INTERNATIONAL INHERITANCE FORUM

REPORT
ON
UNITED ARAB EMIRATES

The law of inheritance can be examined through the lens of relatively few categories of enquiry.

Core categories address the following topics: general rules applicable to both legal and testamentary succession (**General Rules**); legal devolution or intestacy (**Intestacy**); wills and testamentary dispositions (**Wills)**; and administration of decedents' property and judicial oversight of that administration (**Administration**). These broad categories are common to—indeed they overarch—all systems in the Western legal tradition.

In some systems, the subject matter of forced heirship (legal or compulsory portion - reserved share - légitime - *portio legitima*) is dealt with as part of the law of wills or, more generally, as part of *mortis causa* donations. In other systems, forced heirship andlike devices are stand-alone institutions of inheritance law. Moreover, some systems empower courts, under various dependants' relief schemes, to vary wills to promote equitable distribution of property. On the whole, however, all these devices can be examined as restraints on freedom of testation and, accordingly, are examined here under the topic of wills (**Wills**).

On another note, some systems may require persons in close personal relationships to elect between their marital property entitlements and their inheritance rights. Other systems consider that property acquired during a marital relationship or rights stemmingfrom a matrimonial regime do not impact spousal inheritance rights whether they be by operation of law or under testamentary dispositions. For this reason, marital property is reviewed as a common inheritance issue (**General Rules**).

One can adopt—and be defeated by—the approach that every system's law of inheritance is incommensurable, or one can proceed, as we intend to, with the convictionthat the law of inheritance may be usefully examined and compared under the following themes: **General Rules**, **Wills**, **Intestacy** and **Administration**.

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1. GENERAL RULES

1.1 Origin and nature of property

According to Chapter 1, Section 2 of Article 1219 (1) of Civil Transaction Law, the heir shall acquire by inheritance the immovable and movable properties as well as the right included in the estates. There are no different rules for the different classes of property.

1.2 Simultaneous death

In the Islamic Sharia`s Law applied in UAE, in the jurisprudence of inheritance, if two or more persons, among whom there are inheritances, die due to an accident or the same, and where the case is not known for the one who died before the other. The ruling on bequeathing is that they are considered like foreigners who are not inherited among them, and they are not inherited from each other. Not knowing the death of the previous one.

According to Chapter 2 Article 1251, A gift made by a person (the doner) in contemplation of impending death, also known as a deathbed gift may always be revokes but becomes irrevocable on the death of the testator.

Article 1251
A partition made by disposition mortis causa may always be revoked. It becomes irrevocable on the death of the testator.

1.3 Capacity to inherit

As per the Law of Personal Affairs (Federal Law No. 28 of 2005) as amended:

- Inheritance is the imperative devolution of the property and financial rights upon the death of their owner to those deserving.

- According to Article 314, the main elements of inheritance are:

  - The decedent.
  - The heir.
  - The succession.

Also stated in Article 315

- The causes of inheritance are marriage and kinship.

Also states in Article 316

- Entitlement to succession is subject to the following conditions: Death of the decedent in reality or by judgment; the presence of the heir alive upon the real or assumed death of the decedent; knowledge of the whereabouts of the succession.

According to Shari'a law, the deceased person's primary heirs consist of a spouse, both parents, son, and daughter. They are generally referred to as primary heirs and they are never excluded. The remaining heirs can

be excluded, and it differs according to situation and circumstance. Inheritors usually fall under three categories in Islamic Law:

1. Quota heirs (dhawu al-farāʾḍ): This group usually inherits the designated shares or quota of the esate, and the beneficiary includes spouse, parents, son, daughter, brothers and sisters, grandparents, and others.

2. Members of the ʿaṣaba, or the residuary: These are the members who receive an inheritance as residuary after the quota-heirs' shares have been accordingly distributed.

3. Extended family members (Dhawu Al Arham): This usually includes maternal grandfather, aunts, nieces, and female cousins, and will include any family that are not quota-heirs and 'Asaba.

According to law No. 14 of 2021 concerning personal status for non-Muslims foreigners, the deceased person's heirs consists of husband or wife, children, parents and his/her siblings.

1.4 Ownership and vesting of property

According to Article (276) Federal Law No. 28 Issued on 2005/11/19 - On Personal Status, the Inheritance procedures begin after the death of the testator, and procedures are initiated to investigate the death and heirs, and to issue an inheritance certificate for the deceased, please note that as per Article 17 of the Civil Law states that the inheritance will be governed by the law of the testator at the time of his death.

Upon death, the personal assets of the deceased, including local bank accounts, are frozen (Article 379(4) of Federal Law No. 18 of 1993 ("Commercial Transactions Law")) until the local court issues a succession order.

When a person dies, a death certificate is issued. A named executor or a close relative of the deceased should submit this certificate to a UAE Sharia Court.

