

## FATAWA INHERITANCE 2003

### Rights of Wife in the Estate and on her Children

From: Monzer Kahf  
Sent: Sunday, February 15, 2004 7:48 AM  
To: Islam on line  
Subject: RE: Distribution of Estate

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Sr. Hura

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

1- Allah, Himself in the Qur'an, made the distribution of the estate of a deceased Muslim and did not leave this matter to any person including the deceased. When your husband died the property he owned becomes owned by the heirs as given in the Qur'an. His property, whether the house you currently live in or any other property including cash and other real estate, should be distributed as follows: 1/8 to you and the remainder is to be divided to his five sons and two daughters, for each son twice as much as for each daughter (the Qur'an Surah 4 Verses 11 and 12). This means: your share is 6/48, the 2 daughters get 7/ 48 divided equally between them and each son gets 7/48.

2- The rented property that your husband registered in your name is purely yours. It was a gift given to you by your husband during his life and no one has any claim on it. Your children and your step children do not have any share in it and you enjoy its rent alone, you can do any thing you like with it and with its rent.

3- Your husband, may Allah bless his soul, had no right to refuse, unless if you then authorized him, your share from your father's estate. That was a decision you should have taken on your own without interference from your husband. But it seems to me that you also agreed on that because you said it was distributed to your brothers by a court order and the court would not accept to exclude you without your consent, you must have given such a consent to the court, I suppose!

4- If you need any support for your living expense including a place to live in and your own income is not sufficient, whether from that rented property or from any other sources you may have such as any pension fund your late husband left behind, then your four children are required to help you, each one within the limits of his/her own abilities. They are required to provide you with a residence and with living expenses to your standards or to the standards of their own families depending on their financial abilities. This is obligatory on your children,

in addition to being an expression of gratitude to their mother. A man who was carrying his mother on his back in Tawaf asked the Prophet, pbuh, whether he would have given her due gratitude; the Prophet, pbuh, said: not even for one single breathe at the time of labor.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Islam on line

Sent: Sunday, February 15, 2004 12:25 AM

To: monzer@kahf.net

Subject: Distribution of Estate

Name of Questioner hura

Gender Female

Age Above 60

Education Illiterate

Date Submitted 2/7/2004

country of Origin India

User Ref. No. 9IJBE2

country of Res. India

Question

Note : I am not a literate woman this matter is written by some other person .some one guide me to take help from you . Respected mufti saheb Assalam Alaikum

Sub: I need fatwa of distribution of properties. I am a 70 years old Muslim widow. My husband expired . I was second wife of my husband. When he was alive, he purchased two properties one property is on his own name & other property is on my name . because between my age & my husbands age is too difference that's why he feel for my future life. Before our marriage his two sons & one daughter with his first wife .His first wife is already expired at the time of our marriage . one most important thing is that after our marriage my father was expired & as a nominee my brothers offered for share in the fathers property but my husband refused to except that property .He replied to my brother I already did the arrangement for her future life with the purchase of property . (may be on humanity ground he refused) I got three sons & one daughter all are settled with t here family Now I stay at home which is purchased by my husband , all the properties purchase before approximately 25 years of expired him self . all the five sons & two daughters are settled with there family . Now my question is that as below Q1) In which house where I stay is also distributed to 5 sons & 2 daughters ? If yes then what is alternative for me to stay . If we soled & distribute the money to all Nominees then I can't purchase the small house with that sharing money .so what I have to do ? Q2) In which property is also to be distribute which is purchase on my name before 25 years of my Husbands death( when he retired from work ) which is on rented basis ? my husbands interest for purchase on my name was security of my life Because my husband was too elder then me when we married (too much age difference ) . If it is also to be distributed to all 5 sons & 2 daughters then how can I survive ?even my husband reuse for the property of father long back & that property is distributed in our brothers by Indian panel

court . & now my brothers also not giving me that property what will be source of my income which is also not much (less then RS. 1000/-per month) if we sale this Property & distributing to all nominee then I cant do any business with this money because I am not a literate & my age is now 65 years plus . So I can't do any thing now to earn. Q3) I can distribute the second property which is on my husbands name .& how to distribute it ? Pls. Help me on this matter with Islamic law . I will very oblige Thanking you Yours faithfully Hura bi Mumbai

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### **Orphans' Money and Guardianship**

From: Monzer Kahf  
Sent: Saturday, January 10, 2004 4:45 PM  
To: Islam on line  
Subject: RE: Disposing Orphans' Money

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Sr. Aisha

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

When a Muslim dies the properties he owned must be distributed according to the Islamic system of inheritance. This system is given mainly in the Qur'an, the Traditions (Ahadith) of the Prophet, pbuh, add only a few non frequent cases. To tell you the exact shares of each person ,I will need more information: When your brother died were there any other brothers and/or sisters alive then? As for the mother, she is assigned a given role that must be given to her. Whatever he wrote or desired as a last will in not valid in Shari'ah except if that was within one third only and to the benefit of persons who are not included as heirs because the inheritance system is mandatory and no one, including the owner himself must not make any alteration directly or indirectly.

Let me make assumptions into three scenarios:

1 - assume you are the only surviving sister: the distribution must be as follows: each of the two daughters shall take 1/3 of the estate (after payment of expenses, debts, funeral cost and other obligations on the estate such as taxes, etc.), his mother takes 1/6, his wife 1/8 and you take the remainder which is only 1/24 ( $\frac{8}{24} + \frac{8}{24} + \frac{4}{24} + \frac{3}{24} = \frac{23}{24}$  and the remainder is just 1/24 goes to you).

2 - assume there is one or more sister besides you but no brothers: distribution is the same but the 1/24 shall be divided between the sisters equally.

3 - assume he was survived by at least one brother and any number of sisters, you are included: The distribution remains as it is but the 1/24 shall be divided between the brothers and sisters so that each male gets twice as much as a female and the males are equal between themselves and the females are also equal between themselves.

the fact that you were most beloved by him does not give you any edge over your sisters. He could have given you any thing during his life time but once one of us dies he/she will have then no authority on the distribution of the estate.

Now how to correct the situation? You said that out of the share you got you gave your mother some money to build a house for herself. If that amount equals the 1/6 that is her share or more, that will be considered like giving her share plus a donation from you. if the amount left with you is more than your proper share as given in one of the scenarios above you must give the extra to whoever did not get his or her share in full. You are also required to advice others (his wife) to take only her share and give to the daughters their proper shares that seems from what you said that they most likely did not get 8/24 each.

Keeping any thing that is not your proper right as determined in the Qur'an and the Sunnah is undoubtedly sinful.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Islam on line

Sent: Tuesday, January 06, 2004 2:40 AM

To: monzer@kahf.net

Subject: 4- Disposing Orphans' Money

Name of Questioner Aisha Gender Female Age 15-20

Education Graduate Date Submitted 12/30/2003

country of Origin Eritrea User Ref. No. 5UAD67 country of Res. Denmark

Assalam Alaikum dear scholars May Allah swt reward you for all the work you do for the Muslims Ummah. My dear brother whom I was leaving with died for some time ago. He loved me much more. He wrote me as one of his child due since he was my elder brother and he was taking care of me because my father died when I was one year old. He was married and had 2 beautiful daughters. Then when he died the government divided the money he had between me his wife and the 2 daughters who were under 5 years. The children mother got most

part of it and the rest was divided between me and the daughters in equal amount. Their money is in the bank and till they fill 18 they can't take it. When I filled 18 I took my part and bought a computer since I needed due to collage and school demands and the rest I send to my mother and a house was build for her. My question is LATTER ON I HAVE READ ABOUT THE DANGER IN TAKING OPHANS PROPERTY AND I FEEL QUILTY IN THIS. MY QUETION IS WAS IT WRONG FOR ME TO TAKE THIS MONEY? DON'T I HAVE THE RIGHT TOO TO GET SOME OF THIS MONEY SINCE I WAS ONE OF HIS FAVARITE SISTERS AND HE WAS TAKING CARE OF ME AS MY GUDIAN. HAS HIS MOTHER RIGHT OVER THIS MONEY SINCE I HAVE BUILT A HOUSE FOR HER SINCE SHE HAD NO PLACE TO STAY? PLEASE INFORM ME IF I HAVE DONE WRONT AND HOW EVENTUALLY I CAN CORECT IT EVEN IF IT MEANS WORKING SO HARD SO THAT I CAN RETURN THIS MONEY IN ORDER NOT TO GO TO THE FIRE DUE TO THIS. WASALAM ALEIKUM

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### **Distribution of Estate**

From: Monzer Kahf  
Sent: Sunday, November 16, 2003 6:04 AM  
To: Islam on line  
Subject: RE: Zakah on business; division of assets in inheritance

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br.

