

2016

Practical Islamic Estate Planning: A Short Primer

Imani Jaafar

Follow this and additional works at: <https://open.mitchellhamline.edu/mhlr>



Part of the [Disability Law Commons](#), [Elder Law Commons](#), and the [Estates and Trusts Commons](#)

Recommended Citation

Jaafar, Imani (2016) "Practical Islamic Estate Planning: A Short Primer," *Mitchell Hamline Law Review*. Vol. 42 : Iss. 3 , Article 4.

Available at: <https://open.mitchellhamline.edu/mhlr/vol42/iss3/4>

This Article is brought to you for free and open access by the Law Reviews and Journals at Mitchell Hamline Open Access. It has been accepted for inclusion in Mitchell Hamline Law Review by an authorized administrator of Mitchell Hamline Open Access. For more information, please contact sean.felhofer@mitchellhamline.edu.

© Mitchell Hamline School of Law

PRACTICAL ISLAMIC ESTATE PLANNING: A SHORT PRIMER

Imani Jaafar[†]

I.	INTRODUCTION.....	926
II.	ORIGINS	926
III.	THE BASICS	929
	A. <i>The Fraction System of Inheritance</i>	930
	B. <i>Practical Application</i>	930
	C. <i>Notable Components</i>	934
IV.	PROBATE AND LOOMING SHARIA LAW BANS.....	936
V.	CONCLUSION	939

† Ms. Imani Jaafar is currently the Director for the Office of Police Conduct Review (OCPD) for the City of Minneapolis. OCPD promotes adherence to the highest standard of police conduct and fosters mutual respect between the Minneapolis Police Department and the community it serves by fairly, objectively, and neutrally investigating complaints that allege misconduct by its police officers. Imani formerly practiced in the area of estate planning, including a specialty practice in Islamic estate planning, for several years. Imani also provided services as an expert consultant and/or witness on cases involving Islamic issues. In addition to her work as Director of OCPD, Imani is an adjunct professor at Mitchell Hamline School of Law, where she most recently taught a course in comparative Islamic law. Imani has been named a Minnesota Super Lawyers Rising Star (2013), an Up and Coming Attorney by Minnesota Lawyer (2009), and received the Judge Varco Pro Bono Services Award 2013 (awarded by the 10th District Bench).

Imani also speaks nationwide on issues related to American Muslims, having been featured on National Public Radio, Minnesota Public Radio, and WCCO Radio. *Minnesota Law and Politics* magazine and the book, *A Peace of My Mind* by John Noltner, also featured Imani's work. Several venues have invited Imani to speak including the Minnesota Department of Human Rights, Advocates for Human Rights, and colleges and universities across the country. Imani teaches several Continuing Legal Education courses for a variety of organizations on Islamic issues throughout the Twin Cities.

I. INTRODUCTION

Islamic estate planning can be challenging for both lawyers and their clients. To attorneys unfamiliar with Islamic estate distribution, the fraction system for dividing an estate can be daunting. The problem can be compounded if Muslim clients do not fully understand the system that applies to their estate documents. Nonetheless, the Qur'an requires Muslims to have a will.¹ The Qur'an, the holy book of Muslims, mandates of believers "when death approaches any of you and he is leaving behind much wealth, to make bequests in [favor] of his parents and [others] near of kin in accordance with what is fair."² The Prophet Muhammad, the most revered and final prophet in Islam, is reported to have said, "It is the duty of a Muslim who has something which is to be given as a bequest not to have it for two nights without having his will written down regarding it."³ This article focuses on Islamic wills and provides an overview of the origins of Islamic estate planning, an explanation of the predetermined inheritor system, and a discussion of common issues practitioners will face when assisting Muslim-American clients in drafting Islamic estate documents.⁴

II. ORIGINS

Islamic estate planning stems from the Qur'an, which is the holy book of Muslims,⁵ and its interpretations in the hadith.⁶ The

1. Qur'an, *sura al-Baqarah* 2:180, in *THE MESSAGE OF THE QUR'AN* 48 (Muhammad Asad trans., Book Foundation, 2012) [hereinafter Qur'an].

2. *Id.* *sura al-Baqarah*, 2:180 (second alteration in original).

3. IBN UMAR, SAHIH MUSLIM bk. XIII, at hadith 3987, <http://hadithcollection.com/sahihmuslim/141-Sahih%20Muslim%20Book%2013.%20Bequests/12217-sahih-muslim-book-013-hadith-number-3987.html>.

