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# Making an Islamic Will

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A clear and concise book by Sayyid Muhammad Rizvi explaining the necessity of making a will and the Islamic procedure of creating it.

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# Writing an Islamic Will

## [1. Is it necessary?](#)

Although the law (Canadian as well as Islamic) does not say that making of the will is a must, but by looking at the consequences of not having a will, it is necessary - both from legal aspect as well from the shari'ah aspect.

Firstly, if a person dies without a will, the government appoints an executor who will divide the estate among the heirs as he/she seems fit. The pay of the executor for this job will come out of your estate, and the government system takes it time in getting jobs done!

Secondly, from the shari'ah point of view, your heirs may get more or less than the shares specified for them in Islam. By not writing a will, you are leaving the door open for a non-Islamic authority to distribute your estate according to its own views.

So not having a will is costly as well as problematic from both Canadian and Islamic points of view. Considering the consequences, I think it is wâjib for a Muslim in Canada to have an Islamic will; more so when you realize that the law of the land allows you to do so.

## **2. The One-Third Option**

After a person dies, what is the relationship between him and his estate? There are three possibilities:

- He has full control over it through a will.
- He has partial control over it through a will.
- He has absolutely no control over it.

Islam has taken the middle position. It says that when a person dies, he still retains the right to decide about up to one-third of his entire estate. But as far as the two-third is concerned, the deceased person loses the right to dispose according to his wish. The two-third must be divided according to the shares specified by the shari'ah. (Most of these shares have been specified in the Quran itself.) This law is part of the over-all system which Islam has introduced for the distribution of wealth in society.

This right of disposing the one-third according to your own wish can be exercised only by making a will. You can do whatever you like with the one-third: give to a family-member, a relative, a friend, a charitable cause or organization, etc.

For example, you can use the 1/3 or a part of it to make -if you like- the shares of your wife or your daughter equal to those of your other children.

When the Qur'an talks about *wasiyyat* which is normally translated as "will", it refers to the will covering the one-third only. For example, it says,

***O you who believe! It is prescribed upon you that when death approaches one you - if he leaves behind plenty - then he should make a will (wasiyyah) for his parents and near relatives in the one-third. This is a duty upon the pious people. (2:177)***

Writing more than one-third to a person or a cause means depriving the potential heirs of their rightful share in the estate; and, therefore, it is considered unjust and wrong. The Qurân says,

***If a person fears that the testator is [wrongfully] inclined [to one party] or is sinning [by depriving the rightful heir in the will, and so that person intervenes between the testator and the potential heirs] and makes peace between them - then there is no sin on him. Allah is Forgiving, Merciful. (2:182)***

What has been described in this verse as wrongfully "inclining to one party" and "sinning by depriving the rightful heir" is related to the two-third of the estate.

### 3. What is the "estate"?

An "estate" is the collective name for everything that you own. The estate consists of the followings:

- all properties, goods and investments that are in your name.
- half of the specified portion of the goods and investments in which you are a co-owner.

The first type of property is very straight-forward. But there are certain cases in the second type which need explanation:

**Joint Account:** According to Canadian laws, with death of one spouse, the money becomes the property of the surviving spouse. Such a transfer of money is not valid in Islam: Islamically, half of the money in that account becomes part of the surviving spouse and the other half will become part of the deceased estate.

**House:** Houses are normally in the name of the couple. Such ownership can be of two types: common ownership and tenants in common. "Tenants in common" is also without any problem because when one spouse dies, his/her share becomes part of the estate.

But in "common ownership", there is a problem because with the death of one spouse, according to Canadian laws, the entire property becomes that of the surviving spouse. This is contrary to Islamic laws, which says that the surviving spouse gets his or her 50% and the remaining 50% becomes part of the estate of the deceased.

We will talk more about this below.

### 4. Wife's Share

Firstly, as the definition of the "estate" shows, a house jointly-owned by a couple is divided - according to the shari'ah - into two: half becomes part of the estate of the deceased, and the other half was from before the property of the surviving spouse.

Secondly, according to the shari'ah, the wife is not entitled to land of her husband (whether an agriculture land or a residential lot): she only inherits the house on the land according to her proportional shares in inheritance.

In common ownership case, the wife is the owner of 50% of the house and the land; the other 50% becomes part of her husband's estate from which she will inherit 6.25% of the house. So in the end, the wife becomes the owner of 56.25% of the house and 50% of the land.

Both the above rules (# 3 & 4) create practical problems in this part of the world; therefore, I suggest the following:

- Either give the house to your wife during your life-time
- Or, if the value of the 50% of the land is within the one-third of your entire estate, then you can write that land to your wife in your will. In this way, half of the land is her property from before and the other half will go to her on strength of the 1/3 option in your will. Actually you can do this for the entire 50% of your residential property (house and land together) if it falls within the 1/3 of your estate. In theory it will work out like this:

- 50% of the land and house belongs to your wife
  - 6.25% of the house is your wife's share of inheritance
  - 50% of the land + 43.75% of the house goes to her by using the 1/3 option
- Or, if the value of the 50% of the land is more than the one-third of your estate and your children are mature (bâligh), then discuss it with them and ask for their consent to write the entire house for your wife in the will. If they give the consent (which is irrevocable), then you can write the house to your wife in the will even if it is more than her proportional share of inheritance.

