

- The testator/testatrix is obligated to make a Wasiyyah (bequest) for the discharging of expiation (Kaffarah/Fidya) of outstanding religious obligations such as missed Salah, missed fasts, unfulfilled compulsory Hajj, etc. If such a bequest was not made, the executors may not discharge such religious obligations from the estate, unless all the heirs collectively consent to the obligation being discharged from the estate.
- A Wasiyyah (bequest) can only be made for a non-heir. A bequest cannot be made for an heir. The executors are only obliged to fulfil bequests up to one third of the estate.
- Be cognisant of the legal proprietary consequences of the different matrimonial regimes.
- Copies of the Will should be kept safely and easily accessible when required.
- An updated record of the following should be kept so that they could be assessed easily

A	Creditors
B	Amanah (items entrusted to one for safe keeping)
C	Unfulfilled religious obligations
D	Debtors
E	Any other information of importance
F	Clarification of Shari ownership of assets



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PREPARATION & EXECUTION OF AN ISLAMIC WILL

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Importance of making out a Will

Preparing and concluding an Islamic Will with all its requirements is an important duty of a Muslim.

Nabi ﷺ said: **“It is not correct for a Muslim who has something to bequeath to allow two nights to pass, without having such a testament written.”** (Muslim)

Hazrat Ibn Umar ؓ says: **“After hearing this from Rasulullah ﷺ, I did not allow one night to pass by me except that I had my Wasiyyah (bequest) written down.”** (Muslim)

The formalisation of a Will becomes more imperative for Muslims living within a secular state, as death intestate (i.e. without leaving a Will) shall result in the law of the land taking precedence over Islamic law.

Nabi ﷺ mentioned that a person who has prepared a Will and passes away, has died on the straight path, the path of Sunnah, on piety and martyrdom and upon forgiveness. (ibn Majah)

Therefore, one should not delay in making out an Islamic Will with the guidance of Ulama.

The Will must conform to the Shariah

It is important that the Will is in conformance with the Islamic Law of

Succession. Estate distribution is not discretionary. The Qur'an Shareef provides divine guidance on who are the Islamic heirs of a person and what proportion each heir is entitled to.

The heirs of a deceased are determined only at the time of death as it is possible that some family members who would be heirs may predecease the testator. Furthermore, it is not permissible to favour or deprive an heir by stipulating shares or specific items to be inherited after one's demise. Additionally, any gift executed in one's lifetime must fulfil the Islamic criteria of gifting.

Nabi ﷺ said, **“Verily a man or woman may devoutly obey Allah for sixty years, yet when death nears, they act wrongly (in making out) their Will and thereby become eligible of Hell fire.”** (Tirmizi, Abu Dawood)

Administration of the Estate

Whatever the deceased person owned at the time of death in the form of personal items, assets, property, moveable or immovable, cash or kind, form part of the estate. All items of the deceased, major or minor in value fall within the estate and cannot be disposed or 'given away' to a non-heir or unilaterally dedicated to an heir without the collective consent of all the heirs. A common error in this regard is where family members allocate items to others as remembrance or for sentimental reasons without seeking the proper consent of all heirs. This is misappropriation of the

estate for which one shall be held accountable.

Sequence of distribution

The estate must be administered in the following sequence:

A	Payment of average burial and shrouding expenses. If a well-wisher voluntarily discharges the burial expenses, then this shall not be deducted from the estate
B	Payment of debts (even if the fulfilment of debts consume the entire estate)
C	Fulfillment of any bequest to discharge unfulfilled religious obligations or in favour of a non-heir
D	Distribution to the heirs

Guidelines for the testator/testatrix

- Keep all matters on record. Do not leave any ambiguity in transactions and dealings, debts, gifting of property, assets and items of high value.
- The testator/testatrix can appoint any number of executors. The Darul Ihsan standard Will has provision for three executors. Should the testator/testatrix wish to appoint more executors, this could be done by attaching a codicil to this effect.