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

1- May God give mercy to your deceased father's soul and unless you know he did not pay Zakah on all his Zakatable wealth and incomes we will assume he has already paid what was due on him. If you know he did not, you have to go back and pay due Zakah before distribution of his estate even if he did not make a last will about that. (although there is an opinion in Fiqh that unless he mentioned its payment in a last will you don't have to pay it, I prefer the opinion I mentioned because of two reasons: he is your father and you don't like him to be held responsible for it in the after life, and you, as one of his off springs, are always encouraged to make prayers for his soul and to give Sadaqat on his behalf).

2- The easiest and simplest way to calculate Zakah on the electronics and gold business is to look at the net worth as it is in the balance sheet and multiply that by 2.5% if the balance sheet is done on the basis of lunar years or add the difference if it is made on a solar year. The way to add the difference is by adjusting the rate of Zakah so you multiply the net worth by 2.57768 (= 2.5% + 2.5% X 11/354).

There is another opinion, the classical one that argues that Zakah is due only on the part of net worth used for mobile assets only, not on all net worth. According to this view the amount subject to Zakah is: total of cash + receivables + inventory + other mobile assets - accounts payable and other credit accounts that are to be paid from the mobile assets (in contrast to creditors that will be paid from future revenues. if you use solar calendar as a fiscal year for the business you need to make the same adjustment mentioned above.

3- I personally prefer the first opinion but I would not consider you wrong if you choose the second. but remember you have to calculate and pay Zakah for all past years since the day you, the heirs, become owners which are the day of the death of your father. Past due Zakah has to be paid as soon as possible without causing damage to the business.

4- You notice that in both cases, it does not make a difference whether profit is added to capital or not because what net worth really means is the amount you own of the asset of the business, amounts withdrawn for expenses are not subject to Zakah anyway.

It is not confusing, is it?

5- For division of the estate of your late father: There is a need for more information that you did not provide, but I will make certain assumptions and give the answer accordingly, if these assumptions were incorrect please ask again with full info.

I will assume that your mother ran, or supervised all the businesses of your deceased father upon his death and these businesses continued to provide income to sustain your living expenses including your education in the US and the education of your siblings. I will also assume that no determination/calculation was done upon the death of your father as to the value of his estate. I will also assume that the assets he left behind did not decline because of expenses spent on your education in America. I will also assume that you are not able today to know what the value of the estate was at the time of his death. Yet another assumption: I will assume that your father was not survived by any of his parents

Under these assumptions, I would make a determination of the present value of all the estate as of today. then distribute the shares as follows: 3/24 to your mother and each of the three sisters, and 6/24 to each of you and your brother. Minors'

shares will remain under the guardianship of their mother and it is permissible to transfer it to you if your mother wishes so.

6- If you guys are well to do, it will be nice (from Islamic moral view point) that you preserve the wealth of your minor siblings and keep it growing within the business and charge all family expenses to the adults' shares even pay for their higher education anywhere that is suitable for them. It is permissible though, but not so nice, to charge them for their shares of the family expenses.

Finally, please do not hesitate in writing again if I and Islam on line can be of any further help on these issues or on any other question you may have.

Wa Allahu A'lam  
Wa Alhamdu li Allah Rabbi al 'Alamin  
Wassalam  
Sincerely,  
Dr. Monzer Kahf

Question:

From: Islam on line  
Sent: Sunday, November 16, 2003 4:53 AM  
To: monzer@kahf.net  
Subject: Very Confused about Zakah

Name of Questioner	Gender	Age
Education	Date Submitted 11/9/2003	
country of Origin	User Ref. No. 13VP2Q	country of Residence

salaam 3alaikum, bare with me please, I tried to learn about Zakah from your fatwa and the more I read the more I got confused, could you explain to me in simple detail, and in understandable words about Zakah. I know it is Fard so save your words and time there. I only want to know about Nisab (and how can I calculate the minimum income for a year) and Hawl and what assets are taxable(for Zakah). I also want you please to emphasize on a company that sells electronics, and give examples on how to pay Zakah on it. Another question on Zakah is that we own a gold shop which we do not get income from, because it goes for increasing the capital. we have not paid Zakah for 8 years on this shop (which is since our father's death, we are not sure if he paid Zakah on it before that) we were minors back then and not involved in the business, also my mother was not involved. but now I am the eldest, 23 years, and trying to do everything right. what should we do? and please explain how to pay Zakah on such a business (examples please) My third question is on inheritance. we(I, mother, younger brother(minor), and 3 younger sisters(2 minors)) did not divide our inheritance since our father's death. It was kept together and my mother spent on us from that pool. My question is how can we divide it now and my mother doesn't know how much was spent on each of us. For example she spent the most on me because I had my education in the US and bought a car there etc.. So if we

divided our inheritance now I would have taken more than what I deserve. And if we do not divide it then someone will have more or less spent on them than the others. So what should we do? wa Jazakum Allah Khairan fi dunia wal akhera. wa ja3alahu fi meezan hasanatikum.

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From: Monzer Kahf  
Sent: Monday, July 07, 2003 6:48 AM  
To: Islam on line  
Subject: RE: Question on Inheritance

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br. Salim

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

I like to beg you to please use words that give definite meaning. are these three children yours from the present or any previous marriage or you and your wife just raised them since they were 4 and 5? I will proceed on the assumption that they are your children (i. e., were born within a marriage performed between you and their mother(s) either at the county clerk or privately according to Islamic law or any previous religion you may have had before reverting to Islam if you are a revert Muslim) because if they came out of wedlock or were adopted, step or foster children they have no inheritance from you at all whether they are Muslims or not.

You know, my dear Brother, that one of the condition in inheritance that a potential heir of a Muslim must be Muslim too as taught by the Prophet Muhammad, pbuh. There are two criteria of being Muslim: 1) confessing faith in Allah as the only deity (God) and in Muhammad, pbuh, as his final and last Prophet/Messenger, and 2) not denying or rejecting any thing that is well established as a part/component of the Islamic religion. A total lack of practice of the pillars of Islam or refuting any of them or any word, even a letter, of the Qur'an violates the second condition even with confessing the Shahadah. Consequently, a person who does not pray, at all, and does not fast and cares not about other prohibitions such as out of marriage sex, etc. is not a Muslim. Living within a non-Muslim majority, especially with non-Muslim family members and failing to have any association or relation with the Muslim community in a mosque or outside a mosque may very often be a great sign that the person does not consider her/himself a Muslim. On the other hand, even a little association with Muslims or praying sometimes only or fasting a few days of Ramadan retains the Islamicity of a person although she/he is committing great sins for the missed prayers , fasting, etc. In other word, in matters of inheritance we need to



distinguish between a non-Muslim and a disobedient Muslim (a Muslim who commits grave sins).

It seems to me from what you mentioned in your question that your two boys are not qualified for inheritance unless they practice the pillars of Islam, even partially. The same applies to your daughter if she has no practices at all. Under these circumstances, you should write your plan for distribution of estate after your death in such a way that does not include them as heirs. If your wife is Muslimah and you have no other Muslim relatives, (parents, siblings, siblings of your father, cousins, etc.) your wife should be assigned 1/4 and the remainder must be assigned to a national or local Islamic organization.

I mentioned the words "plan for distribution of estate" because the Islamic inheritance law can be implemented here in the United States by either a Last Will or a Living Trust. The latter is advisable especially if you own any real estate and is generally a better instrument because it avoids the Probate court. Depending on the expected size of your estate you may make a provision that whatever is given to the Islamic organization must be distributed after the demise of your wife and until then she has the right to use it and benefit from its revenues if you believe she needs that for her living expenses. Also you may make a provision, to a maximum of only one third of the net estate (i. e., after debts, funeral and other expenses), to your non-Muslim children, either or all of them and in any proportion as it is not inheritance, with the condition that this money be used by the Trustee for certain good reason like their education, housing, food stipend, etc. to prevent any abuse of this money on any bad habits they may have.

Finally I suggest that you should read in details the items of last will and living trust on my Website at [www.kahf.net](http://www.kahf.net) and please do not hesitate to ask again through Islam on line or directly.

For the three of them  
Wa Allahu A'lam  
Wa Alhamdu li Allah Rabbi al 'Alamin  
Wassalam  
Sincerely,  
Dr. Monzer Kahf

Question:

From: Islam on line  
Sent: Sunday, July 06, 2003 11:21 PM  
To: Monzer Kahf  
Subject: Question on Inheritance  
Name of Questioner Salim                      Gender Male                      Age 46-60  
Education High School and Below      Date Submitted 7/1/2003  
Country of Origin U S                      User Ref. No. 9CSXL6                      country of Res. U S

Bismillah, Assalam Alaikum. My question is regarding inheritance. I have 2 sons, and 1 daughter. I raised my sons since the ages of 4 and 5 years old. They are now 20 and 22 years old. They were both raised as Muslims and professed to being Muslims. However, since they reached high school age, they began going astray. I retired in 2000 and made Hijra to Egypt giving them the choice of staying in America with their non-Muslim family or coming with me. Of course they chose to stay in America. Since then, they have turned totally away from Islam, no praying, no fasting, and no attending Jumah or the Masjid at all. Unfortunately, I just found out that they are both using hard drugs. I want to start preparations of making a will but I am not sure if they still should receive the same portion. I am also concerned that if I die before my wife who raised them since they were 4 and 5 years old, that they will not act as Muslims and help in providing for her as they would if they were practicing Islam. I am also concerned that they would waste their inheritance on their drug habits and I definitely do not want to contribute to that. My daughter who is now 32 years old was not raised by me since she was a young girl but accepted Islam while incarcerated a few years ago. Since her release in 2001 she has not been practicing, praying, and fasting either. What would be her status of inheritance also. May Allah swt reward you for your assistance in this delicate situation. Shukran. Maah Salama

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From: Monzer Kahf  
Sent: Saturday, July 05, 2003 7:55 AM  
To: Islam on line  
Subject: RE: Division of Inheritance

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br. Quresh

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

you could not get an answer in two years because you either did not ask the right people or you confused them in your explanations and symbols.

