

# SUMMER IMMERSION

## BLISSFUL DEPARTURE



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### **Islamic Estate Planning**

- Remembering death and preparing for death includes both the spiritual preparation for death and how to live one's life in a manner that prepares them to die.
- We have to make it our life's mission and goal to die as a Muslim. Allah said:

تُقَاتِهِ وَلَا تَمُوتُنَ إِلَّا وَأَنْتُمْ مُسْلِمُونَ

*And do not die except in 'a state of full' submission 'to Him' (3:102)*

- Part of the preparation for dying as a Muslim includes organizing one's affairs in a way that allows them to fulfill the religious obligations that deal with inheritance and wealth that a person owns and how that is to be distributed post-death.

### **What is Islamic Inheritance Law?**

- Islamic inheritance law is a science which deals with what happens to a person's assets after death.
- Assets refer to the estates that we own. This comprises our assets as well as our liabilities; debts that we owe others.
- Part of estate planning is making sure that the things we own and the things we owe are well documented.
- In order to fully implement this science correctly, we have to prepare the necessary steps during our life.
- Premises to this knowledge:
  - Everyone is going to die one day
  - Everyone has some assets

- Nobody can take their assets with them
- Someone else will take those assets
- This obligation cannot be fulfilled without advance planning
- Islamic inheritance law on the whole is outlined in the Qur'an. Most of it is defined in Surah An-Nisa' (verses 11, 12, 176) and its preceding verses (1-10) frame the discussion about rulings of inheritance.
- In discussing these rules, we must understand that Allah is the most knowledgeable and forbearing.
- Whether we understand the wisdom of these rules or not, it has been laid out by Allah and they apply in a society as well as organize a society.
- If all of these rulings are applied accordingly, the society will work harmoniously; meaning when everybody follows the law, the relationships and the obligations.
- Allah describes after the verse of inheritance:

**تِلْكَ حُدُودُ اللَّهِ وَمَنْ يُطِعِ اللَّهَ وَرَسُولَهُ يُذْخَلُهُ جَنَّتِ تَجْرِي مِنْ تَحْتِهَا أَلْأَنَهَرُ خَلِدِينَ فِيهَا وَذَلِكَ الْفَوْزُ الْعَظِيمُ**

*These 'entitlements' are the limits set by Allah. Whoever obeys Allah and His Messenger will be admitted into Gardens under which rivers flow, to stay there forever. That is the ultimate triumph! (4:13)*

- This tells us that we have to work toward following the will of Allah, attaining His pleasure and avoiding sin and punishment. In this process we can earn the reward that He mentioned.
- People often fight about money, especially after death. Hence, Allah has made these rules to assure a just distribution of wealth to heirs and there should be no dispute about them.
- If we apply these rulings correctly, this will be a means of maintaining family ties.
- In Allah's divine wisdom and perfect system, He combines discretion of the descendent or the testator and predetermined shares, as well as wasiyah.
- Predetermined shares:
  - For men there is a share in what the parents and the nears of kin have left. This applies to both adult males and minors.

- For women there is a share in what the parents and the nearest of kin have left. This means that daughters, mothers, wives will inherit.
- It is mandatory; be it small or large, there is a determined share. This means that there is always going to be somebody who's going to inherit.
- Wasiyah could be allocating the wealth to different types of charitable acts; sadaqah jariyah for institutions of good, the needy and others.
- Ilm al-Faraid or the knowledge of the obligatory shares is an important discipline in Islam. It refers to the fiqh of inheritance – the knowledge which deals with the laws of inheritance and the rules by which the estate is distributed.
- The Prophet (ﷺ) has commanded to learn and teach the fiqh of inheritance.
  - It was narrated from Abu Hurairah that the Messenger of Allah (ﷺ) said:

"يَا أَبَا هُرَيْرَةَ تَعَلَّمُوا الْفَرَائِضَ وَعَلَمُوهَا فَإِنَّهُ نِصْفُ الْعِلْمِ وَهُوَ يُنْسَى وَهُوَ أَوَّلُ شَيْءٍ يُنْتَرَزُ مِنْ أُمَّتِي".

"O Abu Hurairah. Learn about the inheritance and teach it, for it is half of knowledge, but it will be forgotten. This is the first thing that will be taken away from my nation." (Sunan Ibn Majah)

- It is considered half of knowledge because it pertains to something which takes place after our death as opposed to the knowledge of fiqh of zakah, salah etc. which we apply in our lifetime.
- Despite this knowledge being so virtuous, the Prophet (ﷺ) prophesied that it is going to be lifted and it will be forgotten. Hence, we are encouraged to study it.

## Priority of Distribution

- There are four categories of distribution of wealth after a person passes away:
  - 1. Funeral and burial costs
  - 2. Payment of debts
    - Owed to individuals, organizations, as well as to Allah (i.e. hajj, missed obligations).

