

# ESSENTIAL ELEMENTS IN ISLAMIC WILLS

Hajj Ahmad Thomson

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[A Glossary of Arabic Terms begins at page 11]

## **General Introduction**

In order to understand the needs of Muslim clients, it helps to know a little about Islam and Muslims: The Arabic word *Islam* means 'safe and sound' and 'submission' to the will of God. Muslims believe that there is only one God and that the Prophet Muhammad, blessings and peace be on him, was the last Messenger sent by God to man. The Arabic word *Allah* literally means 'the God'. Muslims believe that by following the example of the Messenger of Allah and his first sincere followers and by obeying what is commanded in the *Qur'an*, they are thereby submitting to God's will and will therefore be safe and sound both in this world and in the next.

In ascertaining the needs of Muslim clients more precisely, there are three main elements which have to be considered: *firstly*, the practice of the *Sunna* – which can be defined briefly as: 'the customary practice of a person or group of people. It has come to refer almost exclusively to the practice of the Messenger of Allah and to the first generation of Muslims;' *secondly*, the requirements of the *Shari'a* – which can be defined briefly as: 'lit. road, the legal modality of a people based on the Revelation of their Prophet. The final *Shari'a* is that of Islam;' and *thirdly*, the requirements of the law of the land.

Ideally Muslim clients should be in a position to follow the *Sunna* in accordance with the *Shari'a* while complying with the law of the land – which by virtue of *Article 9* of the *European Convention on Human Rights*, as incorporated into UK domestic law by virtue of the *Human Rights Act 1998*, guarantees their right to believe and worship and live and die as Muslims.

The *Shari'a* derives from the *Qur'an* – the original revelation which was revealed to the Prophet Muhammad, blessings and peace be on him, from God through the angel Jibril (Gabriel) – and the *Hadith* – the transmitted eyewitness accounts of what the Prophet Muhammad and his companions, blessings and peace be on him and them, said and did.

After the deaths of the Prophet Muhammad and his Companions, what they had learned was transmitted by a combination of action and memorisation. Inevitably situations arose which had not been encountered by the early Muslim community. Those who had to make legal judgements in such situations therefore had to struggle to arrive at a decision based within and on the basic parameters and principles of the *Shari'a*. This is known in Arabic as *ijtihad*.

The science of the application of the *Shari'a* is called *fiqh* – the equivalent of 'jurisprudence'. A *faqih* (plural, *fuqaha*) is someone who has sufficient knowledge of the *Shari'a* to be able to make a judgement in accordance with it. A *fatwa* is a legal opinion. A *qadi* is a judge who is able not only to make a judgement, but also to see that it is carried out.

As with today's judges, some *fuqaha* were better at reaching an informed and reliable decision than others. In the second and third generations of Muslims, leading *fuqaha* emerged and schools of jurisprudence formed.

Although the essential blueprint remained the way of the first Muslim community of Madina, different forms of *ijtihad* emerged, often in different geographical locations, each within the parameters of the *Shari'a*, although not necessarily identical. These are known as *madhhabs*. The word '*madhhab*' literally means 'the way he went' – so *fiqh* is linked primarily to behaviour and action, not to theory and speculation.

One of the main differences in *madhhab* was that between the two groups who came to be known as the Sunni and the Shi'a. This arose out of a difference of opinion as to who should have become the leader of the Muslim community after the death of the Prophet Muhammad, blessings and peace be on him. There are also different *madhhabs* within these two main groups.

The main Sunni schools of law which have survived up until today are the Maliki, Hanifi, Shafi'i and Hanbali schools. The main Shi'a school is the Jafari school.

Although the majority of Muslims today are Sunni Muslims, it does help to establish whether a Muslim client is Sunni or Shi'a. Since the majority of Muslims today are Sunni Muslims, these notes deal with the *Shari'a* as understood by Sunni Muslims.

One of the most important concepts which it is necessary to grasp is that of the different degrees of obligation within the *Shari'a*, ranging from what is permitted to what is forbidden – and from what is obligatory to what is a matter of personal choice:

- *Halal* means permitted.
- *Makruh* means disliked, but not forbidden.
- *Haram* means forbidden.
- *Fard* means obligatory.
- *Wajib* means necessary, but not obligatory.
- *Mustahab* means recommended, but not necessary.
- *Sunna* means what the Prophet and his Companions usually did although not obliged to do so.
- *Nawafil*, the plural of *nafla*, means voluntary, but well-rewarded.

For those who are interested, more detailed definitions of the Arabic terminology used in these notes appear in the *Glossary of Arabic Terms*.

Bearing this overview and these basic concepts in mind we can now begin to approach how the *Shari'a* deals with inheritance.

## **General Overview**

There are approximately 2 million Muslims in the United Kingdom today. Most of them will want their estate to be distributed in accordance with the teachings of Islam after their deaths, since Muslims believe that this will have beneficial results for their spirits on the other side of death in the next world.

If a Muslim dies intestate in the United Kingdom, the domestic laws of intestacy will be applied. The criteria applied by virtue of these laws are not the same as those applied under Islamic personal law.

A growing number of Muslims are beginning to realise that the division of their estate in accordance with Islamic personal law will be facilitated if they leave an Islamic Will which expresses this wish and which is also valid as regards the requirements of English law.

As the demand for Islamic Wills grows, an increasing number of solicitors wish to provide an Islamic Wills service for their Muslim clients. In order to provide a reliable service, they need to know what this entails.

### **Why Islamic Wills are different**

The requirements of the *Shari'a* as regards what happens to a deceased Muslim's estate are more specific than those of UK domestic law.

The basic rule is that (after payment of any debts, funeral expenses, taxes and testamentary administration charges) at least two thirds of a deceased Muslim's estate must be distributed amongst surviving relatives in fixed shares as prescribed by the *Qur'an*. Up to one third of the estate may be bequeathed to anyone (including for example a charity) not entitled to a fixed share.

In the absence of any bequests of up to one third, the entire estate will be distributed amongst the surviving relatives in the fixed shares stipulated by the *Shari'a*.