As I understand the case you describe there is no great grand father! there is only a grand father who died and we are concerned about the distribution of his estate. He is survived by the following: 1- his wife, 2- one daughter (her children and husband are irrelevant) 3- one grandson and one grand daughter from a deceased son (their mother is irrelevant) and 4- one grand son and two grand daughters from a deceased son (their mother is also irrelevant). The distribution is as follows(You know the Fuqaha like to express share in full numbers rather than percentages so they expand the denominator until it gives full numbers in the numerators):  $1/8 = 7/56 = 12.5%$  to his wife;  $1/2 = 28/56 = 50%$  to his daughter;

$2/7$  of the remainder =  $6/56 = 10.7143\%$  to each of the two grand sons; and  $1/7$  of the remainder =  $3/56 = 5.3571\%$  to each of the grand daughters.

You can take the same answer from my website [www.kahf.net](http://www.kahf.net) the last will, schedule of Mawarith, line no. 2.v and to understand it you need to read lines 2.t and 2.u.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Islam on line

Sent: Saturday, July 05, 2003 12:10 AM

To: Monzer Kahf

Subject: Division of Inheritance

Name of Questioner Quresh Gender Male Age 15-20

Education High School and Below Date Submitted 6/16/2003

country of Origin India User Ref. No. 2HXS7X country of Res. India

BISMILLAH HIR RAHMAN NIR RAHIM I SEEK REFUGE WITH ALLAH THE MOST HIGH FROM SHAITAN ACCURSED Dear expert, Peace is upon you, I would like to ask you regarding the percent of share each member in my family gets according to Islamic law. I would like a sum of Rs 100 to be taken as the ultimate figure. Here is how it goes m stands for married um stands for unmarried d stands for dead l stands for living Great grand father {m,d} Great grand mother {m,l} they have three children 2 males one female male child 1 {d,m}-has two children one boy and girl and wife living Male child 2 {d,m}-has three children 2 females one male and wife who is living Female child {l,m}-has one child daughter and one husband I would like an answer in terms of percent for example 16.66% on a total some of 100 Every person mentioned above must be allotted some percent if necessary. Please help I have been trying to get an answer since 2 yrs but still I haven't got one. thanking you Allah hu Akbar

Notes

I would prefer if this answer is not put on the site but just a personal answer is given to me

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From: Monzer Kahf

Sent: Tuesday, June 03, 2003 6:33 AM

To: Islam on line

Subject: RE: Question on Inheritance

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br. Ali

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

The principle is that at the time of the death properties and all other assets should be accounted for, debts paid out of them, and the rest divided as follows (assuming the deceased had no parents) 1/16 to each of the two wives, 7/48 to each of the four boys and 7/96 to each of the four girls. Apparently debts were too large that the older children felt that they may exhaust all the estate and they put their own effort to develop some properties and develop the furniture business to pay them. It is true distribution must only be done after debt payment, and notice that there is an effort expended by the two sons on the estate that can otherwise be paid for. It seems to me there is fairness, though may not be accounting-wise exact, in dealing with this estate.

Whatever the father gave in his live to his wives and children is legally valid and binding. parents are required when they give gifts to their children to be just and fair, they must give either equal amount or equal service (equal service is like paying for their marriages although the amount paid may not be the same depending of the circumstances of each). But if they did not make justice their gifts are still valid and God, Ta'ala, shall question them for the injustice they may have made. gift distribution to wives is also valid and should be just on the same principle. You cannot change the distribution of gifts he made even if you believe it was unjust.

The houses of the wives and any other properties they own are theirs. Each person is entitled to do whatever she pleases with whatever she owns. She can give to any body, child or otherwise and no one can impose restriction on her action unless in very limited cases such as when she is overwhelmed by debts, when she shows legal inaptitude or become sane (restrictions can only be imposed by a court order). in gifts to children the same principle of justice as mentioned above applies. By the way, justice in gifts to children equates boys and girls (the rule of inheritance does not apply to gifts).

all estate of the deceased should have been divided according to Shari'ah. This is obvious. But it seems the debts would have taken up everything.

No single heir, including those who put effort can take any thing from the estate, before distribution, for his own benefit without the consent of all other heirs. Effort spent by the two elder sons could have been paid for but charging for their effort can only be done from the moment they ask for compensation, all past effort before that is counted voluntary. Although justice and fairness requires that such effort is considered under the circumstances. Equal distribution between the

two families may be fair if their expenses are close to each other especially when the number of persons in each household is about the same.

girls are certainly entitles to their share in the estate after payment of all debts.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Islam on line

Sent: Tuesday, June 03, 2003 1:08 AM

To: Monzer Kahf

Subject: Question on Inheritance

Name of Questioner Ali

Gender Male

Age 46-60

Education Graduate

Date Submitted 5/26/2003

country of Origin Qatar

User Ref. No. BRGJUM

country of Res. Qatar

Assalamu Alaikum My father-in-law died 5 years ago leaving behind 2 wives and 8 children. First wife with 2 boys and 1 girl, second with 3 girls and 2 boys. All are adults and are at the age of inheritance. He was a wealthy man with property and large furniture business, but had large debt on him. Most of his debts have been cleared by selling off his properties by the elder sons of his first wife and developing some properties and then selling them to pay the debts. The elder boys managed the family's furniture business from which they also repaid the debt. A fixed amount is divided among the 2 families equally for their expenses although the second family is larger than the first. Recently, they rented half the shop, the rent is again divided among the 2 families equally. The other half they run their business to pay the debts. The girls so far have got nothing. The boys say the girls are not working in the shop to pay father's debt so they are not eligible till the debts are paid. During his life time he put 2 houses on each wives names and one house on the first son's name and bought shares for first wife's 2 sons and 1 shop for second wife's 2 sons. The only thing that is left is the furniture business which is left to all the heirs which cannot be sold till the debts are paid as the income from this business is used to pay the debts. 1. Can a person give some properties to some of the children and none to others and are they entitled to those properties. 2. Do the houses the wives were given belong to them and can they give it to the children of their choice. 3. Should all the property be divided among the heirs as per the Islamic Law including the ones 4. Can some of the heirs take money from the business to develop their own personal properties or their own needs without the consent or take extra property with mutual agreement between themselves. 5. Are the girls entitled for the past 5 years payments which they did not receive. Jazak Allah Khair

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From: Monzer Kahf  
Sent: Tuesday, April 01, 2003 4:21 PM  
To: aneesa  
Subject: RE: Doubts

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Sr. aneesa  
Assalamu Alaikum wa Rahmatullahi wa Barakatuh.  
There are four points at stake:

1- The fact now is that the heirs of your deceased husband are in partnership with his elder brother. Continuation of partnership always requires the consent of all parties. Yes, he has the right to get you out of the partnership, now and at any time. You have the same right too.

2- pricing of the partnership or assessment of its value requires local experts. what matter is the current price today, not on the day your husband passed away. Assessment includes good will an all other material and abstract elements. It has to be done by neutral expert. IT DOES REQUIRE THE CONSENT OF ALL PARTIES. Once a price is determine either party have the right to buy out the other(s). If you are the guardian of your daughters you can certainly vote for them.

3- You didn't mention whether your husband is survived by one or two parents. If his two parents survived him, your share would be 1/9 and the share of each girl would be 8/27, and each parent 4/27. If he was survived by his mother, or no parents your share would be 1/8 and the share of the mother 1/6 and the elder brother (along with other siblings) would get either 1/24 or 5/24.

4- If you get married you loose the privilege of providing care to your daughters. According to the Shari'ah, this is a right of the minors and they should not be obliged to be in household under non-kin to them (your husband). Loss of care provision privilege is not a big thing because it automatically goes to your mother, if she is alive, with unlimited visitation to you, it certainly does not go to the elder uncle. To keep the children you need the consent of both the husband and the minors' closest kin male.

