

# Islamic Wills & Estate Planning



This is a brief overview of Islamic and California Wills and Estate Law  
The topic is much more complicated, but this is to, Inshallah, provide a brief overview to understand your options and duties.



## What happens when you die?

- Probate is a legal process where a court determines if a will is valid or distributes a person's property if he or she dies without a will
  - Appoint Executor
  - Find Creditors and Pay Debts
  - Pay Income and Estate Taxes
  - Distribute Assets



## Social Security

- As a spouse survivor of one who was receiving social security at their death, do have a right to some survivor benefits, but need to apply immediately:
  - Must provide Proof of death, Your Social Security number, as well as the deceased worker's, Your birth certificate, Your marriage certificate, and the deceased worker's W-2 forms or federal self-employment tax return for the most recent year
- **How much will I receive?**
  - Based on earnings of deceased worker, but not usually full amount.



## Things to Consider

1. Making a Will
2. Consider a trust
3. Make health care directives
4. Make a financial power of attorney
5. Protect your children and their property

Making a Will – what are your duties under islamic law? What are all of your assets? What are all of your liabilities?

Also → dreaded question. . .who (if anyone) will contest your will? Reason needs to be in writing and follow all proper steps under the law.

Consider a trust – protecting and distributing your property now, avoiding probate

Make health care directives – drugs, pain relief, surgery, Do Not Resuscitate

Make a financial power of attorney – what if you become mentally incapacitated? Don't want to have a conservatorship proceeding where family will have to go to court if they don't agree. Family members are forced to make tough decision at a difficult time. Great costs because need an attorney and a conservator.

Protect your children and their property – who will care for your children? Who will care for their money/property? Islamically – must ensure children cared for by a Muslim – raise in muslim family.



## Things to Consider (con't)

6. Consider life insurance
7. Understand tax consequences
8. Cover funeral expenses and final arrangements
9. Long-Term Care
10. Organ Donations and Autopsy


Consider life insurance – get it from your company? Young children/spouse

Understand tax consequences – various tax consequences for your total assets, your distribution during your life time, whether have a trust or a will.

Cover funeral expenses and final arrangements – ease your families concerns, if you don't make the arrangements then who will?

Long-Term Care – cost of the care, type of care-- Health care proxy, avoid need to appoint a guardian

Organ Donations/autopsies – do you want to? Some are mandatory and some health insurances require (look at your contract)



## What is an Estate?

- **Estate** is a total of a person's property, entitlements, and obligations
- **Property**
  - **Real Property**
    - Land
  - **Personal Property – movable property**
    - Cars, Cash, Jewelry, Artwork, Securities (Stock)
    - Copyrights, Patents, Trademarks and Goodwill

**Real Property** = includes land and things permanently attached to the land, such as trees, buildings, and stationary mobile homes.

**Personal Property** = anything that is not real property. Moveable goods, personal effects, including furniture, cars, jewelry and artwork.

**Estate** = collective name for everything own at time of death.



## Power of a Will or Trust

- If create a valid, have the power to give according to Islamic Law
- Follow Islamic duties
- Abide by CA law to ensure property properly distributed
- If not a valid will, then falls to the rules of Intestacy, which do not follow Shari'ah

## ● ● ● | Why a Will?

- Under California law, one must have a valid will, otherwise all property (personal and real) in the estate are subject to the rules of intestacy.
- **Intestacy** = Dying without a legal will and all property is subject to the laws of the state.

Describe the issues of community property. That children take in equal shares, that parents are left out if have children. That if have a surviving spouse, but no children, that the spouse may take all of the estate, or parents (if alive) may take a portion.

Depends on Whether or not married? Whether or not decedent had children? Whether or not decedent has living parents? Whether or not decedent has brothers or sisters?





## If no will. . .

- o Surviving Spouse gets 100% of community property, and
  - o 100% of separate property (if no parent, sibling, issue)
  - o If children, spouse shares an equal percentage of separate property with them
  - o If have parent(s), spouse gets 50% of separate property, parent(s) the other 50%

Community property = what acquire during marriage

Separate property = what acquire before marriage, via inheritance.

## ● ● ● | To Create a Valid Will in CA

- Signed by:
  - By the testator
  - witnessed by two persons who are present for signing and understand that this is a will
- Comply with the laws of the state
  - No oral wills, must be in writing
  - To ensure spouse and children are included
  - Cannot strikeout portions of document

Very strict formalities of Execution

Witness's must be uninterested → not be receiving benefit, otherwise their part will be revoked.

