



# Islamic Estate Planning

*A brief overview of various principles governing the Islamic law of inheritance*

(علم الميراث)

## Virtue

عَنْ جَابِرِ بْنِ عَبْدِ اللَّهِ، قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ  
وَسَلَّمَ " مَنْ مَاتَ عَلَى وَصِيَّةٍ مَاتَ عَلَى سَبِيلِ وَسُنَّةِ  
وَمَاتَ عَلَى تَقَى وَشَهَادَةٍ وَمَاتَ مَغْفُورًا لَهُ

(رواه ابن ماجه)

## Warning

عَنْ أَبِي هُرَيْرَةَ، قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " إِنَّ  
الرَّجُلَ لَيَعْمَلُ بِعَمَلِ أَهْلِ الْخَيْرِ سَبْعِينَ سَنَةً فَإِذَا أَوْصَى حَافٍ  
فِي وَصِيَّتِهِ فَيُخْتَمُ لَهُ بِشَرِّ عَمَلِهِ فَيَدْخُلُ النَّارَ وَإِنَّ الرَّجُلَ لَيَعْمَلُ  
بِعَمَلِ أَهْلِ الشَّرِّ سَبْعِينَ سَنَةً فَيَعْدِلُ فِي وَصِيَّتِهِ فَيُخْتَمُ لَهُ بِخَيْرِ  
عَمَلِهِ فَيَدْخُلُ الْجَنَّةَ "

(رواه أحمد وابن ماجه)

# Concern of our Prophet (Sallallahu Alayhi Wa Sallam)

روا ابن ماجه في سننه عن النبي : يا أبا هريرة تعلموا الفرائض  
وعلموها، فإنه نصف العلم، وهو ينسى، وهو أول شيء ينزع من  
أمّتي

ورواه الدارمي عن ابن مسعود  
ورواه البيهقي والدارقطني والطبراني والحاكم، والبيهقي في الشعب



# Essential points



- ▶ Taking steps to ensure correct distribution begins before passing away
- ▶ Instructing the family about what you wish to be done about life support
- ▶ Burial expenses
- ▶ Clearing debt
- ▶ Discharging the “Wasiyyah”

A decorative graphic on the left side of the slide. It features a dark blue vertical bar at the top left, from which a black arrow points to the right. Below the arrow, several thin, curved lines in shades of blue and grey sweep across the page, creating a sense of movement and design.

# Ensuring Correct Distribution During Your Lifetime

- ▶ It's a responsibility upon us all to **have and express** concern for our children following Islam
  - ▶ We learn this from the story of Yaqub (A.S.)



# Burial expenses

- ▶ In principle, this expense is due from the deceased person's wealth.
  - ▶ Expenses include the burial cloth, coffin, maintenance of the body, grave digging fees, plot of land, etc.
- ▶ It is praiseworthy for a community/relatives to pay for the above expenses for a family in need.

# Clearing Our Debts

- The creditor is placed in a very difficult situation for asking his right.
  - Pay off:
    - Debts to people
    - *Mahr* that wasn't paid during lifetime
- It is so important to pay off personal debts that the Prophet (S.A.W.) refused to pray the *janaaza* of a person who had debts.
- Every individual is in a different circumstance, so talk to a scholar to understand what debts must be paid immediately and what can be paid over time (student loans, mortgage, etc.)



# Discharging the *Wasiyyah*

- What is *Wasiyyah*?
  - *Wasiyyah* is the right to distribute up to a third of a person's wealth in his/her lifetime which will go on to be executed upon death.
  - 1/3 of your wealth can be distributed to family members ineligible to receive inheritance, charities, mosque, etc. The remainder would pass per the rules of inheritance
  - *Wasiyyah* also includes appointing a guardian for minors, appointing a will executor, personal requests from family members, etc.
  - Conditions:
    - 1/3 of the wealth is considered after subtracting debts and funeral expenses.
    - A **maximum** of 1/3 may be distributed
    - *Wasiyyah* cannot be distributed to an **active** heir (i.e., can't give extra from the 1/3 to someone receiving inheritance).