A Muslim is not permitted by the *Shari'a* to change or ignore these basic principles, although as we shall see beneficiaries are permitted to *voluntarily* accept a smaller share than their entitlement in order to fulfil a testator's wish. There will inevitably be some nominal Muslim clients who will wish to re-write the *Shari'a* in some way – but a practising Muslim will avoid doing this, so as not to incur the displeasure of the Almighty in both worlds.

In any Muslim country where Islamic personal law is part of the law of the land, in the absence of any Islamic Will, distribution of the deceased's estate in accordance with the fixed *Qur'anic* shares will usually be implemented automatically as a matter of custom.

Since Muslim personal law has not yet been recognised by the domestic law of the UK, this automatic distribution will not take place when a Muslim dies intestate in the UK – unless of course those who inherit in accordance with the laws of intestacy then proceed to conduct a further *voluntary* re-distribution of the estate in accordance with the *Shari'a*.

Furthermore, since UK law does not recognise Islamic marriages or divorces, an Islamic Will is often the only means by which Muslim spouses and their dependents can be guaranteed the shares to which they are entitled under Islamic law.

This is why it is prudent for Muslims in the UK to write an Islamic Will. For them the following *hadith* has an extra significance:

**Malik related to me from Nafi' from 'Abdullah ibn 'Umar that the Messenger of Allah, may Allah bless him and grant him peace, said: "It is the duty of a Muslim who has anything to bequeath not to let two nights pass without writing a Will about it." (Al-Muwatta' of Imam Malik: 37.1.1)**

## **Essential Elements in an Islamic Will**

Under the *Shari'a*, a Will does not have to be in writing, but clearly for the purpose of a valid Islamic Will in the UK, it does.

The main considerations are these:

**Firstly:** the basic requirements of UK domestic law have to be satisfied :

- The testator must be identified, be at least 18 years old, be of sound mind;
- It must be the *last* Will – previous Wills and Codicils must be revoked;
- The Will must be dated and signed in the presence of and attested by two witnesses who are not themselves a spouse or beneficiary under the Will.

**Secondly:** administration of the estate will be assisted by clauses which :

- appoint executors (friends, relatives or lawyers);
- appoint guardians of minors;
- authorise professional charges.

Where the estate is large, it may well be prudent for a testator to appoint a firm of solicitors as his or her executor.

**Thirdly:** The Islamic element provisions have to be clearly expressed. These will include:

(i) The basic intention clause which can be expressed in terms such as :

“I wish my estate to be distributed and where relevant invested in accordance with the *Shari'a* of Islam, following the *fiqh* of the *madhhab* of *Imam* ....., and after all or any funeral expenses, debts, taxes and professional and testamentary expenses have been paid out of my estate by my executors they shall hold what remains of my estate on trust to be distributed in accordance with the following provisions:”

- (ii) the clause(s) which deal with the ‘up to one third of the estate bequests’;
- (iii) the clause(s) which deal with the ‘at least two thirds of the estate fixed shares’;
- (iv) a residuary clause dealing with what should happen to the estate if there are no surviving relatives and also what should happen if any part of the Will fails for any reason;
- (v) a clause dealing with how any minors’ shares should be held on trust and invested and expended for the child’s maintenance, education or benefit;
- (vi) an (optional) clause in which the testator passes on a last message or general advice or requests to his or her beneficiaries.
- (vii) a clause dealing with funeral arrangements.

## **Islamic Element Provisions in Greater Detail**

### 1. Basic Intention Clause

- It is relatively easy to ascertain which *madhhab* a client follows simply by asking. If a client is not certain, most Malaysian, Indonesian and East African Muslims follow *Imam Shafi'*, most Asian and Turkish Muslims follow *Imam Abu Hanifa*, most North African Muslims follow *Imam Malik*, and many Middle Eastern Arabs follow *Imam Ibn Hanbal*.

## 2. Up to One Third of the Estate Bequests

- Specific items or sums of money can be specified.
- If, for example, a husband makes a bequest to an ex-wife, he should not leave her more than what she would receive if she was still married to him at his death.
- If, when it comes to the division of the estate, it transpires that the bequests are more than a third there are two options : either the executors have to reduce the bequests proportionately, or those entitled to fixed shares may (but do not have to) agree to accept a diminution in their shares.

## 3. At Least Two Thirds of the Estate Fixed Shares

- Specific items or sums of money can be specified as part of any particular relative's shares.
- If, when it comes to the division of the estate, it transpires that the value of any specified item(s) is more than the value of the share to which the relative is entitled there are two options : either the executors have to reduce or ignore what has been specified, or the other relatives entitled to fixed shares may (but do not have to) agree to accept a diminution in their shares.
- It is quite common for a testator (especially if relatively poor) to say that he or she wants all the estate to be divided amongst the surviving relatives in accordance with the *Shari'a* without specifying any particular item for any particular relative. This makes both the drafting of the Islamic Will and the subsequent administration of the estate easier.

## 4. Residuary Clause

- Under the *Shari'a*, if a person makes no 'up to one third bequests' and has no surviving relatives, then his or her estate goes to *the Bayt al-Mal* (the equivalent of the Treasury), to be spent on social welfare.
- In the UK, in the absence of a *Bayt al-Mal*, the residuary clause can specify one or more charities (and if more than one, then in what proportions). If the client wishes to name an overseas charity, it is important to identify it clearly. Where the value of the estate is potentially in excess of the nil rate band, it is important to bear in mind that only bequests to *registered* charities will be exempt from Inheritance Tax.
- As regards any residue which arises as a result of any part of the Will failing for any reason, it is prudent to direct that this be held by the executors on trust to be distributed to those in need in the Muslim community in accordance with and guided by the *Shari'a* of Islam.

## 5. Minors

- It is important to stipulate at what age minors who are beneficiaries may be given their inheritance, especially if it is beyond the age of 18 – for example,

21 or 25. Instructions can be given as to how their shares are to be invested while they remain minors and in what way provision can be made from it for their maintenance, education or benefit.

- Most Muslims will want to stipulate that any investment made should not involve usury, since this is a practice which was expressly forbidden by all of the Prophets, including Moses, Jesus and Muhammad, blessings and peace be on them.

#### 6. Last Messages

- Some testators will want to have one final word from ‘beyond the grave’, often expressing their love for those they have left behind or giving advice.