Fraud and Undue Influence invalidates

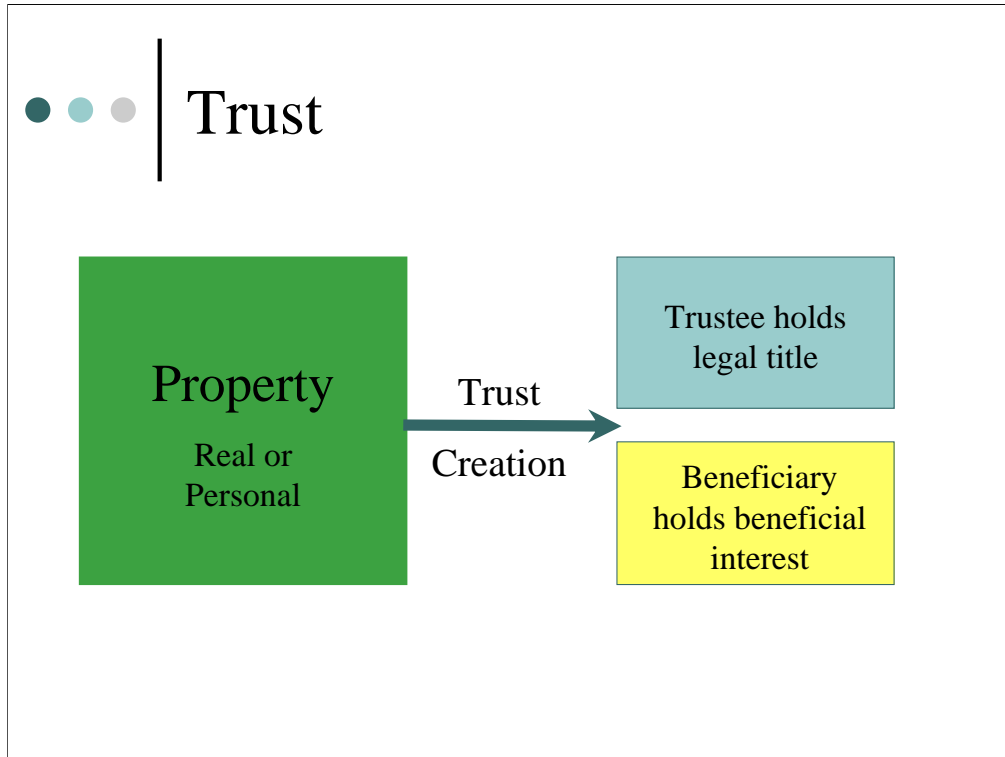
Mistake can invalidate:

Name wrong beneficiary or property

Don't properly execute

Erroneous belief when make

Ambiguity in document



Also the option of a trust.

If have more than \$100,000 then go through probate.



## Benefits of a Trust

- Wills go through probate:
  - Public court hearing
  - Takes time, which takes money
- Trusts can do what wills cannot
  - Can ensure that parents/grandparents are supported
  - Can ensure wife and daughters are supported
  - Often a tool to avoid hefty estate taxes



## Trusts

- **Living Trust**
- **Trust** = a fiduciary relationship with respect to property where by a trustee holds legal title for the benefit of another.

These lifetime tools enable a person to ensure that individuals who may be otherwise excluded or not given enough of a portion through the Islamic inheritance laws are well provided for. . Likewise, divesting assets can be used to reduce share of an heir should the donor feel that heir is undeserving of the share the/she is slated to receive.

Lifetime transfers not only benefits the donor in that he/she is able to provide for family, friends as he sees fit but if the client is wealthy, he/she may potentially stand to save on federal and state gift and estate tax through proper planning.



## Trustee

- Must follow interests of Settlor, so long as legal
- Must invest for benefit of Beneficiaries
- May dictate Islamic investment vehicles



## Can't Escape Death and Taxes

- Federal tax on estate where a decedent's assets are greater than \$2,000,000
- No gift tax on gift of \$12,000 or less per person per year
- Inheritance tax rate starts at 18% at \$2,000,000 and then percent increases as total assets increase up to 55%

\*\*\* Congress will be changing for better or worse \*\*\*

There is a provision that the taxes will increase in 2009, not exist during 2010 and then go back to their current status in 2011. Basically will be changed by congress soon.

