was enacted.

66. The Muslim Personal Law (Shariat) Application Act, 1937 (XXVI of 1937), in force from 7th of October 1937 throughout British India, provided by section 2:

> "2. Application of Personal Law to Muslims.— Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate

> succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)."

The parenthetical exclusion of agricultural land left the principal source of exclusion untouched. The daughter could inherit her father's watch but not his fields.

67. The Punjab Muslim Personal Law (Shariat) Application Act, 1948 (IX of 1948), in force from 15th of March 1948, applied Muslim Personal Law to succession, including to agricultural land, and dealt with limited estates held by females under custom. Section 3 of that Act provided, in substance, that in respect of immovable property held by a Muslim female as a limited owner under custom, succession should be deemed to have opened out on the termination of her limited interest, and should devolve on those who would have inherited from the last full owner had the Muslim Personal Law been applicable at the time of his death; if any such person had died before the termination, his share was to devolve on his own heirs existing at the termination, as if he had died at that moment. The female limited owner herself was to take the share which the Shariah would have given her at the death of the last full owner. Section 2 was not retrospective as to deaths before its commencement; but section 3, by its terms reaches back to the death of the last full owner, and this Court has applied it where the limited interest ended before the Act came into force (Faiz Ullah v. Dilawar Hussain, 2022 SCMR 1647). It stands repealed by section 7(1)(e) of the West Pakistan Act of 1962, which consolidated its operative provisions.

68. In Sindh, custom had a narrower hold than in the Punjab and the Frontier, but the exclusion of agricultural land from the Act of 1937 applied there as elsewhere. The Muslim Personal Law (Shariat) Application (Sind Amendment) Act, 1950 (Sind XXII of 1950) extended the Shariah to agricultural land in the Province. In the former State of Bahawalpur, the Bahawalpur State Shariat (Muslim Personal Law) Application Act, 1951 (Bwp. I of 1950), promulgated on 4th of March 1951, did the same, although this Court has held that the Punjab Act of 1948 already applied there, so that the Shariah governed the succession of Muslims in Bahawalpur even before March, 1951, notwithstanding any custom (Muhammad Boota v. Mst. Fatima, 2023 SCMR 1901, following Government of Pakistan v. Nawab Muhammad Abbas Khan Abbasi, PLD 1982 SC 367); and in the former State of Khairpur, the Khairpur State Muslim Female Inheritance (Removal of Customs) Act, 1952 (Khairpur I of 1950) removed, by its very title, the customs which excluded women. Each of these was repealed and consolidated by the West Pakistan Act of 1962.

69. In British Balochistan and the Baloch and Pashtun tribal territories, succession was, by long practice, regulated by tribal custom (riwaj) administered through the jirga system, and the Act of 1937 applied only so far as it extended and subject to its exclusion of agricultural land. The West Pakistan Act of 1962 applied in the settled districts, and its application was later extended to the tribal areas of the Province by regulation published in the Balochistan Gazette in December 1976.

70. The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 (V of 1962), in force from 31st of December 1962, now governs the whole of Pakistan. Section 2 provides:

> "2. Application of the Muslim Personal Law.— Notwithstanding any custom or usage, in all questions regarding succession (whether testate or intestate), special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, legitimacy or bastardy, family relations, wills, legacies, gifts, religious usages or institutions, including waqfs, trusts and trust properties, the rule of decision, subject to the provisions of any enactment for the time being in force, shall be the Muslim Personal Law (Shariat) in case where the parties are Muslims."

71. Sections 3, 5 and 6 (section 3 as substituted by Ordinance XXXIX of 1963, and deemed always to have been so substituted) provide:

> "3. Termination of limited Estate under Customary Law.— The limited estates in respect of immovable property held by Muslim females under the Customary Law are hereby terminated:
>
> Provided that nothing herein contained shall apply to any such estate saved by any enactment, repealed by this Act, and the estates so excepted shall continue to be governed by that enactment, notwithstanding its repeal by this Act."

> "5. Devolution of property on the termination of life estate and certain wills.— The life estate terminated under section 3 or the property in respect of which the further operation of a will has ceased under section 4 shall devolve upon such persons as would have been entitled to succeed under the Muslim Personal Law (Shariat) upon the death of the last full owner or the testator as though he had died intestate; and if any such heir has died in the meantime, his share shall devolve in accordance with Shariat on such persons as would have succeeded him, if he had died immediately after the termination of the life estate or the death of the said legatee:
>
> Provided that the share to which a Muslim female holding limited estate under Customary Law would have been entitled under the Muslim Personal Law (Shariat) upon the death of the last full owner shall devolve on her."

> "6. Sections 3, 4 and 5 only to be retrospective.— Save as expressly provided by the provisions of sections 3, 4 and 5, this Act shall have no retrospective operation."

It bears mentioning that section 5 itself embodies the principle on which our answer to the third question rests. Where an heir entitled on the death of the last full owner has died in the meantime, his share devolves upon his own heirs in accordance with the Shariah. The Legislature thus recognised that a share which vested in an heir does not lapse because he did not live to claim it.

72. Section 7 repealed the earlier enactments:

> "7. Repeal and savings.— (1) The following enactments are hereby repealed: (a) The Punjab Limitation (Custom) Act, 1920 (Pb. I of 1920); (b) The Punjab Custom (Power to Contest) Act, 1920 (Pb. II of 1920); (c) The Muslim Personal Law (Shariat) Application Act, 1937, in its application to West Pakistan (Act XXVI of 1937); (d) The North-West Frontier Province Muslim Personal Law (Shariat) Application Act, 1935 (N.W.F.P. VI of 1935); (e) The Punjab Muslim Personal Law (Shariat) Application Act, 1948 (Pb. IX of 1948); (f) The Muslim Personal Law (Shariat) Application (Sind Amendment) Act, 1950 (Sind XXII of 1950); (g) The Bahawalpur State Shariat (Muslim Personal Law) Application Act, 1951 (Bwp. I of 1950); (h) The Khairpur State Muslim Female Inheritance (Removal of Customs) Act, 1952 (Khairpur I of 1950).
>
> (2) This Act shall not apply to cases where the death of the last full owner or the termination of the life estate or the death of the legatee-in-enjoyment, as the case may be, has occurred before the commencement thereof, and all such cases shall be governed by the Acts repealed in sub-section (1), according to the territories in which they were operative."

Sub-section (2) of section 7 was first omitted by Ordinance XXXIX of 1963, and its omission was then effected by section 2 of the West Pakistan Muslim Personal Law (Shariat) Application (Amendment) Act, 1964 (XXVIII of 1964). The

Lahore High Court has also held it void from its inception for repugnancy to section 3 and 6 (Sarwar Bibi v. Said Ahmad, PLD 1969 Lahore 412). Sub-section (2), had it stood, would have confined to the repealed Acts every case in which the last full owner died before the Act of 1962. It was omitted, as the High Court explained, because once the proviso to Section 3 saved the limited estates which the repealed Acts protected, it had become redundant. Its omission is not, therefore, by itself evidence of a legislative intention as to claims arising from earlier deaths; but it leaves the Act of 1962 with no provision confirming such claims to the repealed law.

73. The Punjab after 1962. The Punjab Muslim Personal Law (Shariat) Application (Removal of Difficulties) Act, 1975 (Pb. XXV of 1975) addressed questions that had arisen about alienations by limited owners. Then the Federal Shariat Court by its judgment of 19th of May, 1981 in the case of Muhammad Ishaque, held repugnant to the injunctions of Islam, the custom continued by Section 5 of the Punjab Laws Act, 1872, which restricted the power of alienation of a person who had inherited agricultural land under custom before 16th of March, 1948 and allowed collaterals to challenge such alienations, and directed that the Act of 1962 be amended accordingly; and the Shariat Appellate Bench of this Court by its judgment of 10th of April, 1983 in Federation of Pakistan vs. Muhammad Ishaq, upheld the direction that the necessary amendment be made (PLD 1983 SC 273). The Legislature responded with section 2-A, inserted in the Punjab by Ordinance XIII of 1983:

> "2A. Notwithstanding anything to the contrary contained in section 2 or any other law for the time being in force, or any custom or usage, or decree, judgment or order of any Court, where, before the commencement of the Punjab Muslim Personal Law (Shariat) Application Act, 1948, a male heir had acquired any agricultural land under custom from a person who, at the time of such acquisition, was a Muslim—

a) he shall be deemed to have become, upon such acquisition, an absolute owner of such land, as if such land had devolved on him under the Muslim Personal Law (Shariat);

b) any decree, judgment or order of any Court affirming the right of any reversioner under custom or usage to call in question such an alienation, or directing delivery of possession of agricultural land on such basis, shall be void, inexecutable and of no legal effect to the extent it is contrary to the Muslim Personal Law (Shariat);

c) all suits or other proceedings of such a nature pending in any Court, and all execution proceedings seeking possession of land under such decree, shall abate forthwith:

Provided that nothing herein contained shall be applicable to transactions past and closed where possession of such land has already been delivered under such decree."

A five-member Bench in Ghulam Haider v. Murad (PLD 2012 SC 501) held, by majority, that such a male heir became absolute owner of the whole land acquired by him. Section 2-A extends to the Punjab only.

74. The tribal areas of Khyber Pakhtunkhwa. In the Provincially Administered Tribal Areas, the Act of 1962 was extended by Regulation I of 1976, which, by its saving clause, protected the previous operation of any law, instrument, custom or usage. In the former Federally Administered Tribal Areas, custom (riwaj) remained the rule until those areas were merged into Khyber Pakhtunkhwa by the Constitution (Twenty-fifth Amendment) Act, 2018, and the laws of the Province were extended to them.

75. Section 6 of the General Clauses Act, 1897, so far as relevant, provides:

> "6. Effect of repeal.— Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not— ...
>
> > (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or..."

76. Finally, the penal law. Section 498A of the Pakistan Penal Code, 1860 provides:

> "498A. Prohibition of depriving woman from inheriting property.— Whoever by deceitful or illegal means deprives any woman from inheriting any movable or immovable property at the time of opening of succession shall be punished with imprisonment for either description for a term which may extend to ten years but not be less than five years or a fine of one million rupees or both."

77. It is crucial to note that section 498A protects only a woman. A man deprived of his inheritance by the same deceitful or illegal means has no comparable remedy under that section. It is, however, a matter of common knowledge that exclusion is not confined to women. Brothers are excluded by brothers, sons of a predeceased son are kept out by their uncles, and the heirs of a co-heir who died young are frequently denied what vested in him. The wrong done to them is, in substance, the same wrong.

78. The Holy Qur'an does not draw this distinction. The verse with which this judgment began (Al-Nisa 4:7) confers an appointed share on men and women alike, in the same breath and in parallel terms: li-l-rijali nasibun ... wa li-l-nisa'i nasibun. And verses 13 and 14 of Surah Al-Nisa warn of the consequence of transgressing the limits of Allah without regard to whose share is taken. The divine scheme protects every heir.

79. Article 25 of the Constitution provides:

> "25. (1) All citizens are equal before law and are entitled to equal protection of law.
>
> (2) There shall be no discrimination on the basis of sex.
>
> (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children."

Clause (3) permits special provision for the protection of women. Section 498A is such a provision. Its object is beyond reproach, for women have historically borne the brunt of exclusion, and nothing we say is intended to dilute the protection it affords them. Nor is it for this Court, in a reference concerning limitation, to pronounce upon the validity of a penal provision which is not under challenge. But clause (3) enables special protection for women; it does not require that every other heir deprived by the same means be left without protection. A man deprived of his share by fraud is equally entitled to the equal protection of law under clause (1). The shield for the sister should not leave the brother's back bare. We return to this in our recommendations.

80. The relevant sections of the Limitation Act, 1908 (IX of 1908) provide:

> "2. (8) 'plaintiff' includes any person from or through whom a plaintiff derives his right to sue;"
>
> "3. Dismissal of suits, etc., instituted, etc., after period of limitation.— Subject to the provisions contained in sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the first schedule shall be dismissed, although limitation has not been set up as a defence."

"6. Legal disability.— (1) Where a person entitled to institute a suit or make an application for the execution of a decree is, at the time from which the period of limitation is to be reckoned, a minor, or insane, or an idiot, he may institute the suit or make the application within the same period after the disability has ceased, as would otherwise have been allowed from the time prescribed therefor in the third column of the first schedule."

"9. Continuous running of time.— Where once time has begun to run, no subsequent disability or inability to sue stops it."

"10. Suits against trustees and their representatives.— Notwithstanding anything hereinbefore contained, no suit against a person in whom property has become vested in trust for any specific purpose, or against his legal representatives or assigns (not being assigns for valuable consideration), for the purpose of following in his or their hands such property, or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time."

"18. Effect of fraud.— Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application—

a) against the person guilty of the fraud or accessory thereto, or

b) against any person claiming through him otherwise than in good faith and for a valuable consideration, shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production."

"19. Effect of acknowledgement in writing. — (1) Where, before the expiration of the period

prescribed for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by some person through whom he derives title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed."

"23. Continuing breaches and wrongs.— In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues."

"28. Extinguishment of right to property.— At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished." (Ceased to have effect on 31 August 1991 upon its being declared repugnant to the Injunctions of Islam in Maqbool Ahmad v. Hakoomat-e-Pakistan, 1991 SCMR 2063, and since omitted.)

"29. Savings.— ... (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the first schedule, the provisions of section 3 shall apply, as if such period were prescribed therefor in that schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law—

a) the provisions contained in section 4, sections 9 to 18, and section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

b) the remaining provisions of this Act shall not apply."

81. The relevant articles of the First Schedule provide:

Art.	Description of Suit	Period	Time from Which Period Begins to Run
91	To cancel or set aside an instrument not otherwise provided for.	Three years	When the facts entitling the plaintiff to have the instrument cancelled or set aside become known to him.
92	To declare the forgery of an instrument issued or registered.	Three years	When the issue or registration becomes known to the plaintiff.
93	To declare the forgery of an instrument attempted to be enforced against the plaintiff.	Three years	When the instrument is first attempted to be enforced.
95	To set aside a decree obtained by fraud, or for other relief on the ground of fraud.	Three years	When the fraud becomes known to the party wronged.
120	Suit for which no period of limitation is provided elsewhere in this Schedule.	Six years	When the right to sue accrues.
123	For a legacy or for a share of a residue bequeathed by a testator, or for a distributive share of the property of an intestate, against the executor or administrator, or some other person legally charged with the duty of distributing the estate.	Twelve years	When the legacy or share becomes payable or deliverable.
127	By a person excluded from joint family property to enforce a right to share therein.	Twelve years	When the exclusion becomes known to the plaintiff.
141	Like suit by a Hindu or Muhammadan entitled to the possession of immovable property on the death of a Hindu or Muhammadan female.	Twelve years	When the female dies.
142	For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.	Twelve years	The date of the dispossession or discontinuance.
144	For possession of immovable property or any interest therein not hereby otherwise specially provided for (ceased to have effect with section 28; since omitted).	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

82. Three features of the scheme are fundamental. First, Article 120 runs from when the right to sue accrues and does not identify the event; that is for the courts to determine according to the nature of the right. Secondly, with section 28 gone, no provision extinguishes title; the Act now bars remedies only. Thirdly, Article 123 presupposes an executor, administrator or other person legally charged with distributing the estate, and Article 127 presupposes a Hindu joint family. A Muslim's estate vests directly in the heirs without any intermediary, and Muslim law knows no joint family property in the Hindu sense. Neither article applies to Muslim heirs. And Article 141, which runs from the death of a female, was framed for the customary world in which a reversion fell in on her death; where a limited estate has been terminated by statute during her lifetime, the event on which the article turns has not occurred.