The Shariah Court in the relevant Emirate has jurisdiction to review any application for a death declaration (declaring the death of and identifying the survivors of the deceased) ("Death Declaration") and to conduct any proceedings relating to succession for a Muslim or a non-Muslim expatriate. Once the Death Declaration is obtained, any of the potential heirs may apply to the Shariah Court to institute succession proceedings, which will only be necessary if the deceased has assets in the UAE in order to obtain a certificate of succession.

To ascertain the identity of the heirs, documents will have to be provided to the Sharia court such as passport copies, birth certificates, marriage certificates, and such other evidentiary documents that will assist the court in issuing the conclusive certificate of succession. Additionally, if the deceased left a valid and acceptable will, it should be submitted to the Sharia Court. Based on these documents, the court will issue a certificate of succession setting out the manner of the distribution of the estate.

Similarly, if an expatriate non-Muslim having property in the UAE passes away outside the UAE, the named executor or a relative of the deceased would usually file the appropriate succession proceedings before the relevant court in the individual's home country.
It is required that the order (Letters of Probate, Letters of Administration, Succession Certificate etc.) issued by that court is legalized and submitted before the Shariah Court in the UAE along with the necessary documents for issuance of a certificate of succession and an order for distribution of UAE assets.

1.5 Unworthiness

The Shari'a Islamic Law provides several conditions where a person cannot become an heir, such as:

· Illegitimate and adopted children cannot be considered as heirs under Islamic law.

· Non-Muslims cannot benefit from the estate of a Muslim.

· A person who committed murder for the purpose of benefitting from the estate cannot be eligible to acquire the estate.

· Divorced women cannot claim the estate of their ex-husband unless they are in the waiting period (Iddat).

1.6 Acceptance

To ascertain the identity of the heirs, documents will have to be provided to the Sharia court such as passport copies, birth certificates, marriage certificates, and such other evidentiary documents that will assist the court in issuing the conclusive certificate of succession. Additionally, if the deceased left a valid and acceptable will, it should be submitted to the Sharia Court. Based on these documents, the court will issue a certificate of succession setting out the manner of the distribution of the estate.

Similarly, if an expatriate non-Muslim having property in the UAE passes away outside the UAE, the named executor or a relative of the deceased would usually file the appropriate succession proceedings before the relevant court in the individual's home country. It is required that the order (Letters of Probate, Letters of Administration, Succession Certificate etc.) issued by that court is legalized and submitted before the Shariah Court in the UAE along with the necessary documents for issuance of a certificate of succession and an order for distribution of UAE assets.

1.7 Liability for debts

Article 292 of the Personal Affairs Law stipulates that, at the end of the aforementioned 30-day period, the estate trustee may settle the estate's debts with the permission of the Court. However, if the estate is insolvent or is likely to be insolvent, the estate trustee may not settle any debt until a final decision has been reached in relation to any insolvency proceedings connected with the estate's debts.

Lastly, the Personal Affairs Law provides that the debts are settled from the proceeds of any claims of the estate, the liquidation of moveable assets and finally from the liquidation of real estate (forming part of the estate), if such proceeds are insufficient. Moveable assets and real estate shall be sold at public auction pursuant to the terms of the Civil Code unless the successors agree on another method. If the estate is insolvent, the approval of all creditors to such an alternative method will be required.

Where the deceased leaves debts, the court orders that the debts are paid prior to the distribution of the estate to the successors. The estate is subsequently divided according to the local court's decision based on sharia's different categories of heirs and their shares.

The forced heirs' participation in the succession of a deceased Muslim can be as follows (although subject to the sharia court's final decision):

· Father: one sixth when the de cujus leaves a son or grandson (Article 327.1, Personal Affairs Law). There are different interpretations about whether the presence of the father or the grandfather deprives the brothers of the deceased of their share in the inheritance.

· Mother: one third when the de cujus leaves no descendants or siblings (Article 326.1, Personal Affairs Law) or one sixth when the de cujus leaves descendants or siblings.

· Parental grandfather: one third or one sixth.

· Grandmother: one sixth if she is not debarred from inheritance.

· Brothers and sisters: one half, two thirds or one sixth.

1.8 Renunciation and disclaimer

A testator can retract his/her Will at any point during his/her life, whether in whole or in part.
A Will may also be revoked (in whole or in part) if a beneficiary dies before the testator, if a beneficiary explicitly rejects the Will, or if any bequeathed asset perishes or is lawfully claimed by a third party.

1.9 Marital rights

N/A.

2. INTESTACY

2.1 Declarations of inheritance

To ascertain the identity of the heirs, documents will have to be provided to the Sharia court such as passport copies, birth certificates, marriage certificates, and such other evidentiary documents that will assist the court in issuing the conclusive certificate of succession. Additionally, if the deceased left a valid and acceptable will, it should be submitted to the Sharia Court. Based on these documents, the court will issue a certificate of succession setting out the manner of the distribution of the estate.