Not Subject → property that passes outright to surviving spouse or to charity

\*\*\* rules are different if the spouse is not a US citizen \*\*\*

# Islamic Law (Shari'ah)

- Slight differences depending on the school of thought
- The following will focus on the Shia teaching





## Islamic Duties

Must pay before estate distribution:

- All debts (legal and religious)
- Provide for funeral expenses

*Oh you who believe! It is prescribed upon you that when death approaches. . .he should make a will. . .This is a duty upon the pious. (2:177)*

### **Koranic Source: Surah 4: 11-12**

“God commands . . . the male shall have equal portions of two females, but if there are more than two females. . . have two-third of what he has left. . . his parents, each of them shall have the sixth of what he has left, if he has a child . . .but if he has brothers, then his mother shall have the sixth. . . you shall have half of what your wives leave if they die without issue; but if they have a child, then you shall have a fourth of what they leave after payment of any bequest . . . or a debt . . .”

Extremely confusing. And this is only an excerpt.

I do not pretend to fully understand this, but the following is my compilation of a number of scholars interpretations of the above.

For most people, will be fairly simple, but in complicated circumstances – more family and Islamic obligations, then the more necessary a more thorough understanding of Shari'ah.

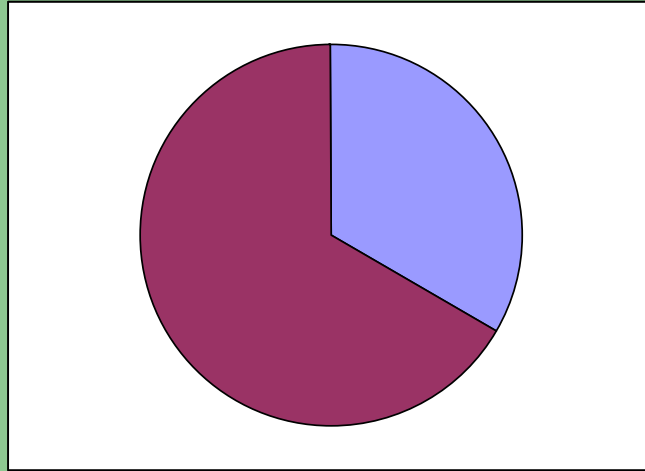
The following is a very minimal summary to help you begin to understand the various islamic obligations.



## Sexism?

- “the male shall have equal portions of two females, but if there are more than two females”
- “you shall have half of what your wives leave if they die without issue”

A person may will away up to  $\frac{1}{3}$   
of his/her estate to ANYONE  
including Koranic heirs





## Who gets the other 2/3s?

Two types of relationships, giving a right to inheritance:

1. ***Nasab*** – blood relationship
2. ***Sabab*** – Special causes i.e. marriage



## Heirs by Nasab

(blood relationships)

- Group 1: Parents and Children
- Group 2: Grandparents and Brothers & Sisters
- Group 3: Paternal & maternal uncles and aunts

## Heirs by Sabab

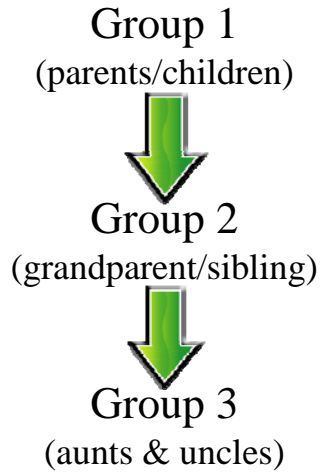
(special relationship)

- Marriage: Spouse – Widow or Widower

### Rule 1: Heirs by Nasab and Sabab succeed together

1. Surviving husband or wife is assigned his/her share
2. The remaining portion is divided among the blood relations

● ● ● | Between the Nasab



- If members of Group 1 then members of Group 2 and Group 3 are excluded
- If no living in Group 1, then members of Group 2 will inherit
- Members of Group 3 will only inherit if no living in Group 1 and Group 2



NOTE

\* Spouse will **ALWAYS** get  
his or her share of the estate





## Nine sharers (Shia law):

- 1) Heirs by marriage
  - a. Husband
  - b. Wife
- 2) Ascendants Deceased
  - a. Father
  - b. Mother
- 3) Descendants of deceased
  - a. Daughter
- 4) Collaterals
  - a. Full sister
  - b. Consanguine sister
  - c. Uterine Brother
  - d. Uterine Sister