83. Sections 39 and 42 of the Specific Relief Act, 1877 (I of 1877) provide:

> "39. When cancellation may be ordered. — Any person against whom a written instrument is void or voidable, who has reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, may sue to have it adjudged void or voidable; and the Court may, in its discretion, so adjudge it and order it to be delivered up and cancelled. ..."

> "42. Discretion of court as to declaration of status or right.— (1) Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:
>
> Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."

The words "denying, or interested to deny" show that a suit lies on a threatened denial; the word "may" shows the plaintiff is not obliged to bring it.

84. The relevant provisions of the Transfer of Property Act, 1882 (IV of 1882) are:

> "2. ... and nothing in the second Chapter of this Act shall be deemed to affect any rule of Muhammadan law."
>
> "41. Transfer by ostensible owner.— Where, with the consent, express or implied, of the persons interested in immovable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorised to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."
>
> "44. Transfer by one co-owner.— Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting at the date of the transfer the share or interest so transferred. ..."
>
> "129. Saving of donations mortis causa and Muhammadan law.— Nothing in this Chapter relates to gifts of movable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law."

Section 3 of the Transfer of Property Act, 1882 provides that a person is said to have notice of a fact when he actually knows it, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it. Section 51 provides that where a transferee who has made improvements in the good-faith belief that he is absolutely entitled is evicted by a person with a better title, he may require that person either to pay

the value of the improvement or to sell his interest to him at its market value, irrespective of the improvement.

85. Section 52 of the Punjab Land Revenue Act, 1967 provides:

> "52. Presumption in favour of entries in records-of-rights and periodical records.— An entry made in a record-of-rights in accordance with the law for the time being in force, or in a periodical record in accordance with the provisions of this Chapter and the rules made thereunder, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor."

86. Section 42 of the Punjab Land Revenue Act, 1967, whose counterparts in the other Provinces are to like effect, requires a person acquiring a right in an estate by inheritance, purchase, mortgage, gift or otherwise to report it to the Patwari within three months; requires the Patwari to enter every report, and every acquisition he has reason to believe has occurred, in the register of mutations; and requires the Revenue Officer to inquire into and order upon each entry in the common assembly of the estate. Sub-section (7) provides:

> "(7) Except in cases of inheritance or where the acquisition of the right is by a registered deed or by or under an order or decree of a Court, the Revenue Officer shall make the order under sub-section (6) in the presence of the person whose right has been acquired, after such person has been identified by two respectable persons, preferably from Lambardars or members of the Zila Council, Tehsil Council or Town Council concerned whose signatures or thumb-impressions shall be obtained by the Revenue Officer on the register of mutations."

Section 53 provides:

> "53. Suit for declaratory decrees by persons aggrieved by an entry in a record.— If any person considers himself aggrieved by an entry in a record-of-rights or in a periodical record as to any right of which he is in possession, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877 (Act I of 1877)."

Two features of these provisions are of particular significance. First, sub-section (7) of section 42 dispenses, in cases of inheritance, with the presence of the person whose right is affected. An inheritance mutation may therefore lawfully be attested without the excluded heir ever attending; its existence is no evidence that she knew of it. Secondly, section 53 confers the right to sue upon a person aggrieved by an entry "as to any right of which he is in possession". A co-heir, whose possession is held for him by the co-heir in possession, is within the section; the Legislature has thus contemplated that such a person may sue whenever an entry aggrieves him, not that he must sue on the first entry or lose his right.

87. Paragraph 7.1(v) of the Land Record Manual provides:

> "It shall not be difficult for a Patwari (resident official) to learn in the normal course of the occurrence of death of land-owner in his small circle. Mutations of inheritance in such case can, therefore, be entered by the Patwari suo motu on the basis of his personal knowledge without waiting for any formal intimation from any quarter. In further failure to enter a mutation of inheritance on the death of a resident land owner shall be construed to reflect adversely on the vigilance and awareness of Patwari and shall be taken due notice of."

None of these provisions makes a mutation a document of title. The mutation is the State's ledger for land revenue, not the heir's title deed.

88. Order VI, Rule 4 and Order VII, Rule 6 of the Code of Civil Procedure, 1908 provide:

> "O. VI, R. 4. Particulars to be given where necessary.— In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."

> "O. VII, R. 6. Grounds of exemption from limitation law.— Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed."

89. The relevant Articles of the Qanun-e-Shahadat, 1984 provide:

> "114. Estoppel.— When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing."
>
> "117. Burden of proof.— (1) Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. ..."
>
> "118. On whom burden of proof lies.— The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side."
>
> "122. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."
>
> "129. Court may presume existence of certain facts.— The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

90. We turn to the precedents. The two lines of authority are contemporaneous, not successive. Claims have succeeded and failed in every decade, sometimes within the same months, and before Benches with common members. Both lines agree on title; they part company on two points: whether the heir's knowledge is required before time runs, and whether a predecessor's mere inaction binds his successors. We state the principles each has established.

91. Vesting, and the character of a mutation. On the death of a Muslim, his estate vests in his heirs immediately, in definite shares, without the intervention of the State, a court, an executor, an administrator or any relation; the theory of representation of the estate by an intermediary is unknown to Islamic law (Ghulam Ali v. Mst. Ghulam Sarwar Naqvi, PLD 1990 SC 1). The heirs become co-sharers the moment inheritance opens, and no mutation is necessary for the devolution (Mst. Reshama Bibi v. Ameer, 2004 SCMR 392; Mst. Janntan v. Mst. Taggi, PLD 2006 SC 322). A mutation is not a document of title. Revenue records are maintained for realising land revenue; a wrong mutation confers no right in property (Anwar Muhammad v. Sharif Din, 1983 SCMR 626; Haji v. Khuda Yar, PLD 1987 SC 453). An erroneous mutation in favour of one heir creates no title contrary to the Shariah (Mst. Gohar Khanum v. Mst. Jamila Jan, 2014 SCMR 801). A person deriving title through a mutation must prove the underlying transaction (Rehmat Ullah v. Saleh Khan, 2007 SCMR 729; Peer Baksh v. Mst. Khanzadi, 2016 SCMR 1417).

92. Void and voidable transactions. If the transaction sought to be set aside is voidable, it must be set aside, and the limitation for setting it aside governs; if it is void, no setting aside is needed. The test is whether the transaction, by its own force, produced legal effects. A forged deed, or an entry in the record of rights with no true basis, produces none; no person is bound to sue to set aside a document merely because it raises a presumption against him (Muhammad Akbar Shah v. Muhammad Yusuf Shah, PLD 1964 SC 329; applied in Abdul Majeed v. Muhammad Subhan, 1999 SCMR 1245). When the basic order is without lawful authority, the superstructure falls with it (Yousaf Ali v. Muhammad Aslam Zia, PLD 1958 SC 104). An order obtained by fraud from an authority having jurisdiction is voidable, not void, and operates until set aside (Chief Settlement Commissioner v. Raja Muhammad Fazil Khan,

PLD 1975 SC 331). An instrument alleged to have been procured by fraud, undue influence or misrepresentation is not void on its face, and a suit for its cancellation is governed by Article 91 (Dr Muhammad Javed Shafi v. Syed Rashid Arshad, PLD 2015 SC 212, majority); the dissent held that limitation cannot shield a transaction which, being forged, never had legal existence.

93. The co-sharer line. Haji v. Khuda Yar, PLD 1987 SC 453, held that an adverse revenue entry, coupled with non-participation in profits, does not amount to ouster of a co-sharer. Ghulam Ali built on it: title vests at death, a mutation is fiscal, brothers stand in a fiduciary relation to their sisters, and there is no estoppel against the Shariah. There can be no ouster without a demand and refusal, or a clear declaration brought home to the co-sharer; mere omission to pay profits is not ouster; the law does not penalise a co-owner who relies on the honesty of his co-sharer. The possession of one co-sharer is the possession of all; a co-sharer is not obliged to sue merely because a mutation was wrongly sanctioned, and a suit on denial of his right is in time (Najabat v. Saba Bibi, PLD 1982 SC 187; Mst. Suban v. Allah Ditta, 2007 SCMR 635; Muhammad Anwar v. Khuda Yar, 2008 SCMR 905). The rule was applied in Mst. Fazal Jan v. Roshan Din (PLD 1992 SC 811), Shahro v. Mst. Fatima (PLD 1998 SC 1512), Khair Din v. Mst. Salaman (PLD 2002 SC 677) and Mst. Janntan.

94. A suit for declaration is governed by Article 120, time running when the right is denied or challenged. A suit for declaration of title is a continuing right while the right to the property subsists; a co-sharer in possession is not bound to sue on every denial, each invasion furnishing a fresh cause of action (Abdul Hafeez Khan v. Muhammad Tahir Khan Loni, 1995 SCMR 284; Riaz Ahmad v. Additional District Judge, 1999 SCMR 1328). Each new record of rights gives co-heirs a fresh cause of action (Mahmood Shah v.

Syed Khalid Hussain Shah, 2015 SCMR 869). Every wrong entry gives a fresh cause to a co-sharer in actual or symbolic possession, and delay in correcting entries cannot be attributed to heirs where the revenue staff are bound to act suo motu (Faiz Ullah v. Dilawar Hussain, 2022 SCMR 1647). Limitation against co-heirs runs not from death or mutation but from the date the right is denied (Rehmat Ullah). A suit lies within six years of a wrong entry or knowledge; each repetition, and each denial, gives a fresh cause; and the cases applying limitation were distinguished as involving transfers by the propositus in his lifetime (Khan Muhammad v. Mst. Khatoon Bibi, 2017 SCMR 1476).

95. Muhammad Iqbal v. Allah Bachaya (2005 SCMR 1447) held that the bar of limitation does not extinguish a right of inheritance, that a female's oral surrender in favour of male relatives cannot defeat her Shariah share, and that Islam knows no estoppel depriving a person of inheritance. In Muhammad Boota, this Court, following Saadat Khan, ran time from the sisters' knowledge of the denial, their brothers having paid them their share of the produce until they stopped and denied the claim; and, citing Shabla, it held that limitation does not run in matters of a female's inheritance where she has been defrauded by her family. Noor Din v. Pervaiz Akhtar (2023 SCMR 1928) held that, where no relinquishment or transfer is shown, the cause of action accrues on denial. Faqir Ali v. Sakina Bibi (PLD 2022 SC 85) placed the burden of proving an alleged gift on the beneficiaries who seek to exclude female heirs, and held that limitation cannot help a beneficiary of established fraud and collusion. Arshad Khan v. Mst. Resham Jan (2005 SCMR 1859), Shabla v. Ms Jahan Afroz Khilat (2020 SCMR 352), Muhammad Yaqoob v. Mst. Sardara (PLD 2020 SC 338) and Mst. Ramzano Bibi v. Ibrahim (2025 SCMR 955) are to like effect.

96. The limitation line. A second line applies Article 120 where there has been an actual denial and the heir, or the heir's predecessor, did not sue. There can hardly be a suit to which limitation does not apply, in view of the residuary Article 120; a sweeping statement that there is no limitation in inheritance cases rewrites the law of limitation; a declaration is discretionary, and delay and laches are incompatible with its grant (Atta Muhammad v. Maula Bakhsh, 2007 SCMR 1446). The presumption attached to long-standing entries must be rebutted by evidence (Mst. Phaphan v. Muhammad Bakhsh, 2005 SCMR 1278). A distinction exists between an heir whose share was simply omitted from the inheritance mutation and an heir who sits by, does not challenge long-standing entries, and comes forward only after third-party rights have arisen; the latter must show unawareness, cogent reasons for not challenging the record, and complicity or knowledge on the purchaser's part (Syed Kausar Ali Shah v. Syed Farhat Hussain Shah, 2022 SCMR 1558). Mst. Grana v. Sahib Kamala Bibi (PLD 2014 SC 167) applied limitation and acquiescence against an heir who sued long after the defendant had openly disposed of and developed the property within her knowledge. Intelligence Bureau Employees Cooperative Housing Society v. Shabbir Hussain (2022 SCMR 877) protected a purchaser where a co-heir knowingly allowed land in his vicinity to be acquired and developed over years. See also Lal Khan v. Muhammad Yousaf (PLD 2011 SC 657), on bona fide family settlements; Mst. Rabia Gula v. Muhammad Janan (2022 SCMR 1009); and Khaleelullah v. Muhaim Khan (PLD 2024 SC 600).

97. The derivative bar. Abdul Haq v. Mst. Surraya Begum (2002 SCMR 1330) held that where the predecessor, deprived by a mutation, did not challenge it in his lifetime, his heirs lacked locus standi to do so after his death. That reasoning was followed in Muhammad Rustam v. Mst. Makhan Jan (2013 SCMR 299), Ghulam Abbas v.

Muhammad Shafi (2016 SCMR 1403, on the ground of estoppel and abandonment) and Mst. Faheeman Begum v. Islam-ud-Din (2023 SCMR 1402). Another line rests the same result, where it is reached, on the Limitation Act itself: once time runs against the person injuriously affected, it does not stop (section 9); a successor, being a "plaintiff" within section 2(8), gets no fresh start unless he asserts and proves that the predecessor never knew (Rabia Gula; Haji Muhammad Yunis v. Mst. Farukh Sultan, 2022 SCMR 1282). A successor must plead that the original owner lacked knowledge and why he did not sue, and prove it by credible evidence; hearsay will not do (Iqbal Ali Khan v. Naseeb Ali Khan, PLD 2025 SC 387).