4. This author choose to focus on Islamic wills because they are by far Muslim clients' most requested estate documents. Islam contains the concept of a trust, or *waqf*, but most Muslims with whom this author has worked are not interested in trusts and focus their efforts on executing a will that is compliant with Islamic legal concepts. See *Introduction*, TNWAKFBOARD.ORG, <http://www.tnwakfboard.org/introduction.htm> (last visited May 6, 2016).

5. Omar T. Mohammedi, *Sharia-Compliant Wills: Principles, Recognition, and Enforcement*, 57 N.Y.L. SCH. L. REV. 259, 260–61 (2013).

6. A group of secondary sources to complement the Qur'an are the hadith. Hadith are sayings of the Prophet Muhammad, the most important prophet in Islam, and were memorized and recorded by several figures. Some of these figures provide more accurate and trusted narrations than others.

Qur'an is a 1400-year-old religious text that has been interpreted over time to be applied to the modern age.⁷ Before the advent of

7. The following verses from the Qur'an explain the concept of wills in Islam: "M[en shall] have a share in what parents and kinfolk leave behind, and women shall have a share in what parents and kinfolk leave behind, whether it be little or much—a share ordained [by God]." Qur'an, *sura an-Nisa* 4:7 (second alteration in original).

"[A]nd they who are [thus] closely related have the highest claim on one another in [accordance with] God's decree." *Id. sura al-Anfal* 8:75 (second and third alterations in original) (footnote omitted).

C[oncerning the inheritance of] your children, God enjoins this upon you: The male shall have the equal of two females' share; but if there are more than two females, they shall have two-thirds of what [their parents] leave behind; and if there is only one, she shall have one-half thereof. And as for the parents [of the deceased], each of them shall have one-sixth of what he leaves behind, in the event of his having [left] a child; but if he has left no child and his parents are his [only] heirs, then his mother shall have one-third; and if he has brothers and sisters, then his mother shall have one-sixth after [the deduction of] any bequest he may have made, or any debt [he may have incurred]. As for your parents and your children—you know not which of them is more deserving of benefit from you; [therefore this] ordinance from God. Verily, God is all-knowing, wise.

Id. sura an-Nisa 4:11 (all alterations after first in original) (footnote omitted).

And you shall inherit one-half of what your wives leave behind, provided that they left no child; but if they have left a child, then you shall have one-quarter of what they leave behind, after [the deduction of] any bequest they may have made, or any debt [they may have incurred]. And your widows shall have one-quarter of what you leave behind, provided you have left no child; but if you have left a child, then they shall have one-eighth of what you leave behind, after [the deduction of] any bequest you may have made, or any debt [you may have incurred]. And if a man or a woman has no heir in the direct line, but has a brother or a sister, then each of those two shall inherit one-sixth; but if there are more than two, then they shall share in one-third [of the inheritance], after [the deduction of] any bequest that may have been made, or any debt [that may have been incurred], neither of which having been intended to harm [the heirs]. [This is] an injunction from God; and God is all-knowing, forbearing.

Id. sura an-Nisa 4:12 (alterations in original) (footnotes omitted).

T[hey will ask] thee to enlighten them. Say: "God enlightens you [thus] about the laws concerning [inheritance from] those who leave no heir in the direct line: If a man dies childless and has a sister, she shall inherit one-half of what he has left, just as he shall inherit from her if she dies childless. But if there are two sisters, both [together] shall have two-thirds of what he has left; and if there are brothers and sisters, then the male shall have the equal of two females' share." God

Islam, women generally could not inherit at all, even from their spouses, and sometimes these women were considered to be part of a man's estate.⁸ Typically, only blood relatives and adopted sons were permitted to inherit.⁹ In a limited exception to this rule, two unrelated men could bequest inheritance to each other via a "contract of alliance."¹⁰ Islam changed these concepts dramatically and introduced the idea that property ultimately belonged to God, and that people only possessed a certain level of control of the property at the time of their deaths.¹¹

These Qur'anic verses shape the fraction system for inheritance division that is the hallmark of Islamic estate planning.¹² The concept of divine ownership of land is the origin of the preset fraction system.¹³ The Qur'anic verses were interpreted and reinterpreted to create a slate of inheritors.¹⁴ The most commonly referenced inheritors are spouses, children, parents, siblings, grandparents, grandchildren, half-siblings, cousins, uncles, and aunts.¹⁵ Below is a visual depiction of the inheritance system¹⁶:

makes [all this] clear unto you, lest you go astray; and God knows everything.

Id. sura an-Nisa 4:176 (all alterations after first in original) (footnotes omitted).