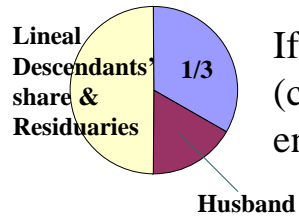
**After determine who is entitled to inherit, next determine who the actual heirs are in the group**

•Distinction between Hanfi and Shia law is that Shia law does not recognize the distinction between True/False grandparents. Shia law does not differentiate between agnates and cognates and thus equal importance is attached to cognates and agnates provided the degree of relationship is the same.

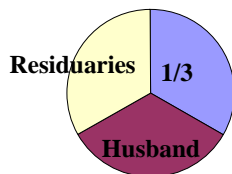
•**Consanguine** is a term that refers to a blood relative, however, it commonly is a term used to refer to a blood relation on the father's side.



## If Wife dies Leaving Husband



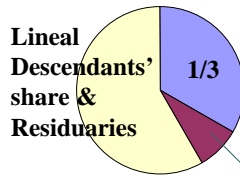
If wife dies and has lineal descendants (children/grandchildren), husband is entitled to 1/4 of the estate; or



If wife dies without lineal descendants, the husband's share is increased to 1/2.

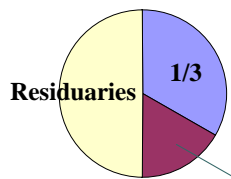


## If Husband dies leaving Wife



If husband is survived by lineal descendants, wife is entitled to  $\frac{1}{8}$  of the estate.

Wife

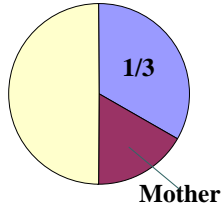


If husband is NOT survived by lineal descendants, wife is entitled to  $\frac{1}{4}$  of the estate.

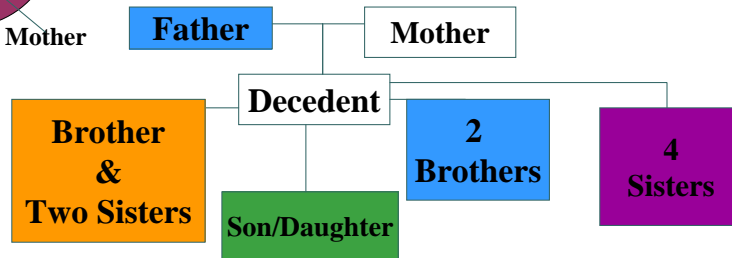
Wife



## Mother as Heir

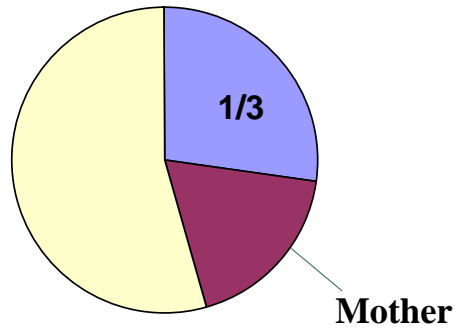


Mother of the decedent takes 1/4 of the estate if the decedent is survived **by a lineal descendant** or **survived by a father and two or more brothers** or **one brother and two sisters** or **four sisters**;



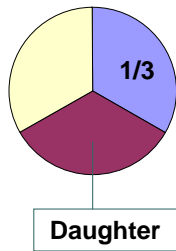
● ● ● | Mother as Heir

In the absence of shares (father, brothers, sisters), the mother's share increases to  $1/3$ .



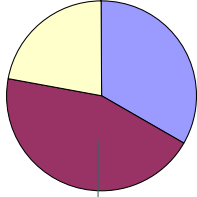
## ● ● ● | Daughter as Heir

In the absence of a son, the daughter takes as a Sharer



If decedent only has one living daughter then she is entitled to  $1/2$  of the estate;