## **5. Executor or Executrix**

(A) It is a normal practice to appoint your spouse or another family member as the executor of your will. There is nothing wrong with this. The only conditions which are necessary for an executor/executrix is he or she should be bâligh, sane, and Muslim. It is not necessary for him/her to be `âdil; trustworthiness would be a sufficient quality for an executor.

(B) I am told that by making your children the heirs of their shares, your children will end up paying tax on that; whereas if your wife becomes the heir of everything than no tax is applied. If this is true, than you can do the following:

You can make your wife the executrix of your will and also leave everything to her – BUT she must know (through a supplementary private will or a letter) that she owns only her specified share according to the shari'ah and she has to hand over the shares of her children when they become mature enough (not just bâligh) to handle their own finances.

(C) If you accept to be an executor for someone's will, then it becomes wâjib for you to fulfill your duty. You can only reject this responsibility while the testator is alive; you cannot reject this role after his/her death.

## **6. Guardian of Children**

In this part of the world, it is very important to write in your will about the guardian and custodian of your children. Under normal circumstances, the surviving spouse is made the guardian, and this is indeed the best decision.

Here, for the sake of record, I would like to mention the conditions which must be found in the guardian of your children. The guardian must be a Muslim, sane, and trustworthy. Those who have the right of custody of children (in order of preference) are: father, mother; paternal grandfather; and then anyone specifically appointed as the guardian of the children.

However, the duty of maintenance for the children falls upon the following (in order of preference): father; paternal grandfather; mother; other grandparents collectively.

The last person in this list can be from outside the family, but one must be very careful in selecting such a person. The most important condition is that he/she besides being trustworthy must also be a Muslim who will raise the children according to the teachings of Islam.

# The Circle of Heirs

- Even a single person from the inner circle will exclude those who are outside
- Even a single person from the smaller square will exclude those who are outside
- The surviving spouse can never be excluded by any blood relative

## Basic Shares of the Most Common Heirs

Heir	Children of Deceased	Basic Shares
FATHER	deceased had a child	16.66% (1/6)
	deceased had no child	whatever remains after share of the mother and/or the spouse
MOTHER	deceased had a child or brother (*)	16.66% (1/6)
	deceased had no child or brother (*)	33.33% (1/3)
HUSBAND	wife had a child	25% (1/4)
	wife had no child	50% (1/2)
WIFE	husband had a child	12.5% (1/8)
	husband had no child	25% (1/4)

- CHILDREN:
1. Whatever remains after giving the shares of the parents and/or the surviving spouse.
  2. a male child gets twice the share of a female

\* - In presence of a parent (or a grandparent) or a child (or a grandchild), the brother of the deceased does not get anything. However, he affects the share of the mother: instead of 1/3, it becomes 1/6.

## List of Charts: explaining 36 most common divisions of an estate

### [Two Generation Heirs](#)

(Spouse + Children)

#### [1. Wife + Daughter + Son](#)

wife (1/8); male child gets twice the share of female child

## **2. Husband + Daughter + Son**

husband (1/4); male child gets twice the share of female child

## **3. Wife + Daughter + Sons**

wife (1/8); male child gets twice the share of female child

## **4. Husband + Daughter + Sons**

husband (1/4); male child gets twice the share of female child

## **5. Wife + Daughters + Son**

wife (1/8); male child gets twice the share of female child

## **6. Husband + Daughters + Son**

husband (1/4); male child gets twice the share of female child

## **Three Generation Heirs**

(1 Parent + Spouse + Children)

## **7. Parent + Wife + Daughter + Son**

father or mother 1/6; wife 1/8; male child gets twice the share of female child

## **8. Parent + Husband + Daughter + Son**

father or mother 1/6; husband 1/4; male child gets twice the share of female child

## **9. Parent + Wife + Daughter + Sons**

father or mother 1/6; wife 1/8; male child gets twice the share of female child

## **10. Parent + Husband + Daughter + Sons**

father or mother 1/6; husband 1/4; male child gets twice the share of female child

## **11. Parent + Wife + Daughters + Son**

father or mother 1/6; wife 1/8; male child gets twice the share of female child

## **12. Husband + Daughters + Son**

father or mother 1/6; husband 1/4; male child gets twice the share of female child

(Parents + Spouse + Children)

### **13. Father + Mother + Wife + Daughter + Son**

father 1/6; mother 1/6; wife 1/8; male child gets twice the share of female child

### **14. Father + Mother + Husband + Daughter + Son**

father 1/6; mother 1/6; husband 1/4; male child gets twice the share of female child

### **15. Father + Mother + Wife + Daughter + Sons**

father 1/6; mother 1/6; wife 1/8; male child gets twice the share of female child

### **16. Father + Mother + Husband + Daughter + Sons**

father 1/6; mother 1/6; husband 1/4; male child gets twice the share of female child

### **17. Father + Mother + Wife + Daughters + Son**

father or mother 1/6; wife 1/8; male child gets twice the share of female child

### **18. Father + Mother + Daughters + Son**

father or mother 1/6; husband 1/4; male child gets twice the share of female child

## **Sample of an Islamic Will**

### ***In the name of God, the Beneficent, the Merciful***

This is the Last Will and Testament of me \_\_\_\_\_ of \_\_\_\_\_ made the \_\_\_ day of \_\_\_\_\_ 1993.

