



— ◆ — **RULINGS OF** — ◆ —  
**ISLAMIC LAW**  
**A SIMPLIFIED PRESENTATION**  
**WWW.ISLAMICFIQH.NET**





←— **RULINGS OF** —→  
**ISLAMIC LAW**  
A SIMPLIFIED PRESENTATION

Translated by

**Adil Salahi**

Edited by

**Dr. Assim Lugman Alhakeem**

**Dr. Ali Bahaeldin Shehata**

funding, translation and editing for this project supervised by osoul global center

[www.osoulcenter.com](http://www.osoulcenter.com)



←→ **RULINGS OF** →←  
**ISLAMIC LAW**  
A SIMPLIFIED PRESENTATION



◆ **CHAPTER 11:** ◆

# WILLS AND INHERITANCE



[www.islamicfiqh.net](http://www.islamicfiqh.net)

## Chapter 11

### Wills and Inheritance

*Wasiyyah*, i.e. a will, according to Islam means bequeathing ownership after one's death in a voluntary way.<sup>475</sup> Qur'anic and *hadith* texts, as well as the unanimous view of scholars, make clear that making a will is perfectly legitimate.<sup>476</sup>

Making a will is recommended, even though one may be in very sound health, as death may occur unexpectedly and all of a sudden. To make a will is not an obligation except for one who has an outstanding debt, or one holding something that belongs to another person, or has a duty. In these cases, a will is a duty so that the person concerned ensures that what he owes to others should be delivered after one's death. Allah makes it a duty of Muslims to deliver to their owners anything they hold in trust.<sup>477</sup>

#### Types of wills:

1. Obligatory: A will to ensure the repayment of debts and return things held in trust;
2. Recommended: A will made in favour of relatives who are not heirs and for charitable purposes;

<sup>475</sup> Ibn [Abidin, *Al-Durr al-Mukhtar*, vol. 6, p. 648.

<sup>476</sup> Ibn Qudamah, *Al-Mughni*, vol. 8, p. 390.

<sup>477</sup> Al-Zuhaili, *Al-Fiqh al-Islami*, vol. 10, p. 7,443.



3. Reprehensible: A will made in favour of people who indulge in sin;
4. Forbidden: A will created for a forbidden purpose, such as building a temple. A will is also forbidden if it amounts to harming any of one's heirs.
5. Permissible: A will made in favour of relatives and non-relatives who are well off.

A will is deemed to have been made in one of three ways: a verbal statement, a written document, and a clear signal.

**Conditions:** The testator must be a person who is qualified to make a donation, by being an adult of sound mind. There are, however, two exceptions: a young testator who makes a will regarding his own funeral and burial, as long as this is within what is reasonable, and a weak-minded person making a will for charitable purposes, such as teaching the Qur'an or building a hospital.

The beneficiary of one's will must not be an heir of the testator. The Prophet (peace be upon him) says: 'No will may be made in favour of an heir.' If the beneficiary kills the testator, the will is rendered invalid.

The maximum amount a person can bequeath by will is one-third of his or her estate. It is preferable to make it less than one-third. If the estate is small, it is better that no will is made, so that the whole estate goes to the heirs.

## Invalidity

A will becomes invalid if any of its conditions is not met. It is also invalid if the testator goes totally insane and his insanity continues until death. It is also invalid if the beneficiary dies before the testator, or if what is bequeathed is a certain object that perishes before the beneficiary takes possession of it.

## Inheritance

*Fara'id* is a branch of Islamic law that deals specifically with inheritance, its rules and how each heir's share is calculated. The word is taken from a root that means 'to assign, determine, etc.' In Islamic law, *fard*, means a share assigned by Islam to its recipient. In Islam, inheritance means the 'rightful share due to an heir on the death of a relative.'<sup>478</sup>

### What makes an heir

Three situations result in making heirs:<sup>479</sup>

1. Marriage: This means a valid marital contract must exist that has been made in the presence of the woman's guardian and two witnesses. Heirs are created even if the death occurs before the marriage is consummated, and even if the husband and wife have never been alone together. Allah says: 'You shall inherit one half of what

<sup>478</sup> Ibn 'Abidin, *Al-Durr al-Mukhtar*, vol. 5, p. 345.

