

ESTATE PLANNING
WILLS, TRUSTS & AWQAF

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the Name of God
Most Compassionate, Most Merciful

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WHY DO WE NEED THIS COURSE?

- 1. Learning the Shari’ah Aspects of Estate Planning
- 2. **Appreciating the Need for Islamic Personal/Family Laws**
- 3. Understanding the Documents of Estate Planning that Reconcile the Islamic and American systems

OBJECTIVES OF ESTATE PLANNING

- a. IMPLEMENTATION OF THE ISLAMIC SHARI’AH IN:
 - 1. **Distribution of the estate**
 - 2. **Guardianship for minors**
 - 3. **Funeral rites**
 - 4. **Handing control to heirs**

OBJECTIVES OF ESTATE PLANNING

(CONTINUE)

- b. Donate to charity/Awqaf: (1/3)
- c. Pass estate to heirs directly & quickly
- d. Maintain privacy
- e. Avoid probate: cost ♦ time ♦ attorney
- f. Keep control while alive
- g. Protect properties

CHARACTERISTICS OF OUR INHERITANCE SYSTEM

- 1. REFLECTS THE ISLAMIC CONCEPT OF OWNERSHIP: No control after death
- 2. DETAILED FROM GOD
- 3. MANDATORY (OBLIGATORY)
- 4. GOD-GIVEN RIGHT: To family members

CHARACTERISTICS OF OUR INHERITANCE SYSTEM_{CONTINUE}

- 5. AIMS AT REDISTRIBUTION
- 6. INTEGRATED WITH OTHER ASPECTS OF ISLAMIC SYSTEM, ESPECIALLY:
MARRIAGE, PROPERTY & FAMILY FINANCIAL SOLIDARITY

SALIENT FEATURES OF ISLAMIC INHERITANCE SYSTEM

- 1. LINEAGE-BASED INCLUDING PARENTS
- 2. RELATED TO FINANCIAL RESPONSIBILITY
- 3. SHARE OF A MALE IS TWICE AS MUCH AS SHARE OF A FEMALE: **CHILDREN, SIBLINGS, SPOUSES, PARENTS** (no children)
- 4. EQUAL SHARES, 5/1 SHARES, 0 TO MALES

FACT SHEET

INTERESTINGLY,
we have one case where a male
takes five times as much as a
female:
**mother and father with no
children and at least two
siblings**

FACT SHEET Continue

YET, there are cases of equal shares:

- ✓ **Mother and father with children;**
- ✓ **Maternal sisters and brothers; and,**
- ✓ **Paternal grandfather and any grand
mother**

FACT SHEET Continue

ALSO INTERESTING are cases
where a female prevents a male from
getting any thing:

- **One daughter, one full sister
and a paternal brother.**
- **Daughters, one full sister and
any number of parental
brothers**

FACT SHEET

Continue

CASES WHERE IT PAYS TO BE A FEMALE:

- **Parents, husband and one child: if the child is male he takes $5/12$ (= $65/256$) while she gets $6/13$ (= $72/256$)**
- **The difference is even larger if there are two children; Two girls, each gets $4/15$ (= $16/60$) but two boys get only $5/12$ to both of them (= $12.5/60$ each)**

FACT SHEET

Continue

NUMEROUS CASES in which a female gets more than a male of same or farther level:

- **Mother with more than five sons**
- **Daughter with more than one brother**
- **Wife, mother and three brothers**
- **Wife with more than three brothers**
- **Etc.**

WAQF

AND

FAMILY WAQF

AWQAF EXISTED BEFORE ISLAM:

- **MAINLY FOR RELIGIOUS PURPOSES**
- **AND A FEW CHARITABLE, RARELY**
- **THEY DID NOT KNOW ANY FAMILY TRUSTS**

IMPORTANCE OF WAQF

SOURCE OF FINANCING FOR:

- EDUCATION
- HEALTH CARE
- SOCIAL WELFARE
- PUBLIC UTILITIES
- RELIGIOUS ACTIVITIES

MEANING OF AWQAF

- taking a property out of personal ownership and holding it for a good cause (righteousness = Birr). It also means properties made into Waqf

KINDS OF AWQAF

- RELIGIOUS
- CHARITABLE
- FAMILY OR POSTERITY

THE ISLAMIC AWQAF

- CREATED AT NO PRECEDING EXAMPLE: SAYINGS OF PROPHET
- WIDE SCOPE: **CHARITABLE**, **RELIGIOUS**, **ENVIRONMENTAL**, **PUBLIC UTILITY**, **FAMILY**, ETC.
- INVENTED THE FAMILY WAQF

CHARACTERISTICS OF AWQAF

- **Righteousness (Birr)**
- **Perpetuation/temporarity**
- **Protection**

FAMILY WAQF

A WAQF FOR DESCENDENTS AND/OR SELF:

- **CAN BE PERPETUAL OR TEMPORARY**
- **YOU CAN BE THE MANAGER**
- **CAN ACCOMMODATE FORMS OF DONATION IN TRUST**

AS A MUSLIM IN THE AMERICAS,
FAILURE TO PLAN FOR
DEATH IS:

..... **SINFUL**

**A VIOLATION OF
INHERITANCE AND
PROPERTY LAWS**

ALTERNATIVE APPROACHES

1. *Last Will*
2. *Living Trust*
3. *Family Corporation*
4. *Charity with end Benefit to Heirs (Donation in Trust)*
5. *A host of other tools*

1 - WASSIYYAH - LAST WILL

1. Islamic Meaning:

Merciful Grant to a max of 1/3

2. Legal Meaning:

Full Distribution of Property After Death

1 -WASSIYYAH - LAST WILL

SHARI'AH MEANING AND SCOPE:

- **A CHARITY FROM GOD**
- **ACT OF RIGHTEOUSNESS TO GAIN MORE REWARD**
- **PARTIAL: ONE THIRD ONLY**
- **RESTRICTED: NON-HEIRS**

1 -WASSIYYAH - LAST WILL

LEGAL MEANING:

- **DISTRIBUTION AT WILL**
- **PERSONAL OBJECTIVES**
- **PERPETUATION OF OWNERSHIP**

1 -WASSIYYAH - LAST WILL

1. **Simple document of estate planning**
2. **Fulfills objectives: a , b & f**
3. **Fails in: c , d , e & g**
4. **Can be challenged and annulled**

2 - LIVING TRUST

A LEGAL ENTITY created by a legal document

It has **FOUR COMPONENTS:**

- * **FOUNDER**
- * **BENEFICIARY**
- * **TRUSTEE**
- * **TRUST'S PROPERTIES**

CHARACTERISTICS OF A LIVING TRUST

1. FULFILLS OBJECTIVES

a THROUGH f

2. IT FAILS IN g

3. ACCEPTABLE IN BOTH SHARI'AH AND LAW OF LAND

CHARACTERISTICS OF LIVING TRUST CONTINUE

- **REVOCABLE**
- **KEEP CONTROL**
- **POUR OVER**
- **A/B TRUSTS**

DOCUMENTS that normally go with **A LIVING TRUST**

1. **REVOCABLE LIVING TRUST**
Individual or Couple
- 2&3. **LAST WILL OF WIFE & LAST WILL OF HUSBAND (POUR OVER CLAUSE)**
- 4&5. **LIVING WILL OF WIFE & LIVING WILL OF HUSBAND (HEALTH CARE DIRECTIVE)**
- 6&7. **POWER OF ATTORNEY OF WIFE & POWER OF ATTORNEY OF HUSBAND**
8. **FUNDING DOCUMENTS TO TRANSFER PROPERTIES TO THE TRUST'S NAME: E. G., WARRANTY DEED**

3 – FAMILY CORPORATION

- * **A COMPANY OWNED BY: (e.g.,)**
WIFE 5% HUSBAND 5%
L. T. OF WIFE 45% L T OF HUSBAND 45%
- * **CHILDREN MAY BE ADDED AT SMALL SHARES**
- * **GRADUAL TRANSFER TO CHILDREN**

4 – DONATION IN TRUST

- TRANSFER OWNERSHIP TO A CHARITY, NOW**
- **TENANCY RIGHT**
 - **PARTIAL DISTRIBUTION TO HEIRS**

THE CRITICAL CONDITION !

USE CAREFULLY STRUCTURED
DOCUMENTS THAT COVER ALL
THE
SHARI'AH REQUIREMENTS
WHILE
THEY FIT LOCAL LAWS

**ADDITIONAL ADVANTAGE OF
WILLb / LIVING TRUST**

DEAL WITH:

- FUNERAL RITES**
- GUARDIANSHIP OF
MINOR CHILDREN**

**ADDITIONAL ADVANTAGE OF
WILL/ LIVING TRUST** Continue

**DEAL WITH SPECIAL
CASES:**

e.g., **grand children**, **non-Muslim
relatives**, **more than one
wife**, etc.

WHY DO MUSLIMS IN THE AMERICAS NEED A LAST WILL OR A LIVING TRUST?

- IT IS **FORBIDDEN** TO VIOLATE THE SHARI'AH (ISLAMIC LAW)
- **AT STAKE ARE: INHERITANCE, FUNERAL, GUARDIANSHIP, PROPERTY LAW AND FAMILY LAW**

THE GOOD NEWS!

A LAST WILL AND A LIVING TRUST CAN BE FORMULATED TO FULFILL THE SHARI'AH REQUIREMENT WITHOUT VIOLATING THE LAW OF THE LAND

SAMPLE DOCUMENTS OF LAST WILL LIVING TRUST (FREE FOR PERSONAL USE)

**www.kahf.net
www.isna.net**

COMMON MISTAKES IN WILLS AND TRUSTS

1. NAMING HEIRS & SHARES
2. LIMITING AUTHORITY OF HEIRS
3. GIVING SOME HEIRS MORE THAN THEIR SHARI'AH GIVEN SHARES (BELOVED, HANDICAPED)

COMMON MISTAKES IN WILLS AND TRUSTS

(CONTINUE)

4. LEAVING BROAD AUTHORITY TO THE JUDGE: "ACCORDING TO ISLAMIC LAW"
5. GIVING MORE THAN 1/3 TO NON-HEIRS

COMMON MISTAKES IN WILLS AND TRUSTS

(CONTINUE)

6. BEQUEATHING TO NON-MUSLIM RELATIVES OUTSIDE THE 1/3
7. FAILURE TO FUND A LIVING TRUST
8. NON-MUSLIM GUARDIAN

**COMMON MISTAKES IN
WILLS AND TRUSTS**

(CONTINUE)

- 9. NEGLECTING A FETUS**
- 10. A/B TRUST WITHOUT
CONSENT OF OTHER
HEIRS**
- 11. NEGLECTING PARENTS**

**COMMON MISTAKES IN
WILLS AND TRUSTS**

(CONTINUE)

- 12. EXCESSIVE FEAR OF
TAXES**
- 13. LOOSING CONTROL**
- 14. ETC.**

**CHARACTERISTICS
OF LIVING TRUST**

STUDY DOCUMENT

**CHARACTERISTICS OF
SCHEDULE OF MAWARITH**

STUDY DOCUMENT