98. The bridge: Saadat Khan v. Shahid-ur-Rehman (PLD 2023 SC 362) reconciled much of the field. It held that Article 120 governs a sister's declaratory suit against her brothers; that an actual denial creates a compulsory cause of action while every threatened denial creates a fresh, optional one; that between co-sharers an actual denial is not to be readily inferred and requires an explicit overt act; that oral negations, non-payment of profits and a wrong inheritance mutation are not enough; but that a fraudulent gift or sale deed, a transfer mutation reciting the sisters' consent, or sale of the joint property as exclusive owners, is an actual denial. An open act is not fraudulent concealment within section 18; but where fraud keeps the sisters from knowledge of the act, section 18 postpones time to discovery, except against a transferee in good faith for value. Salamat Ali v. Muhammad Din (PLD 2022 SC 353) held that where the co-sharer in possession sells joint property exceeding his share, claiming exclusive ownership, and transfers possession, he ousts the other even from constructive possession, and if the latter, despite knowledge, does not sue within time, his remedy is barred. Khaleelullah held that a transfer to a third party is an actual denial, a revenue annotation a threatened denial, and that after an actual

denial, repetition of the entry gives no fresh cause. The fraud contemplated by section 18 is fraud which conceals the right to sue, not the fraud which constitutes the cause of action; a plaintiff invoking it must plead the fraud, its particulars and the date of knowledge under Order VI, Rule 4, and prove them (Rabia Gula).

99. The other side of the bridge. In Mst. Brikhna v. Faiz Ullah Khan, 2020 SCMR 1618, this Court distinguished Grana and expressly left the question of limitation and acquiescence in Muslim inheritance open for an appropriate case. By contrast, in Hidayat Khan v. Mst. Nasreen (PLD 2025 SC 502) it was said that the question of limitation in cases of inheritance and fraud "is not attracted". And in Abrar Hussain v. Mst. Bibi Shahida (PLD 2026 SC 42) , this Court held that waiver, estoppel, relinquishment and adverse possession do not apply among co-heirs, and that a donee bears a heavy onus to prove offer, acceptance and delivery of possession. Limitation cannot eclipse the anterior question of whether an alleged gift was proved (Noor Muhammad v. Ghulam Haider, CPLA No. 1103-L of 2016, decided on 30.06.2026).

100. Purchasers. No one can confer a better title than he has; the purchaser steps into his vendor's shoes and can claim no protection where the vendor had no title (Muhammad Yamin v. Settlement Commissioner, 1976 SCMR 489; Muhammad Saleem v. Administrator, KMC, 2000 SCMR 1748; Talib Hussain v. Member, Board of Revenue, 2003 SCMR 549; Muhammad Jameel v. Abdul Ghafoor, 2022 SCMR 348). Protection under section 41 requires that the transferor is the ostensible owner, by the express or implied consent of the real owner, that the transfer is for consideration, and that the transferee acted in good faith after taking reasonable care to ascertain the transferor's power (Haji Abdul Ghafoor Khan v. Ghulam Sadiq, PLD 2007 SC 433). The omission of an owner's name

from the revenue record, by error or design, is not his consent, and a purchaser who did not go into the genesis of title has not taken reasonable care (Ghulam Rasool v. Noor Muhammad, 2017 SCMR 81). The person asserting that he is a bona fide purchaser bears the initial onus (Hafiz Tassaduq Hussain v. Lal Khatoon, PLD 2011 SC 296; Gulzar Ahmed v. Ammad Aslam, 2022 SCMR 1433). The burden under section 41 is heavier than under section 27(b) of the Specific Relief Act, 1877 (Inayatullah Khan v. Shabbir Ahmad Khan, 2021 SCMR 686). An honest buyer inquires of persons with knowledge of the property, including neighbours (Bahar Shah v. Manzoor Ahmad, 2022 SCMR 284). Under the doctrine of caveat emptor, a buyer is charged with notice of what the title papers disclose and cannot shut his eyes and then claim to be a purchaser without notice (Rao Abdul Rehman v. Muhammad Afzal, 2023 SCMR 815).

101. Limited estates. On termination of a limited estate, succession to the last full owner opens, and the persons entitled under Muslim Personal Law take as owners. In Faiz Ullah, the last full owner died in 1922. His widow succeeded as a limited owner under custom until her marriage in the mid-1930s; his daughter then held the same limited interest until her marriage in 1944 or 1945, which terminated it. Applying Section 3 of the Punjab Act of 1948, and holding Section 2-A and other provisions of the Act of 1962 inapplicable, this Court held that on the termination, the succession “reverted back to the year 1922”. The property devolved on those who would have been the Shariah heirs of the last full owner at his death, the widow taking one-eight, the daughter one-half and the brother the residue, and those heirs became co-sharers from his death. It held further that a revenue record which continued to show the daughter as full owner could not defeat their title, and that limitation did not run against a co-sharer in possession. Akbar Khan v. Mst. Shamozai (1983 SCMR

474), on appeal from the Peshawar High Court, turned on what estate was in the hands of a female on the enforcement of the Frontier Act of 1935, following Kamalzai (PLD 1974 SC 207).

102. The Peshawar High Court decisions. It is necessary to deal specifically with the Peshawar decisions, because the questions under the Act of 1935 arise most sharply in Khyber Pakhtunkhwa, and because the views taken there have not been uniform.

103. The first is Saadat Khan (PLD 2023 SC 362), in which this Court refused leave against a decision of the Peshawar High Court. The facts are instructive. Isa Khan was owner of about 19 kanals according to the jamabandi of 1929-30. On Isa Khan's death, inheritance mutation No. 327 was sanctioned on 23rd of March 1935, a few months before the Frontier Act came into force, in favour of his only son, Abdur Rehman, excluding his two daughters, Mst. Mehro and Mst. Afsro. In 1960-61 part of the land was compulsorily acquired by the Small Industries Corporation of West Pakistan, and Abdur Rehman received the whole compensation. The daughters died. Their heirs sued on 19th of November 2004, nearly seventy years after the mutation. The High Court non-suited them, and this Court refused leave. The decisive fact was not the age of the mutation. It was that the sisters knew Abdur Rehman had received the compensation and had refused them their share, and that his receipt of the whole price of the acquired land was equivalent to a sale of the joint property as exclusive owner. That was an actual denial, known to the sisters in their lifetime, and they did not sue within six years. Their heirs took the claim as it stood: barred.

104. We agree with that result, and the reasoning that underlies it. But we note with concern that the decision was widely reported as holding that a woman's inheritance

may be claimed only in her lifetime and that her children can lay no claim after her death. That is not what the case decided, and it is not the law. The sisters' claim was lost not because they died, but because, while they lived, they knew of an overt act of repudiation and let six years pass. Had they never known of it, their heirs' claim would have been as alive as their own. A judgment is authority for what it decides on its facts, not for the headline written about it.

105. The second is the decision reported as Ghulam Qadir and others v. Mir Farosha and others, 2010 CLC 640 (Peshawar). Noor Ullah died in about 1935-36, and inheritance mutation No.786 dated 25th of January 1936 was attested in favour of his sons alone, excluding his two daughters and his widow on the strength of custom. One daughter and the legal heirs of the other sued. The defendants contended that the plaintiffs, having knowledge of the mutation, had not sued in time. The Court, on concurrent findings that the plaintiffs were the propositus's heirs, treated their right of inheritance as secured by law. That approach is sound. A mutation of 1936, made under custom after the Act of 1935 had abolished custom as the rule of decision for Muslims, was a nullity as against the excluded heirs; and mere knowledge of a mutation, which is a threatened denial only, does not start time.

106. The third is the decision reported as Mst. Farida and others v. Rehmatullah and another, PLD 1984 Peshawar 117 (reversed, PLD 1991 SC 213), which reasoned that Section 6 of the Act of 1962 excludes the retrospective operation of Section 2, so that where the owner died before that Act and succession was governed by custom, the question of applying the Shariah in a suit brought in 1978 does not arise. That view did not survive appeal. In Mst. Farida vs. Rehmatullah (PLD 1991 SC 213), this Court allowed the daughter’s appeal against that very judgment. Their father had died in 1972 or 1973 in an area, within the

limits of Provincially Administered Tribal Area, to which the Act of 1962 was extended only on 15th of January 1976. Following Muzaffar Khan, the Court held that once the decision of its Shariat Appellate Bench took effect from 30th of June 1983, the words "subject to the provisions of any enactment for the time being in force" in section 2 of the Act of 1962 ceased to have effect; that the Islamic dispensation of the Act of 1962, read with that of the Act of 1935, had taken over retrospectively even before the Act of 1962 was formally applied to the area; and that the daughters took their shares in accordance with the Shariah. The view of the High Court therefore stands reversed and is not to be followed. We address it nonetheless because notwithstanding its reversal, it has continued to be followed in the courts below.

107. There are also decisions of the Peshawar High Court which have held that an heir excluded under custom in Khyber Pakhtunkhwa could claim under the Act of 1935 only if he sued between 1950 and 1962, and that after the repeal of 1962 the right was gone. With respect, that view cannot be sustained, for four reasons. First, Ghulam Haider construed section 2-A, a Punjab provision with no application in Khyber Pakhtunkhwa. Secondly, once section 3(2) of the Act of 1935 deemed the propositus to have died under Muslim Personal Law, title vested in the Muslim heirs as from his death; that was a right acquired under the repealed enactment, which section 6(c) of the General Clauses Act preserves, no contrary intention appearing. The converse does not hold: the Regulation of 1901 created no right or privilege in the customary heirs which Section 6(c) could save (Habibullah Jan). Thirdly, section 7(2) the only provision that would have confined cases arising from deaths before 1962 to the repealed Acts, was void from its inception (Sarwar Bibi) and has since been omitted; nothing in the Act of 1962 therefore closed the door on such claims. Fourthly, section 2 of the Act of 1962 itself makes Muslim Personal

Law the rule of decision in succession notwithstanding any custom. A window that the Legislature never built cannot be slammed shut by the courts.

108. The same conclusion, by a different and earlier route, was reached by a Division Bench at Peshawar in Mst. Sahib Jan Bibi v. Wali Dad (PLD 1961 (W.P.) Peshawar 9). Khan Karamdad Khan of Bannu died in 1928 under custom. Inheritance mutations were attested in 1930 and 1931 in favour of his two sons alone; the sons partitioned the land between themselves in 1931–32, held their separate shares exclusively, and in 1954–55 gifted the whole to their wives and children. A widow and the three daughters of the propositus sued in 1955 for their Shariah shares. The Bench accepted that section 3(2), as enacted in 1950 and substituted in 1953, was retrospective, so that the propositus was deemed to have died under the Shariah. It held, nevertheless, that a claim under the Act of 1935 must pass the test of the Limitation Act like any other; that the sons had entered in 1928 not as co-heirs but as full owners in their own right; that their open and exclusive possession, their partition and their denial of access to the property, all within the plaintiffs' knowledge, amounted to ouster; and that their title had matured by prescription under Article 144 twelve years after the death or, at the latest, twelve years after the Act of 1935 came into force. The theory of co-heirship, the Bench reasoned, could not be introduced between customary heirs and the Shariah heirs whom the Act enabled to claim; otherwise successions settled over centuries would be reopened, and the law of limitation abrogated.

109. This Court quoted with approval in Muzaffar Khan, and referred to in Habibullah Jan, Sahib Jan Bibi's account of the retrospective operation of Section 3(2), and on that question the Bench was right. Neither decision approved the rest of its reasoning in Muzaffar Khan, the High Court

had applied that reasoning to hold the claims of the Muslim law heirs barred, and this Court dismissed the appeal on another ground without passing upon it. On two further points Sahib Jan Bibi is in harmony with what we hold. It recognised that the Shariat Application Law does not abrogate the Limitation Act, which is our own view. And it accepted, with the concurrence of counsel on both sides, that had the widow and daughters been receiving their share of the produce as owners, they would have been co-heirs in constructive joint possession, unaffected by the omission of their names from the revenue record, with time running only from the alienations of 1954–55. But its central reasoning cannot stand, for three reasons. First, it rested on Article 144 and on the extinction of title under section 28, both of which ceased to have effect on 31st of August 1991 (Maqbool Ahmad). Secondly, the proposition that the sons' entry in their own right fixed the character of their possession for all time cannot be reconciled with the legal fiction section 3(2) creates. If the propositus is deemed to have died under the Shariah, his sons are deemed to have taken only their own Shariah shares, and their possession of the rest is, in law, the possession of co-sharers; the fiction does not stop at the threshold of their entry. The fear that centuries of devolution would be reopened was a matter for the Legislature, which made its choice in terms; and it is answered by the safeguards this judgment preserves: decrees that have attained finality, section 41, estoppel, and the running of time from a known actual denial. Thirdly, the Bench ran time from the death in 1928, or from 1935, although the Shariah heirs of a propositus who died before 6th of December 1935 had no enforceable claim until section 3(2) was enacted in 1950. A statute that confers a right does not, by the same stroke, deny it; still less does it start time against an heir for whom, until 1950, the deemed devolution under the Shariah did not yet exist to be asserted. The partition of 1931–32 and the exclusion that accompanied it preceded that date and could start no clock. Whether the

first actual denial after 1950 is found in the sons' continued exclusion or in the gifts of 1954–55, the suit, filed in 1955, was within six years of it. To the extent that Sahib Jan Bibi holds that the claim of a Shariah heir excluded under custom was barred by prescription running from the death or from 1935, it is disapproved. The disapproval does not disturb the decree in that case, which attained finality long ago.

110. It must be emphasised that these Peshawar decisions do not stand on a clean slate. Muzaffar Khan and Habibullah Jan bind the High Court under Article 189. A view that confines the Shariah heir's claim to a window between 1950 and 1962, or that applies section 6 of the Act of 1962 to deny the Shariah to the heirs of a propositus in the settled districts, cannot be reconciled with the holding of this Court that such a propositus is deemed to have died under the Shariah whenever the question of his succession arises before a court. Where a High Court decision is inconsistent with a decision of this Court, it is the decision of this Court that governs, whatever the order in which they were reported.

111. Read for their principles rather than their phrases, the decisions show that claims have failed where there was (i) a proved overt act of repudiation known to the claimant or his predecessor, (ii) third-party interests acquired for value in reliance on the claimant's own conduct, or (iii) a successor who did not plead that his predecessor was ignorant of such an act. Claims have succeeded where none of these was present, or where fraud was established, or where the divesting transaction itself was not proved. The results are far more consistent than the reasons. Four conflicts of principle nonetheless remain: (a) whether waiver, estoppel and acquiescence can operate among co-heirs (Grana and Ghulam Abbas, against Abrar Hussain); (b) whether a predecessor's failure to sue deprives his successor

of standing (Abdul Haq and Muhammad Rustam, against Khan Muhammad); (c) whether limitation is "not attracted" in inheritance cases (Hidayat Khan, against Saadat Khan and Atta Muhammad); and (d) the effect of the Shariat Application laws upon devolutions under custom, on which the Peshawar decisions diverge.