<sup>479</sup> Ibid., vol. 5; p. 538; Al-Dardir, *Al-Sharh al-Saghir*, vol. 4, p. 619; Ibn Rushd, *Bidayat al-Mujtahid*, vol. 2, p. 355; al-Khatib al-Shirbini, *Mughni al-Muhtaj*, vol. 3, p. 4; al-Bahuti, *Kashshaf al-Qinal*, vol. 4, p. 448. Ibn Qudamah, *Al-Mughni*, vol. 6, pp. 304 and 326.

your wives leave behind’ (4: 12). This is a general statement that applies in all cases.

2. Blood relations: This refers to a relationship created by reason of birth, and applies to near or distant relatives. It includes parents, ancestors, offspring and others.
3. *Wala’*: which is a contractual relationship between two persons, one of whom has no heir through blood relations. He says to the other person: “You are my *waliy* (i.e. relation). You inherit me when I die, and you pay the compensation due of me if I commit a crime of manslaughter or a lesser crime.” According to the Hanafi school of *Fiqh*, such a contract initiates a reason of inheritance, but the majority of scholars do not uphold this relationship.

## What prevents inheritance

Three reasons prevent inheritance:

1. Murder: All scholars agree that a deliberate murder is a cause that precludes inheritance. The murderer cannot inherit from his victim. The Prophet (peace be upon him) says: ‘A murderer takes nothing of the estate.’<sup>480</sup>
2. Slavery: During the time when slavery was a recognized system, slaves could not inherit.
3. If the heir and his deceased relative belonged to different faiths. The Prophet (peace be upon him) says: ‘A Muslim

<sup>480</sup> Related by al-Daraqutni, *hadith* No. 4,573; al-Bayhaqi in *Al-Sunan al-Kubra*, vol. 6, p. 220.



does not inherit from an unbeliever, nor does an unbeliever inherit from a Muslim.<sup>481</sup>

It should be absolutely clear that no one may, under any circumstances, deprive an heir of his or her share of inheritance, nor is it up to anyone to give any heir more than the share to which that heir is entitled under the Islamic system of inheritance.

## The heirs

Heirs may be males or females. There are nine types of male relatives: 1) son; 2) grandson and lower male grandchildren;<sup>482</sup> 3) father; 4) grandfather and higher male grandparents; 5) brother or half-brother; 6) nephew who is the son of a half-brother who has a different mother. If the deceased has the same mother then his nephew does not inherit; 7) paternal uncle; 8) son of a paternal uncle who is a full brother of the deceased's father or a half-brother born to the same father; 9) husband, as Allah says: 'You shall inherit one half of what your wives leave behind' (4: 12).

Similarly, there are six types of female heirs: 1) daughter; 2) granddaughter who is the daughter of a son; 3) mother; 4) grandmother; 5) sister or half-sister; 6) wife, as Allah says: 'They (i.e. your wives) shall inherit one quarter of what you leave behind' (4: 12).

<sup>481</sup> Related by Muslim, *hadith* No. 1,614.

<sup>482</sup> i.e. great-grandchildren, etc.



## Types of heirs according to their inheritance

1. Those who inherit assigned shares, known as *fard*: There are seven types of these heirs: husband, wife, the two grandmothers, mother and her two sons, i.e. the full and the half brothers of the deceased.
2. The heirs who do not have assigned shares. There are 10 of these, known as *ta[sib*: son, grandson, full brother and his son; half-brother from the same father and his son; full paternal uncle and his son; paternal uncle from the same father and his son.
3. Heirs who inherit as *fard* in one capacity and *ta[sib* in another, combining both. These are the father and the grandfather.
4. Heirs who inherit as *fard* in one capacity and *ta[sib* in another but do not combine both. These are the ones who jointly inherit one half of the estate, except the deceased's husband, and the ones who jointly inherit a share of two-thirds.

Altogether, there are 21 kinds of relatives who may be heirs with assigned shares. The assigned shares for them differ according to the type of the relationship with the deceased and the presence or absence of other heirs, and may be one-half, one-quarter, one-eighth, two-thirds, one-third and one-sixth.

**One: Five kinds of heirs may take a share of one-half:**

1. The husband, when his deceased wife has no male or female offspring by that marriage or an earlier one.
2. The deceased's daughter, when she has no siblings, male or female, who are also heirs of the deceased.
3. The deceased's son's daughter, when she is the only heir.
4. The deceased's full brother, when he has no siblings to share with him and the deceased has neither offspring nor parents or grandparents.
5. The deceased's half sister born to his father, when she has no siblings to inherit with her, and the deceased has neither offspring nor parents or grandparents, nor a full brother or a full sister.