Narrators thought to be trusted reported the following hadith: "One-half is for [the] daughter, and one-sixth for the son's daughter, i.e., [.] both shares make two-thirds of the total property; and the rest is for the sister." HUZAIL BIN SHIRAHBIL, SAHIH AL-BUKHARI bk. LXXX, at hadith 728, <http://sunnah.com/bukhari/85>.

"Give the shares to those who are entitled to them, and what is left from those who are entitled to it goes to the nearest male heir." IBN UMAR, SAHIH MUSLIM bk. XI, at hadith 3930, <http://hadithcollection.com/sahihmuslim/139-Sahih%20Muslim%20Book%2011.%20The%20Rules%20Of%20Inheritance/11999-sahih-muslim-book-011-hadith-number-3930.html>.

8. ANN BLACK ET AL., MODERN PERSPECTIVES ON ISLAMIC LAW 200 (2013).

9. *Id.*

10. *Id.*

11. *Id.* at 198–99.

12. *See id.* at 201.

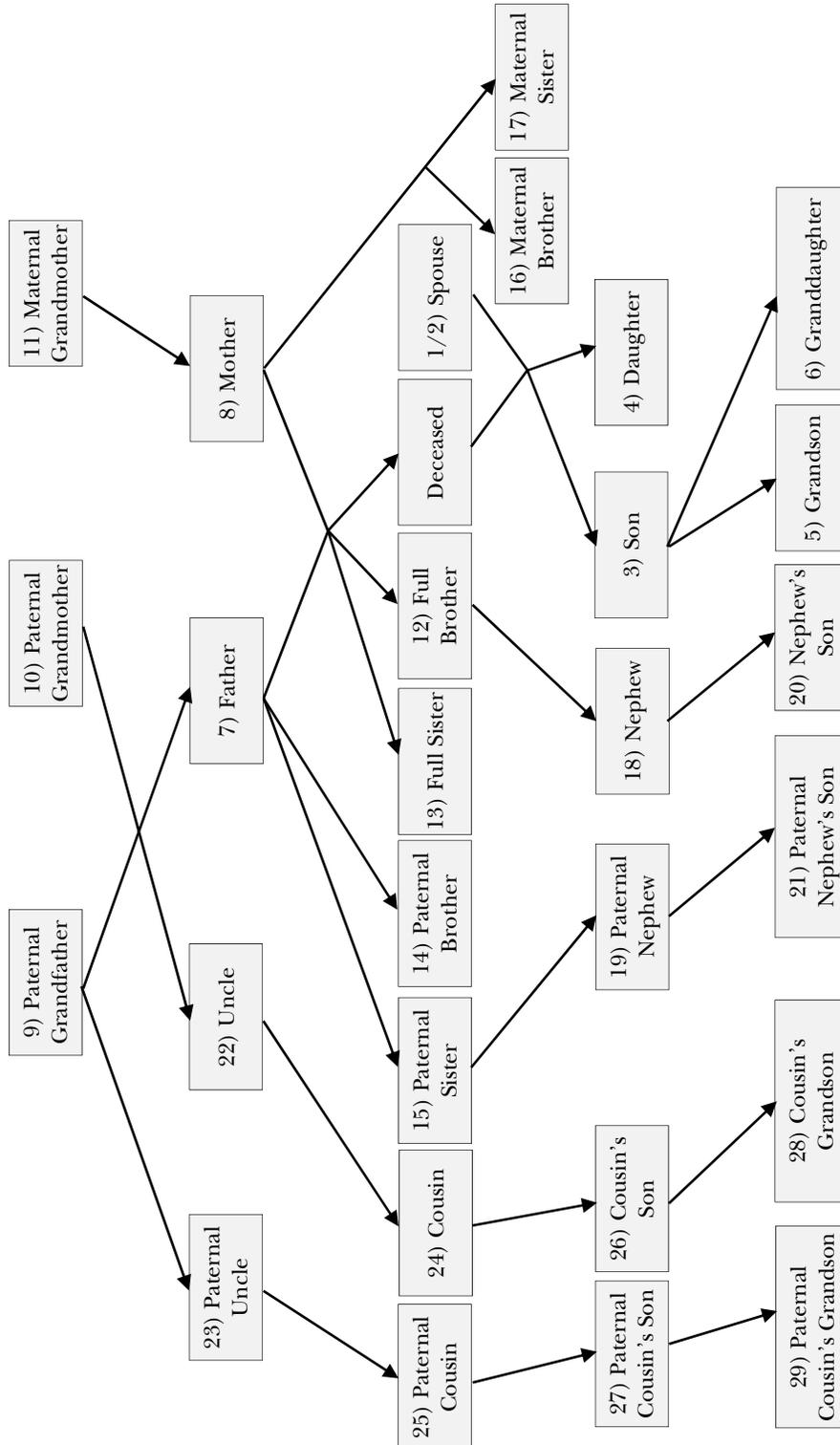
13. *See id.* at 199.