#### 7. Funeral Arrangements

- Most Muslims do not wish their bodies to be subjected to a *post mortem* examination or to donate organs. This is because the Prophet Muhammad, blessings and peace be on him, forbade mutilation of the dead and because he said, “Breaking a dead man’s bone is like breaking it when he is alive.” (*Sunan* of Imam Abu Dawud: 14.1193.3201).
- Specifying this wish in an Islamic Will may help to avoid an unnecessary routine *post mortem* examination.
- Sometimes first generation immigrant Muslims wish to be buried in the land of their childhood. When drafting the Will, they should be reminded that if they stipulate this in their Will, as well as being costly, the dead body is usually eviscerated, emptied of blood and filled with alcohol before being flown abroad. This may persuade them to choose burial in a Muslim cemetery in the UK instead.

### **Calculating Fixed Shares**

- The beauty of the *Shari‘a* is its simplicity and certainty. It is *not* necessary for the testator to try and calculate the shares to which surviving relatives of your client will be entitled when he or she dies.
- This is because no one knows at the time they are writing their Islamic Will, which of their relatives will be alive when he or she dies. This is not a problem. There is no need for a Muslim to try and figure out which of their relatives will still be alive when he or she dies in order to make sure that they will receive something. Whoever administers the estate will ascertain which relatives are still alive and what fixed shares they are automatically entitled to inherit by applying the criteria of the *Shari‘a*.
- It is beyond the scope of this brief summary to identify all the relatives who are entitled to fixed shares and what these shares are (see *Part V of Shari‘ah: Islamic Law*<sup>1</sup> by ‘Abd ar-Rahman I. Doi, revised by ‘Abdassamad Clarke, Ta-Ha Publishers Ltd, 2008, and also *Parts V and VI of Muslim Personal Law*<sup>2</sup> by Dr Hashim Mahdi, Ta-Ha Publishers Ltd, 2009, for a more detailed summary).

The basic principles are these :

- (i) The closest relatives (husband, wife, son daughter, father, mother) will always inherit a share and will always have precedence over and exclude more distant relatives.
  - (ii) In the absence of the closest relatives, the more distant relatives (such as grandparents and grand children, for example) will then be entitled to inherit fixed shares.
  - (iii) A male receives twice the share of a female (because the men are responsible for the well being of the womenfolk in their family which means that much of the men's "double" share is in fact spent on the women) – whereas the women do not have a corresponding duty to maintain the men, which means that amongst practising Muslims, the womenfolk in fact often end up "better off" than the menfolk.
- If the executor(s) of the deceased's estate do not know how to calculate the fixed shares, the prospect of doing so can appear daunting. At present there are two options :
    - (iv) You can find an '*alim*' (a person who has knowledge) who knows this science from your local Muslim community to help you; or
    - (v) You can visit the following link where there is a software that will do the calculation for you: <http://www.islamicsoftware.org/irth/irth.html>.

This software is useful when a client wants to know, "Who would inherit what if I were to die today?"

This software is also particularly useful as regards ascertaining whether or not there may be more distant relations (for example, grandchildren or nieces and nephews) who are unlikely to be entitled to fixed shares because they will be excluded by the near relatives from automatically inheriting a fixed share. If this appears likely, then the client can make specific bequests to the more distant relations out of the one third which can be left to anyone – but these should not be for more than the shares which they would have received if inheriting a fixed share because the closest relatives had predeceased the testator.

### **Inheritance Tax Considerations**

- Where potentially large estates are involved and therefore inheritance tax liability could be seriously large, it makes perfect sense to avoid it. As house prices continue to rise (indicating the loss of purchasing power of modern paper and digital currencies which have no intrinsic value), an increasing number of estates will be liable to Inheritance Tax ("IHT") unless prudent steps are taken. These include :
  - (vi) Making *inter vivos* gifts, preferably seven years before death.
  - (vii) Where both spouses are still alive and hold property as joint tenants, the joint-tenancy can be severed so that they each have their own distinct share in the property, which means that when the first spouse dies, the size of his or her estate will be appreciably smaller than it otherwise would have been. Of course after the first spouse has died, if not before, IHT planning will become necessary.

- (viii) Adding the names of close relatives as registered tenants in common of the property. This reduces the size of each family member's potential estate. An arrangement such as this will usually only work if the family members know and trust each other.
- (ix) Since bequests between spouses are exempt from IHT, and where both spouses are alive, it often makes sense to have mirror Wills whereby the surviving spouse inherits everything – on the unwritten understanding that the surviving spouse will then voluntarily divide the estate between all the surviving relatives in accordance with the *Qur'anic* fixed shares. Not all surviving spouses are prepared to do this, especially if they are only Muslim in name but not in practice, so this arrangement will only work among those who trust each other.
- (x) Making a bequest of up to a third of the estate to a charity, since under English law, bequests to *registered* charities are exempt from inheritance tax. Also, the Prophet Muhammad, blessings and peace be on him, indicated that gifts such as these which continue to benefit people in this world also continue to benefit the state of the spirit of the donor in his or her grave, (which can be experienced either as a spacious place of light and bliss, or as a cramped place of darkness and torment).
- (xi) Setting up family trusts.
- (xii) Setting up a discretionary trust (within the Will) and also having a letter of wishes (not part of the Will) – the letter of wishes being the means whereby the estate will in fact be distributed in accordance with the Shari'a.

### **Contradictions between Shari'a Requirements & Inheritance Tax Planning**

- A practitioner is sometimes faced with a Muslim client who wishes to make an Islamic Will which on the face of it will not be cost effective. For example, it may be that if the whole estate is left to the surviving spouse, no IHT will be payable, whereas if it is divided between surviving relatives in accordance with Shari'a, then IHT will be payable on at least a percentage of the shares which do not go to the surviving spouse.

Some solicitors are reluctant to draft an Islamic Will in these circumstances for fear that once it becomes apparent how much IHT is payable, surviving relatives may sue them for negligence for not having advised the deceased better.

- A sincere Muslim testator, however, will always wish to have his or her estate distributed in accordance with the Shari'a, even if this means that full advantage will not have been taken of the limited dispensations which the law governing IHT provides. As far as a sincere Muslim is concerned, the reward for following the Shari'a in this world is the Garden in the next world – whose rewards far exceed whatever perks this life has to offer.

