

Islamic Factors in Estate Planning

In this installment of my periodic series on religion and the law, I address the implications of Islam and their effect on the estate planning process. To gain insight into these issues and help practitioners serve Islamic clients in the most efficient and considerate manner possible, I interviewed Muhammad Farooq Malik, chairman of the board of trustees of the Institute of Islamic Knowledge, P.O. Box 8307, Houston, Texas 77288, telephone (281) 448-4080.

Q: What are the main issues a Muslim should consider when planning an estate?

A: Islamic law affects the laws of inheritance and hence every estate plan. Living and health care decisions are affected by Islamic law. Charitable giving is encouraged.

Q: What sources are relevant to determining Islamic law that affects estate planning?



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A: Every Muslim is under the obligation to follow what the Quraan states. There are also sayings of the Prophet Mohammad relating to inheritance based on the Quaraanic injunctions. Finally, there are decisions, called "fiqh," which are analogous to case law in the American legal system. These fiqhs are analyses by jurists of the issues covered by the Quraan and the sayings of the Prophet. If the above sources are silent, a decision must be made that is consistent with the spirit of fiqhs. For example, a state's community property laws only establish ownership, not the distribution for Muslims.

Q: What are the basic laws of inheritance?

A: Historically, men could inherit and women could not. This issue has been resolved so no discrimination now exists and women cannot be disinherited. Now, no natural born child can be prohibited from receiving an inheritance. Equality for male children and female children are separate. Males inherit twice the value (shares) of what female children inherit. Two-

thirds of the estate must be distributed among the heirs as ascribed in the Quraan:

"Forever parent and relative We have appointed the rightful heirs to inherit what they leave. As for those with whom you have made firm agreements, give them their share. Surely Allah is a witness to everything."

"The distribution in all the following cases shall be after fulfilling the terms of the Will and the payment of Debts."

"Allah commands concerning your children: that the share of a boy shall be twice that of a girl. If there are more than two girls, their share will be two-thirds of the estate; but if only one girl, her share will be one half of the estate. If the deceased left children, each of the parents shall get one-sixth of the estate; but if the deceased left no children and parents are the only heirs, the mother shall get one-third of the estate; but if the deceased left brothers and sisters, then the mother will get one-sixth. With regards to your parents and children, Allah issued this ordinance. You shall inherit one-half of your wife's estate if they leave no child, but if they leave a child, then you will get one-fourth of the estate. Your wife shall inherit one-fourth if you leave no child, but if you leave a child then the wife gets one-eighth of your estate. If a man or a woman leaves neither ascendant nor descendant but has left a brother or a sister, each inherit one-sixth; but if more than two, they shall share one-third of the estate... without prejudice to the rights of the heirs.

If you ask for a legal decision (relating to inheritance in the case of a childless person), say: Allah gives you His decision about those who leave no descendant or ascendant heirs... Allah has perfect knowledge of every thing."

It is mandatory for every Muslim to use this dispositive scheme in their wills.

There is a limitation that up to one-third of the estate can be given to anyone the deceased wishes. The one-third includes charities, non-Muslims, non-family, anyone other than those in the above requirements.

Q: Are there other issues of inheritance?

A: The marital residence cannot be disturbed or distributed for one full year. The wife must be given the right to live in the house for one year. This is in addition to any inheritance. If the wife decides not to exercise this right, it can be avoided.

Q: What happens if a child is conceived but not born?

A: The distributions for all inheritances, other than maintenance, will be held in abeyance until the child is born. This approach will help ensure protection of the expectant mother.

Q: What about charitable giving?

A: This is one of the reasons the one-third discretionary distributions of estate assets are permitted. Giving charity is looked upon very favorably as it can provide the donor rewards even after death. There is no ruling to give any specified amount to charity, but it is encouraged to give to a charity where it will be used in perpetuity. This could include a school system that can educate children for many years to come, rather than for one-time use.

Q: What about lifetime gifts?

A: There are no restrictions on gifts (lifetime transfers). Thus, any Muslim can convey property as they wish while alive; the above distribution requirements apply only following death.

Q: What about health care issues?

A: Islamic law permits the use of living wills. Decisions concerning health are primarily given to physicians. If the decisions will enable someone to be restored to health, they should be taken. If the medical decisions would merely keep a person alive but are not able to restore the person to health, they need not be taken. If the only result is to artificially keep someone alive on life support, those decisions are not mandatory under Islamic law, but these heroic measures may be continued if the family wishes.

Q: What about charging interest?

A: There are different scholarly views on what constitutes "riba." Some say modern interest comes under the concept riba, which connotes usury in modern concepts. If there is no charge in form, such as money is repaid with interest as money, it may be viewed as riba. Other scholars say the modern interest, such as for a mortgage,

is not riba. Therefore, there must be care exercised in any estate planning transaction that is based on an interest payment.

Q: What about investment clauses?

A: Islamic law can make it inappropriate to pay or earn interest based on prohibition of making a guaranteed profit on capital. Stock mutual funds have also been formed that invest in a manner that conforms with Islamic law by purchasing stock for investment while avoiding stocks of companies that engage in businesses involving alcohol, gambling or pornography. Bank stocks also can be problematic for these reasons.

A sample clause to be used in a will or trust might be:

"Further, the trustee is authorized and directed to structure any investments and assets, to the extent feasible, to be in accordance with Islamic religious principles, if the beneficiaries of any trust formed hereunder request such standard in writing. Such standard may include by way of example, a prohibition against paying or earning interest based on a prohibition of making a guaranteed profit on capital. Stock mutual funds have been formed which invest in a manner which conforms with Islamic law by purchasing stocks for investment, while avoiding stocks of companies that engage in businesses involving alcohol, gambling or pornography. Bank stocks may also be prohibited. In the event that there is a conflict between beneficiaries of any trust as to whether such standard shall apply, then the trustee shall divide such trust into separate parts and invest each part accordingly. This limited right of a beneficiary to designate whether or not Islamic investment standards should apply shall not be interpreted as providing any future rights or powers to any beneficiary. In the event of any dispute as to the application of Islamic investment standards, the trustee shall consult the Islamic Society of North America for further clarification. If such action is not feasible, or not determinative, the trustee may consult any Islamic scholar or Imam of the trustee's choice and rely on the determination of same."



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