

Islamic Inheritance and Wills

(part 1 of 2): Islamic Wills



Islam is much more than a religion; it is a way of life. Islam is guidance from God that directs us through life, and God willing into the next life. It is for this reason that God also guides us through the process of death and dying. Death will come to each and every one of us; however there are things we can do to make our passing easier for those we leave behind. One of those things is to make sure we leave an Islamically sound will. Islam has placed great emphasis on both the laws of inheritance and making a will, thus there is compelling evidence that every sane adult Muslim should have a will.

“It is the duty of a Muslim who has anything to bequeath not to let two nights pass without writing a will.”^[1]

“A man may do good deeds for seventy years but if he acts unjustly when he leaves his last testament, the wickedness of his deed will be sealed upon him, and he will enter the Fire. If, (on the other hand), a man acts wickedly for seventy years but is just in his last will and testament, the goodness of his deed will be sealed upon him, and he will enter the Garden.”^[2]

The Islamic will, in Arabic, *al wasiyah* is a set of instructions that come into effect after a person’s death. The will is acted upon after the payment of funeral expenses and any outstanding debts.

“...of what they leave, after any bequest they [may have] made or debt...” (Quran 4:12)

Islamic law allows a person to bequeath up to 1/3 (one third) of his or her estate to whomever he or she wishes, providing the beneficiaries are not from amongst those who will benefit from the remaining 2/3 (two thirds). Those who are entitled to the final two thirds of the estate are set out in chapter 4 of the

Quran. When one of Prophet Muhammad's close companions suffered from a severe illness he asked how much of his vast wealth he should bequeath as a gift because he only had one daughter who qualified to be an inheritor under Islamic law. The Prophet, may the mercy and blessings of God be upon him, stated one third and said, *"It is better to leave them rich rather than poor and destitute"*.^[3]

A person should take his obligations seriously and think about who could benefit from his or her bequests. It is an opportunity to perhaps help a poor relative who would not otherwise qualify for a share or even to leave something to a person of another faith, because they cannot inherit from the other two thirds of the estate.

"The followers of two different religions may not inherit from each other."^[4]

Nowadays there are many qualified people that can help one write a will that fulfils all of the Islamic obligations. In fact the Islamic laws of inheritance have been praised and copied by many individuals and law firms, and academics in the West. Consider this statement by a leading British university Professor Almaric Rumsey from Kings College in London, England:

"The Muslim law of inheritance comprises beyond question the most refined and elaborate set of rules for the devolution of property that is known to the western world."

When an estate is divided according to this divine system of law that is outlined in the Quranic text and in the traditions of the Prophet, it would be highly rewarding in the sight of God. Besides this, there are a number of compelling reasons why a person should make an Islamically acceptable will. Firstly it gives a person peace of mind to know that their wishes will be carried out after their death. It helps resolve or avoid completely the unnecessary disputes that sometimes occur after a person's death.

A will also makes financial sense. If a person dies without a will it is called having died intestate and this means the wealth will be distributed according to the laws of the country in which the person lived. This may or may not be in an Islamic fashion depending upon where in the world the deceased person resided. Consider the situation, God forbid, where a married couple dies leaving young children, if there is no will, and thus no guardians appointed, the courts have an overwhelming say in where those children are placed. No will means that such children's lives, both now and in the hereafter could be in peril, should guardianship be given to someone not Islamically suitable.

An Islamic will gives a person the opportunity to help those less fortunate. He or she can assure that the charities they supported in their life are not neglected at their time of death. A will helps not only the beneficiaries, but can help the deceased person too who may wish to set up provision for an ongoing charity, an

action that continues to be rewarded even after death. In accordance with the principle that one third of a person's estate may be distributed as he or she wishes the prophet Muhammad, may the mercy and blessings of God be upon him, said, *"God was being generous to you when He allowed you to give one-third of your wealth (in charity) when you die, to increase your good deeds."*^[5]

"When a man dies his actions come to an end except for three: an ongoing charity; knowledge that benefits others or pious offspring who pray for him".^[6]

As with any legal document an Islamic will must be witnessed. A person making a will should choose his witnesses carefully, remembering that a person who inherits is not able to be a witness. If he or she does so they will not be able to inherit. The ideal situation would be to choose two trustworthy Muslim men to witness the signing of the will. However if this is not possible, then two non-Muslim men may be taken as witnesses.