# Distribution of *Mirath*

- ▶ *Wasiyyah* is the 1/3 distribution per your wishes.
- ▶ *Mirath* is the other 2/3 which deals with your assets to be distributed per the formulas in the Qur'an and Hadith.
- ▶ The difference? *Wasiyyah* is in the control of a person whereas *Mirath* is not.
- ▶ The term “will” can be inclusive of both.



# Primary Basis of Mirath

Quran and Hadith

# Example of Islamic laws for the Quran

يُوصِيكُمُ اللَّهُ فِي أَوْلَادٍ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ فَإِنْ كُنَّ  
نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا  
النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ  
وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ  
إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ لِأَبَائِكُمْ  
وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِنَ اللَّهِ إِنَّ  
اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾

# Fundamentals of Islamic Inheritance

- Distributions generally go to relations by:
  - Marriage
  - Blood
- No marriage or blood relation:
  - Stepchildren/adopted children
- Reasons that block distributions to certain heirs:
  - Killing the deceased
  - Difference of religion
- Active heirs are not disinherited if:
  - Widow remarries
  - Children are disobedient
  - Infants/minors

# Possible Heirs

## ► **Female:**

- Daughter, Mother (and ascendants), Wife, Son's daughter (and descendants), Maternal grandmother , Paternal grandmother, Full sister, Sister (same father), Sister (same mother)

## ► **Male:**

### ► **Son, if none then:**

- Son's Son (and descendants)

### ► **Father, if none then:**

- Father's father (and ascendants)

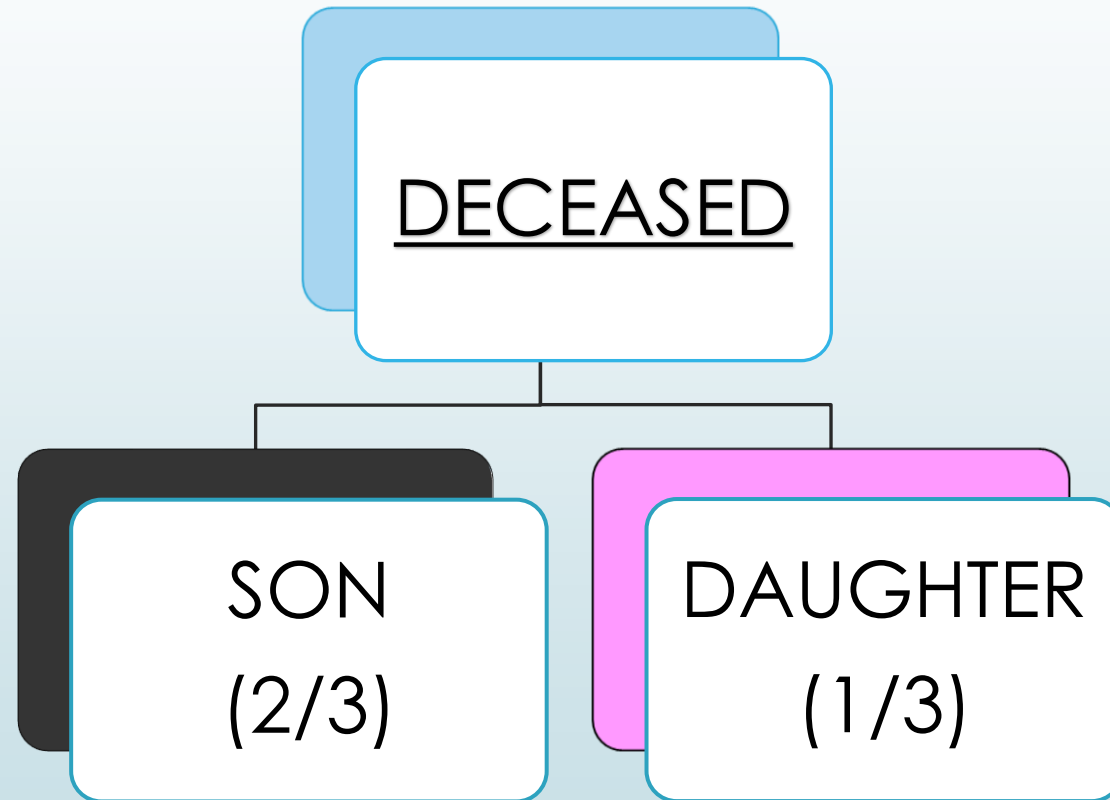
- **Husband**, Full brother, Half brother (father's side), Half brother (mother's side), Full brother's son (and descendants), Nephew from father's side (and descendants), Full paternal uncle (same father and mother), Paternal uncle (same father, not same mother), Male cousin - father's side (and descendants)



