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Inheritance Law in the UAE

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# Shar'ia Law on Inheritance

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## INTRODUCTION

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Inheritance is the transfer of legal ownership of a deceased's assets to his heirs; the legal basis for the law of inheritance in the United Arab Emirates is found in Shariá. Shariá is the primary source of Islamic law and is based mainly on the Quran and the Sunna (sayings of the Prophet Mohammed PBUH), which serves as a complementary source to the Quran. Shariá is however not a codified law; it is an abstract form of law capable of adaptations, development and further interpretation. A source of significant controversy both inside and outside the Muslim community is the Islamic law of inheritance; the "law" is in fact a continuing process of the interpretation of Qurantic rules and principles to form the complex "laws" of inheritance under Islam.

Under the UAE Civil Code, Federal Law No.2 of 1987 ("Code"), Article 17(1) provides: *'Inheritance shall be governed by the law of the deceased at the time of his death.'* Therefore, the law of domicile shall apply.

However, in relation to real property, as an exception, Article 17(5) specifically states that *"The law of the UAE shall apply to wills made by aliens disposing of their real property located in the State"*. (Reference to the "State" is a reference to the United Arab Emirates.)

Additionally, Article 1219(2) of the Code provides that inheritance issues and transfers of estates shall be subject to the provisions of the Islamic Shariá and the laws passed giving effect thereto. With regard to wills specifically, Article 1258 of the Code states that the provisions of the Islamic Shariá and the legislative provisions deriving therefrom shall apply to wills.

## WHOSE ESTATE WILL BE WOUND UP ACCORDING TO THE ISLAMIC INHERITANCE LAW?

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All Muslims living in any country of the world can expect to have their estates wound up according to the Islamic Inheritance Law. There are some scholars however who maintain that certain of the inheritance laws are applicable only in Islamically- based legal systems and governments and that other jurisdictions do not provide for the complete application of Islamic Law.

### Faraidh

The Arabic word for the distribution process of assets after death according to Islamic Law is faraidh.

## WHAT CONSTITUTES A DECEASED'S ESTATE?

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According to Shariá, whatever a person owns at the time of his death whether it be property, money, bonds, gold, shares or clothes falls into his estate. However, items that the deceased stole or acquired by breach of trust while alive will not be included in his estate. Pensions provided by the government or the deceased's employer will be considered as an award and not as a part of the deceased's estate. If the deceased had gifted something

of which he had actual ownership before he died and had seen that the recipient possessed the gift before his death, then this item is not included in the inheritance. However, had the deceased only said or put in writing words to the effect, *"I give this to you..."* and the gift was not physically received by the recipient before the deceased's death, then this item will remain within the ownership of the deceased and will be included in his estate upon his death. If the gift was given to the recipient during any illness of which the deceased died (referred in Arabic as *marad-ul-maut*) and the deceased had also made him take it in his possession, then this act of giving will fall under the rule governing a will. Furthermore any property that the deceased had mortgaged during his lifetime but has failed to leave sufficient money or property in his estate to settle the debt, such property will not form part of the estate either.

1 Maulana Ashraf Ali Thanvi, *Bahishti Zewar*, vol. 5, 60.

## WHO IS EXCLUDED FROM BEING AN HEIR?

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Islam has formulated a clear system of wealth distribution on the death of an individual. Heirs must be Muslim and they cannot have willfully caused the death of a deceased. Furthermore all illegitimate and adopted children are excluded from being heirs. If several relatives die in an accident they will usually be considered to have died simultaneously and no inheritances will pass between them. An inheritance is usually only distributed amongst living heirs and not their estates. When heirs that have gone missing before the death of the deceased in circumstances where it has become impossible to know whether those heirs are alive or dead, Islamic law provides that the heirs' inheritances must be held in trust. If the missing heirs never return, the Muslim rulers can declare those persons dead and the shares which had been held in trust for them, will be distributed to their heirs.

When an heir of a deceased is still in utero at the time of the deceased's death, the distribution of the inheritance will only take place after the birth of the baby due to the fact that shares allocated to boys and girls differ. The different categories of heirs and their inheritance will be looked at later on in the booklet.

## FOREIGNERS AND THE ISLAMIC LAW OF INHERITANCE

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### Is a foreigner able to inherit immovable property?