In most cases it is possible to make an Islamic will that is legally acceptable in almost any part of the world. Islamic wills have been praised for their thoroughness and the fact that they are almost never considered uncertain.

In the following article we will look more closely at the verses in Quran that set out the laws of inheritance.

Footnotes:

^[1] *Saheeh Al-Bukhari*

^[2] *Iman Ahmad, Ibn Majar*

^[3] *Saheeh Al-Bukhari*

^[4] *Abu Dawood*

^[5] *Ibn Majah*

^[6] *Ibid.*

(part 2 of 2): Who are the inheritors?

In this article we will examine inheritance, paying particular attention to rights and responsibilities as defined by Islamic law. The money and the property that we possess in this life is a trust from God and our responsibility to use it for His sake extends beyond our death, for on the day of Judgement we will surely be asked about our wealth and how we spent it.

The two feet of the son of Adam will not move on the Day of Judgement in front of his Lord until he is asked about five things: about his life, and how he

lived it? About his youth, and how he lived it? And about his money, how did he earn it? And what did he spend it on? And what did he do with his knowledge?^[1]

In Islam the heirs to a person's estate can take two forms. There are the fixed share inheritors, these are those whose percentage of the share is explicitly mentioned in Chapter 4 of the Quran (for example, for the husband, half or one-fourth, depending upon if there are children or not), and there are the residual inheritors, who will receive the balance of the estate once the fixed shares have been calculated.

“God commands you as regards your children’s (inheritance): to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by God. And God is Ever All-Knower, All-Wise.” (Quran 4:11)

Islamic scholars have derived several essential instructions from this verse, the most important being:

- Debts and bequests are taken from the estate before division amongst the heirs.
- A son receives twice as much as a daughter.
- If the deceased children are female only they receive two-thirds of the estate divided equally among them. The leftover would also be returned to them if there are no residual heirs.
- If the deceased is survived by only one daughter, she receives half the estate. The leftover would also be returned to them if there are no residual heirs.
- If there are children, parents receive one-sixth of the estate each.
- In the absence of children, if the deceased leaves siblings, (maternal or paternal) the mother then receives one-sixth.

- In the absence of children and siblings the mother then receives one-third of the estate.

“In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a (maternal) brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third, after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from God; and God is Ever All-Knowing, Most-Forbearing.” (Quran 4: 12)

Once again Islamic scholars have derived a number of rulings from this verse.

- If a married woman dies without children her husband receives half of her estate; if there are children he receives one-fourth.
- A wife is a woman who was married to the deceased when he died. If there is more than one (maximum four) their share is divided equally. A wife’s share of her husband’s estate is one-quarter – if there are no offspring; if there are, her share is one-eighth.
- The shares for males and females of the same rank (brother and sister, son and daughter etc.) are that the males receive twice as much as the females.
- The maternal siblings are the only exception to the above rule. If there is only one maternal sibling, he or she receives one-sixth. If there are two or more, they share one-third.

What is becoming more and more obvious, as we learn about the Islamic rules of inheritance is that it is a bit complex. It is for this reason that it is wise to both research and get advice from someone familiar with the Islamic laws of inheritance. The complexity also serves to remind us of the importance of making a will. When the rules have been so explicitly set out by God Himself, it would be unwise to leave the handling of an estate to someone not familiar with the deceased wishes or rules set by God.

Finally, when preparing for, or writing a will take into consideration the way the Prophet Muhammad, may the mercy and blessings of God be upon him, and his companions disposed of their wealth.

A man came to the Prophet and asked, “*Which charity is the most superior in reward?*” He replied, “*The charity which you give out while you are healthy and are afraid of poverty and wish to become wealthy. Do not delay it to the time of approaching death and then say, ‘Give so much to such and such, and so much to such and such.’*”^[2]

- Do not delay giving charity until you feel unwell and fear that death may be approaching. Because, at death it becomes too late, for your wealth is no longer yours, it belongs to your inheritors.
- Your wealth is yours to dispose of in whatever way that you see fit. If there are people or organisations or charities you would like to help you can do this at any time. There is no need to wait for your death or impending death.

Footnotes:

^[1] *At Tirmidi.*

^[2] *Saheeh Al-Bukhari*