Now that you know your Shari'ah rights and duties, my suggestion is to get married and still keep good relation with the uncle of your daughters and the rest of their father's family. You described him as "true and just". Try to have some older person in the family to convince him to appreciate your need to be married

and to accept it. apparently, he loved his brother and his apprehension is quite understandable. He needs certain religious advice from a wise family member. This Allah's doing and natural way of life that he has to learn to cope with. May Allah bless you and your family.

Wa Allahu A'lam  
Wa Alhamdu li Allah Rabbi al 'Alamin  
Wassalam  
Sincerely,  
Dr. Monzer Kahf

Question:

From: aneesa  
Sent: Tuesday, April 01, 2003 8:42 AM  
Cc: monzer@kahf.com  
Subject: Doubts

Assalamu Alaikum !

I am a doctor and a young widow from India with two minor girls doing school . My husband was the founder of a company in UAE in which his elder brother also had equal rights . After my husband's death , his elder brother has been looking after the company and has been true and just in giving my husband's share of the profit to us . Now I intend to remarry and when I mentioned this to husband's elder brother , he said that in that case he will be settling my 1/ 8th share once and for all in the company and maintain my children's share as it is . Is it necessary that I cannot continue to hold my share in the company if I remarry ? The company is well established with high growth rate and running highly profitably and it would be always better if I hold my shares which would provide me with a regular source of income . I am receiving about Rs. 500,000 annually and it grows every year . In the event that I will have to come out of the company , how will they assess my 1 / 8th share ? Will it be on its net worth ? Can the goodwill of the company be given weightage on assessing net worth ? Please clarify .

Dr. Aneesa

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### **Inheritance When there are too Many who Deserve Shares**

From: Monzer Kahf [monzer@kahf.com]  
Sent: Monday, November 03, 2003 9:53 AM  
To: asifa  
Subject: Inheritance

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa  
Ashabihi Ajma'in

Dear Sr. Asifa

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

The question of your anonymous female questioner lack certain info about her uncles, are they from both sides, paternal or maternal?. also I wonder if there were any aunts that she dismissed or not? Here is the answer on two scenarios.

1 - if brothers are from both parents of the deceased, the distribution will be as follows:

1/8 to the wife.

1/2 to the only one daughter,

1/6 to the mother, these three persons are share heirs (Ashab al

Nasib), the remainder is to be

divided between the three brothers, each one of them takes 5/72, these are the remainder's heirs

(Al "asabaat). This is in application of the second part of Verse 4: 176.

Notice that the total is obviously 1 ( $9/72 + 36/72 + 12/72 + 5/72 + 5/72 + 5/72 = 72/72$ ).

2 - If brothers are only from mother side, then the last part of Verse of 4:12 applies: the three brothers' share one third.

Yet the total adds up to more than 1! what do we do? this is a typical case that is studied under the chapter of

'Awl (approximately: recalculation) in the inheritance books, it is normally hard to find it and to understand it by

personal research without the help of a teacher! Since all the heirs are of the share type and the total adds to

more than 1, we have to recalculate keeping the relative shares fixed. The following is the distribution:

	ORIGINAL	ADJUSTED
Wife	9/72	9/81
Daughter	36/72	36/81
Mother	12/72	12/81
each brother 8/72 X3 =	<u>24/72</u>	<u>24/81</u>
TOTAL	81/72	81/81

If there are sisters from both sides they share with there brothers in case (1) on the basis of one to two like the rule for children. But in case (2) sisters maternal share equally with their maternal brothers.

In case some brothers are from both side and some from mother side, maternal brothers and sisters share one third, and if only one, she/he takes one sixth and



the remainder is given to the both-parents' brothers and sisters as mentioned in case (1).

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Anonymous inheritance question below. If you can help, please respond to me and I will forward to the inquirer. Thanks, Salam,

Asifa

Subject: Need Advice

Date: Thu, 30 Oct 2003 17:38:25 -0500

The Muslim Women's League gave your organization's contact information to me.

I am a Muslim woman and I have some questions about the Islamic inheritance laws. I have conducted my own research however I still need feedback. My father passed away when I was six months old. I was his only child. I am now 24 years old (single). My father left a land (in my country). I come from a Muslim country, which practices Shari'ah law and is primary Sunni? My mom and I would like to sell

the land in my country. From my own studies and research I know that I am not able to inherit all the land because I am a woman. I can inherit 50 and my mom can

inherit 1/8 according to Shari'ah law. My dad has the following family members left

from his side of the family:

1. His mother
2. 3 Brothers

According to my studies and research I have found that my grandmother and 3 uncles can each inherit 1/6 of my dad's property. I am confused about the formula because it doesn't seem to add up. Here is how I have done the calculations:

1. My mom's share ==  $1/8$  == 12.5
2. My Share == == == 50
3. My Grandmother's Share ==  $1/6$  == 16.7
4. Uncle 1's Share ==  $1/6$  == 16.7
5. Uncle 2's Share ==  $1/6$  == 16.7
6. Uncle 3's Share ==  $1/6$  == 16.7

Everyone's share adds up to more than 100.

Do I automatically get 50 of the whole and my mom gets 1/8? Who has priority over this land and his/her share?

I would appreciate your feedback and expertise.

Please keep my name confidential.

Regards,

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## Wills and Living Trusts

From: Monzer Kahf  
Sent: Thursday, October 30, 2003 6:30 AM  
To: Islam on line  
Subject: RE: Making a Will before Going to Hajj  
My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br. Mohammed  
Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

You may find a detailed Last Will on my website at [www.kahf.net](http://www.kahf.net). Last will or any document that does the same is necessary for Muslims who live in Western countries at any time not only for going to Hajj. Hajj trip may not be any less safe than traveling by car or plain from Liverpool to Manchester! Without a last Will or similar documents the estate will not be distributed in accordance with Shari'ah.

You can summarize the schedule of Mawarith that is attached to the Last Will for your special case, but you don't know what happens as time goes by, you don't who may die before who and who will be born anew. In your case, should you die now, God forbid, your wife takes one fourth, your mother one fourth and your father one half; no body else gets anything. (BTW, this distribution is mentioned in the Qur'an at the beginning of Surah 4).

Wa Allahu A'lam  
Wa Alhamdu li Allah Rabbi al 'Alamin  
Wassalam  
Sincerely,  
Dr. Monzer Kahf

### Question:

From: Islam on line  
Sent: Wednesday, October 29, 2003 4:34 AM  
To: [monzer@kahf.net](mailto:monzer@kahf.net)  
Subject: Making a Well before Going to Hajj  
Name of Questioner Mohammed      Gender Male      Age 21-30  
Education Graduate      Date Submitted 10/20/2003  
country of Origin United Kingdom      User Ref. No. J913QZ country of Res. U K

Salaam, I am intending to go to Hajj this year InShaAllah and would like to make a will in preparation. How do I go about making one and what share of inheritance would the following get in my current circumstance: I'm married No children Parents 2 brothers (both married), one has 2 children No grandparents May Allah swt reward you for your help

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From: Monzer Kahf  
Sent: Thursday, August 21, 2003 8:04 AM  
To: Islam on line  
Subject: RE: Questions on Zakah, Will and Waqf

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Sr. Heidi

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

1 - The sum you are saving for your daughters is subject to Zakah from the end of the lunar year that began on the day you acquired it provided it is in the amount of Nisab or more (# US\$ 1000). The rate is 2.5% and remember that Zakah is due after the passage of every lunar year from then after. They are, Wal Hamdu li Allah, much better than orphans about them the Prophet, pbuh, suggested that the guardian should invest their funds so that the Zakah does not exhaust (eat up) them. They have their Parent to their support and InShaAllah you and your husband will be able to take care of their education and marriages without even needing to use this fund and you still give it to them. It is true it will decrease but they will still be better off than the poor who deserve Zakah! By the Way, why don't you invest this fund in long term investment (Mudarabah) deposit with an Islamic bank; most likely it will give a profit that covers the Zakah in bad years and more than that in good years.

2 - If the land you have is intended to build your own new house or for the children to build on it in the future it is not subject to Zakah. If you acquired it with the eye on watching prices of land (that are skyrocketing) and to sell it when you get a good price, it is then subject to Zakah. it is 2.5% at the end of every lunar year, the first year begins when you acquired the land.

3 - A will is invalid to an heir. It is also invalid in the amount that exceeds one third of the net distributable estate unless with the approval of the heir. This is the Shari'ah and the Egyptian law too because the family law in Egypt is essentially derived from Shari'ah.

4 - It is Haram to take any action that is intended to prevent the distribution of the estate according to the texts of the Shari'ah (by the way they are, almost all, given exactly in the Qur'an and the Sunnah).

5 - However, You and your husband are completely free to take any transaction, contract or action regarding your property while alive (and not restricted such as an action of a debtor that may harm creditors or an action during the final illness). You may give your daughters any thing including all your property provides your intention is to help them through education, marriage, etc., not to prevent other heirs from getting their shares. Notice the line that differentiates these two intentions is thin but still you must not cross it. If they are still minors, you can also establish a temporary Waqf for them, say for 20 years at the end of it will be liquidated and its asset distributed to them; and while alive you may retain control as a trustee (Mutawalli/Wasi) and you may put a provision that gives you both the right to benefit from and use these properties for your own selves. If properly worded such a Waqf is permissible in Shari'ah (It is also legal in the USA and most Western countries) and I suggest that you may consult a specialized local lawyer if you decide to take this route.