A competent solicitor, however, should know how to fulfill the client's wishes as well as minimizing IHT liability.



- It is because of the relative disadvantages that religious minorities suffer under the current IHT regime (not only Muslims, but also members of other religious minorities, including Jews), that the National Audit Office has been requested to consider ways of lessening the disproportionate impact of IHT on them.

Although in the eyes of the Shari'a IHT is an unjust tax which should be abolished, it has been recommended as an interim measure (bearing in mind that the burgeoning national debt has to be serviced until written off) that bequests to immediate family members (parents, brothers, sisters, spouses, sons and daughters) should all be exempt from IHT – and that this should apply to everyone in the UK.

### **Administration of the Estate : Practical Considerations**

- Another major consideration for practitioners is how a large asset such as a house can be 'divided' amongst several relatives, especially where title to it may still be subject to the terms of a mortgage agreement and/or the particular needs of one or more members of the family. There are several possibilities, including :
  - (xiii) The house can be sold and the net proceeds of sale divided in accordance with the shares of those entitled to shares by *Shari'a*. This would make sense, for example, if all the children have grown up and married and are living elsewhere and the surviving spouse decides to move to a smaller dwelling near one of the children.
  - (xiv) The surviving spouse wishes to remain in the house. The market value of the house is ascertained (on the day probate is granted). The values of the respective shares of those entitled to shares by *Shari'a* are calculated. The surviving spouse buys the others' shares, so that he or she owns the house completely.
  - (xv) The surviving spouse wishes to remain in the house, but does not have sufficient means to buy the others' shares. The other share holders agree that whilst retaining their shares in the house, he or she can continue to live in the house *either* until everyone decides on option (i) or (ii) above *or* until he or she dies, when her share will then be divided amongst those entitled to a fixed share in her estate under *Shari'a*.
  - (xvi) The others entitled to shares under *Shari'a* are always free to give part or all of their share to the surviving spouse (or anyone else) while they are alive, as it is theirs to do with as they wish. This could help with making option (ii) possible - but the bottom line is that if anyone entitled to a share wants that share, then no-one can make them give it up or accept less than it.

### **Conclusion**

At present, the art of drafting the Islamic Will in the UK is still relatively young. There is a basic Islamic Will precedent which can be adapted as needed at the back of *The Islamic Will*<sup>3</sup> by Hajj Abdalhaqq and Aisha Bewley and Ahmad Thomson. This is by no means a comprehensive precedent. Each person's circumstances are unique and accordingly so will be the provisions of his or her Will.

The basic precedent in *The Islamic Will* is not designed to cater for anyone whose estate's value is likely to be in excess of the Nil Rate Band ("the NRB") – in which case, a discretionary trust and a letter of wishes are necessary, the letter of wishes being the means whereby the estate will in fact be distributed in accordance with the Shari'a.

Unless you are specifically catering for high net worth clients, you will find that many Muslim clients just want straightforward Islamic Wills which are relatively easy to draft, especially where the value of their estates will clearly fall below the NRB.

Shia principles of inheritance do differ in some respects to the Sunni principles and accordingly anyone drafting a will for a Shia Muslim client would be advised to read *Islamic Wills*<sup>4</sup> by His Honour Judge Abbas Mithani QC which deals with Shia principles of inheritance and provides several precedents.

To the best of my knowledge, no Islamic Will has yet been challenged in the courts, but no doubt this will happen sooner or later and precedents will be established. Since there is no combination of relatives for which it is not possible to calculate their Qur'anic shares, a properly drafted Islamic Will should never fail for uncertainty.

During the last decade, various Islamic Wills services have been developed by a number of firms of solicitors. This has involved the formulation of a basic questionnaire (with accompanying explanatory notes) which facilitates the gathering of the information necessary to draft a client's Will – together with the information which will assist the executor trace the deceased's surviving relatives and all of his or her estate after the testator has died. There is a further Information Sheet to give to the client once the Will has been executed, informing him or her of the circumstances in which it will be advisable to make a new Will or a Codicil.

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## Notes

<sup>1</sup> *Shari'ah: Islamic Law (Part V)* by 'Abd ar-Rahman I. Doi, revised by 'Abdassamad Clarke, published by Ta-Ha Publishers Ltd, (ISBN 978 1 842000 87 8), can be purchased via [www.tahapublishers.com](http://www.tahapublishers.com).

<sup>2</sup> *Muslim Personal Law (Parts V and VI)* by Dr Hashim Mahdi, Ta-Ha Publishers Ltd, (ISBN 978 1 842000 102 8), can be purchased via [www.tahapublishers.com](http://www.tahapublishers.com).

<sup>3</sup> *The Islamic Will* by Hajj Abdalhaqq & Aisha Bewley and Ahmad Thomson, published by Dar Al-Taqwa Ltd, (ISBN 1 870582 35 7) can be purchased from Dar Al-Taqwa Bookshop, 7A Melcombe Street, London NW1 6AE.

<sup>4</sup> *Islamic Wills* by Abbas Mithani, published by the World Federation of Khoja Shia Ithna-Asheri Muslim Communities, (ISBN 0 9509879 3 X) can be purchased from the World Federation of K.S.I. Muslim Communities Islamic Centre, PO Box 60, Stanmore, Middlesex HA7 4JB.



