

Understanding Islamic Wills

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“As the demand for Islamic Wills grows, an increasing number of solicitors wish to provide a reliable Islamic Wills service for their Muslim clients,” writes Ahmad Thomson, Barrister.

Introduction

There are approximately 2 million Muslims in the United Kingdom today. Most of them will want their estate to be distributed in accordance with Islamic personal law after their deaths, since the Prophet Muhammad, may Allah bless him and grant him peace, said: “It is the duty of a Muslim who has anything to bequeath not to let two nights pass without writing a Will about it.” (*Al-Muwatta’* of Imam Malik: 37.1.1)

If a Muslim dies intestate in the United Kingdom, the domestic laws of intestacy will be applied – which do not utilise the same criteria as those applied under Islamic personal law. A growing number of Muslims are beginning to realise that the division of their estate in accordance with Islamic personal law will be facilitated if they leave an Islamic Will which expresses this wish and which is also valid as regards the requirements of English law.

Furthermore, since UK law does not recognise Islamic marriages or divorces, an Islamic Will is often the only means by which Muslim spouses and their dependants can be guaranteed the shares to which they are entitled under Islamic personal law.

Islamic personal law is part of the *Shari’a*, which literally means ‘road’, and which can be defined briefly as the legal modality of a people based on the Revelation of their Prophet. The *Shari’a* derives *firstly*, from the *Qur’an*, which the Muslims believe was revealed to the Prophet Muhammad from Allah (the Arabic word *Allah* literally means ‘the God’) through the angel Jibril (Gabriel) – and *secondly*, from the *Hadith*, the transmitted eyewitness accounts of what the Prophet Muhammad and his companions, blessings and peace be on him and them, said and did. This customary practice is usually referred to as the *Sunna*. The way of life as a whole is called Islam, which means ‘safe and sound’ and ‘submission’ to the will of God.

Although the essential behavioural blueprint for Muslims is the example of the first Muslim community of Madina, during the last fourteen centuries different schools of Islamic jurisprudence (*fiqh*) have developed. These are known as *madhhabs*. The word ‘*madhhab*’ literally means ‘the way he went’ – so *fiqh* is linked primarily to behaviour and action, not to theory and speculation.

One of the main differences in *madhhab* is between the two groups who are known as the Sunni and the Shi’a. This arose out of a difference of opinion as to who should have become the leader of the Muslim community after the death of the Prophet Muhammad, blessings and peace be on him. There are also different *madhhabs* within these two main groups. The main Sunni schools of law which have survived up until today are the Maliki, Hanifi, Shafi’i and Hanbali schools. The main Shi’a school is the Jafari school.

Principles Governing Islamic Inheritance

The basic principle is that (after the payment of any debts, funeral expenses, taxes and testamentary administration charges) at least two thirds of a deceased Muslim's estate must be distributed amongst surviving relatives in fixed shares as prescribed by the *Qur'an*. Up to one third of the estate may be bequeathed to anyone (including for example a charity) not entitled to a fixed share. In the absence of any bequests of up to one third, the entire estate will be distributed amongst the surviving relatives in the fixed shares stipulated by the *Shari'a*.

It is not necessary when drafting an Islamic Will to try and calculate the shares to which the surviving relatives of your client will be entitled when he or she dies, because no one knows which of their relatives will be alive at that future point in time. Once probate has been granted, whoever administers the estate will ascertain which relatives are still alive and what fixed shares they are automatically entitled to inherit. Since there is no combination of relatives for whom it is not possible to calculate their Qur'anic shares, a properly drafted Islamic Will should never fail for uncertainty.

The closest relatives (husband, wife, son, daughter, father, mother) will always inherit a share and will always have precedence over and exclude more distant relatives. In the absence of the closest relatives, the more distant relatives (such as grandparents and grandchildren, for example) will then be entitled to inherit fixed shares.

If the executors do not know how to calculate the Qur'anic shares, they can *either* find an '*alim* (a person of knowledge) to assist them, *or* they can use the software at <http://members.aol.com/IslamicSoftware/irthie.html> which does the calculation for you.

Essential Elements in an Islamic Will

Under the *Shari'a*, a Will does not have to be in writing, as long as it is witnessed, but for the purpose of a valid Islamic Will in the UK, it does. The essential elements are:

Firstly, the basic requirements of UK domestic law must be satisfied: The testator must be identified, at least 18 years old, and of sound mind. It must be the *last* Will – previous Wills and Codicils must be revoked. The Will must be dated and signed in the presence of and attested by two witnesses who are neither a spouse nor a beneficiary under the Will.

Secondly, future administration of the estate will be assisted by clauses which appoint executors, appoint guardians of minors and authorise professional charges.