Previously within the United Arab Emirates, only United Arab Emirates citizens or GCC nationals in certain circumstances could own immovable property in the United Arab Emirates. However, recent developments with respect to foreign ownership of land in Dubai have altered this position, and in May 2002, H.H General Sheikh Mohammed bin Rashid announced that 100% freehold ownership of certain properties in Dubai was available to all nationalities. No new law has been issued as of yet and it is still uncertain as to whether Shariá law would apply to property owned by non- Muslims. We understand that a new law is currently being contemplated in relation to personal affairs, divorce, inheritance and marriage in the UAE, which would apply to non Muslim foreigners as well as Muslim foreigners and Muslim nationals in the UAE. Until then the Code remains the leading authority.

## ADMINISTRATION OF FOREIGNERS' WILLS

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An application needs to be made for a grant of representation in the deceased's country of domicile. Once probate is obtained, it must be notarized, legalized and/or attested before it may be recognised by UAE government authorities as authentic and valid. Upon recognition by the government authorities of the deceased's representatives and confirmation that the will may be distributed in accordance with the laws of the country to which the deceased belonged, the trustees or executors would have full power to administer the deceased's estate in accordance with his wishes.

In the case of intestacy, a letter of administration will also need to be obtained from the country of domicile; this also needs to be notarized, legalized and/or attested.

## DUTIES OF HEIRS AT THE TIME OF DEATH

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All expenses incurred in bathing, shrouding and burying the deceased is to be paid out of the estate immediately after death and all financial claims or debts owing by the deceased must be settled from the estate by the heirs.

## WHAT IF THE DECEASED LEFT A VALID WILL OR TESTAMENT?

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Because of the confusion surrounding inheritance issues for foreigners, the courts will have discretion as to whether the laws of the country to which the deceased belonged are applied. If they are not, but the deceased left a valid will or testament, one third of the balance of his estate must be liquidated and distributed in terms of the said will or testament. The remaining two-thirds of the balance of the estate must be distributed amongst all the heirs; this distribution to his heirs will be in accordance with fixed shares as prescribed by Shariá. In the event that the deceased left no will and he was a Muslim, Shariá law would apply and any debt would be paid prior to any other disbursement of property. The property would subsequently be divided according to Shariá law's different categories of heirs and their shares.

## DIFFERENT CATEGORIES OF HEIRS AND THEIR INHERITANCE

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### Dhawu'l-Fara'id

These are heirs who have a right to definite shares in assets left by the deceased e.g. father, grandfather, brother, husband, wife, mother etc. The fixed shares are stated below:

- The father's share is one-sixth when the deceased leaves a son or a son's son. However, if the deceased is not survived by a son or grandson, his father will, in addition to this share (one-sixth), also get a share of being 'Asaba.' (Asabaat includes relatives in whose line of relationship no female enters).
- The grandfather's share is like that of the father's share. In relation to this, according to Imam Bukhari and Imam Muslim, the presence of the father deprives brothers of their share in the inheritance. But this is not the case for a grandfather. Abu Hanifa is also of the opinion that the presence of a grandfather deprives the brother of his share in the inheritance. Also, the grandmother of the deceased has no share in the presence of the father of the deceased. However, she has a share in the presence of the grandfather.

- The third set of heirs are uterine brothers and sisters. They are entitled to one-sixth if their number is one, and one-third if they are more than one.
- The husband's share is half the property of the deceased wife if she has no children. But if she has children, then it is one-quarter.
- As for the wife, if her spouse dies childless she is entitled to one-fourth. If, on the other hand, he has a child or children, her share is reduced to one-eighth.
- If the deceased leaves behind a daughter, her share is half. However, if he has more than one daughter, then they are entitled to two-thirds.
- If the deceased has a male child(ren) in addition to the daughter(s), then the daughter(s) would be treated as 'Asaba' and the male child(ren) would be entitled to double what the female child(ren) receives. As for granddaughters, they stand on the same level as daughters. If, for instance, there is a situation where the deceased is survived by a daughter and also by one or more granddaughters, they would be entitled to one-sixth. Moreover, if a son survives the deceased, the granddaughter is not entitled to any share. However, if he is survived by grandsons and granddaughters, they would be treated as 'Asaba' and the male grandchild would be entitled to double that of the female grandchild.
- Furthermore, if the paternal grandmother or maternal grandmother survives the deceased, she is entitled to one-sixth. The maternal grandmother is deprived of her share if the mother of the deceased is alive, and if the father is alive, the paternal grandmother is deprived of this share.