## GLOSSARY OF ARABIC TERMS

- akhira* : what is on the other side of death; the world after this world in the realm of the Unseen.
- al-abkam*  
*al-khamsa* : ‘the five values’, the categories of *fard* or *wajib*, *mandub*, *mubah*, *makruh* and *haram*.
- ‘alim* : a Muslim who has sound knowledge of the *Qur’an* and the *Hadith*, and accordingly of the *Shari‘a* and the *Sunna*, and who puts what he or she knows into action.
- Allah* : The Lord of all the worlds and what is in them. *Allah* has ninety-nine Names all of which are from and within the One, *Allah*. *Allah*, the supreme and mighty Name, indicates the One, the Existent, the Creator, the Worshipped, the Lord of the Universe. *Allah* is the First without beginning and the Last without end. He is the Outwardly Manifest and the Inwardly Hidden. There is no existent except Him and there is only Him in existence.
- amir* : the one who commands, the source of authority in a situation; a military commander.
- ‘amm* : paternal uncle.
- ‘amma* : paternal aunt.
- ‘aql* : sane and able to reason, and therefore capable of making a valid bequest and inheriting wealth.
- ‘aql* : intellect, the faculty of reason.
- ‘asaba* : male relatives on the father’s side who take the remaining estate, if any, after the heirs with fixed shares have received their shares. Sometimes translated as “universal heir”.
- ashab*  
*al-fara’id* : those entitled to fixed shares of inheritance by the *Qur’an*. They are: father, father’s father however old, half-brother by the mother, husband, wife, daughter, son’s daughter, however young, full sister, consanguine sister, uterine sister, mother, and grandmother.
- asl* : the basic estate.
- Ayat*  
*al-Mawarith* : “the Verses of Inheritance Shares” in the *Qur’an* (4:11-12) which lay down the basic rules of inheritance.
- ‘awl* : adjustment, accommodation by reducing inheritance shares when the shares exceed the total estate.
- awqaf* : (*plural of waqf*) pious foundations.
- baligh* : someone who is an adult (cf. *bulugh*).
- Bayt al-Mal* : the ‘house of wealth’, the treasury of the Muslims where income from *zakat* and other sources – including the wealth of Muslims who die without leaving a Will or any relatives entitled to that wealth in accordance with the *Shari‘a* – is gathered for redistribution.

- bi'l-ma'ruf* : according to reasonable usage, in a correct and commonly acceptable manner.
- bulugh* : the age of puberty, physical sexual maturity.
- dayn* : debt – debts are paid first from the estate before it is divided between the heirs.
- deen* : the life transaction, the way you live and behave towards *Allah*. It is submission and obedience to a particular system of rules and practices. Literally it means the debt or exchange situation between two parties, in this usage the Creator and the created, or as some say between the conditioned and the unconditioned, the limited and the limitless, or the many and the One. *Allah* says in the *Qur'an* that surely the *deen* with *Allah* is *Islam*.
- dhur-rahm* : (plural *ulu'l-arham*) relatives who receive none of the fixed shares of inheritance and are not among the *'asaba*; blood relatives on the mother's side.
- dunya* : this world, not as a cosmic phenomenon, but as it is imagined, inwardly and outwardly. It has been compared to a bunch of grapes which appears to be in reach but which, when you stretch out for it, disappears.
- faqih* : (plural *fuqaha*), a person learned in the knowledge of *fiqh* who by virtue of his knowledge can give a legal judgement.
- far'id* : plural of *farida*, the fixed shares of inheritance as stipulated in the *Qur'an*. The shares are:  $\frac{1}{2}$ ,  $\frac{1}{4}$ ,  $\frac{1}{3}$ ,  $\frac{1}{6}$ ,  $\frac{1}{8}$ , and  $\frac{2}{3}$ .
- fard* : what is obligatory in the *Shari'a*. This is divided into *fard 'ayn*, which is what is obligatory on every adult Muslim; and *fard kifaya*, which is what is obligatory on at least one of the adults in any particular Muslim community. The knowledge of which relatives are entitled to what shares of a dead Muslim's wealth, for example, is *fard kifaya*.
- farida* : (plural *far'id*) share of inheritance.
- fatwa* : an authoritative statement on a point of law.
- fiqh* : the formal study of knowledge, especially the practice of *Islam*. It is the science of the application of the *Shari'a*. A practitioner or expert in *fiqh* is called a *faqih*.
- fiqh*  
*al-aqalliyat* : 'jurisprudence of [Muslim] minorities', a new name for an old area of jurisprudence that used to be called *fiqh an-nawazil* – or 'jurisprudence of momentous events'.
- fiqh*  
*an-nawazil* : 'jurisprudence of momentous events', an area of *fiqh* covered mostly by the Malikis, which is concerned with the *fiqh* for Muslims living in a minority situation.
- fuqaha* : the scholars of *fiqh*, who by virtue of their knowledge can give an authoritative legal opinion or judgement which is firmly based on what is in the *Qur'an* and the *Hadith* and which is in accordance with the *Shari'a* and the *Sunna*.

- hadd* : (plural *hudud*), Allah's boundary limits for the lawful and unlawful. The *hadd* punishments are specific fixed penalties laid down by Allah for specified crimes which break these limits.
- hadith* : the written record of what the Prophet Muhammad said or did, may the blessings and peace of *Allah* be on him, preserved intact from source, through a reliable chain of human transmission, person to person.
- hadith qudsi* : the written record of those words of *Allah* on the tongue of the Prophet Muhammad, may the blessings and peace of *Allah* be on him, which are not a part of the revelation of the *Qur'an*, preserved intact from source, through a reliable chain of human transmission, person to person.
- hajib* : preventing someone else from inheriting. Such exclusion can be total (*hajib harmani*) or partial (*hajib nafsani*).
- hakam* : an arbiter.
- halal* : what is permitted by the *Shari'a*.
- haram* : what is forbidden by the *Shari'a*. Also *Haram*: A protected area. There are two protected areas, known as the *Haramayn*, in which certain behaviour is forbidden and other behaviour necessary. These are the areas around the *Ka'ba* in *Makka* and around the Prophet's Mosque in *Madina*, in which is his tomb, may the blessings and peace of *Allah* be on him.
- hudud* : (the plural of *hadd*), the limits. The boundary limits which separate what is *halal* from what is *haram*, as defined by *Allah*.
- ihсан* : the inward state of the *mumin* who is constantly aware of being in the Presence of *Allah*, and who acts accordingly. *Ihsan* is to worship *Allah* as though you see Him, knowing that although you do not see Him, He sees you.
- ijma'* : consensus, particularly consensus of the people of knowledge among the Muslims on matters of *fiqh*.
- ijtihad* : to struggle, to exercise personal judgement in legal matters. The faculty of deciding the best course of action in a situation, which is not expressly referred to in the *Qur'an* and the *Hadith*, and then choosing a course of action which is close to the *Sunna* and in accord with the *Shari'a*.
- 'ilm* : (plural, *'ulum*) knowledge, science.
- 'ilm al-fara'id* : knowledge of the shares of inheritance.
- imam* : (1) Muslim religious or political leader; (2) one of the succession of Muslim leaders, beginning with 'Ali, regarded as legitimate by the Shi'a; (3) leader of Muslim congregational worship.
- iman* : trust in *Allah* and acceptance of His Messenger, may the blessings and peace of *Allah* be on him. *Iman* grows in the heart of the one who follows the way of *Islam*. *Iman* is to believe in *Allah*; His Angels; His Books; His Messengers; the Last Day and the Fire and the Garden; and that everything, both good and bad, is by the Decree of Allah. Thus *iman* is the inner knowledge and certainty in the heart which gives you *taqwa* and *tawba* and the yearning to know more.