Wa Allahu A'lam  
Wa Alhamdu li Allah Rabbi al 'Alamin  
Wassalam  
Sincerely,  
Dr. Monzer Kahf

Question:

From: Islam on line  
Sent: Tuesday, August 19, 2003 11:57 PM  
To: Monzer Kahf  
Subject: Questions on Zakah and Will  
Name of Questioner Heidi                      Gender Female                      Age 31-45  
Education Graduate                              Date Submitted 8/14/2003  
country of Origin Egypt                      User Ref. No.11441W                      country of Res. Egypt

Dear Sir, I have two questions the first regarding Zakah- We are a family of a good income but it is spent every month without any savings. My husband was in the army and at the end of his service he was given a bonus of a sum of money which we put aside and do not touch it for our girls' marriage and education and it is the only saving we have since our monthly income is totally spent every month and we have debts (car loans ad credit card expenses ..etc). The money we are putting aside we do not get any income from it and it is a fixed amount and probably its value is diminishing with years. Does such money require Zakah payment taking into account that it is not for our daughters who are minors and if we pay Zakah on such money it will eventually decrease. Also we have a piece of land- how is Zakah paid on it? My second question is regarding writing a will; is it sinful if my husband writes a will stating that all his possessions go to his

daughters after death? and if he writes say his possessions in the name of our daughters by means of contracts- is that Haram? Thank you and may God bless you.

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From: Monzer Kahf  
Sent: Sunday, August 03, 2003 9:14 PM  
To: hafiff  
Subject: Estate Distribution - Will

My Answer:

Dear Br. Hasyim  
Assalamu Alaikum wa Rahmatullahi wa Barakatuh,  
Your email was referred to me to answer.

I'm the person who prepared the schedule of distribution of estate in accordance with Islamic Shari'ah, as it should apply in countries that do not have Islamic inheritance laws for Muslims.

I really appreciate your concern and interest to help improve this presentation of the Islamic inheritance system in applicable form but please excuse me because I didn't quite well understand what is your question, what translation did you make and to what language and what is the work sheet thing that you intend to provide? Certainly ISNA and I both appreciate any advice and help in this process and especially if it comes from an expert like your kind self.

Kindly explain to me in some details what do you suggest and write me about any concern or question related to the Last Will and its attached estate distribution schedule.

With my best regards,  
Wassalam  
Sincerely,  
Monzer Kahf

Question:

From: Afiff  
Sent: Sunday, July 27, 2003 10:17 PM  
To: president@isna.net  
Subject: Estate Distribution - Will

Assalamu Alaikum Sheikh Muhammad Nur Abdullah  
Many families downloaded "Last Will and Testament..." from your websites and it is very helpful. I am a CPA and have reviewed, translated, and converted into numbers many operating agreements for variety of businesses and corporations. I

found a little bit difficult in translating the "The Islamic Distribution of the Estate" schedules provided in the package.

Since it is very important to us, Muslims, I would like to share my experience without compensation in the presentations of the schedules so that they are easy to read and translate. I read many questions and answers in regards to the Islamic Will, but most of the answers provided are very convoluted. I want at least to help build the worksheet so that everyone can be beneficial.

Please provide me with the contact person, who is knowledgeable with your Will package, so that I can get a clear understanding of the several scenarios mentioned on the "The Islamic Distribution of The Estate". I will then provide to the responsible person and yourself a worksheet that is hopefully we all can understand them easier.

Thank you and Wassalam.  
Afiff

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From: Monzer Kahf  
Sent: Sunday, July 13, 2003 6:27 AM  
To: Islam on line  
Subject: RE: Writing a Will

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Sr. Sheeny

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

A Last Will in the Shari'ah must not alter the inheritance system and the prophet, pbuh, mentioned that a Last Will (Wasyyah) does not apply to heirs). The Inheritance system in Islam is mandatory and the rules of distribution of an estate are made by God in the Qur'an, mostly in Surah No. 4.

Consequently a Last Will can only be made to non heirs, especially charities and with a limit set by the Prophet, pbuh, of one third of the estate only.

Getting any financial help from /potential heirs/relatives is not a criterion because they may not be in need or you may not be in need. The Shari'ah establishes clear rules for obligatory financial assistance in case of need and ability to extend it. these rules are very consistent with inheritance to the extent that it is known among scholars that he who may inherit is financially responsible in case of need.

in you case and according to the info mentioned in the question including that you have no grand parents, the estate of your father, should he die, must be distributed as follows: 1/6 to each of the four girls and 1/8 to your mother, the remaining 5/24 should go to brothers and sisters of father if they exist or even to farther like cousins and second cousins. this can only be determined on the basis of more details. if there are no other relatives at all, this part must be rendered back to the four of you for equal distribution between the four girls only.

On the other hand, you should notice that the inheritance system is based on a basic Islamic philosophy that properties are only entrusted to us during our life time, when one dies properties entrusted to her/him go back to their True Owner, God, who ordered how it must be distributed. The other immediate implication of this philosophy is that while one is alive once can use one's property in any way that one pleases. This means that while making a Last Will to heir is prohibited and not valid in both the Shari'ah and the law of the land (remember India has a Muslim personal/family law for Muslims) giving gifts to children is permissible in both Shari'ah and the law of the land. Therefore while alive your father can give as gifts any amount, even all what he owns at that moment of time to his daughters. there is an important condition is the Shari'ah that such gifts must be given equally to all children regardless of their gender (i. e., the rule of inheritance that a male child gets twice as much as a female child does not apply on gifting).

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Islam on line

Sent: Sunday, July 13, 2003 12:09 AM

To: Monzer Kahf

Subject: Writing a Will

Name of Questioner sheeny

Gender Female

Age 21-30

Education Graduate

Date Submitted 6/29/2003

country of Origin India

User Ref. No. K4RYZX

country of Res. India

My father has four daughters. Is it possible for him to write a will to give his property to the four of us. We don't get any help from any of our relatives. IF writing a will is forbidden in Islam, can u enlighten me on what share of the property will go outside our immediate family-that is my mother and we four sisters.

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From: Monzer Kahf

Sent: Tuesday, June 17, 2003 1:22 PM

To: Hanı  
Subject: Last Will and Testament

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br. Hanı  
Assalamu Alaikum wa Rahmatullahi wa Barakatuh.  
Sorry for the confusion. the website is currently under reconstruction and there are revisions to some of the documents.

What you need is the material (the whole package) under living trust. However, the main document is the revocable living trust, the others are very important and necessary. Please read them and you will realize the differences between them. the Revocable Living Trust document is revised and please find attached the revised one. Please tell the lawyer that if he is going to charge you for it, there is a copy right owned by me. I allow personal use free (i.e., for you) but if a lawyer uses it and he charges customers certain fees then he must realize that He has to buy from me the copy right to use it. The Warranty deed differs a lot from one county to another. please discard the one in the file and use one that is accepted in your county. its only use is to transfer properties from the personal names to the personal names as trustees of your trust.

In other words the documents you can take from the web are:

General Durable Power of Attorney of Wife  
General Durable Power of Attorney of Husband  
Last Will - Wife  
Last Will - Husband  
Living Will Declaration - Wife  
Living Will Declaration - Husband  
These documents complete the revocable living trust and are always with it.

And add to them the attached document, and the warranty deed used in your county.

Other trusts are for other purposes and for organizations that own Islamic properties like mosques and Islamic centers.

Wa Allahu A'lam  
Wa Alhamdu li Allah Rabbi al 'Alamin  
Wassalam  
Sincerely,  
Dr. Monzer Kahf



Question:

From: Hani  
Sent: Tuesday, June 17, 2003 11:24 AM  
To: Monzer@Kahf.net; Monzer@Kahf.com  
Subject: Last Will and Testament

Assalamu Alaikum Dr. Kahf,

May Allah bless you and your family for your hard work to help Muslims all over North America. I attended a seminar on May 31, 2003 about "Islamic Financing, Last Will, Inheritance & Zakah" at Jami Mosque in Toronto, Canada. You gave excellent presentations on both Zakah and Last will.

I went to your website and downloaded all the documents for the Charitable Trust, Living Trust and Last Will. I intend to go to a Muslim Lawyer (br. Faisal Kutty) insha Allah to complete these documents for me and my wife.

However, I got confused by the number of documents that you have posted on you site. Many of these documents seem very similar to each other. In fact, some information is duplicated (such as the Schedule of heirs). Can you help me identify which documents I need and which are most updated.

For example, there's a Living Trust, permanent trust, and revocable trust. What is the difference between them and do I need all of them?