14. *See supra* note 7.

15. *See supra* note 7.

16. ISLAMIC INHERITANCE CALCULATOR, <http://inheritance.ilmsummit.org/projects/inheritance/chart.aspx> (last visited May 7, 2016).

Diagram 1: Standard Heirs
 Credit: *Standard Heirs*, ISLAMIC INHERITANCE CALCULATOR, <http://inheritance.ilmsummit.org/projects/inheritance/chart.aspx> (last visited May 7, 2016)



III. THE BASICS

A. *The Fraction System of Inheritance*

The diagram above lays the foundation for different fraction scenarios depending on the family structure of the decedent. The foundation for the fraction system is laid out in the Qur'an, chapter *sura al-Nisa*, which means "the women."¹⁷ Here are some common distributions: (1) a husband whose wife dies without children as a result of the marriage will inherit one-half of the estate;¹⁸ (2) a husband whose wife dies with biological children as a result of the marriage will inherit one-fourth of the estate;¹⁹ (3) a wife whose husband dies without children as a result of the marriage will inherit one-fourth of the estate;²⁰ and (4) a wife whose husband dies with biological children as a result of the marriage will inherit one-eighth of the estate.²¹

Further, if a deceased parent leaves behind biological male and female children, the male children will inherit twice as much as female children, so in the case of one daughter and one son, the daughter inherits one-third and the son inherits two-thirds.²² The possibilities for division seem endless: a spouse could inherit one-half, one-fourth, or one-eighth; a parent could inherit one-third or one-sixth; and a child could inherit one-third or two-thirds, all dependent upon the situation and composition of the family.²³

B. *Practical Application*

As evidenced in the diagram above,²⁴ the Islamic inheritance system is not simply a system of division into equal parts. As a result,

17. See *supra* note 6 (detailing the fraction system established in the *sura an-Nisa*).

18. AHMAD IBN NAQIB AL-MISRI, RELIANCE OF THE TRAVELLER: A CLASSIC MANUAL OF ISLAMIC SACRED LAW 477 (Nuh Ha Mim Keller ed. & trans., Amana Publications rev. ed. 1997).

19. *Id.*

20. *Id.* at 478.

21. *Id.* Note that this instruction does not include adopted children, who are not considered inheritors and have to be specifically included in the discretionary one-third in order to inherit from adoptive parents.

22. *Id.* at 480.

23. *Id.* at 477–83. For more information on this topic, see Solomon Gandz, *The Algebra of Inheritance: A Rehabilitation of Al-Khuwarizmi*, 5 OSIRIS 319 (1938).

24. See *supra* Part II.

many Muslim clients who want to use this system come into a lawyer's office without really understanding what they are seeking. When trying to detail the fraction process for practitioners who are unfamiliar, the client is often unable to articulate how the fractions are supposed to apply. This leaves lawyers in the difficult position of trying to decipher the distribution system and how it applies specifically to their clients.²⁵

The division process above is impacted by a few notable factors. Before an estate is divided according to this diagram, there are some mandatory disbursements.²⁶ First, any debts owed by the deceased need to be paid.²⁷ Debts can include money owed, burial expenses, money remaining to be paid to a spouse via a marriage contract,²⁸ and even travel expenses for the hajj.²⁹ Second, the deceased is permitted to gift one-third of his or her estate in any way he or she sees fit.³⁰ This share can include charitable contributions or a gift to someone dear to the decedent but who is not included in the preset slate of inheritors.³¹ However, this disbursement is conditioned on which Islamic school of thought the decedent identified with.³²

It is widely known that there are two major sects in Islam: Sunni and Shia. The basic distinction between the two sects is rooted in the succession of the caliphate after Prophet

25. See, e.g., *Shahzad Q. Qadri, Shariah and Estate Planning*, 7 GP|SOLO 24, 24–27 (2008).

26. AL-MISRI, *supra* note 18, at 473.

27. *Id.*

28. Marriage contracts, or *kitab*, are documents executed when a couple marries. Similar to an antenuptial agreement, these documents typically include a *mahr*, or dowry, that is awarded to the wife either upon marriage, death, or divorce. See generally Imani Jaafar-Mohammad & Charlie Lehmann, *Women's Rights in Islam Regarding Marriage and Divorce*, 4 WM. MITCHELL J.L. & PRAC. 3 (2011), <http://wmlawandpractice.com/2011/04/11/women%E2%80%99s-rights-in-islam-regarding-marriage-and-divorce>.