112. Foreign law does not bind us. Yet the problem before us is not peculiar to Pakistan. Every legal system must decide how long an heir may wait, what happens to the heir in possession, and whether a stranger who bought in good faith deserves protection. It is instructive to see how others have struck the balance, if only to test our own conclusions against them. Every system we have examined converges on three rules: possession by one co-owner is possession for all; time runs against a co-owner only from an unequivocal ouster; and fraud postpones time until discovery, save against an innocent purchaser for value.

113. The Islamic tradition in codified form. The Majalla barred the hearing of claims after fifteen years but preserved the right itself, excluded periods of lawful excuse (including fear of a powerful opponent), and combined the periods of a predecessor and his heir. This technique of barring the hearing rather than extinguishing the right has survived in the civil codes of several Muslim States that drew on the Majalla. The lesson is not the length of the period but the nature of the bar. Modern Turkey abandoned the Majalla for a code modelled on the Swiss Civil Code; even there, the heir's action to recover the estate runs for a short period from knowledge, but for a much longer period against a possessor in bad faith. A secular code thus treats the possessor's bad faith as a reason to lengthen, not shorten, the time allowed.

114. In Corea v. Appuhamy [1912] AC 230, on appeal from Ceylon, the Judicial Committee of the Privy Council

held that the possession of one co-owner is in law the possession of all, that the entry of a co-heir is presumed to be for the benefit of all unless an ouster, or something equivalent to it, is proved, and that non-participation in profits, without more, is not ouster. This principle travelled into the jurisprudence of the subcontinent and underlies Haji v. Khuda Yar. The courts of India, which inherited the same Limitation Act, have arrived at the same principle among Muslim co-heirs (Mohammad Baqar v. Naim-un-Nisa Bibi, AIR 1956 SC 548; Karbalai Begum v. Mohd. Sayeed, (1980) 4 SCC 396). Notably, India's Limitation Act, 1963 now fixes three years for a declaration from when the right to sue first accrues; our Article 120 contains no such word as "first", which supports the view that, under our Act, a fresh threat may give a fresh cause.

115. England and Wales. English law once followed the co-owner rule. It was Parliament, by section 12 of the Real Property Limitation Act, 1833, that reversed it, so that one co-owner's possession could thereafter run against the others. The change came from the legislature, not from the courts. Under the Limitation Act 1980, a claim to a share in a deceased's personal estate has twelve years (section 22(a)); no period applies to an action against a trustee in respect of fraud, or to recover trust property in the trustee's hands (section 21(1)); and time is postponed in cases of fraud, deliberate concealment and mistake until the claimant discovered it or could with reasonable diligence have done so (section 32(1)), while section 32(3) protects a purchaser for value who was not a party to the fraud and had no reason to believe it had occurred. The House of Lords in Sheldon v. RHM Outhwaite [1996] AC 102 held that concealment after the cause of action accrues also postpones time. Williams v. Central Bank of Nigeria [2014] UKSC 10 confirms the narrow, fiduciary scope of the no-limitation rule. The Law Commission, in Limitation of Actions (Law Com No 270, 2001), endorsed discoverability as the fairest general starting

point. And under the Land Registration Act 2002, a person in adverse possession of registered land cannot acquire title merely by the passage of time; he must apply, and the registered owner is notified and may object.

116. United States. American law retains the rule that the possession of one tenant in common is presumed to be possession for all, and that time does not run in favour of one co-tenant against the others until there is an ouster, or acts so open and hostile that notice may be presumed (Clymer v. Dawkins, 44 U.S. (3 How.) 674 (1845)). The federal courts hold that where a party has been injured by fraud and remains in ignorance of it without fault, time does not run until the fraud is discovered (Bailey v. Glover, 88 U.S. (21 Wall.) 342 (1874); Holmberg v. Armbrecht, 327 U.S. 392 (1946)). The discovery rule now operates generally across American jurisdictions.

117. Canada. Ontario followed the English statute of 1833 on co-owners. But its general limitations statute makes discoverability central: time runs from when the claimant knew or ought to have known of the claim, subject to an ultimate long-stop. The Supreme Court of Canada recognised the discoverability principle in Central Trust Co. v. Rafuse [1986] 2 SCR 147 and Novak v. Bond [1999] 1 SCR 808, and held in Pioneer Corp. v. Godfrey, 2019 SCC 42, that fraudulent concealment suspends time.

118. Australia, New Zealand and Malaysia. Under the Torrens system, registration confers on a purchaser an indefeasible title (Frazer v. Walker [1967] 1 AC 569; Breskvar v. Wall (1971) 126 CLR 376), save for actual fraud by the registered proprietor or his agent (Assets Co. Ltd. v. Mere Roihi [1905] AC 176) and personal equities arising from his own conduct (Bahr v. Nicolay (No 2) (1988) 164 CLR 604). Even there, the Privy Council in Gibbs v. Messer [1891] AC 248 refused protection to one who took directly from a

forger. Malaysia's Federal Court, in Tan Ying Hong v. Tan Sian San [2010] 2 MLJ 1, overruling Adorna Properties v. Boonsom Boonyanit [2001] 1 MLJ 241, held that an immediate purchaser from a forger acquires no indefeasible title; only a later bona fide purchaser does.

119. Four lessons emerge. **First**, every system that keeps the co-owner rule requires an ouster, or an open and hostile act, brought home to the excluded co-owner before time runs; where the rule has been abandoned, it was the legislature that abandoned it. **Secondly**, every system postpones time where a claim has been concealed by fraud, and most protect a later purchaser who gave value in good faith. **Thirdly**, where purchasers are protected strongly, it is because the State maintains a register of title on which they may rely. Our revenue record is not such a register; it is fiscal and confers no title. Our law of purchaser protection must therefore rest on section 41 of the Transfer of Property Act, 1882 and estoppel, not on the record. **Fourthly**, the Islamic tradition, where it limits claims at all, bars the hearing rather than the right and excludes periods of excuse. None of these systems permits time to run against a person who neither knew nor could have known that his title was denied.

120. The core question is deceptively simple: when, if ever, does time run against an heir? To answer it we must first settle what a court of ordinary civil jurisdiction may and may not do with the Limitation Act, 1908; then distinguish the right from the remedy; and only then determine when the remedy begins to be lost.

121. It was urged with considerable force that, inheritance being a divine right, no man-made period of limitation can touch it. We are unable to accept the submission in that form. Article 203D vests the power to decide whether a law is repugnant to the Injunctions of

Islam in the Federal Shariat Court, and Article 203G bars every other court from exercising any jurisdiction in respect of that matter. That procedure was followed in Maqbool Ahmad: section 28 was declared repugnant and ceased to have effect, and Article 144 fell with it. Article 120 was not touched. It follows that a court of ordinary civil jurisdiction cannot declare Article 120 inapplicable to an entire class of suits. Statements that limitation is "not attracted" in inheritance cases are, with respect, too wide if read as a rule of law. The civil court may interpret the statute; it may not repeal it.

122. But that is not the end of the matter. Section 4 of the Enforcement of Shariah Act, 1991 obliges every court, where more than one interpretation of a statute is possible, to adopt the one consistent with Islamic principles and jurisprudence. Article 120 does not say when the right to sue accrues. That is a question of interpretation, and on it the Injunctions of Islam speak with clarity. It is here that the reconciliation lies.

123. Right and remedy. Before 31st of August 1991, section 28 provided that, at the end of the period for a suit for possession, the right to the property was extinguished. Its disappearance changed the character of our law of limitation. No provision now extinguishes title by lapse of time; the Act bars remedies, nothing more. Two consequences follow. First, the heir's title, having vested by operation of law at death, survives any lapse of time; only a lawful transfer can divest it. Secondly, where the heir's remedy is barred, the person in possession holds by virtue of that bar, not by virtue of any title which time has conferred on him. Time can lock the courtroom door; it cannot change the name on the title. This is precisely the classical distinction between the right and the hearing of the claim.

124. Two routes we decline. It was suggested that the heir in possession holds as a trustee for his co-heirs, so that section 10 of the Limitation Act, 1908, applies. It does not. Section 10 applies to a person in whom property has vested in trust for any specific purpose. A Muslim co-heir's share vests in him in his own right, and the other shares never vest in him at all. The fidelity a co-heir owes his co-heirs is real, but it is not a trust within section 10. Where this judgment speaks of the trust or confidence between co-heirs, it speaks of that relationship of fidelity, and not of a trust in the technical sense. It was also suggested that a wrong entry is a continuing wrong under section 23 of the Limitation Act, 1908. Section 23 concerns a continuing wrongful act. A wrong mutation is not, in law, an invasion of title at all; it is evidence only. The principle that each fresh entry gives a fresh cause rests not on section 23, but on the nature of a threatened denial, which gives an optional cause that the co-heir may, but need not, act upon, and which each fresh threat renews.

125. Actual and threatened denial. This brings us to the heart of the matter. We adopt the distinction drawn in Saadat Khan between an actual denial, which gives a compulsory cause of action, and a threatened denial, which gives an optional one. Section 42 of the Specific Relief Act, 1877 supports it. A suit lies against a person "denying, or interested to deny" the plaintiff's title; but the plaintiff "may" sue, and is under no obligation to sue upon a mere interest to deny. A threat to one's title is an invitation to sue; a repudiation of it is a summons.

126. The distinction is not peculiar to us. The English courts have long recognised that declaratory relief may be sought before any right has actually been invaded. In Guaranty Trust Co. of New York v. Hannay & Co. [1915] 2 KB 536, the Court of Appeal held that a declaration may be granted although no cause of action in the traditional sense

has arisen; and in Russian Commercial and Industrial Bank v. British Bank for Foreign Trade [1921] 2 AC 438, the House of Lords required only a real and present question between parties with a true interest in it. A threatened denial is exactly such a question: it may be litigated, but it need not be. In the United States, the Supreme Court in Aetna Life Insurance Co. v. Haworth, 300 U.S. 227 (1937), held that a declaratory judgment lies in a real and substantial controversy before any breach, and in MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118 (2007), that a party need not first expose himself to injury in order to obtain a declaration of his rights. Neither system treats the availability of an early remedy as an obligation to use it on pain of losing the right. The law that lets a man sue early does not compel him to.

127. What, then, converts a threat into a repudiation as between co-owners? Here too the common law offers guidance. In Jacobs v. Seward (1872) LR 5 HL 464, the House of Lords held that one tenant in common who took the whole of the produce of the land did not thereby oust his co-tenant; there must be something more than the enjoyment of the common property, some act of actual exclusion. In Doe d. Fishar v. Prosser (1774) 1 Cowp 217, Lord Mansfield allowed that very long, undisturbed and exclusive possession by one co-tenant might, in the circumstances, support a presumption of an actual ouster; but it was the ouster, not the length of possession, that the law required. And in Clymer v. Dawkins (1845), the Supreme Court of the United States required an ouster, or acts so open, notorious and hostile that knowledge in the co-tenant could be presumed. Across these jurisdictions, enjoyment is not exclusion, and exclusion is not effective until it is known.

128. As between co-heirs, an actual denial accordingly requires an overt act inconsistent with the co-heir's continuing ownership. Five such acts may be identified: (a) alienation of the co-heir's share, or of joint

property exceeding the alienor's share, to a third person, with delivery of possession; (b) execution or attestation of an instrument or transfer mutation setting up an exclusive title in another, such as a gift, sale, relinquishment or settlement attributed to the co-heir or to the propositus; (c) a demand by the co-heir for his share, and its refusal; (d) physical exclusion of the co-heir from possession, coupled with an assertion of exclusive ownership; and (e) a written repudiation of the co-heir's title, asserting exclusive ownership, delivered to the co-heir personally. The last is the means by which an heir in possession who claims the whole may himself start the clock. To these, Saadat Khan adds an important species of the first: the receipt by one heir, as exclusive owner, of the whole price or compensation for joint land taken by the State.

129. These are illustrations of a single test, not a closed list. It is equally important to state what does not amount to actual denial: a wrong or incomplete inheritance mutation; its repetition in the periodical record; failure to pay produce or rent; oral negation unaccompanied by an overt act; and possession by the heir in possession, however long. Whispers in the patwarkhana do not amount to a declaration of war.

130. Knowledge. A further question then arises. Does an actual denial start time the moment it occurs, or only when the excluded co-heir comes to know of it? As between co-heirs, the answer lies in the nature of the denial itself. The possession of one co-heir is, in law, the possession of all; the excluded co-heir is not out of possession, but in constructive possession through the co-heir who occupies the land. An ouster of a co-owner is therefore not a unilateral act, in the hands of the one who does it. It consists of two things: an overt act inconsistent with the other's title, and the bringing home of that act to him. Until the second occurs, the first has not displaced his constructive

possession, and his title has not, in law, been denied to him. An assertion never communicated is no assertion at all. This is not a rule which postpones the running of time after a cause of action has accrued; it is a rule about when, between co-owners, a denial exists, and therefore about when the right to sue accrues within the meaning of Article 120 of the Limitation Act, 1908. Nor is it new. It has been the law of this Court since Ghulam Ali, which held that there can be no ouster without a demand and refusal or a clear declaration brought home to the co-sharer. Muhammad Boota and Saadat Khan both ran time from the claimant's knowledge of denial; and Salamat Ali stated the rule as one that bars the claim of a person who does not sue within time "despite having knowledge thereof". The Privy Council in Corea v. Appuhamy, and the Supreme Court of United States in Clymer v. Dawkins, likewise required an ouster, or acts so open and hostile that notice to the co-owner may be presumed; and every system which retains the co-owner rule requires the ouster to be brought home to the excluded co-owner. We declare and consolidate that line of authority; we do not create it. The reality of the record confirms the rule. Section 42(7) of the Land Revenue Act, 1967 permits an inheritance mutation to be attested without the heir whose right is affected; and an "open" act in a revenue office is open in name only to a widow or daughter who has no access to the record and is told nothing. To treat such an act as notice would convert the protection of section 18 of the Limitation Act, 1908 into a trap.

131. It may be objected that where the Legislature intended knowledge to be the starting point it said so expressly, as in Articles 91, 92, 95 and 127, and that its silence in Article 120 is deliberate. The objection does not survive scrutiny. Article 91, 92 and 95 turn on events (the existence of an instrument, its issue or registration, the commission of fraud) which are complete whether or not the plaintiff knows of them; the Legislature therefore had to say

expressly that time should run only from his knowledge. A denial between co-owners is of a different kind. It is relational. It does not exist until it reaches the person whose title is denied. Article 120 names no event at all, and leaves the accrual of the right to sue to be determined by the nature of the right in question. And where the Legislature did address the exclusion of a co-owner from joint property, in Article 127, it chose knowledge as the starting point. That article does not apply to Muslim heirs, for the reasons given above; but it is closest statutory analogy to their case, and it points the same way. Nor does this do by interpretation what we held that a civil court cannot do. To declare that Article 120 does not apply to inheritance suits would be to disapply the statute; to determine when, under Article 120, the right to sue accrues is to apply it. The settled rule that a declaratory suit accrues only upon a denial, actual or threatened, is itself a judicial reading of Article 120, and no one has suggested that it amends the Act. We emphasise that the rule we state is confined to suits between co-owners and those claiming through them, otherwise than as transferees in good faith for valuable consideration. It is not a general rule of discoverability for suits under Article 120, and the accrual of other suits under that article is unaffected by it. Finally, the conclusion we have reached on the words of the statute and the authority of this Court is confirmed by section 4 of the Enforcement of Shariah Act, 1991. Of the interpretation reasonably open, ours is the one consistent with Islamic principles: the Maliki doctrine of hiyaza among relatives, and the Majalla's exclusion of time during fear of a powerful opponent, both turn on the claimant's knowledge and capacity to act. We rely on section 4 not as the foundation of the rule but as a statutory direction which confirms the choice that the words of the statute and the precedents of this Court already require.

