



SHARI'AH WILLS FACT SHEET

How is a Shari'ah Will different to a conventional Will?

Below are a few examples of how a Shari'ah compliant Will is different to a conventional Will:

- Burial arrangements are made in accordance with Islamic principles
- Pre-determination of who inherits the deceased's assets in accordance with Islamic principles
- A requirement that at least two thirds of the deceased's assets (after debts and funeral expenses are paid) are distributed to surviving family members

Are Muslims required to have a Will in place?

Yes.

Sahih Bukhari – Chapter 53, Wills and Testaments (Wasaya) Hadith No 1 states - "It is not permissible for any Muslim who has something to will to stay for two nights without having his last will and testament written and kept ready with him."

What happens if the deceased does not have a Shari'ah Will in place?

If an individual dies without having a Shari'ah will in place, then any of his / her assets and estate within England or Wales will be distributed in accordance with the rules of intestacy under English law.

This means that the distribution of assets will not be in accordance with Islamic principles and there will be no clear executor of the deceased's estate.

Given that a Shari'ah Will also sets out the deceased's funeral wishes, passing away without such a Will could mean that the deceased's funeral is not conducted in accordance with Islamic requirements.

How are the deceased's assets distributed under a Shari'ah Will?

The assets of the deceased should be distributed in the following order of priority:

1. Funeral expenses.
2. Payment of the deceased's outstanding debts.
3. Any specific bequests (Wasiyah) from the deceased to any person or charity are optional. A specific bequest can be made provided that (1) the bequest does not exceed one third of the total value of the deceased's assets, and (2) the bequest is not made to an individual who is already entitled to have a share of the deceased's assets under the prescribed rules.
4. The remaining assets are distributed among the deceased's surviving family members in accordance with Shari'ah principles.

Is a Shari'ah Will enforceable in England?

Yes, they are enforceable, but provided they are also drafted with regard to the laws of England and Wales.

The specific asset distributions in a Shari'ah Will are not enforceable under English law. Therefore, we often advise clients to place their assets under a 'trust', whereby one or more nominated trustees (usually family members) are appointed to be in charge of the distribution of assets to the deceased's beneficiaries through the trust.

A 'trust' document is prepared alongside the Shari'ah Will and is legally binding under English law, and therefore enforceable.