29. A person who has not completed the hajj can designate part of his estate for someone who has already attended the hajj in order to attend on behalf of the decedent. For information about the hajj, see Matthew Long, *Practices, in ISLAMIC BELIEFS, PRACTICES, AND CULTURES* 86 (2010).

30. See AL-MISRI, *supra* note 18, at 473.

31. MAJID KHADDURI & HERBERT J. LIEBESNY, *ORIGIN AND DEVELOPMENT OF ISLAMIC LAW* 162 (2010); *Estate Planning for Muslims*, MONEY COMPASS, <http://moneycompass.com.my/en/estate-planning-for-muslim/> (last visited Apr. 21, 2016).

32. KHADDURI & LIEBESNY, *supra* note 31, at 164.

Muhammad's death. Shia Muslims believe that succession should be by blood. Meanwhile, Sunni Muslims believe in succession by consensus.³³ Beyond these two general categories, there are four major Sunni schools of thought for interpretation purposes: Hanafi, Shafi'i, Maliki, and Hanbali.³⁴ Each school of thought is named after a prominent Islamic scholar who interpreted the Qur'an and hadith in a way that was respected and implemented throughout history.³⁵ Each school of thought presents a unique interpretation on certain Islamic issues.³⁶ For example, the Maliki school of thought prohibits the one-third gift mentioned above from being distributed to anyone who is an automatic inheritor.³⁷ The other schools of thought permit the one-third portion to be

33. John Harney, *How Do Sunni and Shia Islam Differ?*, N.Y. TIMES (Jan. 3, 2016), http://www.nytimes.com/2016/01/04/world/middleeast/q-and-a-how-do-sunni-and-shia-islam-differ.html?_r=0 (last visited Mar. 25, 2016).

34. *What Are the Major Similarities and Differences in the Different Sects of Islam?*, INTERFAITH LEADERSHIP COUNCIL METRO. DETROIT (June 10, 2013), <http://detroitinterfaithcouncil.com/2013/06/10/what-are-the-major-similarities-and-differences-in-the-different-sects-of-islam/>. The source provides the following information about the different sects:

1. The Hanafi school of thought: The founder is the Persian scholar Imam Abu Hanifah al-Nu'man ibn Thabit (AD 699–767). His school of thought is practiced widely in Southeast Asia, Central Asia, the Caucasus, the Balkans and Turkey. The majority of Sunni Muslims practice the Hanfi jurisprudence.

2. The Shafi'i school of thought: The founder is Abu Abdullah Muhammad Ibn Idris al-Shafi'i known as Imam Al-Shafi'i (AD 767–820). Imam al-Shafi'i is also known as the "First Among Equals" for his exhaustive knowledge and systematic methodology to religious science. Adherents of this sect are mainly from the Middle East.

3. The Maliki school of thought: The founder is Malik Bin Anas (AD 711–95). Its adherents are mostly from North Africa, United Arab Emirates, and parts of Saudi Arabia.

4. The Hanbali school of thought: The founder is Imam Ahmad Ibn Hanbal (AD 780–855). The Hanbali jurisprudence is considered very strict and conservative. The Hanbali school of jurisprudence is practiced mainly in Saudi Arabia and Qatar, as well as in parts of Syria and Iraq.

Id.

35. See THE OXFORD HISTORY OF ISLAM 112–14 (1999); *supra* note 6 (explaining the hadith).

36. See THE OXFORD HISTORY OF ISLAM, *supra* note 35, at 112–14 (comparing and contrasting the differences between the four schools of thought).

37. Sunni Path Academy, Virtual Course on Islamic Estate Planning, Lectures (2009).

gifted to any person, even if he or she is already an inheritor.³⁸ Shia Muslims³⁹—comprising the other major sect in Islam—use another interpretation that does not distinguish between relatives from a husband’s or wife’s side of the family in the case of spouses.⁴⁰

The most apparent problem with the implementation of this system is the unequal treatment of men and women. In the Qur’anic verses mentioned above, men are provided twice the inheritance of women.⁴¹ This system assumes that men are financially responsible for women in their roles as daughters, wives, or mothers.⁴² This religious assumption was more applicable during the period of early Islam—roughly 1400 years ago—but now causes issues when implemented in modern society where women may be primary earners in their households, financially responsible for their dependents, and not dependent on the financial support of the men in their lives.⁴³ Many clients struggle with this assumption, and it becomes a primary concern for parents planning their estates who are faced with treating a son and daughter unequally. Some clients opt for wills that lay out the requirements for a traditional Islamic burial and use language that identifies them as Muslim but specifically opt out of the Islamic distribution system. As a result, “hybrid wills” may be developed that incorporate traditional elements of a Minnesota will along with language that allows for Islamic burial and other cultural traditions of the decedent.⁴⁴ In using this type of structure, it is imperative to explain to clients that the document is no longer an Islamic will when the fraction distribution system is removed. Clients are sometimes surprised that their wills are not considered “Islamic” when they

38. *Id.*

39. This author has assisted only clients practicing as Sunni Muslims and have limited knowledge of the practical application of the Shia interpretation of the Islamic division system.