132. Knowledge may be proved directly, or inferred from circumstances. Residence in the same locality,

participation in proceedings concerning the property, open development of the property in the claimant's vicinity over a period of years, the receipt by the claimant of consideration or of a part of compensation, or a demand made by the claimant himself or herself, may each support the inference. Long, open and exclusive enjoyment may be weighed, together with other circumstances in deciding whether a particular overt act was done and when it became known; but length of possession cannot by itself supply either the overt act or the knowledge, and no inference of ouster shall rest on it alone. What will not support the inference is the existence of a mutation or periodical entry alone. The record is maintained by the State for fiscal purposes, and heirs, particularly women, have no reason to inspect it.

133. It bears mentioning that this rule of knowledge is a rule about accrual under Article 120 of the Limitation Act, 1908. It is distinct from section 18 of the Limitation Act, 1908, which postpones time where knowledge has been prevented by fraud. The two overlap, but they are not identical; and they furnish independent grounds for the same result. Even if it were held that, as between co-heirs, the right to sue accrues upon the overt act itself, whether or not it is known, the heir who did the act and left his co-heir in ignorance of it could not, in the generality of cases, rely on the lapse of time. Co-heirs stand in a relationship of confidence. The heir in possession who knows that his co-heir does not know of the gift mutation he procured or the sale he made, and allows him to go on believing that the land is joint, keeps him from the knowledge of his right by fraud within the meaning of section 18, for silence where there is a duty to speak is itself a species of fraud. Time would then run, under section 18, only from the date on which the fraud first became known to the heir. Section 18 has an express limit: it does not operate against a transferee in good faith and for valuable consideration. The rule of accrual is qualified in a corresponding manner where a purchaser is

concerned, and for the same reason that the Legislature so qualified section 18, as we explain herein later: as against a transferee in good faith for valuable consideration who has entered into open possession, the heir is charged with the knowledge he would have acquired by ordinary diligence.

134. Burden of proof. Order VII, Rule 6 CPC requires a plaintiff whose suit is prima facie out of time to show the ground of exemption. But in an inheritance suit, the question of when time began is bound up with facts peculiarly within the defendant's knowledge: what transaction he set up, when he did so, and whether he told the claimant. Article 122 of the Qanun-e-Shahadat, 1984 places the burden of such facts on him; and limitation is, in substance, a plea in avoidance of an otherwise valid title. The burden is therefore distributed as follows:

(i) The plaintiff must prove his heirship and that the property formed part of the propositus's estate.

(ii) The defendant who relies on a divesting transaction (gift, sale, relinquishment, settlement or custom) must prove it strictly and in accordance with law, before any question of limitation is reached.

(iii) The defendant who pleads limitation must prove an actual denial and its date.

(iv) The plaintiff must plead the date and manner of his knowledge, with particulars in the plaint itself as Order VII, Rule 6 requires; and the defendant may prove earlier knowledge, once an actual denial is proved, directly or by circumstances.

He who holds another's share must explain how; he who says the claim is late must show when the clock started.

135. Fraud is the oldest enemy of the heir and the most persistent. It wears many coats: the forged thumb-impression on a gift mutation, the "oral gift" never made, the affidavit that omits a sister, the relinquishment signed by a woman who could not read it, the succession certificate obtained on a pedigree with a branch lopped off. Fraud is a thief that works in the dark; limitation is a watchman that cannot count the hours while the lights are out.

136. The common law has never allowed time to become the accomplice of fraud. In Lazarus Estates Ltd. v. Beasley [1956] 1 QB 702, Denning L.J. declared that no judgment of a court and no order of a minister can be allowed to stand if obtained by fraud, for fraud unravels everything. In Rochefoucauld v. Boustead [1897] 1 Ch 196, the Court of Appeal refused to allow a statute to be used as an instrument of fraud. In Bulli Coal Mining Co. v. Osborne [1899] AC 351, the Privy Council held that where a wrong has been concealed by fraud, time does not run until the injured party discovers, or with reasonable diligence could have discovered, the fraud. In Kitchen v. Royal Air Forces Association [1958] 1 WLR 563, it was held that "fraud" in this sense is not confined to deceit in the common-law sense, but extends to conduct which, in the circumstances, it would be unconscionable for the defendant to rely upon to defeat the claim. And in Sheldon v. RHM Outhwaite, [1996] AC 102, the House of Lords held that deliberate concealment after the cause of action has arisen postpones time just as concealment before it.

137. The American law is to the same effect. In Bailey v. Glover (1874), the Supreme Court held that where the fraud has been concealed, or is of such character as to conceal itself, the bar does not begin to run until the fraud is discovered; and in Holmberg v. Armbrecht (1946) it reaffirmed that equity will not permit a statute of limitation to be made an instrument of fraud. But American law also

demands diligence of the injured party: in Wood v. Carpenter, 101 U.S. 135 (1879), the Court required the plaintiff to plead with particularity how and when the fraud was discovered and why it was not discovered sooner. The Supreme Court of Canada, in Pioneer Corp. v. Godfrey, held that fraudulent concealment suspends time, and that it may arise from a relationship of special trust in which concealment is unconscionable. Every system thus holds two things at once: fraud stops the clock, and he who alleges fraud must show it with particulars.

138. Two strands of our own authority appear at first sight to collide. One holds that limitation does not run against fraud (Arshad Khan; Shabla; Muhammad Yaqoob; Faqir Ali; Muhammad Boota). The other holds that a transaction procured by fraud is voidable and must be set aside within time (Raja Muhammad Fazil Khan; Javed Shafi). The collision is more apparent than real. The test in Akbar Shah reconciles them: did the impugned transaction produce legal effects against the plaintiff?

139. An excluded heir who was not a party to a mutation, deed or decree is not bound by it. As against him, it produces no legal effects; it is void, not voidable. He need not sue to cancel it, and Article 91 has no application. His suit is for a declaration of his share, joint possession or partition, governed by Article 120 and running from an actual denial brought home to him. A forged instrument attributed to him stands on the same footing: it was never his act. A forgery is not a defective transaction; it is no transaction at all. One cannot be required to undo what one never did.

140. The position is different where the heir was himself a party to the transaction, as where he executed a deed of gift or relinquishment or appeared before the revenue officer, and now alleges undue influence, coercion or misrepresentation. Such a transaction is voidable at his

instance, and he must sue to set it aside under Article 91 within three years of the facts becoming known to him. Even then, the beneficiary bears the burden of proving that the transaction was free and understood (Mst. Hamida Begum v. Mst. Murad Begum, PLD 1975 SC 624). And a bare relinquishment of accrued inheritance is void in any event, so that Article 91 does not arise.

141. Thus understood, the proposition that limitation does not run against fraud is correct in two senses: a fraud to which the plaintiff was not a party produces nothing he must set aside; and concealment postpones time under section 18 of the Limitation Act, 1908. It is not correct in the sense that a proved actual denial, known to the heir, may be ignored indefinitely merely because its origin was fraudulent. Fraud excuses ignorance; it does not excuse indifference. Once the heir knows that he has been cheated, the law gives him six years to say so, and that is time enough.

142. Three further points. **First**, the fraud that engages section 18 is fraud that conceals the right to sue, not the fraud that constitutes the cause of action, and it must be pleaded with particulars and dates under Order VI, Rule 4 CPC and proved by positive evidence (Rabia Gula). **Secondly**, in a family relationship of trust, concealment is not confined to positive lies: the brother who, knowing that his sister does not know of the gift mutation he procured, allows her to go on believing the land is joint, is concealing it as surely as if he had hidden the register. Silence where there is a duty to speak is itself a species of fraud. **Thirdly**, section 18 cannot be invoked against a transferee who took in good faith and for valuable consideration. Against him, the heir's protection lies elsewhere: in the requirement that his good faith be real, and in the rules of section 41 and estoppel, to which we come.

143. We come to the four doctrines by which an heir who has not sued is most often said to have lost his share without ever having transferred it: relinquishment, waiver, estoppel and acquiescence. They are distinct doctrines, but in our courts they are often invoked together, as if piling up four weak pleas could make one strong one. They cannot. Each has its own elements, and each must be proved.

144. Relinquishment. The classical jurists are emphatic. Ownership is not extinguished by abandonment (Ibn Nujaym; Ibn 'Abidin). The Hanafi jurists distinguish a release (ibra') of a debt or a claim, which is valid, from a purported release of specific property owned ('ayn), which is not: الإِبْرَاءُ عَنِ الأَعْيَانِ لا يَصِحُّ — "a release from specific property is not valid". A vested share in land is such property. It can leave its owner only by a transfer that the law recognises: sale, gift with delivery of possession, exchange, or takharuj. This Court has said the same in its own idiom. Relinquishment by a female of her accrued inheritance is opposed to public policy as understood in Islam and void under section 23 of the Contract Act, 1872; it is not saved by section 25; relinquishment simpliciter is neither a transfer recognised by Islamic law nor a transfer under the Transfer of Property Act, 1882; and in such transactions undue influence is presumed and the burden lies on the alienee (Ghulam Ali; Khair Din). The principle on which those decisions rest, that a vested share in property which can be transferred but not released, does not depend on the sex of the heir; it applies equally to a male heir though the presumption of undue influence will ordinarily weigh more heavily where the heir is a woman. A share cannot be shrugged off like a coat; it must be conveyed like land.

145. A relinquishment, settlement or takharuj relied on by a beneficiary must be proved by clear and cogent evidence of (a) the heir's knowledge of her precise share, (b) independent advice or a genuinely free choice, especially

where a female heir gives up her share to male relatives, and (c) compliance with the requirements of the mode of transfer relied on. A recital of consent in a mutation is not such proof. A bona fide family settlement, fairly made among heirs who know their shares, binds the parties to it (Lal Khan); a settlement that is merely the name given to a sister's surrender is not a settlement at all.

146. Waiver. Waiver is the intentional relinquishment of a known right. That is the classic definition of the Supreme Court of the United States in Johnson v. Zerbst, 304 U.S. 458 (1938), and it is the definition the common law has generally applied. Two elements follow: knowledge of the right, and an intention to give it up. Silence supplies neither. The Majalla states the principle in a maxim of striking economy, Article 67: لَا يُنْسَبُ إِلَى سَاكِتٍ قَوْلٌ، لَكِنَّ السُّكُوتَ فِي مَعْرِضِ الْحَاجَةِ بَيَانٌ — "No statement is attributed to one who is silent; but silence where there is need to speak is a statement." The excluded sister who was never told of the mutation was under no need to speak, for she did not know there was anything to speak about. To read her silence as a waiver is to put words in a mouth the law requires us to treat as closed. And even waiver, properly proved, operates upon claims and rights of action, not upon ownership of property: what has vested as property can be transferred, but it cannot simply be waived away.

147. Estoppel. Article 114 of the Qanun-e-Shahadat,1984 requires that one person, by declaration, act or omission, intentionally caused or permitted another to believe a thing and to act upon that belief. The common law of proprietary estoppel, from which our Article is drawn, is exacting. In Pickard v. Sears (1837) 6 Ad & E 469, the estoppel was confined to one who wilfully causes another to believe a state of things and induces him to act on that belief. In Ramsden v. Dyson (1866) LR 1 HL 129, Lord Kingsdown explained the equity of one who builds on

another's land in the expectation, created or encouraged by the owner, of an interest in it. In Willmott v. Barber (1880) 15 Ch D 96, Fry J. laid down the five probanda of estoppel by standing by: the claimant must have made a mistake as to his legal rights; he must have expended money or done some act on the faith of that mistaken belief; the owner must know of his own right; the owner must know of the claimant's mistaken belief; and the owner must have encouraged the claimant's expenditure, directly or by abstaining from asserting his right. Taylors Fashions Ltd. v. Liverpool Victoria Trustees Co. Ltd. [1982] QB 133 and Thorner v. Major [2009] UKHL 18 later relaxed the rigour of those probanda in favour of a broader inquiry into unconscionability, but kept at their heart the owner's knowledge, the claimant's reliance and the detriment. No system has ever held that an owner is estopped by a silence he did not know he was keeping.

148. Acquiescence. Acquiescence, in the sense relevant here, is assent inferred from conduct with knowledge. In De Bussche v. Alt (1878) 8 Ch D 286, the Court of Appeal described it as standing by while a violation of one's right is in progress, with knowledge of the right and of the violation. In Holder v. Holder [1968] Ch 353, acquiescence by a beneficiary who, with full knowledge, accepted the benefit of a transaction precluded him from setting it aside; but the Court emphasised that the knowledge must be real. And in Lindsay Petroleum Co. v. Hurd (1874) LR 5 PC 221, the Privy Council explained that the equitable doctrine of laches turns on whether, by his conduct, the claimant has done that which might fairly be regarded as a waiver, or has put the other party in a situation in which it would be unreasonable to grant the remedy. Acquiescence presupposes knowledge of one's rights and of the infringement. Without knowledge there is nothing to acquiesce in.

149. The Maliki doctrine of hiyaza is the classical analogue, and its conditions are revealing. The jurists required that the claimant be present, that he see the possessor dealing with the property as owner, that he remain silent without impediment such as fear or kinship, and, as between relatives and co-heirs, that the period be much longer and the acts of ownership more emphatic than as between strangers. The presumption that kin tolerate one another's possession out of affection, hiyaza among relatives being disfavoured, is a presumption against inferring assent from a sister's silence. Thus the most permissive of the classical schools agrees with the common law on the essentials: knowledge, freedom to object, and conduct of the possessor so clearly hostile that silence in the face of it can only mean consent.

150. We now resolve the first conflict. As between co-heirs inter se, we affirm Abrar Hussain. Waiver requires an intentional relinquishment of a known right; relinquishment simpliciter of accrued inheritance is void; and silence is not intention. Estoppel under Article 114 requires that one person intentionally caused or permitted another to believe a thing and to act upon that belief. The co-heir who himself brought about the exclusion was never misled; he knew the truth because he made the falsehood. He cannot plead an estoppel arising out of his own wrong. No man can found an estoppel on a deception he himself practised. Nor can the defrauding heir plead the acquiescence of one from whom he concealed the very thing acquiesced in.