Thirdly, the 'Islamic element' provisions which must be clearly expressed. These include:

- (i) the basic intention clause which can be expressed in terms such as :
"I wish my estate to be distributed and where relevant invested in accordance with the *Shari'a* of Islam, following the *fiqh* of the *madhhab* of Imam ÉÉÉÉÉ., and after all or any funeral expenses, debts, taxes and professional and testamentary expenses have been paid out of my estate by my executors they shall hold what remains of my estate on trust to be distributed in accordance with the following provisions:

- (ii) the clause(s) which deal with the 'up to one third of the estate bequests'. If, when it comes to the division of the estate, it transpires that the bequests are more than a third then either the executors have to reduce the bequests proportionately, or those entitled to fixed shares may (but do not have to) agree to accept a diminution in their shares.
- (iii) the clause(s) which deal with the 'at least two thirds of the estate fixed shares'. Specific items or sums of money can be specified as part of any particular relative's shares. If, when it comes to the division of the estate, it transpires that the value of any specified item(s) is more than the value of the share to which the relative is entitled then either the executors have to reduce or even ignore what has been specified, or the other relatives entitled to fixed shares may (but do not have to) agree to accept a diminution in their shares.

It is quite common for a testator to simply state that he or she wants all the estate to be divided amongst the surviving relatives in accordance with the *Shari'a* without specifying any particular item for any particular relative.

- (iv) a residuary clause dealing with what should happen to the estate if there are no surviving relatives – in which case the estate can be left to one or more charities (and if more than one, then in what proportions). As regards any residue which may arise as a result of any part of the Will failing for any reason, it is prudent to direct that this be held by the executors on trust to be distributed to those in need in the Muslim community in accordance with the *Shari'a* of Islam.
- (v) a clause dealing with how any minors' shares should be held on trust and invested and expended for the child's maintenance, education or benefit. Most Muslims will want to stipulate that any investment made should not involve usury, since this was expressly forbidden by all of the Prophets, including Moses, Jesus and Muhammad, blessings and peace be on them.
- (vi) an (optional) clause in which the testator passes on a last message to his or her beneficiaries.
- (vii) a clause dealing with funeral arrangements. Most Muslims wish to stipulate that they do not wish their bodies to be subjected to a *post mortem* examination or to donate organs. This is because the Prophet Muhammad, blessings and peace be on him, forbade mutilation of the dead and because he said, "Breaking a dead man's bone is like breaking it when he is alive." (Sunan of Imam Abu Dawud: 14.1193.3201).

Some first generation immigrant Muslims wish to be buried in the land of their childhood. They should be reminded that as well as being costly, the dead body is usually eviscerated, emptied of blood and filled with alcohol before being flown abroad. This may persuade them to stipulate burial in a Muslim cemetery in the UK instead.

Inheritance Tax Considerations

Where potentially large estates are involved and therefore inheritance tax liability could be seriously large, steps should be taken to avoid it. There are various ways of doing this, including: making *inter vivos* gifts, preferably seven years before death; setting up family trusts; and making a bequest of up to a third of the estate to a charity. Where both spouses are alive, it may make sense to have mirror Wills whereby the surviving spouse inherits everything – on the unwritten understanding that having done so, the surviving spouse will then divide the estate between all the surviving relatives in accordance with the *Qur'anic* fixed shares.

Conclusion

The art of drafting the Islamic Will in the UK is still relatively young. There is a basic Islamic Will precedent which can be adapted as needed at the back of *The Islamic Will* by Hajj Abdalhaqq and Aisha Bewley and Ahmad Thomson. This is by no means a comprehensive precedent. Each person's circumstances are unique and accordingly so will be the provisions of his or her Will.

[Quotations from the *Qur'an* are from *THE NOBLE QUR'AN – a New Rendering of its Meaning in English* by Abdalhaqq and Aisha Bewley, (Bookwork, Norwich, 1999). Quoted *hadith* are from *Al-Muwatta* of Imam Malik translated by Aisha Bewley and Yaqub Johnson (Diwan Press, Norwich, 1982) and the *Sunan* of Imam Abu Dawud translated by Professor Ahmad Hasan (Sh. Muhammad Ashraf, Publishers, Lahore, 1984). Most of the definitions of Arabic and Islamic terminology are derived either from *A Glossary of Islamic Terms* by Aisha Bewley (Ta-Ha Publishers Ltd, 1998), or from the *Glossary of Arabic Terms* of *The Islamic Will* by Hajj Abdalhaqq and Aisha Bewley and Ahmad Thomson (Dar Al-Taqwa Ltd, 1995).]