40. BLACK ET AL., *supra* note 8, at 202.

41. *See supra* text accompanying notes 7.

42. *See* AL-MISRI, *supra* note 18, at 480 (illustrating the inheritance of women in consideration of their relationship to the deceased).

43. *See* Reem, *Important Figures: Khadijah bint Khuwaylid*, INSIDE ISLAM (Jan. 18, 2012), <http://insideislam.wisc.edu/2012/01/important-figures-khadijah-bint-khuwaylid/>. The Prophet Muhammad’s first wife, Khadija, was his employer and the primary earner in their relationship, showing that religious assumptions that the male is the main earner did not apply even in their relationship, which was among the first in Islam. *Id.*

44. This author successfully incorporated hybrid wills into her practice.

remove the fraction system and then struggle with the decision. However, because the fraction system is such a hallmark of Islamic estate planning, many clients are aware and then grapple with reconciling their religious beliefs with personal feelings about gender equality.

Some Muslim clients will want a traditional Islamic will with the distribution system intact. For clients who are not comfortable with the hybrid model and want to retain the fraction system, practitioners may also use the one-third gift portion mentioned above to provide female relatives with a larger share if the decedent does not belong to the Maliki school of thought.⁴⁵ This practice can equalize the fractions for children or family members of different genders if calculated correctly.

Another challenge is how to lay out the fractions when a changing family structure can greatly impact how a decedent's estate will look. For example, the death of a parent would change the fraction system and the client would need an update immediately.⁴⁶ Some practitioners will provide a table in an addendum that lays out possible outcomes.⁴⁷ Other practitioners will write out the exact fractions that are applicable when the client executes his or her will but then have the client execute codicils, or amendments, as the family structure changes. Some practitioners will do a combination of the two methods. Whatever method is used, it is important to explain to clients that Islamic wills do need to be updated if the family structure changes in any way that impacts the distribution system.

C. *Notable Components*

Muslim clients also have unique requests for burials that should be addressed in their wills as well as health care directive documents. Muslims believe that, after death, a body should be buried as soon as possible.⁴⁸ Many Muslim families try to bury the

45. See *supra* notes 30–37 and accompanying text.

46. See AL-MISRI, *supra* note 18, at 481–90.

47. See *id.*

48. Rema Rahman, *Who, What, Why: What Are the Burial Customs in Islam?*, BBC NEWS (Oct. 25, 2011), <http://www.bbc.com/news/magazine-15444275> (“A person must be buried as soon as possible after death, says Imam Dr [sic] Abduljalil Sajid, chairman for the Muslim Council for Religious and Racial Harmony in the UK. This is usually no more than 24 hours later.”).

deceased within twenty-four hours of death.⁴⁹ Upon death, the body is washed in a ritual manner and wrapped in a white shroud.⁵⁰ The body is placed in a pine box and is buried according to a specific set of instructions that include what can be used as a grave marker.⁵¹ There are Muslim graveyards in Minnesota, as well as funeral homes, that are familiar with these customs.⁵² Articulating these specific needs in the client's will can make the process much easier after the client's death.

Muslim clients may also appreciate some kind of statement or preamble that identifies the decedent as Muslim and explains their choice of distribution for their estate. This section can discuss the basic beliefs of Muslims about estate division and any other wishes they have upon their death. For example, it is common for women who are widowed to wait for four months and ten days to remarry to make sure they are not pregnant so the proper father can be attributed to the child.⁵³ This concept is called *iddah*, or the waiting period, and can be included in the preamble.⁵⁴

There are also some events that disqualify inheritors that should be listed in the will as well. In Islam, a person who commits homicide cannot inherit from the decedent that he or she killed.⁵⁵ Second, slaves were not permitted to inherit from their masters.⁵⁶ Slavery was permitted in Islam and included mechanisms to encourage freeing slaves or, in the alternative, treating them in a humane manner, but they still could not inherit.⁵⁷ Lastly, non-Muslims are not permitted to inherit under the Islamic distribution system.⁵⁸ This prohibition causes challenges for Muslims who converted from another faith and have many family members who

49. *Id.*

50. Heather M. Ross, *Islamic Tradition at the End of Life*, 10 MEDSURG NURSING 83, 85 (2001).

51. *Id.*

52. Garden of Eden Cemetery in Burnsville, Minnesota, works with Islamic funerals and has a special section of the graveyard for Muslims.