151. It does not follow, however, that Article 114 of the Qanun-e-Shahadat, 1984 has no place in inheritance disputes. It is a statutory rule of evidence, and it binds the heir's "representative". Where a third person acted on the excluded heir's own representation, the Article operates. Grana rests on such a foundation, and so does the Intelligence Bureau Employees Cooperative Housing Society

case. An estoppel in favour of a transferee arises only on proof of four elements: (i) the heir's knowledge of his own right; (ii) his knowledge of the transfer, or of the transferor's assertion of exclusive title; (iii) a representation by words or conduct, silence counting only where the heir was under a duty to speak and the transferee could not have discovered the truth by reasonable inquiry; and (iv) the transferee's action in reliance, to his detriment. The burden lies on the transferee. Thus Abrar Hussain is affirmed as between co-heirs, and Grana is affirmed as to transferees, but only on proof of these elements. To the extent that Ghulam Abbas applied estoppel and abandonment against heirs without such proof, with respect, it does not state the law correctly.

152. One caution remains. The Islamic texts forbid any presumption of consent to the loss of property without "willing consent" (tib nafs). The common law requires knowledge before silence can count. Both lead to a single proposition for our courts: no heir shall be held to have waived, abandoned, acquiesced in or been estopped from claiming his share unless the court records, on evidence, a finding that he knew of his right and of the act said to defeat it.

153. Successors. We are unable to agree with the proposition, in Abdul Haq, Muhammad Rustam, Ghulam Abbas and Faheeman Begum, that the heirs of an excluded heir lack locus standi because their predecessor did not sue. The excluded heir's share vested in him at the death of the propositus. On his own death, it passed, like the rest of his property, to his heirs. They sue on their own vested title. To hold otherwise would reduce a vested share to a life interest terminable on non-assertion, reviving in another guise the customary "limited owner" whom the Shariat Application laws abolished. The Legislature itself, in section 5 of the Act of 1962, directed that the share of an heir who died before termination of a limited estate should pass to his own heirs.

The courts cannot do by implication what the Legislature has expressly refused to do. A share that passes by inheritance does not die with the heir; it changes hands, not character.

154. On limitation, however, sections 2(8) and 9 of the Limitation Act, 1908 leave no room for doubt. A successor takes the claim as it stood. If an actual denial was brought home to the predecessor and six years expired in his lifetime, the successor's remedy is barred. If time had begun but had not expired, the balance continues to run. If the predecessor never knew of any actual denial, or none occurred in his lifetime, time runs from the successor's own knowledge. Khan Muhammad is consistent with this. The results reached in Abdul Haq and its progeny may well have been correct on their facts, where time had in fact run against a predecessor who knew of the denial; but the reason is limitation, not a separate doctrine of derivative incapacity. Saadat Khan, examined above, is the paradigm: the sisters knew of their brother's receipt of the whole compensation as owner and did not sue; their heirs took that barred claim, and nothing better.

155. The successor must plead which of these positions applies, with particulars. He need not prove a negative by direct evidence: the predecessor's ignorance may be inferred from circumstances such as distance, seclusion, illiteracy, dependence on the heir in possession, and the absence of any transaction to which the predecessor was party. But where the defendant proves an overt act done in the predecessor's knowledge, a bare assertion of ignorance will not suffice (Iqbal Ali Khan).

156. Limited estates, and whether the heirs become owners in possession on termination. Under custom, a widow, and in some tribes a daughter, took the land of the last male owner for her life or until remarriage, with the

reversion in his male collaterals. Section 3 of the Act of 1962 terminated such estates throughout West Pakistan, save those which an enactment repealed by it had saved. The Act of 1948 in the Punjab had not terminated subsisting estates; it left them to run their course and directed that, on their termination, succession should open under the Shariah. Section 5 of the Act of 1962 directs that the property "shall devolve" upon those who would have been entitled to succeed under the Shariah upon the death of the last full owner, as though he had died intestate; that the share of any such heir who has died in the meantime devolves on his own heirs; and that the female limited owner herself takes the share to which the Shariah would have entitled her. The interplay of these provisions was examined in Sarwar Bibi v. Said Ahmad (PLD 1969 Lahore 412). Muhammad Yar, who was governed by custom, was succeeded by his widow, Mst. Sarwar Bibi, as a limited owner, with his nephew Said Ahmad as reversioner. Some five weeks after the Act of 1962 came into force, Said Ahmad sued for joint possession of three-fourths of the land, contending that section 3 had terminated the widow's estate and left her only the one-fourth share of a childless widow under the Shariah. The widow relied on section 7(2), which excluded the Act where the last full owner had died before its commencement. The High Court held, first, that section 7(2) was void from its inception. Section 3, read with section 6, terminated every limited estate held by a Muslim female under custom on the date of the Act, whenever it arose. Since every such estate was necessarily one whose last full owner had already died, a saving clause excluding those cases would have left section 3 with nothing to operate on; and, following the rule stated by Craies in his treatise on Statute Law that a saving clause repugnant to the purview of an Act is to be rejected, he declined to give it effect. The High Court held, secondly, that the widow's estate had nevertheless survived. Ordinance XXXIX of 1963 substituted section 3 with the proviso, deemed always to have been so substituted, and omitted

section 7(2). An estate held under section 3 of the Punjab Act of 1948 was an estate saved by an enactment repealed by the Act of 1962, and therefore continued to be governed by the Act of 1948. The Ordinance lapsed for want of approval under Article 79(4) of the Constitution of 1962, but the rights saved by the proviso were preserved by Article 250(b) and (c) of that Constitution. The reversioner's suit was dismissed. We agree with Sarwar Bibi on the effect of the proviso, which follows from its words. In the Punjab, every limited estate subsisting on 31st of December 1962 had been governed, since 15th of March 1948, by section 3 of the Act of 1948. Each such estate was therefore saved. It was not terminated by section 3 of the Act of 1962, but ran its course until the death or remarriage of the holder, whereupon succession to the last full owner opened under the Shariah, the heirs being ascertained as at his death. An estate not saved by a repealed enactment was terminated on 31st of December 1962, and succession opened then under section 5. Whether a limited estate was saved or terminated is thus the first question in every such case, for it fixes the date on which succession opened and so the earliest date from which a cause of action could accrue. Where a saved estate ended by the holder's death, the event on which Article 141 turns has occurred; whether that Article or Article 120 then governs a suit against a person holding under her is a question we leave for a case in which it arises. The holding on section 7(2) has lost its practical importance, the sub-section having since been omitted; but its reasoning confirms that section 7(2) could never have confined to the repealed Acts the succession to estates which section 3 itself reached, whenever the last full owner died. A saved estate ends not by statute but by nature, and only then does the succession open.

157. We were asked whether, on such termination, the heirs of the last full owner become, by operation of law, owners in possession of the property. Our answer is yes. The

devolution under section 5 is statutory and immediate; it requires no mutation, no decree and no act of entry. From the moment of termination, the heirs of the last full owner, including the former limited owner in respect of her own Shariah share, are co-owners of the whole; and because they are his heirs their title as co-sharers relates back to his death (Faiz Ullah). And because they are co-owners, the rule of co-ownership applies at once: the possession of the former limited owner, or of whoever was in occupation through her, is in law the possession of all the co-owners. The heirs are therefore owners in constructive possession. They are not out of possession and are not required to sue for possession in order to keep their title alive. The heir is owner in possession the moment the limited estate ends; the law hands her the keys without waiting for the patwari.

158. Several consequences follow. **First**, where the estate was terminated by statute, Article 141, which runs from the death of a female, is inapt; the succession opened not on her death but on the statutory termination of her estate. **Secondly**, Article 142 is equally inapt, for no heir was dispossessed. **Thirdly**, the governing article is Article 120, and time runs only from an actual denial brought home to the heir after termination, in accordance with the rule we have stated. A mutation continuing to show the former limited owner as owner of the whole is a threatened denial only. **Fourthly**, an alienation by the limited owner before termination passed no more than she had, a life interest, unless it was for legal necessity or was consented to by the reversioners, or is protected by a decree that has attained finality. Where the estate itself was saved by the proviso to section 3, these consequences follow on its termination in due course, not on 31st of December 1962. On termination, the transferee who continues in occupation claiming as owner beyond the alienor's own Shariah share commits an actual denial; but time runs against each heir only from the date that denial is brought home to him. **Fifthly**, the

transferee from the limited owner may, as against her own Shariah share, be accommodated on partition, and may in a proper case claim the protection of section 41 of the Transfer of Property Act, 1882 or estoppel on the elements we have stated.

159. Question (ix): the devolution of estates under custom. We now come to the question added by this Bench. The answer depends upon five general principles, after which we state the position territory by territory.

160. **First**, the law in force at the death of the propositus governs the devolution of his estate, unless the Legislature has expressly reached back. Succession opens at death, and the heirs are ascertained by the law of that moment. That is the ordinary rule, and section 6 of the Act of 1962 confirms it: save for sections 3, 4 and 5, that Act has no retrospective operation. **Secondly**, where the Legislature has reached back, its words govern, and courts must give them full effect. The Frontier Act of 1935, by section 3(2) as enacted in 1950 and substituted in 1953, reached back across the whole of the customary era. Section 2-A, inserted in the Punjab in 1983, also reached back, but in the opposite direction, confirming the absolute title of male heirs who acquired agricultural land under custom before 15th of March 1948. **Thirdly**, custom is a question of fact. It must be pleaded and strictly proved by the party relying on it, as applicable to the particular tribe, place and kind of property; in its absence, the Muslim Personal Law governs as the personal law of the parties. **Fourthly**, a right acquired under a repealed enactment survives the repeal, no contrary intention appearing (section 6(c), General Clauses Act, 1897). **Fifthly**, a mutation attested under custom after the Shariah had become the rule of decision for that territory and that kind of property is a nullity as against the heirs it excludes.

161. Is the devolution under custom then "past and closed"? In general, yes: where the propositus died before the Shariat law of his territory applied to the property, and no provision reaches back, the devolution under custom is a completed event, and the heirs who took under custom took the title custom gave them. But the generalisation is subject to four exceptions which, in practice, swallow a large part of it: (a) the retrospective deeming in the settled districts of Khyber Pakhtunkhwa including the former Provincially Administered Tribal Areas (Muzaffar Khan; Habibullah Jan; and for those Areas, Farida); (b) limited estates of females subsisting when the relevant Act came into force, which were terminated by law or, where saved, ran their course under the Act that saved them, and on their termination opened the succession afresh, together with those which, in the Punjab, had ended before the Act of 1948 came into force (Faiz Ullah); (c) cases in which the custom set up is not proved; and (d) customary mutations made after the Shariah had become the rule of decision. And, within the general rule, it must be remembered that what is closed is only the devolution upon that propositus's death. The male heir who took absolutely under custom died, or will die, under the Shariah; his own estate devolves on his daughters, widow and other Shariah heirs.

162. Khyber Pakhtunkhwa: the settled districts. Nothing is past and closed by reason only of custom. By section 3(2) of the Act of 1935, every Muslim propositus is deemed to have died under the Shariah, whenever he died (Muzaffar Khan; Habibullah Jan); and as we have held, title is deemed to have vested in his Shariah heirs at his death. But for deaths before 6th of December 1935, no cause of action could arise in favour of an heir excluded by custom before 1950, when section 3(2) was first enacted; a customary mutation attested before that date cannot start time against an heir who then had no enforceable right. For deaths on or after 6th of December 1935, the Shariah applied

directly and customary mutations are nullities against the excluded heirs. The repeal of 1962 did not affect the rights so acquired. The heir's claim is governed by Article 120 and runs only from an actual denial brought home to him after 1950 (or after the death, if later). The only matters past and closed are decrees that attained finality and transactions protected under the ordinary law by section 41, estoppel or limitation. The view that claims had to be brought between 1950 and 1962 is disapproved. So is the view in Sahib Jan Bibi that time ran against the Shariah heirs from the death of the propositus or from 1935.

163. Khyber Pakhtunkhwa: the former Provincially Administered Tribal Areas. The Act of 1935 did not extend to these areas, and the Act of 1962 arrived only with Regulation I of 1976, whose saving clause protected the previous operation of custom. It might once have been thought that a devolution thereunder proved custom before 1976 was past and closed. This Court has held otherwise. In Farida, the propositus died in 1972 or 1973 in such an area, and this Court held that his daughters took their share under the Shariah, because the Islamic dispensation of the Act of 1962, read with that of the Act of 1935, had taken over retrospectively even before the Act of 1962 was formally applied. In the former Provincially Administered Tribal Areas, therefore, a Muslim propositus is deemed to have died under the Shariah, as in the settled districts. An heir excluded by custom could, however, have no enforceable claim before the Act of 1962 was extended to these areas on 15th of January, 1976. Time, in every case, runs only from an actual denial brought home after that date. The former Federally Administered Tribal Areas stand on a different footing. There, custom (riwaj) remained the rule of decision until the merger effected by the Constitution (Twenty-fifth) Amendment Act, 2018 and the extension of the laws of the Province. Whether section 3(2) of the Act of 1935, or the Act of 1962 as construed in Farida, reaches back to deaths in

those areas before that extension was not argued before us, and we leave it open for a case in which it arises. For deaths after the extension, the Shariah governs, and time runs only from an actual denial brought home to the heir thereafter.

164. The Punjab. For a propositus who died before 15th of March 1948, custom governs, if proved. Where a male heir acquired agricultural land under custom from such a propositus, section 2-A deems him to have become absolute owner of the whole of it, as if it had devolved on him under the Shariah (Ghulam Haider); the female heirs of that propositus have no claim to it by inheritance from him. Reversioners' decrees affirming customary rights to challenge such acquisitions are void and inexecutable, save where possession was delivered under them, which alone the proviso treats as past and closed. But where the propositus was succeeded by a female as limited owner, her estate, if subsisting on 15th of March 1948, came under section 3 of the Act of 1948, was saved by the proviso to section 3 of the Act of 1962, and continued until her death or remarriage (Sarwar Bibi); succession then opened to the last full owner under the Shariah, the heirs being ascertained at his death, and the persons entitled took as owners in constructive possession. The same is true where the limited interest ended before 15th of March 1948: section 3 of the Act of 1948 reaches back to the death of the last full owner (Faiz Ullah). For a propositus who died on or after 15th of March 1948, the Shariah applies directly to all property, and customary mutations are nullities against excluded heirs. As to the former state of Bahawalpur, this Court has held that the Punjab Act of 1948 applied there, so that the Shariah governed the succession of Muslims even before the Bahawalpur Act of 1951, notwithstanding any custom or section 20 of the Colonization of Government Lands (Punjab) Act, 1912 (Muhammad Boota). The relevant date for the application of the Shariah there is therefore 15th of March,

1948. The Islamabad Capital Territory follows the position in the Punjab under the laws continued in force there.

165. Sindh. Custom never held the same sway in Sindh as in the Punjab and the Frontier, and a party setting up custom there must prove it with particular rigour. For non-agricultural property, the Shariah has governed since 7th of October 1937. For agricultural land, it has governed since the commencement of the Sind Amendment Act of 1950; in the former State of Khairpur, since the commencement of the Khairpur Act. For a death before the relevant date, a devolution under proved custom is past and closed, subject to the termination of subsisting limited estates by section 3 of the Act of 1962 and the opening of succession under section 5. Where custom is not proved, the Shariah governs, and no question of a closed transaction arises.