# Caveat About Possible Inheritors

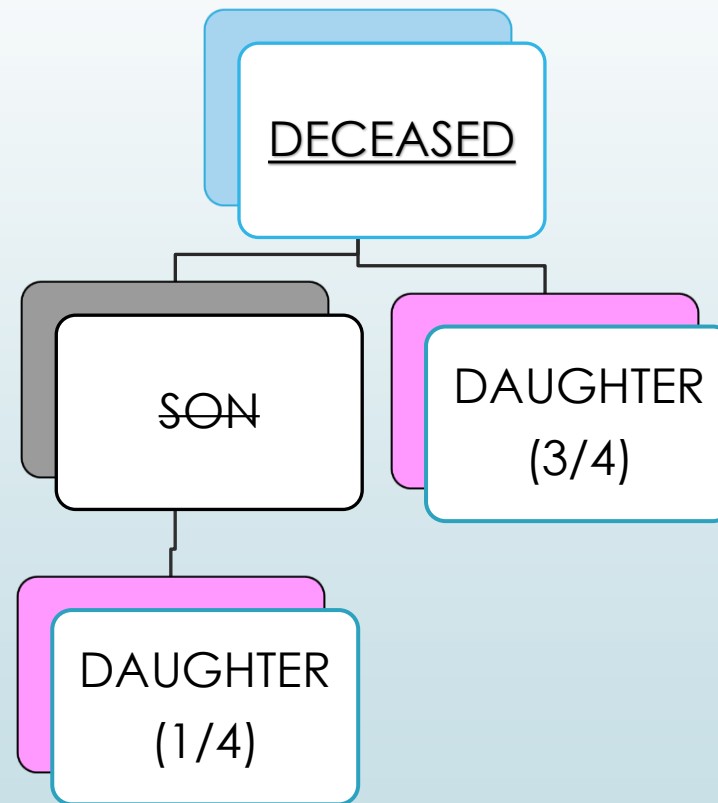
- Generally most of the relatives listed do not inherit at all
  - Some heirs have preferential right over others
- Not all relatives inherit same amount
  - Some get more than others
- Amount and who inherits depends on who survives