1. I **REVOKE** all former Wills, Codicils, and Testamentary Dispositions previously made by me.

2. I **APPOINT** \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ to be the joint Executors and Trustees of this my last Will and Testament. BUT IF anyone or more of the above named persons should refuse to act, predecease me, or die before the trusts hereof have been fully performed, THEN I APPOINT \_\_\_\_\_ of \_\_\_\_\_ to be the Executor and Trustee of my Will and Testament in the place and stead of anyone or more of the above named persons, and the expression, `my Trustee, used throughout include the Trustee for the time being, whether original or substitution.

3. I **GIVE, DEVISE AND BEQUEATH** all my real and personal property of every nature and kind, wheresoever situated, including any property over which I may have a general power of appointment, to my Trustees upon the following trusts, namely:

a) subject to my express direction to the contrary, to use their discretion in the realization of my estate with the power to my Trustees to sell, call in or convert into cash at such time or times and in such manner and upon such terms, either for cash or credit or part cast and part credit as my Trustees may in their absolute discretion decide upon or to postpone such

conversion of my estate or any part or parts thereof for such length of time as they may think best and I hereby declare that my said Trustees may retain any portion of my estate in the form in which it may be at the time of my death, notwithstanding that it may not be in the form of an investment in which Trustees are authorized to invest trust funds and whether or not there is liability attached to any such portion of my estate for such length of time as my Trustees in their absolute discretion deem advisable and my Trustees shall not be held responsible for any loss that may happen to my estate by reason of their so doing;

b) to pay my just debts, funeral and other testamentary expenses, all succession duties, inheritance and death taxes, and all expenses necessarily incidental thereto, to be paid and satisfied by my Trustees as soon as conveniently may be after my death;

c) to pay such religious taxes (like khums and kaffarah) and other expenses for hiring people to do qaza prayers and fasts;

d) to divide and pay or transfer the balance of my estate as soon as is reasonably practicable after my death as follows:

(i) to my eldest son, \_\_\_\_\_, my dress in which I die, my ring and my personal Qur'an;

(ii) to my wife / husband....

(iii) to my father....

(iv) to my mother.....

(v) to my son, \_\_\_\_\_, .....

(vi) to my daughter, \_\_\_\_\_, .....

4. The share of each child of mine as determined above shall be paid or transferred to such child of mine, if he or she is over the age of twenty-one at the time of my death, for his or her own use absolutely.

If however, any child of mine, whether male or female, is under the age of twenty-one at the time of my death, my Trustees shall hold and keep invested the share of such child of mine and the income from and capital of such share or so much thereof as my Trustees in their discretion consider advisable shall be paid to or applied for maintenance, education and benefit of such child of mine until he or she reaches the age of twenty-one, at which time my Trustees shall pay or transfer the amount remaining of the share of such child, if any, to such child for his or her own use absolutely.

5. I **NOMINATE** CONSTITUTE AND APPOINT \_\_\_\_\_ of \_\_\_\_\_ to be the Guardian of my infant children. I direct the Guardian of my infant children to raise them as Muslims according to the rules, customs and teachings of the Shi'ah Ithna `Ashari sect of Islam.

6. In the event that my said wife should predecease me, then I direct my Trustees to distribute the share that my wife would have received had she survived me amongst my parents and my children alive at my death in the same proportion and in the same manner as provided for in paragraph 3 (d) (i, iii to vi) of this my Will and the provisions of paragraph 4 of this my Will shall apply mutatis mutandis.

7. In the event that my mother or my father or both my mother and my father should predecease me, then I direct my Trustees to distribute the share that my mother or my father or both my mother and my father would have received had they survived me amongst my wife and my children alive at my death in the same proportion and in the

same manner as provided for in paragraph 3 (d) (i, ii, v to vi) of this my Will and the provisions of paragraph 4 of this my Will shall apply mutatis mutandis.

IN **WITNESS** WHEREOF I have to this my Last Will and Testament set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 1993.

SIGNED by the Testator and published and declared as and for his last Will and Testament, in the presence of us both present together at the same time who at his request and in his presence and in the presence of each other have hereunto subscribed our names as witnesses.

_____ Signature of Witness	_____ Signature of Witness
Name: _____	Name: _____
Address: _____	Address: _____
Occupation: _____	Occupation: _____

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