53. Qur'an, *sura al-Baqarah* 2:234.

54. Abbas Hadjian, *The Children of Shari'a*, 36 L.A. LAW. MAG. 32, 38 (2013).

55. BLACK ET AL., *supra* note 8, at 203.

56. See AL-MISRI, *supra* note 18, at 468; LAW IN THE MIDDLE EAST: ORIGIN AND DEVELOPMENT OF ISLAMIC LAW 196, 343 (Makid Khadduri & Herbert J. Liebesny eds., 3d ed. 2010).

57. See LAW IN THE MIDDLE EAST: ORIGIN AND DEVELOPMENT OF ISLAMIC LAW, *supra* note 56, at 196, 356.

58. *Id.* at 203.

are not Muslim. Although Muslim converts may wish to include their non-Muslims parents, aunts, uncles, or other beloved family members, they are not permitted to do so if they use the Islamic distribution system.⁵⁹

The distribution system included above does not include child custody, which is one of the primary concerns for parents drafting an estate plan. State-specific language is needed to appoint guardians and custodians to make sure that this important issue is covered in a person's will.⁶⁰ In Minnesota, using basic definitions for survivorship and other concepts are necessary when drafting an Islamic will because these concepts are not included in the scope of such a will as stated in the Qur'an and hadith.⁶¹ When American-Islamic wills are drafted properly, they are usually a combination of state-specific language covering all areas that are not touched by the distribution system. This combination is done so that the Islamic will also complies with local law.

IV. PROBATE AND LOOMING SHARIA LAW BANS

Although probate cases are not at the forefront of issues facing Muslim inheritors, Islamic wills are certainly on their way into the court system. There are a plethora of free Islamic wills available online that are not state-specific but are popular among Muslims who want the fraction system in their estate plans.⁶² There are also non-lawyers who make templates available through local mosques or community centers that may not provide a will compliant with state laws.⁶³ These wills are easily challenged in probate court, and it is a large question as to whether probate judges would be willing to apply the Islamic distribution systems for wills that are deficient in some manner.⁶⁴

Further, several states in the United States have passed Sharia law bans.⁶⁵ These laws are primarily passed out of fear of an

59. *Id.*

60. *See* MINN. STAT. §§ 524.101–.122 (2014).

61. *Id.*

62. *See Sample of an Islamic Will*, AL-ISLAM.ORG, <http://www.al-islam.org/making-an-islamic-will-sayyid-muhammad-rizvi/sample-islamic-will> (last visited Apr. 21, 2016); *see also Last Will and Testament*, ISLAMIC SOC'Y N. AM., <http://www.missionislam.com/knowledge/will.pdf> (last visited Mar. 30, 2016).

63. Mohammedi, *supra* note 5, at 260.

64. *Id.*

65. Bradford J. Kelley, *Bad Moon Rising: The Sharia Law Bans*, 73 LA. L. REV.

unknown legal system and do not contain specific concerns or areas that are banned.⁶⁶ Because of the sweeping nature of these laws, they could have an impact on Muslim-American families. For example, couples who desire an Islamic marriage ceremony conducted by a Muslim cleric may find they are unable to get marriage licenses unless they also agree to be married in state court because state licensing of a Muslim cleric would violate a ban on Sharia law. Those already married before such a ban will find difficulties in divorce when one party tries to enforce an Islamic marriage contract or ask that religious components be applied to the divorce decree.

In terms of estate planning, a Sharia ban could lead a probate court to determine an Islamic will is unenforceable because it is based on Islamic law principles.⁶⁷ Even wills that do not explicitly present themselves as Islamic wills could be interpreted to be Sharia-compliant by experts hired by feuding family members.⁶⁸ The time and care the decedent took in preparing a will with a professional would be moot if a Sharia law ban is in place in his or her state.⁶⁹

To date, sixteen states have passed some type of Sharia law ban and seven states prohibit courts from taking foreign and international law into consideration.⁷⁰ These bans do not stop people from seeking application of foreign or international laws but seem to complicate the access to justice for those with unique needs due to religious beliefs or immigration status.⁷¹ These complications can lead to a legal system that alienates certain groups, and—based on the intersection of law and religion created by Islam—the Muslim community easily falls into this category.