# Daughter and son's share

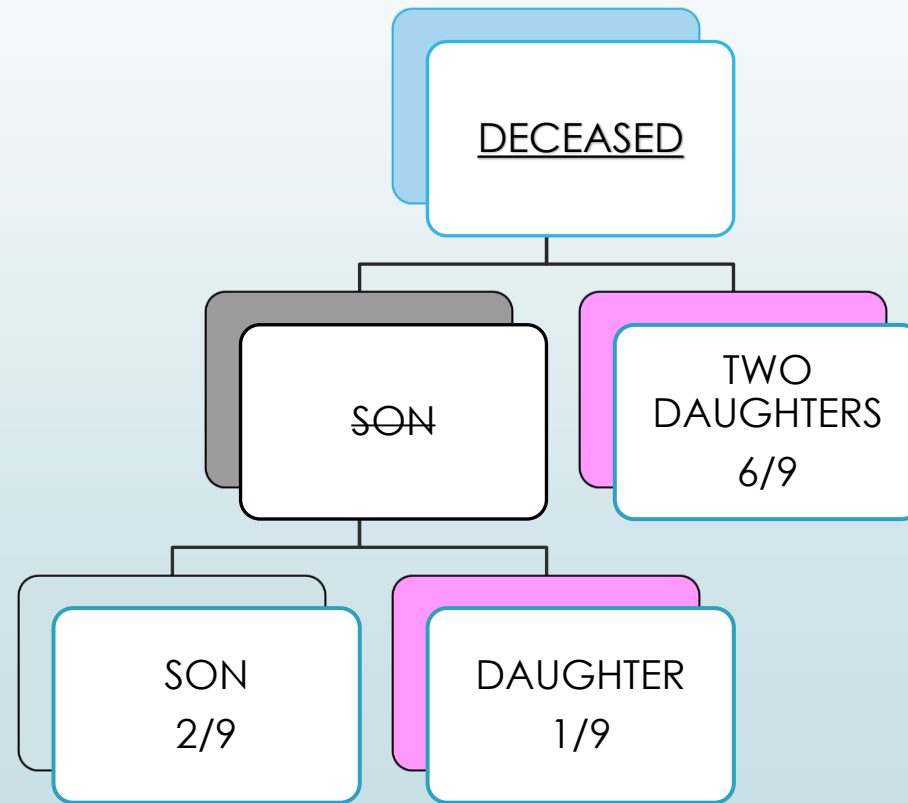




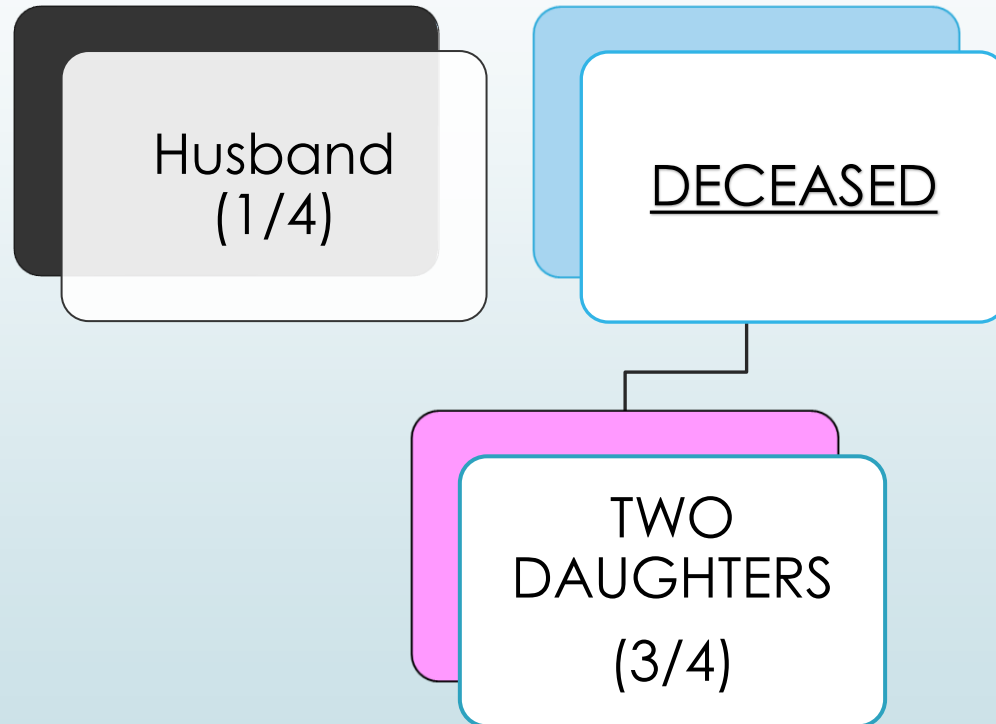
# Daughter and granddaughter's share



# Daughter, grandson and granddaughter's share



# Husband's share



# Husband's share

Husband  
(1/2)

Father  
(1/2)