## ● ● ● | Daughters as Heirs



Daughters

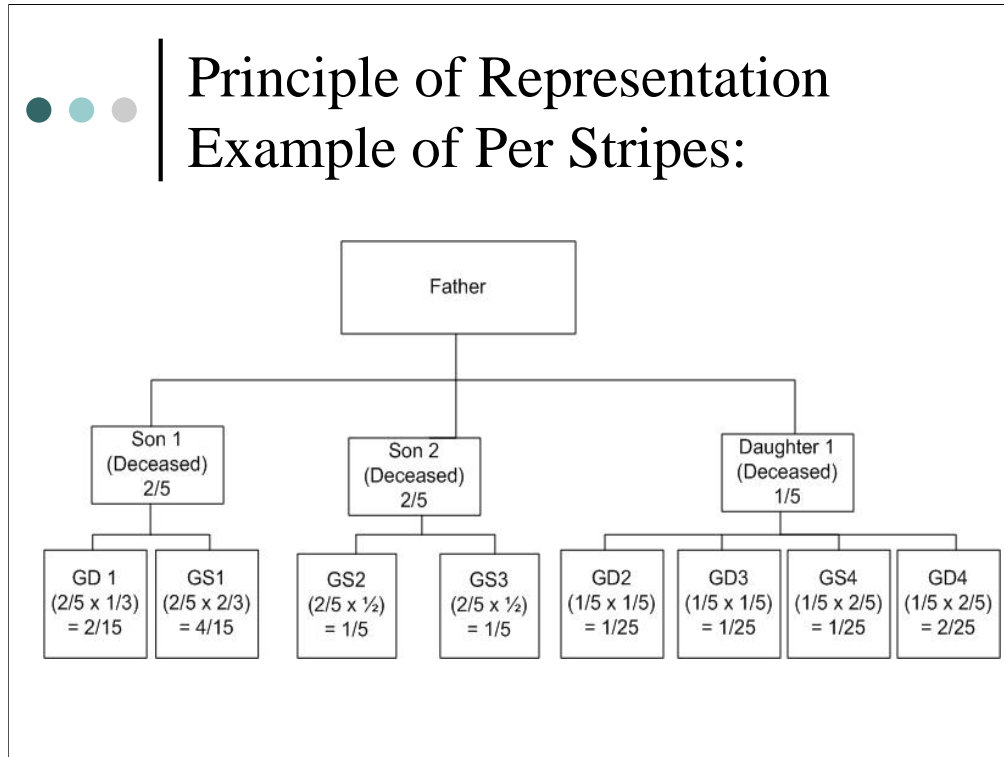
if there are two or more daughters then they receive  $\frac{2}{3}$  of the estate collectively to be shared equally;

if there is a son, she takes as a residuary with the male taking double the portion of a female.

**All heirs other than sharers become Residuaries**

**Daughter, full sister and consanguine sister are four people who under certain circumstances may inherit as Sharers or residuaries**

## Principle of Representation Example of Per Stripes:



The above example demonstrates the Principle of Representation. Here all of the children predecease the father leaving behind presently living grandchildren. Had the two sons and one daughter been alive they would have been entitled to two fifths, two fifths, and one fifth respectively. The Grandson 1 and Grand Daughter 2 are entitled to  $1/3$  and  $2/3$  respectively to the estate of their father. A multiplication of the share of Son 1 times the share entitled to the children of Son 1 results in the amount of the Father's estate. Likewise Grandson 2 and Grandson 3 are entitled to  $1/2$  each of their father's estate. Son 2's share ( $2/5$ ) multiplied the portion of Son 2's estate that Grandson 2 and 3 are entitled to ( $1/2$ ) results in a  $1/5$  share of the Father's estate to Grandson 2 and 3. Lastly, where there are three daughters and one son in the case of the children of Daughter 1, each granddaughter is entitled to  $1/5$  of the Daughter 1's estate, and the grandson is entitled to  $2/5$  of his mother's estate. Granddaughter 2, 3, and 4 are each entitled to  $1/25$  of the Father's estate while Grandson 4 is entitled to  $2/25$  of the father's estate. The distinction between the Hanafi and Shia law is that under the Hanafi system, the children of the daughter would have been totally excluded being Distant Kindred and the children of the sons would have succeeded per capital.





## Following Shari'ah and Wishes

- Islam allows flexibility
  - Establish Trusts
  - Lifetime Gifts
- Tax issues and alternatives:
  - Estate Tax – by pass via lifetime gifts
  - Gifting \$12,000 per person per year



## Prohibition to Gifting – under Islamic and CA law

- Transactions or Gifts made during the last illness are considered as bequests
- Only valid within the limitation of the one third that can be willed away



## Questions/Concerns

It's a lot  
to take in!