Also, there's a last will and a living will; what is the difference between them.

I listed below the sections in your website and the documents under each section. Please help me in identifying which ones I need.

Charitable Trusts:

Living Trust (With Charitable Clause)

Permanent Religious Trust

PERMANENT FAMILY/CHARITABLE TRUST

PERMANENT FAMILY/CHARITABLE TRUST

The Permanent Family/Charitable Trust

Living Trusts:

Revocable Living Trust

General Durable Power of Attorney of Wife

General Durable Power of Attorney of Husband

Last Will - Wife

Last Will - Husband

Living Will Declaration - Wife

Living Will Declaration - Husband

Warrant Deed

Last Will and Testament.

Jazak Allah Khair,  
Your brother  
Hani

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From: Monzer Kahf  
Sent: Tuesday, June 03, 2003 7:01 AM  
To: Islam on line  
Subject: RE: Writing a Will and Inheritance

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br. Taahir

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

An arrangement that guarantees that distribution of estate shall be done according to Shari'ah is a must for all Muslims who live under non-Islamic laws because without such an arrangement the Islamic system of inheritance that is obligatory and Faridah like prayers, cannot be implemented.

Such arrangement can be a last will, a living trust, a family corporation or even a word of mouth if it is sufficient to potential heirs and estate custodians. Still the estate of any Muslim who dies under non-Islamic laws must be distributed by her/his heirs according to Shari'ah even when no such arrangement was done by the deceased. Members of Muslim community must advise each of the heirs that the only Halal thing they can take from the estate is what is assigned to them in the Qur'an. Heirs are also required by Shari'ah to redistribute according to the Qur'an and Sunnah whatever shares given them by the law of the land and any one of them who takes more than her/his Shari'ah assigned share is sinful and the property she/he takes in excess of the Shari'ah share is Haram for her/him regardless of what the laws of the land decree.

A person during his life can dispose of his/her property any way she/he pleases. If a husband gave his wife all his properties, it is permissible and valid. If some of these properties require formal recording (as in cases of real estate, cars and boats) and such formal recording was not done, other heirs can challenge the gift and seek distribution according to Shari'ah because the word of mouth is not sufficient to transfer title of such properties, formal recording is recognized in Shari'ah. Notice that gifts to a spouse or to any other heir must be executed in the life time, they cannot be made in a last will. Also gift giving must be actually implemented, i. e., the property must be handed over to the recipient of the gift,

otherwise a gift is not executed and can be considered withdrawn and challenged after death. In the example you mentioned the wife must be the actual holder of these properties during life time of the deceased to be considered the owner, by virtue of gift, after his death. If he continued to manage his properties until death, then they belonged to him unless there is evidence to indicate that he was hired by his wife or he volunteered to manage them.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Islam on line

Sent: Tuesday, June 03, 2003 1:15 AM

To: Monzer Kahf

Subject: Writing a Will and Inheritance

Name of Questioner Taahir Gender Male Age 21-30

Education Graduate Date Submitted 5/27/2003

country of Origin South Africa User Ref. No. UDYUKW country of Res.

Salaams Firstly, if in the event a person does not declare a will prior to them passing on, what is the Islamic ruling with regard to inheritance. Secondly, if while the now deceased person was alive he on a number of occasions stated in action and expressly that what he owns belongs to his wife (cash , properties and loans receivable). would the assets then become the property of the wife or would it have to be distributed according to the Shari'ah as if he had owned everything. Thank you for an excellent service which is extremely balanced. looking forward to your reply. Wassalam Taahir

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### **Is the Inheritance System obligatory? Can it be Changed by a Will?**

From: Monzer Kahf

Sent: Thursday, September 18, 2003 7:48 AM

To: Islam on line

Subject: RE: Question on Inheritance

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi

Ajma'in

Dear Br. ABDULLAH

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

your abbreviations are confusing. You don't save on typing when you ask a question!

Any way, let me give you a general answer to what I understood of your confusing question.

The Islamic inheritance system does not go by the intention of the deceased. The reason is: the Islamic doctrine that properties are owned by God, we are only vicegerent during our life time on this earth and whence we die property goes back to its Owner. He, in the Qur'an gave us the details of what to do with the estate of the deceased. Even if your brother in law wrote a last will to his wife, this will is not valid from Shari'ah point of view.

You know that the revelation of God came down in two forms: the Qur'an that is the exact words of God and the Sunnah which is what God revealed to the Prophet to tell us with the Prophet's own words, action or approval of action of others that he knew about and approved. The Prophet told us what means that it is permissible for a person before death to make a last will of a maximum amount that does not exceed one third of the estate (after payment of debts and expenses) to non-heirs persons and entities such as charitable organizations or non-heir relatives (like children of a sister). Otherwise all persons who may inherit are determined by God Himself in the Qur'an, mostly in Surah 4, al Nisa'.

According to the Qur'an and Sunnah, if the deceased is married with no children, his wife takes only one fourth. The rest goes to his parents, brothers and sisters, uncles and aunts and even cousins. But certainly the wife does not have a right to anything more than 1/4. You need to give me all relatives of the deceased who were alive at the time of his death so that I can tell you the exact distribution according to the Qur'an and the Sunnah.

A last note: if your deceased brother in law had his house recorded in the deed documents as a joint property with his wife, this means that when he died she already owned 1/2 of the property and if there are no children she inherits one fourth of the other half. This makes her an owner of 5/8 of the house. (This applies if the property is located in a country/state that has community property laws and he recorded the property in his name without taking approval from his wife at the time of recording the deed).

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Islam on line  
Sent: Thursday, September 18, 2003 12:59 AM  
To: monzer@kahf.net  
Subject: Question on Inheritance  
Name of Questioner ABDULLAH Gender Male Age 46-60  
Education Post Graduate Date Submitted 9/10/2003  
country of Origin India User Ref. No. 3N6SC2 country of Res. U K

ASAK, my brother in law ali died, he had one sister alive, he intended that he would give the house 2 mansoor his nephew after death, meanwhile mansoor married outside the family, ali got annoyed ,banned entry of mansoor & his mother 2 his house, then he became ill my sister nursed him lovingly, later he told her he would give her a big surprise, then again when he fell ill he asked my sister 2 call an advocate, she said no it is time for doctor not advocate, he intended 2 transfer the house in the name of my sister but death did not gave a chance to him to do it, after his death sister sold the house, informed deceased's sister about what his intention was, there is no reply from her nor any court case against my sister c legal hassles r present day problems ,intention of deceased and intention of his living sister are apparent, the property as per niyyah of the deceased/his sister belongs 2 my sister, please elaborate, wass-salam. Lately sister of my b-in-law expired, her husband & children R alive, by b-in law I mean, husband of my real sister.

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**Non-Muslims Inheriting Muslims**

From: Monzer Kahf  
Sent: Tuesday, September 02, 2003 9:20 PM  
To: Islam on line  
Subject: RE:

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br. Shadya

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

We need first to define our terminology. getting distribution from an estate is not necessarily inheritance according to the definition of Our Glorious Shari'ah.

Inheritance is getting distribution by virtue of the words of God and His

messenger that is a "statuary distribution" if the term can be used. In other words, Inheritance in Islam is the distribution as ordained by God Revelation that is handed down to mankind either by the very Words of God as revealed to the Prophet Muhammad or what is revealed to Muhammad, the Prophet and he put it in his own words, the Sayings of the Prophet, pbuh.

The Shari'ah allows another kind of distribution that is determined by the will of the person before death through a Last Will or a Testament. This is not inheritance but willful distribution, it is limited to a maximum of one third of the net remainder after disbursement of expenses (including funeral and burial expenses) and debts.

Our common jargon, in the US today uses the term inheritance to mean all and any distribution of an estate whether it is statuary by man-made law or by will and unfortunately we Muslims also use the term inheritance with no distinction between whether it is from God, by secular laws or by will.

Now, inheritance (statuary distribution by the Revelation of God) between persons of different religion is not permitted. A Muslim may not inherit a non-Muslim and a Non-Muslim may not inherit a Muslim. This is stated clearly in the Sayings of the Prophet, pbuh and the Prophet prevented one of his companions from asking for a share of his father's estate that was taken by the non-Muslim siblings.

On the other hand, distribution by the will of the testator or by any other formula made by human beings like a state law is not limited, according to our Shari'ah to within the religion of the deceased, former owner of the estate. Our Shari'ah limits such a distribution to a maximum of one third as I mentioned above. This one third limit is binding on Muslims only, it can be willed to any person(s), charities, or causes (e. g., poor and needy or an Islamic center), it can also be willed as a Waqf whose revenue is to be spent on persons, charities, causes, etc. The only condition is that such a willful distribution must not disturb the Qur'anic (statuary) distribution. This condition is expressed by the Prophet, pbuh, as "there must be no will to an heir."