DECEASED

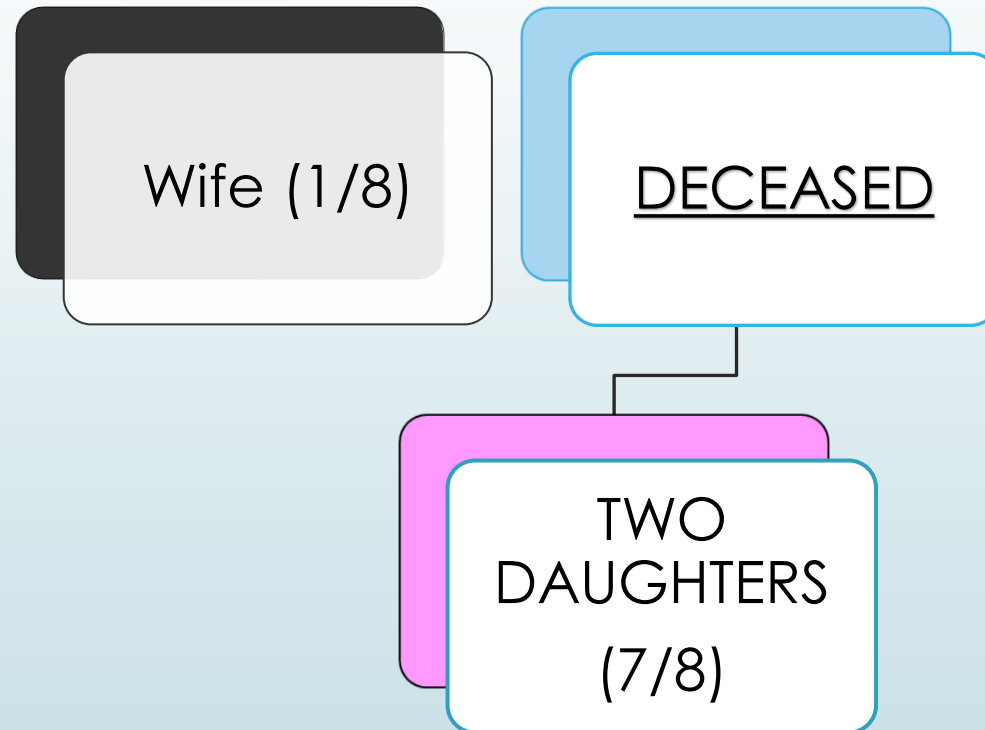
# Wife's share

Wife (1/4)

Father  
(3/4)

DECEASED

# Wife's share



# Example of one person's share

- ▶ In total, a mother may receive the following amounts considering those alive:
  - ▶ 1)  $1/6$  – If deceased is survived by:
    - ▶ Any children
    - ▶ Two or more siblings, whether full or half
    - ▶ Only parents and a husband are survivors (Considering the deceased is a female)
  - ▶ 2)  $1/3$  – In the absence of the above three scenarios
  - ▶ 3)  $1/4$  – Only parents and wife (considering the deceased is a male)



# General Principles for Calculating Inheritance

1. When a person dies, those relatives who are alive at that distinct second become the heirs;
2. Not distributing the estate will not prevent ownership of the entitled heirs;
3. If an entitled heir does not receive his share and dies, then that share will be counted amongst his personal estate, and now his heirs will be entitled to that undistributed share;
4. An heir can **not** prevent himself from being an heir;
5. Ownership of estate does not even require taking possession;
6. One can not give up his personal property by merely saying so; and
7. **Everything** that the deceased leaves behind is owned by the heirs in proportion to their share.



# Example

- Zainab is survived by her husband Zaid, daughter Fatimah, mother Maryam.
- Then three years later, Zaid dies before receiving his share from the estate of Zainab, and leaves behind Fatimah, father named Abdullah and mother named Aleeza.
- Then the daughter of Zainab, Fatimah, dies and leaves behind two sons, Bakr and Umar, a daughter named Aishah, a paternal grandmother named Aleeza, a maternal grandmother named Maryam, paternal grandfather named Abdullah.
- Then the grandmother, Maryam, dies leaving behind two brothers named Hamza and Taha.

# Violating Rights of Heirs

- ▶ Cutting out heirs or give less than the required fixed share (not giving parents their share or giving all male and female children equally)
- ▶ Unislamic Conditions: You must marry in order to get inheritance, you must go to medical school to get your inheritance.
- ▶ Picking and choosing assets: Heirs have a right to own their share in all your assets, not just some of your assets.
- ▶ Giving a Wasiyyah in excess of 1/3

# Conclusion

- Laws of inheritance can be tricky and complex.
- Before you pass away, prepare a will and/or trust and offer family good counsel
- Trusting and submitting to Allah's (SWT) infinite wisdom instead of objecting
- You can distribute assets during your lifetime in any manner you'd like without worrying about *Mirath* distributions.
- Finding ways to fulfill our spouse and family's needs whilst complying with Allah's (SWT) orders by consulting scholars and lawyers
- Ultimate success: Meeting Allah SWT and Muhammad SAW in a state in which they are pleased with us