

# ISLAMIC WILLS AND INHERITANCE (PART 2 OF 2)

**Rating:**

**Description:** The secondary inheritors, those who cannot inherit and the writing of a will.

**Category:** [Lessons](#) › [Islamic Lifestyle, Morals and Practices](#)

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Objectives

- To understand the difference between those who can inherit and those who can receive a bequest. To understand that writing a legal document can be complex and thus seeking advice is useful.

Arabic Terms

- Sunnah* - The word Sunnah has several meanings depending on the area of study however the meaning is generally accepted to be, whatever the Prophet said, did, or approved.
- Hadith* - (plural – *ahadith*) is a piece of information or a story. In Islam it is a narrative record of the sayings and actions of Prophet Muhammad and his companions.
- Al-wasiyah* – This is the Arabic term for an Islamic will. It distributes up to 1/3<sup>rd</sup> of the deceased's estate. Bequests in the will are not to be left for those who are entitled to inherit.
- Shariah* – Islamic Law

## The Secondary Inheritors

After the primary inheritors comes the next category known as the secondary inheritors. They inherit in the absence of one or more of the primary heirs. They are listed in order of preference.

- Paternal grandson(s), paternal granddaughter(s)
- Full brothers, full sisters
- Half-brothers and half-sisters



- Paternal grandfather
- Full brother's son
- Paternal brother's son
- Paternal uncle (father's full brother)

## Those Who Cannot Inherit

These categories of people, although they cannot inherit, are able to benefit from *al-wasiyah*.

1. Adopted children
2. Non-Muslims. Prophet Muhammad said that a believer cannot inherit from a non-believer and a non-believer cannot inherit from a believer.[\[1\]](#)
3. The children of the deceased's daughter.
4. The children of the deceased's sister.
5. The daughters of the deceased's brother.
6. The children of a maternal half sibling.
7. The deceased's mother's brothers.
8. The deceased's father's sisters.
9. Any and all in-laws.
10. Family members known as 'step' (i.e. that share no birth parents with the deceased.)
11. Ex-wife or ex-wives.

A murderer is unable to either inherit or receive a bequest from the person he killed.

An illegitimate child is only able to inherit from the mother.

## Complications

In some places across the world it is not uncommon for parents to disown one or more of their children. Often a will is written to reflect that certain inheritors will not benefit at

all from the deceased's estate. This is not something that Islam allows. Heirs have been determined by Allah and no one has the authority to countermand these instructions. It is not allowed for someone to deprive a rightful inheritor from his or her inheritance. Prophet Muhammad, may the mercy and blessings of Allah be upon him, said that Allah will not admit into Paradise any person who tries to deprive heirs of their rightful shares.

[\[2\]](#)

Although the lists of inheritors try to cover all familial relationships and situations, sometimes things get a little bit complicated. When a complex situation arises, Islamic scholars use the primary sources of Islam, the Quran and the *Sunnah*, to derive both just and satisfactory rulings. Sometimes they take from the rulings given by other Islamic scholars and judges.

Let us take as an example the tragic situation of a childless couple dying together in a car accident. Under normal circumstances when one spouse dies the other inherits. However, in this situation we do not know which of the two died first. When discussing such a case Sheikh Uthaymeen (1925 – 2001 CE) said that one of five different scenarios would apply. Without delving into details, this simply demonstrates that complex situations do arise, and seeking the advice of those acquainted with the Islamic laws of inheritance is sometimes essential.

## Writing a Will

Writing a will can be a complex matter because as we have seen inheritance laws are intricate and multifaceted. Before writing your own will, it is wise to get advice from somebody familiar with the Islamic laws of inheritance. This could be a sheikh or imam, and even in a Muslim country it is advisable to seek assistance from lawyers and the court system. In non-Islamic countries it is even more important to seek assistance and it is surprisingly easy to find law firms that deal with Islamic wills.

For instance, the Australian judicial system recognises any will whether it is based on religious teachings or on secular values. Wills, in Australia, are not rendered invalid due to their religious or cultural nature however they can be ruled invalid on the grounds of legal impropriety. Wills in Australia can be contested for many reasons including mental capacity, undue influence, and fraud. It is up to the individual to decide how their estate is divided and it cannot be contested just because it adheres to the *Shariah*.

One of the reasons why every sane adult Muslim should have a properly prepared will is that it will be unlikely to be contested due to legal impropriety. Whether you are in Muslim or non-Muslim countries, if the will is prepared by a law firm the legal requirements for each individual country will be adhered to. Under these circumstances it can be very difficult for anyone to contest the will for any reason. When the rules of Islamic inheritance law have been set out so specifically by Allah Himself it would be unwise to leave the handling of one's estate to somebody not familiar with those rules.

## What does the will document contain?

The following are the core sections you will find in an Islamic will. The person who makes a will is called the testator.

- 1.Preamble. The testator declares his faith.
- 2.Burial. In this section the testator gives instructions as to how his or her funeral and burial will be conducted.
- 3.Debts. Here the testator gives instructions for all outstanding debts to be paid.
- 4.*Al-wasiyah*. Here the testator directs the distribution of up to 1/3<sup>rd</sup> of his or her estate.
- 5.Residuary Distribution. This section sets out the distribution of the remaining 2/3rds of the estate in accordance to the *Shariah*.

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Footnotes:

[1] Saheeh al Bukhari

[2] Ibn Majah

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