### Asaba

Asaba are relatives who only receive their shares once the heirs in the abovementioned Dhawu'l-Fara'id group have received their entitlement. Women do not enter into this calculation of the line of the relationship and there are no fixed shares in this category either. i.e. sons are the first to inherit the residue of the estate and daughters are entitled to half of the shares that are awarded to the sons.

### Dhaw-ul Arham

The members of this category include relatives who are related through the female heirs; they include, for example, a daughter's son or daughter, a son of the daughter of a son and maternal grandfather.

### WHAT HAPPENS TO THE SHARE OF AN INHERITANCE IF THE HEIR IS MISSING?

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If an heir was missing before the death of the deceased and it is not possible to determine whether the missing person is alive or dead, Islamic law provides that his inheritance should be held in trust in order that he may receive his share when he is found or returns. If he does not return, and the time limit for waiting terminates and the designated Muslim ruler declares this person as dead in accordance with the rules set by Shariá, then the share held in trust for the missing person will be distributed among the heirs of the deceased. It must be noted that it will not be distributed among the heirs of the missing person. Only the property of the missing person will be distributed among his heirs.

## WHAT ARE WOMEN'S INHERITANCE RIGHTS UNDER SHARÍA LAW?

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In Islam, the Quran clearly states that women have the right to inherit for themselves; the percentage of the inheritance usually depends on various factors. Women also have certain rights:

1. Any gift given to a woman by her fiancé prior to marriage is hers and her husband has no legal right to it after marriage.
2. At the time of marriage, a Muslim woman is entitled to receive a marriage gift from her husband and it is usually but not necessarily in the form of money. The marriage gift is known as the mahar and this is her property.
3. Even if the wife is rich, she is not required to spend any money on her household; the responsibility for her food, clothing, housing, medication and recreation rests on her husband.
4. Any income the wife earns or any profit she gains from her investments are hers alone.
5. In the case of divorce, if any part of the mahar has not been paid to her, the husband will be required to pay it to her immediately.
6. A divorced woman is entitled to financial assistance for her maintenance (which includes food, clothing, etc.) from her husband during her waiting period.

### Waqf as an Estate Planning Tool

In other jurisdictions trusts have been used successfully to preserve estates for the benefit of successive generations. As trusts are not clearly defined in the Federal Law of the United Arab Emirates or in Islamic Law, the closest and most appropriate tool found in Shari'a is the waqf. The principle of perpetuity is a unique characteristic of the Islamic waqf. In Islam, perpetuity in waqf means that once a property is dedicated as a waqf, it remains so until "the day of judgment". There are two basic types of waqf; the first type is waqf khairi which means a dedication in perpetuity of the capital and income of the property to religious or charitable purposes; the second type of waqf is waqf khas or waqf ahli which means a dedication in perpetuity of the capital and income of property to a member(s) of the family. In the United Arab Emirates the Ministry of Justice administers waqf property.

The basic procedures that need to be followed in forming a waqf in the UAE are:

1. If the property in question is land, a certificate is required from the Land Department of the relevant emirate. The land should be free from any restrictions restraining the owner from using or transferring the land.
2. The waqif (trustee) must request the Shari'a Court to register the land in question as being held under the family or ahli waqf.

3. Once the land is registered this will signify that ownership has been directly transferred. One condition is that the registration of land under waqf must be completed during the founder's lifetime. If this task is carried out at the time of his death, it will no longer be waqf but rather a will.
  
4. In the case of a company, for example, if the trustee wishes to put all the revenues of the company in waqf, he must ensure that all the partners or shareholders, depending on the legal structure of the company, mutually agree and that the company's assets are not subject to any mortgage and that there are no restrictions binding or disagreements between the parties.

## CONCLUSION

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As this publication is only meant to be a brief introduction to the main principles of inheritance law and waqf under Shariá Law, it is recommended that the reader consult a lawyer with expertise in this field or a religious scholar who must be entitled to give rulings in inheritance matters, if you have any queries regarding inheritance, wills and succession according to Islamic Law.

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