Unlike Muslims who live in most Muslim countries and in India, Sri Lanka, Kenya and others, we Muslims in America have no Islamic inheritance law. Therefore we are required by the Shari'ah to make arrangement for the distribution of the estate in accordance with the Words of God. Making such arrangement is an obligation on those Muslims who own any property and they think that once they die there is a chance that their estates may not be distributed according to Shari'ah.

While doing such arrangement (that may be a Last Will, Living Trusts, Family corporations, etc.), we must distinguish between the Qur'anic statuary inheritance and distribution by will. WE CAN GIVE TO ANY NON-MUSLIM RELATIVE

THROUGH THE WILL (WITHIN 1/3) REGARDLESS OF THEIR RELIGION. This was even done by no less than The mother of Believers, Safiyyah who left something for her Jewish brothers.

BTW, I advice you to take a look at the form of a living trust in accordance with the Islamic Law that is posted on my Website. It is not a legal advice but one from Shari'ah point of view because it has been my experience with living trusts that most people make them without noticing the many many requirement that are needed from the Shari'ah point of view which I highlighted yellow on the forms. Besides, you will find attached to the form a schedule of Inheritance according to the Shari'ah.

If you have any question or comment, please write me through Islam on line or directly

Wa Allahu A'lam  
Wa Alhamdu li Allah Rabbi al 'Alamin  
Wassalam  
Sincerely,  
Dr. Monzer Kahf

Question:

From: Islam on line  
Sent: Monday, September 01, 2003 6:37 AM  
To: Monzer Kahf  
Subject: Non-Muslims Inheriting Muslims  
Name of Questioner Shadya                      Gender Female                      Age 31-45  
Education Post Graduate                      Date Submitted 8/21/2003  
country of Origin U S                      User Ref. No. TBKPTS                      country of Residence

SalamUAlikum Wa Rahmatu Allah. Should non-Muslims inherit from Muslims? Does the answer change whether it is from parents to kids or visa versa? Should Muslims inherit from non-Muslims? I was born an Arab Muslim. I married an American man, Khalid, who converted to Islam. We are currently expecting our first child Alhamdulillah (this would be my first and Khalids second). Khalid is the only Muslim in his family. His mother, father and one sister practice Christianity. His brother and other sister do not practice any kind of religion but go by the name of Christians. When Khalid was in his early 20's he got married and Allah blessed him with a child – Michael. Michael is now 19 and in college. He is a good boy. Michael “knows there is something out there” but does not subscribe to any religion. He says he basically does not have any religion. We are trying to gently bring him into Islam. Khalid and I are putting together a living trust. It is important that we arrange our finances in a way that would be pleasing to Allah, and make our transition to the life-after easier. During the life of our beloved Prophet (swas) Muslims could not inherit from the non-believers and visa versa. This caused hardship on many. In today's times that might cause

contention. But we don't know what is the most accepted action or view for our Akhira. Thank you for your help. Jazakum Allah Khair.

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### **Should the Islamic Inheritance System be Implemented to Muslims in the West?**

From: Monzer Kahf  
Sent: Thursday, August 28, 2003 9:16 AM  
To: Islam on line  
Subject: RE: Inheritance

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br. Ibadete

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

The Shari'ah is as you said a comprehensive, consistent system. Although we are required to implement it all, the failure of implementing some does not give relaxation to implement the other. The Prophet, pbuh, ordained: "Whatever I ask you to do you must do as much as you can of it and whatever I ask to avoid you must avoid it all. The rationale behind this is that if you start using excuses all the application collapses, and there are always circumstances that make us unable to implement certain portion of the Shari'ah; the immediate result is that there will be no application of Shari'ah in any society! Take the Muslim countries, their political system is not in accordance with Shari'ah, does it give an excuse to get a family law imported and scrap the Islamic family law?! The right position is to have an Islamic family law and call and spent all possible effort to amend the political system so that it becomes in line with the Islamic law.

I agree with you that the family financial responsibilities are reflected in the distribution of inheritance. This calls for implementing both, not quitting both! We call for implementing the Shari'ah inheritance law and the financial responsibility directives for all Muslims who live in countries governed by non-Islamic laws.

I do not agree with you on your statement that common laws in the West do not allow implementation of Islamic laws related to family financial responsibilities. They in fact do. An Islamic marriage contract is recognized in all such countries (if you site a different case, I am sure it can be easily fought in a court). This means that the Mahr is enforceable in both its advanced and delayed parts.



Husband responsibility to spend on the family exists in the common law, it is sometimes vague, and An Islamic marriage agreement that specifically mentions this point is also enforceable in courts in the Western countries. The same applies to independence of properties and earnings.

I don't intend to say that there is no problem. In fact, there is one; but not the one you mentioned! The problem is that immigrant to Western countries come with marriage contract done under Islamic family laws, in most of the cases. Since the laws in the countries they came from are clear on these matters the marriage contract only refers to the issue of Mahr. By the same token the indigenous Muslims (those who revert to Islam) in these countries copied the immigrants' marriage contracts without noticing the missing part in it! What we have, for instance, in North America is simple one page contract that only mentions the Mahr!

What are needed in the Muslim communities that live in the Western countries are both a marriage contract (can be a prenuptial or a postnuptial agreement) that mentions all these point ( add to them the issue of guardianship) and legal instruments that implement the inheritance system (last will/ living trust). For suggestions and forms please visit my website [www.kahf.net](http://www.kahf.net) every thing is offered free if it is for personal use only.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Islam on line

Sent: Wednesday, August 27, 2003 8:26 AM

To: Monzer Kahf

Subject: Question on Inheritance

Name of Questioner Ibadete Gender Age

Education Date Submitted 8/21/2003

country of Origin User Ref. No. G2PPW1 country of Res.

I recently read a ruling issued on this site, whereby a Muslim must ensure that his/her property after death be distributed in accordance with Shari'ah Law even if such a person resides in a common/civil law country. Could you please explain the rationale of doing so, in light of the following: Shari'ah Law, as Civil or Common Law is a comprehensive system of inter-related laws and regulations, which cannot operate independently of one another. In the case of Shari'ah inheritance laws, female heirs inherit less than male heirs – which is just in the Shari'ah legal system that ensures certain other financial privileges for women, namely: a woman's entitlement to a dowry, the right to be supported by her husband (or other Mahram), as well as the right to keep all her earnings. The

Shari'ah ruling on inheritance thus presupposes certain financial advantages of the woman which are not legally guaranteed in a Common / Civil Law system (on the contrary). How can it thus be fair to insist on the application of one economic aspect of the Shari'ah in a system which does not guarantee those other economic conditions which such a Shari'ah ruling presupposes? Please note that I would reserve this view to legal and economic matters which require enforcement and not those pertaining to a Muslim's personal moral conduct which are, at any rate, not enforceable in any legal system.

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From: Monzer Kahf  
Sent: Friday, May 23, 2003 8:58 PM  
To: Islam on line  
Subject: RE: Why Must We Ensure to Follow Islamic Inheritance Law

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Sr. Emira

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

It is the nature of this religion that it is a system and personal standards at the same time. The Prophet, pbuh, said that whatever I call upon you to do, do as much as you can out of it and whatever I ordain you to abstain from you must quit it all. This is a correct authentic Saying.

The argument you gave is very important, acceptable and sound, yet it does not necessarily lead to the conclusion you suggested. You said that if the Islamic system of property, family finance and relation and inheritance is taken all together "this makes perfect sense." What your argument leads to is that we need to take all these aspect, and if one of them is already available then let us work together on achieving the others because it is important to reach the "objective of economic justice which is ultimately the underlying principle of this and complementary Shari'ah rulings." We need to implement the Islamic inheritance system, and we need to make marriage agreement that are not satisfied by a simple statement 'according to the Qur'an and the Sunnah of the Prophet' We need a detailed marriage agreement that mentions the rights of the wife, the children , the parents, how to deal with disputes and the property rights of each of the spouses.

In other word, we cannot quit the part of the Shari'ah that we can implement because others are not implementing their part but we must be aware of all our Shari'ah given rights as well as obligations and call for their implementation all so they can complete each other.

For exactly this reason I invite you to visit [www.kahf.net](http://www.kahf.net) and look at the proposed marriage contract that delineate all this points, you will find it side by side with

the last will and living trust that contain the inheritance system. The legal structures in USA, Canada, Australia and most European countries accommodate this kind of marriage contract and I think that Muslim Girls must not accept to enter into a marriage except on the basis of a contract of this kind.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Islam on line

Sent: Thursday, May 22, 2003 1:50 AM

To: Monzer Kahf

Subject: Why Must We Ensure to Follow Islamic Inheritance Law

Name of Questioner Emira

Gender

Age

Education

Date Submitted 5/15/2003

country of Origin

User Ref. No. ZNK6VH

country of Res.

