

THE LAW FIRM OF OMAR T. MOHAMMEDI, LLC

ATTORNEYS AT LAW

NEW YORK, NY



# Islamic Inheritance and Planned Charitable Giving

Woolworth Building

233 Broadway · Suite 801 · New York, NY 10279

Telephone: 212-725-3846 · <http://www.otmlaw.com> · [info@otmlaw.com](mailto:info@otmlaw.com)



## Islamic Estate Planning

### **Why it is important to have a Shariah-compliant Estate Plan?**

- Fulfills obligation under Islamic law.
- It is related from Abu Hurayrah that the Messenger of Allah, may Allah bless him and grant him peace, said, “A man or a woman might perform actions in obedience to Allah for sixty years. Yet, when they are near death, they leave an unfair will and thus acquire the fire.”

Sunan Abu Dawud 3:288
- Knowledge of Inheritance is half the knowledge of the religion and will be the first of the Islamic traditions to be forgotten. – Ibn Ashir (The Guiding Helper)



## Islamic Estate Planning

### **Why it is important to have a Shariah-compliant Estate Plan?**

- Provides security and peace of mind for family
  - Determine guardianship of minors
  - Determine medical treatment if incapacitated
  - Burial procedure

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# Wills

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## Tradition of the Prophet (s.a.)

It is related from 'Abdullah ibn 'Umar that the Messenger of Allah, may Allah bless him and grant him peace, said, "It is not right for a Muslim man who has anything to bequeath to spend two nights without having a written will in his possession."

Sahih Bukhari, Book 51, No. 1



## Requirements for a Validly Executed Will

- In order for any will to be recognized in NY/NJ, it must be validly executed!
- Not valid:
  - Downloaded from the internet and signed by testator
  - Will forms from local masjid that are signed and notarized
- Invalid will means default state laws of distribution will be used.
- An experienced attorney will ensure:
  - Proper procedural and substantive execution
  - Safekeeping of the will
  - Testator's intentions are carried out!



## Islamic Wills and U.S. Law

### Substantive Requirements

- Even if procedure is sound, substantive problems can negate an Islamic Will
- For example, it's not enough to say “This Will shall be distributed according to the Shariah” and nothing else
- Language must be clear and unambiguous
- Shariah will can lose its Shariah-compliance if there are substantive problems.
- Attorneys are best suited to:
  - Ensure enforceable Shariah-compliant will
  - Prevent intestate law from being applied



## Intestate Distribution v. Shariah Distribution

### Under NJ/NY Intestate Law

- Creditors paid first,
- Spouse receives \$50,000 plus one-half of the remaining estate,
- Children share equally in the remaining one-half

### Under Shariah Law

- Creditors paid first,
- Wasiyya distributed next (see later slides)
- Remaining estate is distributed to all heirs according to the rules in Surah An-Nisa' and the Hadith
- (E.g. Spousal share one-fourth or one-eighth, sons receive twice the share of daughters)



## Options in Shariah Inheritance Law

- Wasiyya Bequest



## Wasiyya: Source of Law

Mus'ab b. Sa'd reported on the authority of his father. I was ailing. I sent message to Allah's Apostle (may peace be upon him) saying: Permit me to give away my property as I like. He refused. I (again) said: (Permit me) to give away half. He (again refused). I (again said): Then one-third. He (the Holy Prophet) observed silence after (I had asked permission to give away) one-third. He (the narrator) said: It was then that endowment of one-third became permissible.

Sahih Muslim, 13, No. 3994



## Wasiyya: Source of Law

Narrated Abu Hurairah:

I heard the Apostle of Allah (peace be upon him) say: Allah has appointed for everyone who has a right what is due to him, and no bequest must be made to an heir.

Sunan Abu Dawud, 11, No. 2864



## Options in the Shariah Inheritance

### Wasiyya Bequest

- Testator can bequest up to one-third of the estate.
  - Friends
  - Islamic Centers or Charities
  - Non-biological parents or children
  - Non-Muslim spouse or relatives
  
- No wasiyya to someone who is already an heir
  - Consent requirement.



## Intestate Distribution v. Shariah Distribution

### EXAMPLE

- Amir dies leaving behind an estate of \$300,000 after all debts and expenses are paid off.
- Amir is survived by his wife, his son and one adopted son.
- Amir also wants to contribute to the long-term growth of his Masjid.
- Amir can give divide his one-third wasiyya (\$100,000) between his adopted son and the Masjid (e.g. \$25,000 to the Masjid and \$75,000 to his son)
- The remaining \$200,000 will be divided according to the Shariah



## Options in Shariah Inheritance Law

- Wasiyya Bequest
- Lifetime gift (inter vivos gift)
- Co-ownership

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## Options in Shariah Inheritance Law

### Sources of Law

- Umar bin Al-Khattab narrated: “The Prophet ordered us to give *sadaqa* . . . Abu Bakr came with all of his wealth. The Prophet said to him: "What have you left for your family?" He said: I have left them Allah and His Messenger.”
  - (Abu Dawood)
  
- “[c]urrent charitable dispositions of property made by X during his life, such as establishing an endowment, giving a gift or others, are considered as personal expenditures of his own money (O: and he could spend it all without any objection)”
  - (Reliance of the Traveler)



## Options in Shariah Inheritance Law

### Lifetime Gifts and Co-ownership

- Lifetime transfers and co-ownerships are not restricted under Shariah
- During his lifetime, a man can make his wife a 50% co-owner
- Upon his death, she will automatically get one-half AND inherit her share from the remaining one-half.
- Similarly, one can make an additional gift during one's lifetime to a daughter or other individual

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# Trusts and Charitable Giving

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## Trusts Under NY and NJ Law

What is a Trust (Waqf)?