Similarly, if an expatriate non-Muslim having property in the UAE passes away outside the UAE, the named executor or a relative of the deceased would usually file the appropriate succession proceedings before the relevant court in the individual's home country. It is required that the order (Letters of Probate, Letters of Administration, Succession Certificate etc.) issued by that court is legalized and submitted before the Shariah Court in the UAE along with the necessary documents for issuance of a certificate of succession and an order for distribution of UAE assets.

2.2 Relationship

As per the Law of Personal Affairs (Federal Law No. 28 of 2005) as amended:

- Inheritance is the imperative devolution of the property and financial rights upon the death of their owner to those deserving.

- According to Article 314, the main elements of inheritance are:

- The decedent.
- The heir.
- The succession.

Also stated in Article 315

- The causes of inheritance are marriage and kinship.

Also states in Article 316

- Entitlement to succession is subject to the following conditions: Death of the decedent in reality or by judgment; the presence of the heir alive upon the real or assumed death of the decedent; knowledge of the whereabouts of the succession.

According to law No. 14 of 2021 concerning personal status for non-Muslims foreigners, the deceased person's heirs consists of husband or wife, children, parents and his/her siblings.

2.3 Order of preference

According to Shari'a law, the deceased person's primary heirs consist of a spouse, both parents, son, and daughter. They are generally referred to as primary heirs and they are never excluded. The remaining heirs can be excluded, and it differs according to situation and circumstance. Inheritors usually fall under three categories in Islamic Law:

1. Quota heirs (dhawu al-farāʾḍ): This group usually inherits the designated shares or quota of the estate, and the beneficiary includes spouse, parents, son, daughter, brothers and sisters, grandparents, and others.

2. Members of the ʿaṣaba, or the residuary: These are the members who receive an inheritance as residuary after the quota-heirs' shares have been accordingly distributed.

3. Extended family members (Dhawu Al Arham): This usually includes maternal grandfather, aunts, nieces, and female cousins, and will include any family that are not quota-heirs and 'Asaba.

According to article 11 of law No. 14 of 2021,

1. The heir addressed by the provisions of this law has the right to leave a will with all the funds he has in the state to those who wish.

2. In the absence of a will, half of the inheritance goes to the husband or wife and the other half is distributed equally between the children, there is no difference between a male and a female, and if the deceased has no children, the inheritance belongs to the parents of the deceased equally between them or half to one if the other is not present, and the other half is to his siblings, and in the absence of the parents, the inheritance is transferred to his brothers and distributed equally between them, which makes no difference between male and female.

According to the Personal status law, the eexpatriates can now deal with their personal estate using the laws of their home country or nationality, and their assets will no longer be automatically divided under Islamic law. Previously, the Sharia Law of Inheritance was applied to the estates of expats who died unless official legal processes were taken. If a person dies in the UAE without leaving a will, their inheritance will be split according to the applicable law based on their citizenship - regardless of religion.

The sole exception is if the property is located within the UAE and is owned by the person. According to UAE legislation, these properties will be governed and distributed.

According to the Federal Decree Law No. 29 of 2020, in the absence of a will, the surviving spouse will receive half of the estate. The remaining half will be divided evenly among the deceased's children. Previously, a son would obtain a larger share of the inheritance. If the deceased seem to have no children, the inheritance would be divided evenly between one living parent and the deceased's siblings.

3. WILLS

3.1 Formalities

There are four basic types of Wills that can be drafted.

The Simple Will

As unassuming as it sounds, a simple Will covers the most important key points:

- Naming a person who you want to execute your will – the Executor
- Stipulating who will receive your assets
- Naming a guardian for your children, if applicable

The Joint Will

Generally used by partners or married couples, this document combines two wills in one. When one testator passes away, all his/her assets are transferred to the co-testator. When both parties die, the Executor is notified and the wishes of the deceased are carried out with regards to the distribution of assets, etc.

The Testamentary Trust Will

This kind of Will establishes a ‘Trust’ that contains assets and puts it into the hands of a ‘Trustee’ who manages it for a ‘specified time’. As the Trust is usually established for the benefit of either young children or mentally incapacitated individuals, the ‘specified period’ must be stipulated in the Will. It can specify the age that the beneficiaries must reach to receive the assets or a milestone they must cross.

The Living Will

Like a Special Power of Attorney, this Will details instructions for the Executor regarding critical care of the Testator. This Will comes into effect when and if the Testator becomes too ill to make medical decisions on his own. These involve the end-of-life decisions and whether to use extraordinary means (use of a ventilator, life support equipment) to support life.

There are two (2) types of Wills that can be written by the non-Muslims having assets or residing in the UAE:

1. Notary Public Wills

These wills are written in English and Arabic languages (bilingual format) and registered with a Notary Public in the Emirate where the testator resides or has assets.