166. Balochistan. In the settled districts, the Shariah has governed non-agricultural property since 7th of October 1937 and all property since 31st of December 1962; in the tribal areas, since the extension of the Act of 1962 by regulation in 1976. For a death before the relevant date, a devolution under proved tribal custom is past and closed, subject to the termination of subsisting limited estates and the opening of succession under section 5. Time runs only from an actual denial brought home after the relevant date.

167. It follows that, in every territory, the cause of action of an heir claiming under the Shariah cannot accrue before the date on which the Shariah first became the rule of decision for that property in that territory (and, in Khyber Pakhtunkhwa, for deaths before 6th of December 1935, before 1950), and thereafter accrues only upon an actual denial brought home to the heir. A statute that creates a right does not, by the same stroke, deny it; the coming into

force of a Shariat law is the earliest moment from which time could run, not the moment at which it does.

168. The hardest cases are not those between brother and sister. They are those in which a stranger stands between them: the purchaser who paid the brother the full price, built a house, and raised his children in it, and who now faces a sister he has never met, holding a share he never knew existed. Both are innocent of the original wrong. One of them must bear its cost. The law must decide which, and on what principle.

169. Every legal system has had to confront this collision between two sound principles: that no one can give what he does not have (nemo dat quod non habet), which protects the owner; and that commerce cannot function if every purchaser buys a lawsuit along with his land, which protects the buyer. The theory of balancing that has emerged, in substance the same in every system we have examined, allocates the loss by asking three questions: who was in the best position to prevent the wrong; who acted with knowledge or with closed eyes; and who did something that led the other to rely.

170. The English answer was given in its classic form by Ashhurst J. in Lickbarrow v. Mason (1787) 2 TR 63: where one of two innocent persons must suffer by the act of a third, the loss falls on the one who enabled the third to cause it. Equity refined that principle into the doctrine of the bona fide purchaser of the legal estate for value without notice, whose plea is "an absolute, unqualified, unanswerable defence" in the language of James L.J. in Pilcher v. Rawlins (1872) LR 7 Ch App 259, but only for one who proves each of its elements. In Ministry of Health v. Simpson [1951] AC 251 (Re Diplock), the House of Lords allowed the next of kin, deprived by a mistaken distribution, to follow the estate into the hands of volunteers who had

given no value; the volunteer, however innocent, must yield to the heir, while the purchaser for value is protected. The line between the two is consideration and good faith.

171. The American answer is similar. In Boone v. Chiles, 35 U.S. (10 Pet.) 177 (1836), the Supreme Court held that a party claiming to be a bona fide purchaser must establish the purchase, the payment of the price, and the absence of notice, and that he bears the burden of proving it. And in Wood v. Carpenter (1879) the Court made clear that a plaintiff who would escape the bar of limitation by alleging concealment must show diligence of his own. The balance is struck by placing on each side the burden that side is best able to discharge.

172. The Torrens jurisdictions protect the purchaser most strongly, because the State guarantees the register; yet even they refuse protection to one who takes directly from a forger (Gibbs v. Messer), and the Malaysian Federal Court in Tan Ying Hong held that the immediate purchaser from a forger acquires nothing indefeasible. Our revenue record carries no State guarantee of title, and the purchaser who relies on it alone relies on a ledger, not a title.

173. Our own law has developed the same balance through section 41 of the Transfer of Property Act, 1882 and estoppel. It was submitted that section 2 of the Transfer of Property Act, 1882 excludes section 41 in favour of Muslim law. Section 2 saves a rule of Muslim law; it does not exclude Chapter II wholesale. The relevant rule of Muslim law is that a sale by a non-owner binds the owner only upon his ratification. Section 41 is consistent with that rule, for it requires the express or implied consent of the persons interested to the transferor's ostensible ownership. Section 41 therefore applies. But the consent it requires must be real. It cannot be found in a mutation the heir did not attend, in an entry made by the revenue staff, or in silence

alone (Ghulam Rasool). It can be found in conduct of the kind described above.

174. The purchaser's corresponding duty is the duty of reasonable care. Reasonable care, in a country where inheritance mutations are attested without the heirs, requires at a minimum inspection of the inheritance mutation or succession record, an inquiry into the pedigree, and an inquiry of every heir shown there and of those in the locality who know the family (Bahar Shah). A purchaser who buys the whole from one heir when the record shows others is fixed with notice (Rao Abdul Rehman). The law does not ask the purchaser to be a detective; it asks him not to be wilfully blind.

175. A sale of the heir's share with delivery of possession to a purchaser is an actual denial. Time runs from the heir's knowledge of it. As against a transferee in good faith for valuable consideration, however, that knowledge includes what the heir would have learned by ordinary diligence once the transferee entered into open possession of the property. The rule of actual knowledge which governs as between co-heirs rests on the trust between them; no such trust exists between the heir and a stranger who has paid the price, and the heir who stays silent while a stranger openly occupies and improves the land is in a better position than the stranger to prevent the loss. That is consistent with Salamat Ali, where this Court ran time from the date on which the co-sharer sold the land as exclusive owner and delivered possession to purchasers whose good faith and possession the heirs did not dispute, and who had not pleaded any later date of knowledge. Even here, the existence of a mutation or other revenue entry shall not, by itself, be treated as notice to the heir. Because such a sale is an open act, knowledge will more readily be inferred where the purchaser has entered into open possession, built or cultivated, and the heir resides in the locality. Section 18

of the Limitation Act, 1908, cannot be invoked against a purchaser in good faith for valuable consideration. But a purchaser who knew of the excluded heir, who was party to the fraud, or who failed to make the inquiries a prudent buyer makes, is not such a purchaser.

176. A co-heir may sell his own undivided share; section 44 so provides, and Muslim law permits the sale of an undivided share (musha'). Where the property sold does not exceed the vendor's share in the whole estate, the purchaser's interest should be accommodated within that share on partition, and the excluded heir's share satisfied from the remainder. Where it exceeds the vendor's share, the excess does not bind the excluded heir unless section 41 or estoppel is proved. For the excess, the purchaser's remedy lies against his vendor.

177. Possession, however long, does not itself confer title, Article 144 and section 28 of the Limitation Act, 1908, having ceased to have effect. It is relevant evidentially: to the date of actual denial and the heir's knowledge of it; to the purchaser's good faith; and to whether the heir's conduct amounted to a representation. It is relevant also to the discretion under section 42 of the Specific Relief Act, 1877, to mesne profits, and to compensation for improvements under section 51 of the Transfer of Property Act. No fixed number of years is decisive. Time is a witness, not a judge.

178. These principles, applied together, yield a coherent allocation of loss. Where the purchaser proves section 41 of the Transfer of Property Act, 1882 or estoppel, or the heir's suit against him is out of time from his or her knowledge of the sale, actual or constructive, the purchaser keeps the land. The heir's remedy then lies against the vendor co-heir for the market value of his or her share at the date of the decree, with mesne profits, provided that her or his claim against the vendor is itself within time. As against

the vendor, who stands to her or him as a co-heir, time runs only from her or his actual knowledge of the sale; and the claim for mesne profits is subject to Article 109 of the Limitation Act, 1908. The heir may join the vendor and the purchaser in one suit, and the court shall then determine limitation separately as against each. Where the purchaser proves none of these, he takes only the vendor's share, accommodated on partition where possible, and his remedy for the rest lies against the vendor. In either event the loss falls, so far as the law can make it, on the wrongdoer who sold what was not his, not on the excluded heir and not on the honest buyer. That is the balance this judgment strikes: the land follows the title, the loss follows the wrong.

179. The balance also has a social dimension that must not be lost. A rule that let every heir unwind every sale, however old and however open, would freeze the land market and punish the many for the sins of the few. A rule that let every sale defeat every heir would make the exclusion of sisters a profitable enterprise, completed simply by selling quickly to a stranger. Neither rule makes for peace. The first breeds fear among purchasers; the second breeds bitterness among families. The middle course we have adopted protects the purchaser who was honest and careful, and the heir who was kept in the dark, and places the cost on the one person who knew everything: the heir in possession who sold.

180. We resolve the remaining conflict. Is limitation "attracted" in inheritance cases? For the reasons given above, it is. What is not attracted, so long as there is no actual denial brought home to the heir, is any running of time. In cases of pure exclusion by a wrong mutation, the result is the same as saying that limitation is not attracted. The difference matters only where an actual denial has been brought home to the heir. Hidayat Khan is to be read accordingly, as are the broad statements in Faiz Ullah that

no limitation runs against a co-sharer: in that case the heirs were in possession and there had been no actual denial.

181. Applying these principles to the three categories of land: in agricultural land in settled areas, the inheritance mutation and the periodical record are threatened denials only, and time does not run from their attestation or repetition. Consolidation or partition proceedings in which the heir participated, or a sale mutation followed by delivery of possession, may each constitute or evidence actual denial and knowledge. The presumption under section 52 of the Land Revenue Act, 1967 attaches to the truth of an entry; it does not establish that an excluded heir consented to it. In urban property, there is usually nothing even of the character of a threatened denial until an affirmative act occurs: a transfer in the records of an authority or society, a registered sale or gift, or a transfer obtained on documents omitting heirs. Such acts are commonly procured by concealment, so that section 18 of the Limitation Act, 1908, and the rule of knowledge are frequently engaged. A succession certificate determines no title and does not, by itself, start time. In unsettled areas, nothing short of physical exclusion coupled with an assertion of exclusive title, a demand and refusal, or an alienation with delivery of possession can amount to actual denial. Customary exclusion of female heirs after the Shariah became the rule of decision is not a transaction which divests title. Where a first record of rights records the exclusion, that entry is a threatened denial, and a failure to object to it does not, by itself, start time.

182. Partition and defence. The right to partition is an incident of co-ownership, and no period of limitation applies to a suit for partition while the claimant remains, in law, in joint possession. But an actual denial brought home to the claimant is, as between co-heirs, an ouster (Ghulam Ali), and it ends his constructive possession as against the co-heir

who made it and those claiming under him (Salamat Ali). From that moment his suit, however it is framed, is a suit to recover his share from one who has repudiated his title; Article 120 of the Limitation Act, 1908 governs it, and time runs as we have stated. Once that remedy is barred, it cannot be revived by calling the suit one for partition, nor obtained by seeking, as a defendant in another's partition suit, the allotment of the share in question. His title, however, is not extinguished. He may therefore resist any proceeding that seeks a declaration of another's exclusive title to his share, or otherwise to divest him of it. Limitation may blunt the sword; it never blunts the shield.

183. Discretion and delay. A declaration under section 42 is discretionary. Where a suit is within the statutory period, however, delay short of that period is not a ground to refuse a declaration of a vested share in inheritance. The discretion is a judicial one; it cannot be used to impose a shorter period than the Legislature has prescribed.

184. Proof of divestment. It was recommended that relinquishment be recognised only through a registered instrument recording that the heir first received his share and then gave it up for consideration. To make registration a condition of every divestment is a matter for the Legislature. We hold, however, that a relinquishment, settlement or takharuj not evidenced by a contemporaneous written instrument, executed after the heir was informed of his share, will rarely discharge the heavy burden which lies on the beneficiary.

185. In view of the foregoing, the questions referred are answered as follows.

186. Question (i). A suit for declaration of a share in inherited property, with or without the consequential relief of

joint possession, is governed by Article 120: six years from when the right to sue accrues. As between co-heirs, the right to sue accrues upon an actual denial of the claimant's right, brought home to him. A wrong inheritance mutation and its repetition in the record are threatened denials; each gives an optional cause of action, and neither starts time. Article 142 applies only where the heir had actual possession and was dispossessed. Article 91 applies only where the heir seeks to avoid an instrument to which he was himself a party. Articles 123 and 127 do not apply to Muslim heirs, and Article 141 does not apply where a limited estate was terminated by statute. A suit for partition of joint property is not barred while the claimant remains in joint possession, actual or constructive; it cannot be used to recover a share whose remedy has become barred after an actual denial brought home to the claimant.

187. Question (ii). No. Title vested by inheritance is not extinguished by lapse of time, section 28 of the Limitation Act, 1908, having ceased to have effect. Only the remedy can be barred, and only after an actual denial brought home to the heir and the expiry of six years thereafter. Where knowledge of the denial was kept from the heir by fraud, section 18 independently postpones time, save against a transferee in good faith for valuable consideration. A fraudulent transaction to which the heir was not a party does not bind him and need not be set aside.

188. Question (iii). Yes. The share vested in the deceased heir at the death of the propositus and passed, on his death, to his own heirs, who have locus standi to sue for it. Under sections 2(8) and 9 of the Limitation Act, 1908, the successor takes the claim as it stood: barred, if an actual denial was brought home to the predecessor and six years expired in his lifetime; subject to the unexpired balance, if time had begun; and running from the successor's own knowledge, if the predecessor never knew of an actual denial.

The successor must plead which of these positions applies. A predecessor's silence is never, in itself, a bar.

189. Question (iv). No. Silence, inaction or delay never amounts to waiver, relinquishment or abandonment of inheritance. Relinquishment simpliciter of accrued inheritance is void. A share leaves an heir only by a lawful transfer, such as sale, gift, exchange, takharuj or a bona fide family settlement, made with free consent after the heir knew his share, and proved strictly by the party relying upon it.

190. Question (v). Estoppel and acquiescence do not operate in favour of a co-heir who brought about the exclusion, nor against the law of succession itself. In favour of a third-party transferee, estoppel under Article 114 of the Qanun-e-Shahadat, 1984 may operate on proof by the transferee of: (1) the heir's knowledge of his own right; (2) his knowledge of the transfer, or of the transferor's assertion of exclusive title; (3) a representation by words or conduct, silence counting only where the heir was under a duty to speak and the transferee could not have discovered the truth by reasonable inquiry; and (4) the transferee's action in reliance, to his detriment. An estoppel so established binds the heir's successors as his representatives.