**Two: Two kinds of heirs may take a share of one-quarter:**

1. The husband, when his deceased wife has another heir who is a son, a daughter or a grandchild.
2. The wife, when her deceased husband has no offspring to inherit from him.

**Three: Heirs who take a share of one-eighth.**

This applies to the deceased's wife, or wives, when her husband has offspring to inherit from him.<sup>483</sup>

**Four: Four kinds of heirs together take a share of two-thirds:**

1. The deceased's daughters, when their father has no son to share with them. Whether there are two daughters or more, they will share equally two-thirds of the deceased's estate.

---

<sup>483</sup> Needless to say, the same rules apply if the deceased is a man or a woman. When we say 'no offspring to inherit from him' we mean 'from him or her'.

2. The deceased's son's daughters, when the deceased has neither children nor a grandson. If there are two or more such granddaughters, they equally share two-thirds of the deceased's estate.
3. The deceased's full sisters, when there are two or more of them and they have no full brother to share with them, and the deceased has no offspring to inherit from him.
4. The deceased's half-sisters born to his father, when there are two or more of them and they have no brother to share with them, and the deceased has no offspring, full brothers or full sisters to inherit from him.

#### **Five: Two kinds of heirs inherit a share of one-third:**

1. The deceased's mother, when the deceased has no offspring and no group of siblings to inherit from him.
2. Half brothers born to the deceased's mother, when the deceased has neither offspring nor parents or grandparents to inherit from him.

#### **Six: Seven kinds of heirs take a share of one-sixth:**

1. The deceased's father, when the deceased has children or grandchildren.
2. The deceased's grandfather, when the deceased has children or grandchildren.
3. The deceased's mother, when the deceased has offspring, and also when the deceased has no offspring but has siblings.
4. The deceased's grandmother, when the deceased's mother has already died.



5. The deceased's son's daughter, when she has no brother to inherit with her, and when the deceased has no higher offspring other than an heir who is entitled to a share of one-half. This granddaughter takes a share of one-sixth only when there is another heir inheriting one-half.
6. The deceased's half sister born to his father, when she has no brother to inherit with her, but the deceased must have a full sister who takes a share of one-half.
7. The deceased's half brother or half sister born to his mother, when a) the deceased has no offspring to inherit from him; b) the deceased has no male ancestors; and c) there is only one half brother or one half sister.

**Ta[sib** means the presence of heirs known as the *[asabah*, who inherit but have no pre-determined shares. If there is only one of them, and no heirs with assigned shares, that single heir takes all the property. If the single *[asabah* heir is joined by heirs who have assigned shares, he takes what remains after the other heirs take their assigned shares. The Prophet (peace be upon him) says: 'Give the assigned shares to the heirs entitled to them and what remains goes to the closest male.'<sup>484</sup>

There are three types of *[asabah*: 1) the person himself is *[asabah*; 2) the person becomes *[asabah* because of the presence of another; and 3) the person becomes *[asabah* when joined with another.

<sup>484</sup> Related by al-Bukhari, *hadith* No. 6,737; Muslim, *hadith* No. 1,615.

## Exclusion

This refers to the prevention of an heir from taking all or part of his or her share because of the presence of another who has a stronger claim. There are two types of exclusion:

1. A cause that prevents inheritance: There are three situations where this type of exclusion might apply, as we have noted: being a slave, killing the deceased and following a religion other than Islam. If any of these causes applies to an heir, it excludes that heir from inheriting. It is as though he or she did not exist, no matter what relationship he or she had with the deceased.
2. Exclusion of personnel: The most common form of exclusion, which works in two ways: a) Total exclusion, which means that the heir is disqualified and receives nothing. It may apply to any heir except six: father, mother, husband, wife, son and daughter; b) Partial exclusion, which means reducing the heir's share.



← **RULINGS OF** →  
**ISLAMIC LAW**  
**A SIMPLIFIED PRESENTATION**

Translated by

**Adil Salahi**

Edited by

**Dr. Assim Lugman Alhakeem**

**Dr. Ali Bahaeldin Shehata**

funding, translation and editing for this project supervised by osoul global center

[www.osoulcenter.com](http://www.osoulcenter.com)