



Counseling Sharia

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The Muslim community in the United States comprises about 1% of the population and continues to grow. In many cities, the presence of the Muslim community is unmistakable in contrast to virtual invisibility decades ago. Now in many cities, “halal” food is more widely available than “kosher,” which is a term now frequently used to market to people of all faiths.

In the political and media environment of our day,

Muslims are often maligned and marginalized due to geopolitical events, causing many Americans to assign collective blame to an “other.” Yet, paradoxically, Muslims are also becoming an increasingly vital part of the American economy. While many Muslims are refugees starting out and many Americans are struggling with poverty, an estimated 10% of American physicians are Muslim. Similarly, many Muslims have achieved sub-

stantial success in their chosen professions or businesses while maintaining fidelity to the values they cherish.

As a religion, Islam has often justifiably been compared to Judaism. The two religions share some similar beliefs and trace back to a common historical lineage. One important trait the two religions share is that there is a system of ordained rules. Circumcision, slaughtering meat, marriage, and inheritance are all things these religions have rules on.

The Islamic Rules of Inheritance, called the *fara'id* (the Arabic term meaning, “what has been fixed”), is the default system of succession for Muslims who live in most Muslim-majority countries, as well as majority non-Muslim countries with large historic Muslim minorities, such as India and Israel. It is something that happens by operation of law after death for the most part (but naturally, there are opportunities for shenanigans and disputes everywhere). If someone leaves a will, it is called a “*wasyyah*”- it covers only up to 1/3 of the overall estate. The rest of it is subjected to a mandatory system of distribution.

For Muslims, this system of succession is mandatory and non-controversial within the faith tradition. The normal disagreements among scholars on various points of religious practice tend not to apply to this area. Much of this has to do with the Quran, which Muslims believe is the revealed word of God.

The Quran is not generally known for providing much detail about things inside it. The Holy book of Islam says Muslims must pray but does not specifically say how or how many times a day; it says Muslims must pay a poor tax (*zakat*), but we don't know from the Quran alone how this is calculated. Scholars would turn to other sources, namely the *hadith*, which are collections of sayings of the Prophet, which are voluminous and ranked by scholars for reliability as well as an established process for formulating rules to derive answers. When it comes to inheritance however, the rules of the Quran are remarkably detailed, with specific fractions for specific beneficiaries. The Quran further states that those who abide by these rules will enter the garden and those who do not, the fire. Quran 4:11-14.

There is far more to the Islamic Rules of Inheritance than these verses in the Quran though. It is a remarkably well-developed system of inheritance that is fundamental to Islamic values. In this faith tradition, in-

heritance is ordained from God. All property belongs to God and what we have is merely entrusted to us. Violating these rules is violating this trust.

Incorporating the Islamic Rules of Inheritance is of vital importance to observant Muslim families as a way of not just fulfilling the requirements of the Sharia, but of also maintaining among the fundamental principles for why the Sharia exists: to maintain harmonious family relationships.

Some lawyers who are unfamiliar with the Islamic Rules of Inheritance may assume their Muslim clients would be capable of explaining them to their lawyer. This will almost never be the case. Children are generally not taught these rules growing up, but educated Muslims may know they exist. Similarly, a practitioner may think the local religious leader, the “Imam,” may also be familiar with these rules. While this is certainly possible, in general, even those trained in Islamic Studies have been known to shy away from learning the Islamic Rules of Inheritance. It has been an area given to specialization not commonly found in the United States. Indeed, it was an area that has been forgotten by Muslims in the United States for years.

In addition to establishing who gets what after death, there are rules in Islam governing gifts to individuals, charitable giving and finances. Algebra, fundamental to our information economy and has aided much human understanding of the world, was developed by Muslim scholars specifically for the purpose of understanding the Islamic Rules of Inheritance. It is a major part of the identity for Muslim families, that there is an ordained system that is designed not for the testator or the beneficiary, but for maintaining harmony in society itself. For Muslims in the United States, the Islamic Rules of Inheritance, mandatory for all of them, look to make a comeback.