191. Question (vi). The transferee takes no better title than the transferor had. A co-heir's transfer passes his own undivided share with the incidents of co-ownership under section 44. As to the excluded heir's share, the transfer binds him only if section 41 or estoppel is proved. A sale of the heir's share with delivery of possession is an actual denial; time runs from the heir's knowledge of it, actual or, as against a transferee in good faith for value in open possession, such as ordinary diligence would have given him or her, and section 18 does not postpone time against a transferee in good faith for value. Where possible, the transferee's interest is to be accommodated within the

transferor's share on partition, his or her remedy for any excess lying against the transferor.

192. Question (vii). Three protections are available, each requiring proof by the purchaser: (a) section 41, on proof of ostensible ownership, the express or implied consent of the persons interested, consideration, and good faith after reasonable care, the consent of an excluded heir not being inferable from a mutation or from silence; (b) estoppel, on the four elements stated in answer to question (v); and (c) limitation, where the heir's suit is out of time from his knowledge of the sale, actual or such as ordinary diligence would have given him, section 18 being unavailable against such a purchaser. Long possession does not itself confer title. A purchaser who failed to inquire into the pedigree, the inheritance record and the nature of the vendor's possession is not a purchaser in good faith. Where the purchaser is protected, the heir's remedy is the market value of her share at the date of decree, with mesne profits, against the vendor co-heir, if his or her claim against him is within time.

193. Question (viii). Yes, but as evidence of the elements identified above, not as independent grounds. The length of possession and open acts of ownership bear on the date of actual denial and on the heir's knowledge; the nature of the transaction and the consideration bear on good faith; notice bears on section 41, section 18 and estoppel; and the heir's conduct bears on estoppel. The court must record findings on each element. No single factor, and no number of years, is decisive.

194. Question (ix). Where the propositus died before the Shariah became the rule of decision for the property in his territory, and no provision reaches back, the devolution under proved custom is past and closed as to his death. That rule does not apply (a) in Khyber Pakhtunkhwa, including the former Provincially Administered Tribal Areas, where

section 3(2) of the Act of 1935, read with the Act of 1962 as construed in Farida, deems every Muslim propositus to have died under the Shariah, with no cause of action accruing, in the settled districts, for pre-1935 deaths before 1950, or, in the former Provincially Administered Tribal Areas, before 15th of January 1976 and none lost by the repeal of 1962; (b) to limited estates held by females under custom and subsisting when the relevant Act came into force, which were terminated by law or, where saved by the proviso to section 3 of the Act of 1962, ran their course, whereupon the heirs of the last full owner became owners in constructive possession, and, in the Punjab, to such estates which had ended before the Act of 1948 came into force; (c) where custom is not pleaded and strictly proved; or (d) to customary mutations made after the Shariah became the rule of decision, which are nullities against the excluded heirs. In the Punjab, section 2-A confirms as absolute the title of a male heir who acquired agricultural land under custom before 15th of March 1948, and treats as past and closed only reversioners' decrees under which possession was delivered. The territory-by-territory position is as stated in paragraphs 162 to 166, and the question in respect of the former Federally Administered Tribal Areas is left open as stated above. In every case, time runs only from an actual denial brought home to the heir after the Shariah became applicable.

195. The bright line, in a sentence, is this: a suit concerning a share in inheritance is out of time only if the defendant proves an actual denial of the claimant's right, brought home to the claimant or his predecessor (or, as against a transferee in good faith for valuable consideration in open possession, which the claimant or his predecessor ought by ordinary diligence to have known), more than six years before the suit, or, where the heir seeks to avoid an instrument to which he was himself a party, proves that the facts entitling him to avoid it became known to him more

than three years before the suit; in every other case, it is within time. We call it the rule of the **known overt act**: time runs only from the date the heir came to know, or as against a purchaser in good faith in open possession, ought by ordinary diligence to have known, of an overt act repudiating her title, that knowledge being proved directly or inferred from circumstances other than a revenue entry alone; nothing else starts the clock. Whenever in this judgment an actual denial is said to be "brought home" to an heir, the expression includes, as against a transferee in good faith for valuable consideration in open possession, what the heir ought by ordinary diligence to have known.

196. Two corollaries complete the bright line. First, where limitation is pleaded in an inheritance suit, the trial court shall frame separate issues on (a) the governing law of succession where custom is set up, (b) the divesting transaction, (c) the actual denial and its date, (d) knowledge and its date, and (e) where a transferee is a party, whether he took in good faith for valuable consideration. Secondly, limitation in such a suit is a mixed question of law and fact, and shall not be decided on the pleadings alone unless the plaint itself discloses an actual denial known to the plaintiff more than six years before the suit. The test is bright because each element is a fact capable of proof: a dated act, a hostile assertion, a date of knowledge. It removes the two sources of uncertainty that divided the courts: whether an unknown act starts time, and whether successors are barred by mere silence.

197. To apply that line with consistency, courts shall take the following steps in order, recording a finding at each.

(i) Heirship and estate. Has the plaintiff proved that he, or his predecessor, is an heir of the propositus, and that the property formed part of the estate? If not, the suit fails on merits and limitation does not arise.

(ii) Governing law of succession. Did the propositus die under the Shariah, or under proved custom in a territory and at a date at which custom governed, applying paragraphs 159 to 167? If a limited estate is involved, when was it terminated?

(iii) Divesting transaction. Does the defendant rely on a gift, sale, relinquishment, settlement, takharuj, custom or other divesting transaction? If so, has he proved it strictly, by the standard the law requires for that transaction? If not, the heir's title stands, and the court proceeds only to decide whether the remedy is barred. A bare relinquishment of accrued inheritance is void and is to be disregarded.

(iv) Special law. Does a special statute fix a period? If so, it governs (section 29(2)).

(v) Nature of the relief. Is the suit for partition while the claimant remains in joint possession, actual or constructive? If so, no limitation applies; but if an actual denial is alleged, proceed to steps (vi) to (ix). Is the heir only resisting a claim to another's exclusive title, or an attempt to divest him? If so, no limitation applies. Is it a suit to avoid an instrument to which the heir himself was a party? If so, Article 91 applies: three years from knowledge of the facts, the burden of proving the instrument free and understood remaining on the beneficiary. In every other case, Article 120 applies.

(vi) Actual denial. Has the defendant proved an actual denial: (i) alienation of the heir's share with delivery of possession, including receipt as exclusive owner of the price or compensation for joint land; (ii) an instrument or transfer mutation setting up exclusive title in another; (iii) a demand and refusal; (iv) physical exclusion with an assertion of exclusive ownership; or (v) a written repudiation of the claimant's title, asserting exclusive ownership, delivered to the claimant personally? If not, the suit is within time, whatever the age of the mutation or entries.

(vii) Knowledge. If there was an actual denial, when was it brought home to the claimant or, where the claimant is a successor, to his predecessor? Knowledge may be proved directly or inferred from circumstances, but not from the existence of a revenue entry alone. As against a transferee in good faith for valuable consideration in open

possession, knowledge includes what the claimant would have learned by ordinary diligence; and where the transferee relies on this rule, his good faith and the consideration paid shall be decided first, applying paragraphs 173 and 174. If knowledge was kept from the heir by fraud, time runs from discovery under section 18, save against a transferee in good faith for value.

(viii) Successors. If the plaintiff is a successor: did the predecessor know of the actual denial? If so, and six years expired in his lifetime, the suit is barred; if time had begun but not expired, only the balance remains. If the predecessor never knew, time runs from the successor's own knowledge.

(ix) Computation. Count six years under Article 120, or three years under Article 91, from the date found at step (vii) or (viii), applying sections 4 to 25, including sections 6 to 8 on disability and section 19 on written acknowledgement. If the suit was instituted within that period, it is within time.

(x) Third parties. Separately from limitation, where a transferee is a party: has he proved section 41, with all its conditions, or estoppel, on the four elements in paragraph 190? If not, the transfer does not bind the heir's share beyond the transferor's own share, within which it shall, where possible, be accommodated on partition. If so, the heir's remedy is value and mesne profits against the vendor co-heir, if within time as against him.

198. Before parting, we consider it necessary to say a word about the purpose of what we have decided, lest it be misunderstood.

199. The principle settled in this judgment is not designed to deprive women of the protection the law owes them. On the contrary, it preserves every part of that protection. The sister who was never told keeps her claim against her brother, whatever the age of the mutation. The daughter whose thumb-impression was forged need not sue to set the forgery aside. The widow pressured into a "relinquishment" may disregard it, for the law treats it as void. The beneficiary of every gift and settlement bears the

burden of proving it. And section 498A of the Penal Code stands untouched. What we have refused to do is to declare that limitation never applies at all, because such a rule cannot be laid down by a civil court, and because, in the end, it would not serve women either: a law that unsettles every title invites the powerful to settle matters outside the law.

200. The deeper purpose of the rule is peace in the family. Nothing corrodes a family more surely than the usurpation of an inheritance. The quarrel begins with a mutation no one reads; it festers through a generation of silence; and it erupts, often after the original actors are dead, among cousins who have never spoken to one another except through counsel. The rule we have laid down speaks to each member of that family. To the heir in possession it says: you cannot win by silence; if you mean to claim the whole, say so openly and in writing to your co-heir, and the clock will start; if you conceal, it will not. To the excluded heir it says: you will not lose by trusting your brother; but once you know that he has repudiated you, you must come to court within six years. To the purchaser it says: inquire of every heir, and the law will protect you; shut your eyes, and it will not. A rule that rewards openness and penalises concealment is a rule that makes families honest with one another.

201. And a nation is only as strong as its families. The verses of Surah Al-Nisa that fix the shares end by describing them as the limits of Allah. Those limits were drawn not to divide families but to hold them together, by removing from the household the most fertile cause of its quarrels: the question of who gets what. Where the shares are given promptly and correctly, there is nothing left to quarrel about. Where they are withheld, the law must be clear enough that the quarrel can be ended, one way or the other, without passing from one generation to the next.

Certainty in the law of inheritance is not a dry technical virtue; it is a condition of social peace. The strength of the State rests on the trust of its citizens in their own homes.

202. The law of limitation is rarely the true cause of an heir's loss. The cause is an exclusion made at the threshold, usually in the record, usually without notice, and usually against a woman, and then a distribution that never happens. If the record were made correctly at the outset and the estate distributed promptly, few of these suits would arise. We therefore, in exercise of the jurisdiction conferred by Article 187 of the Constitution and so that the law declared herein may be given effect, direct as follows.

(i) Revenue authorities in all Provinces and other areas shall ensure that no inheritance mutation is attested without (a) a family registration record issued by the National Database and Registration Authority or equivalent proof of all heirs, (b) written notice to every heir shown in it, including female heirs at their own address, and (c) a recorded statement of any heir who is said to have received less than his or her share.

(ii) Before attesting any gift, sale, relinquishment or settlement mutation by an heir in respect of inherited land, the revenue officer shall record the heir's personal appearance, identity, and a statement that the heir was informed of the precise share; for a female heir, this shall be recorded in the presence of a woman revenue officer where available. Non-compliance may be taken into account by the Court in determining whether the heir had knowledge.

(iii) Registering authorities, development authorities, cantonment boards and cooperative housing societies shall not transfer property on the basis of inheritance except upon a succession certificate, letters of administration or a decree, and shall give written notice to all heirs before effecting the transfer.

(iv) Settlement officers, in areas now under first settlement, including the merged tribal districts, shall record all heirs according to the Shariah and give them notice of objection proceedings.

(v) Trial courts, where limitation is pleaded in an inheritance suit, shall frame the issues stated above and decide them on evidence, and shall endeavour to decide such suits expeditiously.

203. We also commend to the Legislature, and to the Law and Justice Commission of Pakistan, consideration of:

(a) a requirement that any relinquishment, settlement or takharuj of an inherited share be effected by a registered instrument executed after the heir is informed of his share;

(b) a specific article in the Limitation Act, 1908 for suits by heirs, so that the period and its starting point are fixed by statute rather than inferred under the residuary article, together with an outer long-stop, running from an open transfer for value with delivery of possession, beyond which a purchaser in good faith may not be disturbed;

(c) an amendment of section 498A of the Pakistan Penal Code, 1860, or the enactment of a companion provision, so that depriving any heir, man or woman, of his or her inheritance by deceitful or illegal means is an offence, while preserving the special protection which the section affords to women; and

(d) a statutory duty, with a reasonable period, on the heirs and the revenue and registering authorities to complete the partition or distribution of an estate after its devolution is recorded, so that the duty of prompt distribution which the Shariah imposes is given practical effect.

204. This judgment declares the law as it has always stood on a correct reading of the statutes. We make it clear, however, that it shall not reopen any decree or order which has attained finality, nor unsettle any transaction past and closed by such a decree or order. The principles stated herein shall govern suits and proceedings pending on, or instituted after, the date of this judgment, and appeals, revisions and petitions arising therefrom. This limitation on its operation is made not because the law was otherwise

before, but to protect finality and the reliance of those who acted upon decrees and transactions already closed.

205. We place on record our deep appreciation for the learned amici curiae, Mr. Mahmood Ahmad Bhatti and Mr. Obaid-ur-Rehman Khan, Advocates Supreme Court. They responded to the call of the Court with diligence and scholarship, and their written submissions, which traced the questions through the Holy Qur'an, the Sunnah, the classical jurists and the case law, illuminated issues of considerable difficulty. Their assistance reflects the finest traditions of the Bar. We are equally grateful to the learned counsel who rendered special assistance, and also to all the learned counsel for the parties, whose careful written and oral arguments, from both sides of the divide, greatly assisted us in identifying the true points of conflict and in resolving them.

206. Having answered the questions of law referred to this Larger Bench, we refrain from expressing any view on the merits of the individual appeals and petitions. The office is directed to place all the cases before the appropriate Benches, according to the roster, for decision on merits.

207. The office is also directed to transmit a copy of this judgment to the Secretary, Ministry of Law and Justice, Government of Pakistan; the Law Secretaries of all the Provinces; the Attorney-General for Pakistan; the Advocates-General of all the Provinces and of the Islamabad Capital Territory; and the Secretary, Law and Justice Commission of Pakistan, for their consideration and necessary action, including in respect of the directions in paragraph 202 and the recommendations in paragraph 203.

208. We end where we began. Can we stop the clock on an inheritance claim? We can, and the law does, but only when the heir has been told, by an act that cannot be

mistaken, that her share is denied, and has then let six years pass. Until that moment the clock has not started, and no court may pretend that it has. The share is nasiban mafrudan, an appointed share; the law of limitation may close the courtroom door upon a claimant who knowingly stays away, but it will never be used to lock out one who was never told the door was open.

Judge

Judge

Judge

Judge

Judge

Islamabad
07.10.2026
APPROVED FOR REPORTING
Irfan Aslam /*

Announced on 13.11.2026 at Lahore.

Judge