However, the U.S. court system is taking some steps to prevent the exclusion of Muslims with religious and legal needs. In a notable Oklahoma probate case, *Awad v. Ziriax*, the U.S. Court of

601, 614 (2013).

66. See *Bans on Sharia and International Law*, AM. CIV. LIBERTIES UNION, <https://www.aclu.org/bans-sharia-and-international-law> (last visited Apr. 21, 2016) (discussing the passage of legislation based upon fear and anti-Muslim bigotry).

67. Mohammedi, *supra* note 5, at 260.

68. *Id.* at 281–82.

69. *Id.*

70. Steven Schwinn, *Anti-Sharia Laws: A Solution in Search of a Problem*, JURIST, <http://jurist.org/forum/2015/03/steven-schwinn-sharia-law.php> (last visited Apr. 21, 2016).

71. *Id.*

Appeals for the Tenth Circuit ruled that Oklahoma's proposed constitutional amendment to ban Sharia law violated the Establishment Clause because the law discriminated among religions without a compelling interest.⁷² Mr. Awad made the exact argument that looms large over Islamic estate plans executed in any state that has passed a Sharia law ban after the execution: he articulated that the Sharia ban would prohibit the probate of his will because the concepts were based on Islamic law but that this prohibition was unnecessary because there were already safeguards in probate court.⁷³ Specifically, the court was already free to refuse to enforce a will if it violates public policy.⁷⁴ In essence, the ban removed the court's discretion in lieu of an outright prohibition that barred only certain individuals from probate court when the courts already possessed the ability to deny enforcement of a will based on any number of public policy reasons.⁷⁵ Interestingly, the court went further by stating that no single instance could be identified in which an Oklahoma court had applied Sharia law or other foreign law over the state law.⁷⁶ The court also stated that the proposed amendment was so poorly written that it would not fit any interest.⁷⁷

Minnesota has not passed a Sharia law ban, but the law could change depending on a variety of factors. Such a law would have a profound impact on practitioners of Islamic estate planning. Currently, there is legislation called American Laws for American Courts (ALAC).⁷⁸ ALAC pushes the idea that "any court ruling that relies in whole or in part on any law that would grant the parties anything less than full state and U.S. constitutional rights is a violation of public policy."⁷⁹ ALAC basically tries to incorporate Sharia law bans into public policy to sidestep decisions like *Awad*.⁸⁰ Efforts to bar Sharia law from being enforced in U.S. courts will likely continue while advocates of such bans continue to lack a firm grasp on how they will practically impact American Muslims in

72. 670 F.3d 1111, 1130 (10th Cir. 2012).

73. *Id.* at 1120.

74. Schwinn, *supra* note 70.

75. *Id.*

76. *Awad*, 670 F.3d at 1130.

77. *Id.*

78. Kelley, *supra* note 65, at 614.

79. Schwinn, *supra* note 70.

80. *Id.*

critical areas like family and probate law. Attorneys working in these areas will need to be mindful of the political climate and advise clients appropriately.

V. CONCLUSION

Islamic estate planning for American Muslims is a challenging but interesting practice area. Effective counsel should have solid knowledge of state laws, as well as a firm grasp on the fraction-based distribution system and other needs of Muslim clients. Knowledge about basic Islamic practices is also helpful for attorneys that currently serve or want to expand their practice to serve Muslim clients. Muslims are a growing segment of our Minnesota landscape; there are anywhere from 20,000 to 130,000 Muslims living in Minnesota.⁸¹ As their population grows, so will their legal needs. Practitioners who are open to familiarizing themselves with Islamic belief systems may find themselves in great demand. This education can occur through classes, community outreach, or even reading credible sources, including the Qur'an and writings by those who are qualified to interpret its contents.

It is also imperative that attorneys are able to counsel their Muslim clients on exactly what they are asking for when clients come into their offices requesting an Islamic will. Thoroughly explaining how the Islamic fraction system operates is critical in advising clients on how to proceed. Providing clients with sound advice that does not stray into religious judgment can be difficult, but those dedicated to working on these issues can find ways to provide effective solutions. Utilizing tools like a "hybrid will" or tailoring documents to reflect the client's unique wishes is key. Educating those involved in probate law on the Islamic distribution system will also help the process go smoothly. With time and education, Minnesota attorneys could find themselves effectively serving the Muslim community's estate planning needs and trailblazing in an area where few practitioners are working.

81. Paula Woessner, *Size of Twin Cities Muslim Population Difficult to Determine*, FED. RES. BANK MINNEAPOLIS (Aug. 1, 2002), <https://www.minneapolisfed.org/publications/community-dividend/size-of-twin-cities-muslim-population-difficult-to-determine>.