For the attorney counseling clients who are Muslim and wish to plan their estate consistent with the Islamic Rules of Inheritance, the nature of the attorney-client relationship is slightly different. In estate planning in general, the lawyer is concerned with carrying out the specific instructions of the client. In general, other than some limited restrictions in certain states, Americans have “free alienation of property.” If a parent wants to disinherit a disfavored child, the counseling may include a discussion of litigation costs, the no-contest clause and its application and perhaps de-

fensive strategies. However if a parent wants the child to be “dead” to him or her, the document will specifically disinherit the child. Testators often tell the lawyers what they believe is “fair” in their estate plan and lawyers implement instructions, never mind how fallible the client’s logic, while providing legal advice on probate, taxes, special needs, and other issues.

For Muslims, the concerns go beyond this. It is prohibited for Muslims to cut off ties with their children, regardless of the reason. Not speaking with a son or daughter for years is actually a sin in Islam. Preservation of the family and ties of kinship, and making family a place of refuge is a fundamental principle in the Sharia. Violating this is one of the worst things a Muslim can do.

Disinheritance in general is similarly prohibited for Muslims. Inheritance goes to a child not because a parent loves a child, likes a child, fulfilled a cultural expectation of endogamy, or because the child calls on weekends or brings grandchildren over. These are all irreverent considerations. Inheritance goes to a child because the Quran ordains that this is so.

In my own Islamic Inheritance practice, I make it clear before the potential client comes in that if there is a plan to disinherit a child, they can obtain their Islamic estate planning elsewhere, since in reality, there is no such thing. The shares are specific. Daughters get less than sons, but women do not always receive less than similarly situated men. Parents are beneficiaries. It is irrelevant that the parent is rich and would rather want the assets to go to the grandchild. If that is in fact the case, the grandparent can make that decision should it ever need to be made. If a parent wants to give more to a daughter or anyone else, they can give it during life, rather than after death.

Adherence to faith is a complicated issue in any religious tradition. Not everyone who is Muslim prays five times a day, or abstains from drinking alcohol or fasts the entire month of Ramadan. Some Muslims may not fit a particular profile of what a “religious person” might look like or act like. Yet, following the Islamic Rules of Inheritance may be important to them all the same. However a person lives life, an act of injustice to an individual’s closest loved ones is not how a devout Muslim would want to be remembered.


The types of questions I get from Muslim clients are typically different from what estate planning attor-

neys may typically expect. For example, a client might ask:

- “How much inheritance does my daughter get?”
- “Can my wife keep the house after I die?”
- “Am I allowed to purchase life insurance?”
- “How do I deal with unpaid *zakat*?”

For most of my colleagues, these would seem to be strange questions. Estate planning for Muslim clients involves religious as well as legal counsel and would necessarily require some knowledge of the religion and religious traditions. For many lawyers, even those who counsel those of their own faith tradition, this may be uncomfortable or novel. For some of our colleagues of various faith traditions, religion guides their practice as it does every part of their lives. For people of faith, their ethics follows their religion.

There are ethical notions that are common among all faith traditions. The golden rule is perhaps the most celebrated among them: to treat others as you would wish to be treated. Yet, the golden rule is not law. As counsel, our roles are not merely limited to “this is legal and that is not”; “this is what the IRS will let us get away with and that is not”; but it is about leaving a legacy consistent with our client’s values and ethics when there are no real legal consequences that flow from violating these, even reminding them of principles they have forgotten about. It is in times of stress or pain that we often forget who we really are. Counseling in this regard could be as simple as getting a client to talk to an estranged son, even picking up the phone in the office.

Being an estate planning attorney is not merely ministering to a client’s wishes on what should be done with worldly possessions. Rather it is to help them in a struggle to do the right thing, by showing them how. 



ABOUT THE AUTHOR

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