- irth* : inheritance, division of the estate.
- Islam* : the Prophetic guidance brought by the Prophet Muhammad, may the blessings and peace of *Allah* be on him, for this age for the people and *jinn* who desire peace in this world, the Garden in the next world, and knowledge and worship of *Allah* in both worlds. The five pillars of *Islam* are the affirmation of the *shahada* (the affirmation that there is no god except Allah and that Muhammad is the Messenger of Allah); doing the *salat* (prayer); fasting during the month of *Ramadan*; paying the *zakat* (a tax on surplus wealth); and doing the *hajj* (the pilgrimage to Makka) if you are able.
- jahiliyya* : the time of arrogance and ignorance which precedes the time when the way of *Islam* is established as a social reality. Anyone who does not have wisdom suffers from *jahiliyya*.
- ja'iz* : permitted, another term for *mubah*.
- Jannah* : the Garden, Paradise, the final destination and resting place of the *Muslims* in the *akhira*, once the Day of Reckoning is past. *Jannah* is accurately described in great detail in the *Qur'an* and in the *Hadith*.
- Ka'ba* : the House of *Allah*, in *Makka*, originally built by the Prophet Ibrahim, peace be on him, and rebuilt with the help of the Prophet Muhammad, may the blessings and peace of *Allah* be on him. The *Ka'ba* is the focal point which all Muslims face when doing the prayer. This does not mean that *Allah* lives inside the *Ka'ba*, nor does it mean that the Muslims worship the *Ka'ba*. It is *Allah* whom the Muslims worship, and *Allah* is not contained or confined in any form or place or time or concept.
- kafir* : (plural *kafirun*) the one who denies the Existence of *Allah* and who rejects His Prophets and Messengers, and who accordingly has no peace or trust in this life, and a place in the Fire in the next life. The opposite is believer or *mu'min*. Shaykh 'Abd'al-Qadir writes, '*Kufr* means to cover up reality: *kafir* is one who does so. The *kafir* is the opposite of the *mu'min*. The point is that everyone knows 'how it is' – only it suits some people to deny it and pretend it is otherwise, to behave as if we were going to be here for ever. This is called *kufr*. The condition of the *kafir* is therefore one of neurosis, because of his inner knowing. He 'bites his hand in rage' but will not give in to his inevitable oncoming death.' (*Quranic Tawhid*. Diwan Press. 1981).
- kalala* : someone who dies without heirs.
- khal* : (plural *akhwal*) maternal uncle.
- khala* : maternal aunt.
- khalif* : the Arabic is *khalifa*, (pl. *khulafa'*); Caliph, someone who stands in for someone else, in this case the leader of the Muslim community, although it is sometimes used to describe the deputy of someone in a higher position of authority.
- kufr* : disbelief, to cover up the truth, to reject Allah and refuse to accept that Muhammad is His Messenger, may Allah bless him and grant him peace.

- lahd* : a grave, about five feet deep, in which – after digging the basic trench – a niche is dug for the body into the bottom of the side which faces *qibla*, so that the body is protected by the overhang.
- madhhab* : a school of law founded on the opinion of a *faqih*. The four main *madhhabs* now are the Hanafi, Maliki, Shafi'i and Hanbali schools. There are also *madhhabs* which have ceased to exist, for example, the Awza'i, Zahirī, Jariri schools and the *madhhab* of Sufyan ath-Thawri. The Shi'a also designate their *fiqh* as the 'Imami' or 'Ja'fari *madhhab*' after Ja'far as-Sadiq. Among the Shi'a, there are also the Akhbaris and the Usulis.
- mafqud* : a missing person – he or she is considered to be still alive by the principle of *istishab* (the presumption of continuity unless and until there is proof to the contrary).
- mahjub* : excluded from inheritance by another heir.
- mahkama* : court of justice, tribunal.
- makruh* : abominable, reprehensible but not unlawful in the *Shari'a*.
- mamnu'a* : what is prohibited in acts of worship in the *Shari'a*.
- mandub* : what is commendable, recommended.
- mani'* : (plural *mawani'*) hindrance, obstacle, preventative cause which prevents inheritance. These can be: homicide, difference of religion, slavery.
- marad*
- al-mawt* : the sickness of which a person dies. He cannot dispose of two-thirds of his property in such an illness.
- masnun* : *sunna*, referring to an act which the Prophet's early community performed regularly.
- ma'truh* : mentally deficient, idiotic, senile; and therefore incapable of making a valid bequest.
- mawani'* : legal impediments, the plural of *mani'*.
- mawarithh* : plural of *mirath*.
- mirath* : (plural *mawarithh*) law of inheritance.
- mubah* : permissible, permitted; something for which there is neither reward nor punishment. Also called *ja'iz*.
- mufsida* : what invalidates acts of worship in the *Shari'a*.
- muhsin* : the Muslim who has *ihsan*, and who accordingly only gives reality to the Real, *Allah*. Only the *muhsin* really knows what *Tawhid* is. Shaykh 'Abd'al-Qadir once said, 'The difference between the *kafir* and the *muslim* is vast. The difference between the *muslim* and the *mumin* is greater still. The difference between the *mumin* and the *muhsin* is immeasurable,' not only in inward state, but also in outward action.
- mumayyiz* : someone who is able to differentiate between good and evil.