I have read in a ruling recently issued on this site that a Muslim must ensure that his/her property after death be distributed in accordance with Shari'ah Law, even if such a person resides in a state ruled by civil/common law. I do not grasp the logic of applying the Shari'ah law of inheritance in a society / legal system that does not guarantee the application of other economic principles of the Shari'ah which, only when working \*together\*, actually ensure that a Shari'ah distribution of property be fair to all heirs. To be more precise, under Shari'ah law, a woman inherits less than a man. In a Shari'ah state, this makes perfect sense as she is guaranteed other financial privileges, such as the right to be supported by her spouse as well as to seek a dowry that is in accordance with his means or her wishes. A man being exclusively responsible for maintaining his wife and children, rightfully inherits more. In this sense, the Shari'ah law of inheritance takes into consideration other Islamic provisions on the economic rights and responsibilities of the male and female. In a civil/common law state that does not guarantee a woman any compensatory economic rights, however, it would seem that the voluntary application of Shari'ah law with respect to inheritance would not achieve the objective of economic justice which is ultimately the underlying principle of this and complementary Shari'ah rulings. Certainly, there are aspects of the Shari'ah that maintain their integrity in any system of law and exist independently of it (particularly those relating to one's personal and moral conduct), however, when it comes to matters that call for legal enforcement (i.e. money), it would seem that the underlying principle of economic justice and balance is not achieved if only the Shari'ah law on inheritance is applied in a society that does not enforce complementary economic rulings - in this case, those pertaining to women. One could, of course, speculate that a good Muslim will, anyhow, support his spouse and pay her a dowry in any legal system; however, in a non-Shari'ah state, this is a purely voluntary matter, and once a woman has

inherited less, and a man (for we cannot really rely on the integrity of every Muslim individual, can we?) fails to provide for her as he Islamically should, the damage to her is very real and very contrary to the Islamic vision for her status and protection. I would appreciate it if you could explain to me the logic of applying the inheritance rulings of Shari'ah in a society which does not operate under nor legally enforce those Islamic economic relations and responsibilities which such an inheritance law presumes. Thank you!

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### **Inheriting Haram assets**

From: Monzer Kahf  
Sent: Saturday, June 21, 2003 6:37 AM  
To: Islam on line  
Subject: RE: Are Bank Shares Our Father Left Halal or Haram?

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br. Ali

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

These shares entered into the ownership of the heirs on the day your father died. It is not permissible to buy conventional banks' shares and to keep them. Maintaining them for all this long period was wrong on the part of the adult heirs and the guardians of the minors. You probably did not know may God forgive you and us all.

The rule regarding Riba is laid down in the Qur'an (2: 279) that is you are entitled to your principal and holding Riba-based banks' shares is like dealing in Riba yourself because the bank management deals in the name of the owners of the company.

With that in mind, the heirs are entitled to either the amount paid by your father for these shares or their value on the day of his death, and that much is Halal InShaAllah for them. whatever extra should be given to Muslim charities.

The distribution of the permissible amount of the sale proceeds is as follows: if the deceased did not leave any parents of his own, your mother takes  $12/96$  ( $=1/8$ ), each of the sisters gets  $7/96$  and each of the brothers gets  $14/96$ .



Subject: RE: Inheriting Money Earned Through Unlawful Means

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br. umar

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

Any property obtained with no legitimate due right belongs to its real owner and must be physically returned to her/him. The example is stolen properties, bribes and the like. Such properties cannot be inherited by the heirs of the person who obtained it and as a member of the family of the person who illegitimately obtained it the Shari'ah does not allow you to knowingly consume it or have it in your hold.

Also prohibited for use, consumption and holding is any property obtained in a means that is clearly prohibited in Shari'ah such as wage of a prostitute, commission of a pimp, price of alcoholic beverages sold by a Muslim. But this money may not be returned to its true owner if the latter is a practitioner of the wrong action for which the money was paid. In this case such money must be given to Muslim charity in analogy to money whose owner is not known.

On the other hand, money obtained in exchange for man-hours sold in a legitimate contract and legitimate work, even if it were in helping a dealer in Riba or price of food sold to a prostitute, is not Haram itself. It does not exist in our Shari'ah that a wrong doer must not be sold food to eat or must be boycotted until starvation. Such an attitude is certainly not Islamic. The law in punishing wrong doers and preventing them from repeating their bad action is left to the public order and is not taken in the hands of individuals. In fact "hide it", "don't mention it" is the attitude that is suggested by the Prophet, pbuh, in authentic saying that deal with "don't mention the sins of believers and if I use the word loosely "covering them up"

This kind of earning is not prohibited for the earner or his dependents.

Bank interest must be given away to Muslim charity by the earner, his dependents are not sinful by eating from it if this is what the father, being the person responsible for their sustenance, offers them. The same applies on salary from working in a wine brewery. Stolen property must be returned to its owner and it is forbidden for the dependent to knowingly eat it or inherit it.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Islam on line

Sent: Friday, May 23, 2003 1:00 AM  
To: Monzer Kahf  
Subject: Inheriting Money Earned Through Unlawful Means  
Name of Questioner umar Gender Male Age 15-20  
Education High School and Below Date Submitted 5/17/2003  
country of Origin Nigeria User Ref. No.NPP6LH country of Res. Nigeria

Assalamu Alaikum is it Halal to inherit money from someone who you know earns his money illegally i.e. earns his money through bank interest, stealing, salary from a Haram job like wine production etc.? how about If you happen to be a son of a man who earns his money illegally, and you have no means at all to support yourself when he dies except with that illegal money, what should you do?

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### **Adopting a Child and Giving Him a Share in Inheritance**

From: Monzer Kahf  
Sent: Sunday, May 18, 2003 5:28 PM  
To: Islam on line  
Subject: RE: Adopting a Child and Giving Him a Share in Inheritance

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi  
Ajma'in

Dear Br./ Sr.

Assalamu Alaikum wa Rahmatullahi wa Barakatuh.

While a person is alive he/she can do any thing with owned property. give to the adopted child, local or national Muslim organization, create a Waqf (Trust) and make himself/herself as a beneficiary while alive, etc. As long as all such actions are not wasteful to an extent that invokes measures of restrictions because of "irrational behavior". the adopted child and any natural or legal person can be given any amount, there is no limit from Shari'ah point of view, but be watchful for the tax limit in the USA if you live in it.

In a last will Such a person can assign up to one third of net estate (after expenses, taxes, funeral, etc.) to any person. the rest goes to the heirs. In the case of the man 2/3 of it the remainder goes to the three sisters and if there are no other heirs, even distant like second or third cousins, the rest goes to the state if this man lives in North America. If this man has a properly prepared last will he must give the rest

to a local or national Islamic organization. It is obligatory to prepare a last will or a living trust You may consult my website for ideas on it [www.kahf.net](http://www.kahf.net) . If this man lives in a Muslim country the rest goes to the state too but it is not obligatory to make a last will. For the woman the same principles apply. she has a brother and sister who may take all the remainder after the one third.

I am sure you know that legal adoption is prohibited in the Shari'ah and unless you make arrangement through Nursing [Radha'ah] while the child was still breast-fed, he remains a stranger to this woman and if he is now after the age of puberty she is required to cover in his presence. Fostering is very much encouraged in our Shari'ah. If this adoption is maid legal for immigration purposes both adopting husband (the child's uncle) and wife must observe the Shari'ah requirements in inheritance and cover. This child does not inherit any thing unless through the maximum of the one third in a Valid last will [Wasiyyah].

My personal advice to this family is as follows if it is in North America: create a living trust. you will be the founder, trustee and beneficiary at the same time. you can add this child as a beneficiary too. assign in the living trust for this child one third of the net estate of the share of the first to die between you after the demise of the first to die and also one third of the share of the second to die[ normally community property is considered owned half/ half]. In the Islamic form of living trust we attached a schedule of Mawarith that indicate how the remainder of the estate should be distributed if the husband dies first or the wife dies first depending on who are the survivors. assign the remainder of the estate to a local or national Islamic organization. If you live in a Muslim country there may be restriction of such trusts that are called in Shari'ah Waqf Ahli or dhurri. In either case I suggest consulting a local lawyer who is specialized in estate planning. After reading the form of the living trust from my website you may ask me any question or for any details.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Question:

From: Islam on line

Sent: Saturday, May 17, 2003 7:11 AM

To: Monzer Kahf

Subject: Adopting a Child and Giving Him a Share in Inheritance

Name of Questioner

Gender

Age

Education Graduate

Date Submitted 5/9/2003

country of Origin

User Ref. No. HUCEY6

country of Res.



A couple who does not have any children, they adopted a child who is the husband's sister's son. The husband does not have any brothers alive but has three sisters who are married. After his death, how his property will be divided. I think he can give 1/3 of his will to any one so if he wants to give that to his adopted son he can give it, but what about the rest of the property and money, and also what about the money he gives to his adopted son and to his (adopted son's family) will it count or he can give as much money or property while he is alive (as a gift or any other shape or form) ALSO COULD YOU ALSO PLEASE TELL what will happen to the money or property the wife will receive if she wants to give any of her money to her adopted son can she. she has one brother one sister alive. Jazakallah

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