- Property is transferred by the owner to a Trustee
- Trustee manages and invests the property
- Trustee pays the income to beneficiaries appointed by the owner
- Upon the death of the owner or termination of the trust, the principal is distributed back to the owner or to a beneficiary appointed by the owner



## Charitable Giving (Donor Side)

### Charitable Remainder Trust (CRT)

- Structure
  - Donor leaves trust assets to relative for life with remainder to a charity
- Benefits to Donor
  - Tax deduction available the year of creation of the trust.
  - Donor receives a financial service AND makes a donation
  - Donor can structure the CRT to benefit from appreciated assets without incurring higher taxes
- Benefits to Charity
  - Charities can collect larger donations in the long-term



## Charitable Giving (Donor Side)

### Charitable Lead Trust (CLT)

- Structure
  - Donor leaves trust assets to a charity for the life of the donor with remainder to donor's heirs
  
- Benefits to Donor
  - Deduction available the year of creation of the trust.
  - Assets in the CLT can flow directly to the heirs and bypass probate
  - Donor can make a donation to the charity and still provide for heirs
  
- Benefits to Charity
  - Charities can receive a steady and reliable flow of income



## Charitable Giving (Charity Side)

### Pooled Income Funds

- Structure
  - Charity holds donor's assets in trust, pays the income to donor or beneficiary and retains the remainder
- Benefits to Donor
  - Accomplishes the same goal as a CRT
  - Requires less effort because these funds are already in place
  - Benefit of leverage from pooled assets
- Benefits to Charity
  - Pooled structure allows charities to collect small and large donations
  - Charity maintains control over investment of assets



## Charitable Giving (Charity Side)

### Endowment

#### – Structure

- A fund where the charity only spends the earnings and not the principal
- Example: a \$2 million endowment allows the charity to spend \$100,000, or about 5%, annually

#### – Benefits

- Financial stability
- Allows for long term growth of the principal
- Example: Harvard University



## Charitable Giving (Charity Side)

Endowment:

Year	Endowment Fund	Avg Annual Income
2010	\$2 million	\$80,000
2020	\$2.7 million	\$109,000
2030	\$3.8 million	\$153,000
2040	\$5.4 million	\$216,000
2050	\$7.6 million	\$306,000
2060	\$10.8 million	\$431,000

Example:

Initial Investment:  
\$2 million

Average Earnings:  
7.5%

Rate of Inflation:  
2.5%

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# Islamic Finance

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## Islamic Finance Structures

### Islamic Financing

- Modes of financing
  - Musharaka, Murabaha, Ijara, Istisna, Mudaraba, etc.
  
- From single or a few large financiers
  - Islamic financial institutions
  - Investment companies
  - Wealthy individual investors
  
- Sukuk (public funding)
  - Several small individual investors
  - Shariah-compliant Islamic bonds



## Islamic Finance Structures

### Musharaka

- Partnership arrangement
  - The Islamic Center and the financier enter into partnership agreement
  - Islamic Center contributes a small portion and financier contributes the lion-share
  - The new partnership pays for the new project
  - The Islamic Center buys out the financier over time
  - Partnership dissolves



## Islamic Finance Structures

### Istisna

- Construction contract
  - The financier agrees to build a new construction for the Islamic Center in the future for cost plus profit
  - Islamic Center agrees to pay in installments beginning on a future date
  - The financier can build it itself or enter into another agreement with a contractor

### Ijara

- Lease to Own agreement
  - The financier buys a commodity and leases it to the Islamic Center
  - Islamic Center pays the lease over a term of years and at the end becomes owner of the commodity



## Islamic Finance Structures

### Sukuk

- Uses one of the underlying structures (musharaka, istisna, ijara, etc.)
- An Islamic financial institution issues sukuk-certificates to several individual investors (rather than a single large financier)
- Investors have an ownership stake in the underlying project
- Sukuk Certificates
  - Certificates mature after a specific term of years
  - During the term of the sukuk, investors earn income from project (e.g. rents, profits, etc.)
- Upon maturity, The Islamic Center buys out all the sukukholders and takes full ownership of the project

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This presentation is intended for informational purposes only. It does not intend to offer any legal advise. For further advise on a case by case basis:  
Please do not hesitate to contact:

Omar Mohammedi, Esq.

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