- mumin* : (plural *muminun*) the Muslim who has *iman*, who trusts in *Allah* and accepts His Messenger, may the blessings and peace of *Allah* be on him, and for whom the next world is more real than this world. The *mumin* longs for the Garden so much, that this world seems like the Fire by comparison and feels like a prison.
- munafiq* : (plural, *munafiqun*); a hypocrite, a person who outwardly professes *Islam* on the tongue, but inwardly and existentially rejects *Allah* and His Messenger, may the blessings and peace of *Allah* be on him, and who sides with the *kafirun* against the *muminun*. The deepest part of the Fire is reserved for the *munafiqun*.
- Munkar and Nakir* : the two angels who question your *ruh* in the grave after your body has been buried, asking, “Who is your Lord? Who is your Prophet? What is your Book? What was your *Deen*?”
- murith* : person leaving the estate.
- musi* : the one who makes a will.
- muslim* : one who follows the Way of *Islam*, doing what is obligatory and avoiding what is forbidden in the *Shari‘a*, keeping within the *hudud* of *Allah*, and embodying as much of the *Sunna* as he or she is able, through study of the *Qur‘an* and the *Hadith* followed by action. A Muslim is, by definition, one who is safe and sound, at peace in this world, and guaranteed the Garden in the next world.
- mustahab* : what is recommended, but not obligatory, in acts of worship in the *Shari‘a*.
- Nar* : the Fire of Hell, the final destination and place of torment of the *kafirun* and the *munafiqun* in the *akhirah*, once the Day of Reckoning is past. Some of those Muslims who neglected what is *fard* in the *Shari‘a* and who did grave wrong action without making *tawba* will spend some time in the Fire before being allowed to enter the Garden, depending on the Forgiveness of *Allah* – Who forgives every wrong action except *shirk* if He wishes. *Nar* is accurately described in great detail in the *Qur‘an* and in the *Hadith*.
- nawafil* : what is voluntary in acts of worship in the *Shari‘a*.
- niyya* : intention; actions are judged by their intentions.
- qabr* : the grave, experienced as a place of peace and light and space by the *ruh* of the *mumin* who sees his or her place in the Garden in the morning and in the evening; and experienced as a place of torment and darkness and no space by the *ruh* of the *kafir* who sees his or her place in the Fire in the morning and in the evening. After death there is a period of waiting in the grave for the *ruh* until the Last Day arrives, when everyone who has ever lived will be brought back to life and gathered together. Their actions and intentions will be weighed in the Balance, and everyone will either go to the Garden or to the Fire, for ever.
- qadi* : (plural *qada*), a judge, qualified to judge all matters in accordance with the *Shari‘a* and to dispense and enforce legal judgements.



- qadi al-qudat* : the chief *qadi*, in charge of all other *qadis*.
- qibla* : the direction faced in prayer, which, for the Muslims, is towards the *Ka'ba* in Makka.
- qiyas* : logical deduction by analogy, one of the four main fundamental principles which can be utilised in reaching a judgement.
- Qur'an* : the 'Recitation', the last Revelation from *Allah* to mankind and the *jinn* before the end of the world, revealed to the Prophet Muhammad, may *Allah* bless him and grant him peace, through the angel Jibril (Gabriel), over a period of twenty-three years (beginning in 610 and ending in 632), the first thirteen of which were spent in *Makka* and the last ten of which were spent in *Madina*. The *Qur'an* amends, encompasses, expands, surpasses and abrogates all the earlier revelations revealed to the earlier Messengers, peace be on all of them. The *Qur'an* is by far the greatest of all the miracles given to the Prophet Muhammad by *Allah*, for he was illiterate and could neither read nor write. The *Qur'an* is the uncreated word of *Allah*. The *Qur'an* still exists today exactly as it was originally revealed, without any alteration or change or addition or deletion. Whoever recites the *Qur'an* with courtesy and sincerity receives knowledge and wisdom, for it is the well of wisdom in this age.
- radd* : the opposite of 'awl, redistribution of the residue of inheritance when the shares are less than the estate. This is distributed to the heirs according to their shares.
- ra'y* : opinion, personal discretion, a legal decision based on the use of common sense and personal opinion, used where there is no explicit guidance in the *Qur'an* and *Sunna* and where it is not possible to use analogy (cf *qiyas*).
- ruh* : the spirit which gives life, formed from pure light; also the Angel Jibril (Gabriel).
- rushd* : the state of full intellectual maturity, able to conduct one's own affairs.
- sadaqa* : charitable giving in the Way of Allah.
- sadaqa jariya* : charitable giving whose beneficial consequences in this world last for a long time.
- shaqq* : a simple grave, about five feet deep. It sometimes has a small ledge dug around its interior about two feet up from the bottom, so that after the body has been placed in the grave, a protective layer of wood or clay slabs can be placed over the body – resting on the ledge – before the grave is filled in with earth.
- Shari'a* : a road, a watering place. The way of *Islam*, the way of Muhammad, may the blessings and peace of *Allah* be on him, the road which leads to knowledge of *Allah* and the Garden. Shaykh 'Abd'al-Qadir writes, 'It is the behaviour modality of a people based on the revelation of their Prophet. The last *Shari'a* in history has proved to be that of *Islam*. Its social modality abrogates all previous *shara'i* e.g. Navaho, Judaic, Vedic, Buddhist, etc. These *shara'i* however, continue until the arrival and confrontation takes place in that culture with the final and thus superior *Shari'a* – *Islam*. It is, being the last, therefore the easiest to follow, for it is applicable to the whole human race wherever they are.' (*Qur'anic Tawhid*. Diwan Press. 1981).