2. DIFC Wills

Non-Muslims in the United Arab Emirates have the option to register their Wills with the DIFC Courts Wills Service (DIFC CWS). These Wills are prepared and registered pursuant to the DIFC WPR Rules which are based on the principles common law. The main benefits of registration of DIFC Wills are:

· Moveable as well as immoveable assets (including real estate) can be distributed as per your wishes – which may not be possible through a Will registered with Notary Public.
· The DIFC WPR Rules provide answers to all types of situations in relation to drafting and probate of Wills.
· It is much quicker to obtain a probate order pursuant to a Will registered with the DIFC Courts Wills Service.

All resident and non-resident non-Muslims over 21 years of age are eligible to register Wills with the DIFC Courts Wills Service.

Similarly, the Federal Decree Law No. 29 of 2020 allows the non-Muslim residents to draw up a will giving their property to whoever they wish. Wills for non-Muslims should be registered during the signing of their marriage certificate.

3.2 Revocation and revival

A testator can retract his/her Will at any point during his/her life, whether in whole or in part.

A Will may also be revoked (in whole or in part) if a beneficiary dies before the testator, if a beneficiary explicitly rejects the Will, or if any bequeathed asset perishes or is lawfully claimed by a third party.

3.3 Recognition, publication and probate

In UAE: The Sharia / Personal Affairs (Court) in each Emirate is responsible for dealing with inheritance issues. To distribute the inheritance, the primary step for courts is to determine the heirs and confirm the family ties through two male witnesses and proof of documentation such as a birth certificate or proof of marriage.

According to Section 4 of Article 1258 of the UAE Civil Code, a will is governed by the rules of the Islamic Shari'a Islamic and the law provisions deriving therefrom. In Abu Dhabi, according to the Federal Decree Law No. 29 of 2020 concerning Personal Status (Personal Status Law) governs personal affairs including inheritance Article 12, the procedures for opening and distributing the estate file is issued by decision of the President or authorized by a guide on the procedures of estates addressed by the provisions of the same Law. And it has implemented a specialized court to hear personal status cases of non-Muslim foreigners.

3.4 Curing formal deficiencies and rectification

Courts can save, cure or validate testamentary paper that does not comply with formal requirements, but cannot, where a will contains errors, slips or omissions or where a will fails to carry out the testator's instructions, rectify the will.

Courts do not have remedial power to secure the testator's true intentions.

The estate trustee - Article 287 of the Personal Affairs Law sets out the procedure to make a claim as follows:

The estate trustee shall invite the estate creditors and debtors to submit a statement of their rights and debts within two months from the date of publishing the relevant order.

3.5 Pacts and agreements as to future successions

N/A

3.6 Forced, reserved and elective shares and other legal rights

According to Sharia Law, Primary heirs, who are always entitled to a share of an inheritance, include: the deceased's spouse, parents, children, and grandchildren.

But the deceased's grandparents, siblings and nieces and nephews could also be eligible for a share of the inheritance if the individual was unmarried or had no living parents.

Inheritance under Islam typically allocates a larger share of assets to male heirs than female heirs, with the expectation that men would be responsible and support women.

Usually, a daughter would receive half the assets her brother would inherit from their father.

According to Article 322 of the personal status law, forced hires whose portions are reserved are as follows; the two parents, the spouses, paternal grandfather or his agnate ascendants, the grandmother who is not related to the decedent by an heir, daughters, the daughters of the son or of his descendants, sisters in the absolute, and the cognate brother. And their fixed shares are one-half, one-quarter, one-eighth, two-thirds, one-third, one-sixth, and one-third of the balance.

3.7 Disinheritance

The Shari'a Islamic Law provides several conditions where a person cannot become an heir, such as:

· Illegitimate and adopted children cannot be considered as heirs under Islamic law.

· Non-Muslims cannot benefit from the estate of a Muslim.

· A person who committed murder for the purpose of benefitting from the estate cannot be eligible to acquire the estate.

· Divorced women cannot claim the estate of their ex-husband unless they are in the waiting period (Iddat)

3.8 Dependents' relief or maintenance

There is no mechanism for dependents, who are not forced heirs, to make an alimentary or maintenance claim.

No claim can be made against the estate by dependents

3.9 Restraints on freedom of testation

There are no restraints on freedom of testation, other than the issues outlined under 3.5 and 3.6?

4. ADMINISTRATION

4.1 Intestate administration

The government administers through court an intestate estate.

There is a requirement to appoint an administrator.

All the Heirs must agree on the administrator and on the terms of administration, otherwise court or the concerned authority appoint the administrator.

4.2 Testamentary administration

The executer administers a testamentary estate.

No requirement for the appointment of the executor named in a will.

4.3 Management and control

Administrators publicly file accounts?