- This is why when there's a debt transaction, we should write it down to ensure it can be fulfilled upon our death.
- 3. Wasiyah/Discretionary share
  - This refers to a discretionary portion which is up to one-third of one's wealth.
  - It was narrated from 'Amir bin Sa'd that his father said:

مَرْضٌ مَرْضًا أَشْفَيْتُ مِنْهُ فَأَتَانِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَعْوَدْنِي فَقُلْتُ يَا رَسُولَ اللَّهِ إِنِّي مَالًا كَثِيرًا وَلَنِسَ يَرِثُنِي إِلَّا ابْنَتِي أَفَأَتَصَدِّقُ بِثُلُثِنَ مَالِي قَالَ "لَا". قُلْتُ فَالشَّطَرَ قَالَ "لَا". قُلْتُ فَالثُّلُثَ قَالَ "الثُّلُثَ وَالثُّلُثُ كَثِيرٌ إِنَّكَ أَنْ تَرْكُ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ لَهُمْ مِنْ أَنْ تَرْكُهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ".

*"I became ill with a sickness from which I later recovered. The Messenger of Allah came to visit me, and I said: 'O Messenger of Allah, I have a great deal of wealth and I have no heir except my daughter. Shall I give two-thirds of my wealth in charity?' He said: 'No.' I said: 'Half?' He said: 'No.' I said: 'One-third?' He said: '(Give) one-third, and one-third is a lot. It is better to leave your heirs independent of means, than to leave them poor and holding out their hands to people.'" (Sunan an-Nasa'i)*

- In our lifetime, when we are healthy, we can donate all our wealth. However, on our deathbed, it is not allowed as the right vest in the heirs.
- One cannot give or take from this discretionary share and give more to one of the heirs who are going to inherit from the fourth category. Nevertheless, it is allowed for planned giving, waqf or any other relatives that require support.
- 4. Faraid/Mandatory share
  - This refers to the residuary amount after the first three, which is going to be the predetermined shares which Allah has laid out in the Qur'an.
  - From verse 11 of Surah An-Nisa':
    - A son receives twice as much as a daughter. This male child has a financial obligation towards those close female relatives.
    - If there are only female children, they split 2/3 equally.
    - If there is only one daughter, she receives 1/2.
    - If there are children, parents receive 1/6 each.

- If there are no children or siblings, the mother receives 1/3.
- If no children, but siblings, the mother receives 1/6.
- From verse 12 of Surah An-Nisa':
  - If a married woman dies without children, her widower receives 1/2 of her estate; if she had children, he receives 1/4.
  - If a married man dies without children, his widow receives 1/4 of his estate; if he had children, she receives 1/8.
  - In general, if males and females are of the same rank, males receive twice as much as females
  - Maternal siblings are one exception to the above rule. If there is only one maternal sibling, he or she receives 1/6. If there are two or more, they share 1/3.
  - This shows us that the siblings inherit equally and the 2:1 ratio doesn't always apply.
- The importance of understanding property law:
  - Need to know who owns what?
  - Must understand how assets are titled - Jointly titled, Rights of survivorship, Beneficiary designations etc.
  - Separate ethical vs legal obligations
- Every Muslim must have these basic estate planning tools:
  - Last will and testament
  - Durable power of attorney
  - Advance healthcare directive
  - Living trust

## Integrating Two Legal Systems

- We have to fulfill our religious obligations and administer that trust based on our intentions and wishes which are in accordance with the Shariah.
  - Fulfill religious obligations
  - Protect surviving spouse
  - Take care of children
  - Ensure family harmony
  - Minimize taxes and fees
  - Prevent squandering of wealth
  - Avoid reach of potential creditors

## Sickness in Islam

- Allah gives us sickness as a reminder of our fragility. Sometimes it heals, and sometimes, it is an indication of the nearness of death.
- We are encouraged to make initiatives to visit the sick within our community and be in their khidma (service).
  - Abu Hurairah reported that the Prophet (ﷺ) said:

مَنْ عَادَ مَرِيضاً أَوْ زَارَ أَخَا لَهُ فِي اللَّهِ، نَادَاهُ مُنَادٍ: بِأَنْ طَبَّتْ، وَطَابَ مَمْشَاكَ، وَتَبَوَّأَتْ مِنَ  
الْجَنَّةِ مَنْزِلاً

"Whoever visits a sick person or a brother of his for Allah's sake, a caller calls out: 'May you be glad, may your footsteps be blessed, and may you dwell a home in Paradise!'" (Ibn Majah)

- Ali bin Abu Talib reported:

سمعت رسول الله صلى الله عليه وسلم يقول: "ما من مسلم يعود مسلماً غدوة إلا صلى عليه سبعون ألف ملك حتى يمسي، وإن عاده عشية إلا صلى عليه سبعون ألف ملك حتى يصبح، وكان له خريف في الجنة"

saying, "When a Muslim visits a sick Muslim at dawn, (ﷺ) I heard the Messenger of Allah seventy thousand angels keep on praying for him till dusk. If he visits him in the evening, seventy thousand angels keep on praying for him till the morning; and he will have (his share of) reaped fruits in Jannah." (At-Tirmidhi)

- Our responsibility as a Muslim is not just limited to worship between us and Allah. It entails taking care of our relationship with His creation; visiting a sick person and helping out a person in need can also be equivalent to worship.
- When visiting the sick, it is encouraged to make du'a for them and say:

لَا بَأْسَ طَهُورٌ إِنْ شَاءَ اللَّهُ

*Do not worry, it will be a purification (for you), Allah willing*

- This refers to a purification for their illness as well as a purification for their sins.
- Sickness is a mercy of Allah. There are a lot of glad tidings that come with sickness.

- Whenever we go through any form of sickness or face any difficulty, it is a reminder that it removes our sins.

◦ Narrated Abu Sa`id Al-Khudri and Abu Hurairah: The Prophet (ﷺ) said,

**مَا يُصِيبُ الْمُسْلِمَ مِنْ نَصَبٍ وَلَا وَصَبٍ وَلَا حُزْنٍ وَلَا أَذْنٍ وَلَا غَمًّا حَتَّى الشَّوْكَةِ يُشَاكُهَا، إِلَّا كَفَرَ اللَّهُ بِهَا مِنْ خَطَايَاهُ.**

*"No fatigue, nor disease, nor sorrow, nor sadness, nor hurt, nor distress befalls a Muslim, even if it were the prick he receives from a thorn, but that Allah expiates some of his sins for that." (Al-Bukhari)*

- Allah will continue to try the believers. The Prophet (ﷺ) said, "When Allah wants to be good to someone, He tries him with some hardship."
- We should use our sickness to elevate ourselves and bring closeness to Allah.
- Whenever we fall into sickness, it is also a reminder to be in a constant state of dhikr.
- Anyone suffering from sickness should remain patient, as there is no reward better than that reserved for those who endure in patience.
  - Abu Yahya Suhaib bin Sinan reported that: The Messenger of Allah (ﷺ) said,

**عَجَباً لِأَمْرِ الْمُؤْمِنِ إِنْ أَمْرَهُ كُلُّهُ لَهُ خَيْرٌ، وَلَيْسَ ذَلِكَ لِأَحَدٍ إِلَّا لِلْمُؤْمِنِ : إِنْ أَصَابَهُ سَرَاءٌ شَكَرٌ فَكَانَ خَيْرًا لَهُ، وَإِنْ أَصَابَهُ ضَرَاءٌ صَبْرٌ فَكَانَ خَيْرًا لَهُ**

*"How wonderful is the case of a believer; there is good for him in everything and this applies only to a believer. If prosperity attends him, he expresses gratitude to Allah and that is good for him; and if adversity befalls him, he endures it patiently and that is better for him". (Muslim)*

- If our trials bring us closer to Allah and to Jannah, then it is a blessing from Allah. However, if it takes us further away from Allah and from Islam, then it is a punishment.
- It is unethical and invalid for one to make dealings with individuals who are on their deathbed and if one's mental state is compromised.

- Allah intends for ease and He does not want to make things difficult for us. The obligatory rulings become lightened upon a sick person based on their ability:
  - Wudu
    - If the sick person cannot do wudu with water because they are unable to, then they should do tayammum.
  - Fasting
    - Among the several that are excused from fasting in Ramadan, include, prepubertal children, women during their menstrual period or post-natal bleeding, travelers, pregnant or breastfeeding women.
    - If the sick person is not able to fast at all, they can break their fast and it is obligatory not to fast.
  - Prayer
    - If the sick person cannot stand, then they may pray sitting, lying on their side or on their back, using their eyes, finger etc. while facing the Qibla.
    - It is not permissible to miss prayers under any circumstances. If it is as such, then it is upon the family members to make up that prayer for their sick parents etc.
  - Hajj
    - The very weak, sick, elderly, or otherwise physically incapable Muslims are exempt from having to perform the pilgrimage.
    - Hajj al-badal (Hajj by proxy) is not valid in the case of the obligatory Hajj on behalf of one who is able to perform Hajj himself.
    - Hajj al-badal may be performed on behalf of a sick person who has no hope of recovery, or one who is physically incapable, or one who has passed away.
    - Hajj al-badal cannot be done on behalf of one who is financially incapable (and cannot afford to go for Hajj), because the obligation of Hajj is waived for the one who is poor.