- Shi'a* : lit. a party or faction, specifically the party who claim that 'Ali should have succeeded the Prophet as the first *khalif* and that the leadership of the Muslims rightfully belongs to his descendant.
- shirk* : the unforgivable wrong action of worshipping something or someone other than Allah or associating anything or anyone as a partner with *Allah*, that is, to worship what is other than *Allah*, including your self, your country, your universe and anything it contains. *Shirk* is the opposite of *Tawhid*. *Allah* says in the *Qur'an* that He will forgive any wrong action except *shirk*. Shaykh 'Abd'al-Qadir writes, 'Idol-worship means giving delineation to the Real. Encasing it in an object, a concept, a ritual, or a myth. This is called *shirk*, or association. Avoidance of *shirk* is the most radical element in the approach to understanding existence in *Islam*. It soars free of these deep social restrictions and so posits such a profoundly revolutionary approach to existence that it constitutes - and has done for fourteen hundred years - the most radical rejection of the political version of idolatry, statism. It is very difficult for programmed literates in this society to cut through to the clear tenets of *Islam*, for the Judaic and Christian perversions stand so strongly in the way either as, rightly, anathema, or else as ideals. The whole approach to understanding reality has a quite different texture than that known and defined in European languages, thus a deep insight into the structure of the Arabic language itself would prove a better introduction to the metaphysic than a philosophical statement. The uncompromising *tawhid* that is affirmed does not add on any sort of 'god-concept'. Nor does it posit an infra-god, a grund-god, even an over-god. Christian philosophers were so frightened by this position that when they met it, to stop people discovering the fantasy element in their trinitarian mythology they decided to identify it with pantheism in the hope of discrediting it. That they succeeded in this deception is an indication of how far the whole viewpoint has been kept out of reach of the literate savage society. Let it suffice here to indicate that there is no 'problem' about the nature of *Allah*. Nor do we consider it possible even to speak of it. No how, who, or what or why. It is not hedging the matter in mystery. It is simply asking the wrong questions. The knowledge of *Allah* is specifically a personal quest in which the radical question that has to be asked is not even 'Who am I?' but 'Where then are you going?' (*Qur'anic Tawhid*. Diwan Press. 1981).
- Sunna* : the form, the customary practice of a person or group of people. It has come to refer almost exclusively to the practice of the Messenger of *Allah*, Muhammad, may the blessings and peace of *Allah* be on him, but at the time that *Imam* Malik, may *Allah* be pleased with him, compiled *Al-Muwatta'*, meaning '*The Well-Trodden Path*', there was no sense of setting the *Sunna* of the Prophet apart from the *Sunna* of *Madina*, so that the actions of its knowledgeable people were given even more weight than the behaviour of the Prophet related in isolated *Hadith*. The *Sunna* of the Prophet Muhammad and the first Muslim community of *Madina al-Munawarra* is a complete behavioural science that has been systematically kept outside the learning framework of this society.

- Sunni* : the main body of Muslims, who recognise and accept the first four *khalifs*.
- taqlid* : in reference to *fiqh*, it means the following of previous authorities and the avoidance of *ijtihad*.
- taqwa* : awe of *Allah*, which inspires a person to be on guard against wrong action and eager for actions which please Him.
- tashih* : rectification, multiplying the number of shares by the number of heirs to avoid fractions.
- tawba* : returning to correct action after error, turning away from wrong action to *Allah* and asking His forgiveness.
- Tawhid* : Unity in its most profound sense. *Allah* is One in His Essence and His Attributes and His Acts. The whole universe and what it contains is One unified event which in itself has no lasting reality. *Allah* is Real. Shaykh ‘Abd’al-Qadir writes, ‘Our *Imam* said, “It is a meaning which obliterates the outlines and joins the knowledges. *Allah* is as He always was. *Tawhid* has five pillars: it consists of the raising of the veil on the contingent, to attribute endlessness to *Allah* alone, to abandon friends, to leave one’s country, and to forget what one knows and what one does not know.” His greatest statement on *tawhid*, which Shaykh al-Akbar has called the highest of what may be said on the subject is, “The colour of the water is the colour of the glass.” Commenting on this Shaykh Ibn ‘Ajiba said, “This means that the exalted Essence is subtle, hidden and luminous. It appears in the outlines and the forms, it takes on their colours. Admit this and understand it if you do not taste it.” *Tawhid* is itself a definition whose meaning is not complete for the one who holds to it until he has abandoned it or rather exhausted its indications and abandoned it for complete absorption in the One.’ (*Qur’anic Tawhid*. Diwan Press. 1981).
- taymiz* : the age of discretion and understanding, at which a valid bequest can be made.
- ‘ulama* : the plural of *‘alim*. Those who know. The *Qur’an* states: “Those who know fear *Allah*.”
- ‘ulum* : plural of *‘ilm*.
- usul* : fundamentals, essentials.
- usul ad-deen* : meaning *‘ilm usul ad-deen*, the science of the fundamental principles of the *deen* as distinct from other belief systems; the science of the tenets of belief. It can also be designated as *‘al-fiqh al-akbar*, ‘the greatest understanding’.
- Umma* : the body of Muslims as one distinct Community.
- wajib* : what is necessary, but not obligatory, in acts of worship in the *Shari‘a*.
- wakil* : a person who is an authorised representative, agent or proxy.
- wali* : (*plural awliya*) a guardian who is responsible for another person; also, someone who is a “friend” of *Allah*, thus possessing the quality of *wilaya*.
- waqf* : (*plural awqaf*) also *habous*, an unalienable endowment for a charitable purpose which cannot be given away or sold to anyone.

- warith* : (plural *waratha*) heir.
- wasaya* : wills or testaments, the plural of *wasaya*.
- wasi* : executor of a will.
- wasaya* : will, bequest. It can be made by a Muslim to a non-Muslim or vice versa, but not to one of the obligatory heirs already entitled to a fixed share.
- wilaya* : guardianship of minor children of the deceased; also friendship, in particular with Allah, referring to the *wali*'s station of knowledge of the Real by direct seeing.
- Yawm al-Akhira* : the Day After – the end of the world, and thus the Last Day, when everyone who has ever lived will be given life again, gathered together, their actions and intentions weighed in the Balance, and their place in either the Garden or the Fire confirmed. *Yawm al-Akhira* is also referred to in the *Qur'an* as *Yawm ad-Deen*, the Day of the Life Transaction; *Yawm al-Ba'th*, the Day of Rising from the grave; *Yawm al-Hashr*, the Day of Gathering; *Yawm al-Qiyama*, the Day of Standing; *Yawm al-Mizan*, the Day of the Balance; and *Yawm al-Hisab*, the Day of Reckoning. That Day will either be the best day or the worst day of your life, depending on who you are and where you are going. The *Yawm al-Akhira* is accurately described in great detail in the *Qur'an* and in the *Hadith*.
- zakat* : the wealth tax obligatory on Muslims each year, usually payable in the form of one fortieth of surplus wealth which is more than a certain fixed minimum amount, called the *nisab*. *Zakat* is payable on accumulated wealth, merchandise, certain crops, certain livestock, and subterranean and mineral wealth, such as, for example, gold and oil.

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