

## 1st Ethical Who are 1st Ethical Charitable Trust?

1st Ethical Charitable Trust is the charitable arm of the 1st Ethical Group and is regulated by the Charities Commission. In addition to providing humanitarian relief, the Charitable Trust seeks to provide information to UK-based Muslims on how best to apply Shariah principles to common legal and financial concerns. The Charitable Trust has published guides on topics such as Zakah, Islamic wills, Halal investments and alternatives to interest, and also operates an extensive online Shariah resource library. For more information please visit [www.1stethical.com](http://www.1stethical.com).

## 1st Ethical Who are 1st Ethical Group?

1st Ethical Limited are the only national firm of Shariah-compliant tax planners and FSA authorised financial advisers. We specialise in Islamic wills, Halal investments and pensions, tax efficient trusts and non-domicile/off-shore planning. We also advise companies and individuals on how to mitigate corporation, income and capital gains tax liabilities through a variety of tailored tax solutions. For more information please visit [www.1stethical.com](http://www.1stethical.com).

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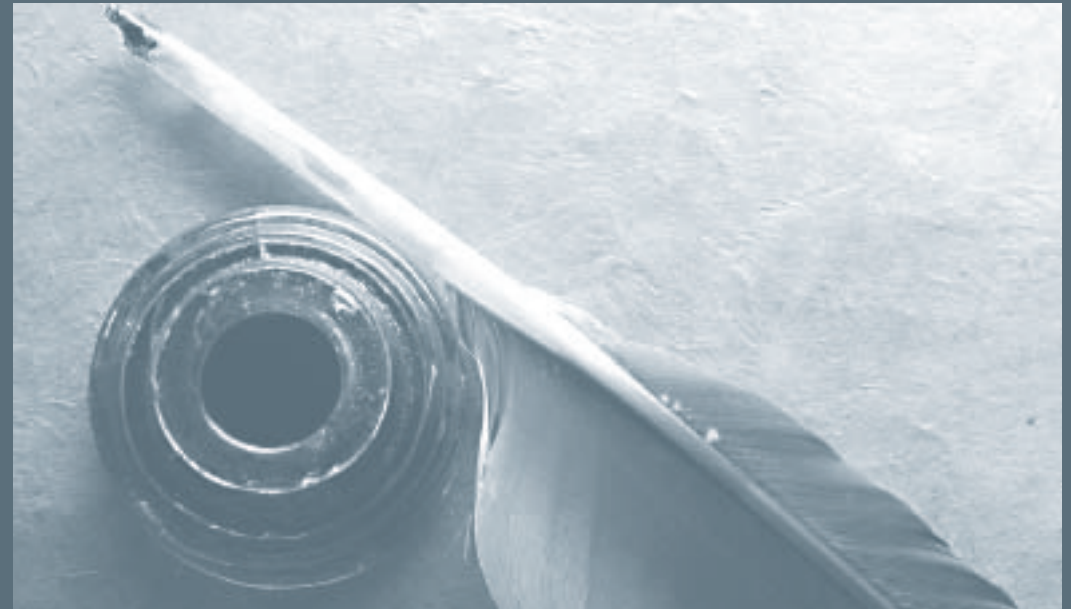
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## 1st Ethical's Guide to



# Preparing an Islamic Will

Edition II

**FREE Islamic will  
template inside**

**1st Ethical**<sup>TM</sup>  
Charitable Trust

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This guide is an abridged version of a research paper which can be downloaded from [www.1stethical.com/publications](http://www.1stethical.com/publications)

Islamic Will Template – FREE download available

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# Introduction

All praise is for Allah, Cherisher and Sustainer of the Worlds. We praise Him, seek His aid and beg of His forgiveness. Indeed, Allah is the one who gives life, and He is the one who takes it, and to Him shall we return.

As Muslims, we are required to bear the anguish and pain of losing a loved one with patience, to beseech our Creator to be merciful to the soul of the deceased, and most importantly, to remind ourselves of the temporary nature of this life, so that we may better prepare ourselves for the next life.

Islam is referred to in the Quran as not just a religion but also as a 'Deen' or way of life. As such, it provides detailed guidance to Muslims on how to conduct their affairs in each and every aspect of our lives. When it comes to the hugely important matter of death, it is therefore unsurprising that Islam has placed great emphasis on the manner in which the deceased is to be treated.

It is a sad reflection upon our general condition, that whilst many Muslims are scrupulous in ensuring the funeral rites, for example, the funeral prayer (janazah), the ritual washing of the body (ghusl) and the funeral shroud (kafn) are properly observed, there is much less emphasis, or even on occasion indifference, in ensuring the assets of the deceased are distributed amongst the family in accordance with Quranic requirements. From a Shariah perspective the correct distribution of assets is a compulsory (fardh) obligation on the deceased and hence is of paramount importance.

In order to maximise the likelihood of our assets being distributed correctly upon death, most scholars maintain it is an obligation to prepare a legally valid will, so

that the family of the deceased are left in no doubt as to the wishes of the deceased.

The implication of dying without a will in Britain are further aggravated by the 'laws of intestacy' which would be enforced if a will was not left, and the family were unable to amicably resolve how to distribute the assets of the deceased. These laws of intestacy would distribute assets according to English law, and are at odds with Shariah principles.

For those who fear, that after their passing, for whatever reason, there will be dispute as how to distribute assets, or for those who possess assets in excess of £300,000, thereby making their families potentially liable to pay 40% inheritance tax, having a professionally prepared, and if required tax efficient will is absolutely essential.

A famous Hadith states 'Prudent is he who subdues his desires and works for what comes after death' (Sunan Tirmidhi and Sunan Nasai). The objective of this guide is to explain in plain English the key points UK based Muslims need to be aware of in order to discharge their Shariah obligation with regards to preparing a will in a legally valid way, including details of how to download instructions at no charge from the internet, which can be used to prepare a will at home without the need for any professional advice or assistance.

For those who have inheritance tax issues, or those who wish to have the reassurance of having a professionally drafted will, the key concerns are identified alongside possible solutions.

# Shariah Considerations

*'Allah instructs you concerning your children's (inheritance): a male receives a share equal to that of two females. But if they (the children) are only women, and are more than (or equal to) two, their share is two thirds of that which he (the deceased) had left. And if there is only one woman, her share is half (of the estate). And for his parents, each one's share is a sixth of that which he left if he had children. But if he had no children, and the parents inherit from him, the mother's share is one third. And if he had siblings, the mother's share is a sixth. (These distributions should be done) after the payment of any bequeathals that he may have made or debts (that he may have had). Your parents and offspring - you do not know which among them are nearest to you in benefit. (These shares are) an ordainment imposed by Allah. Indeed, Allah is Knowing and Wise.'*

Surah Nisa v 11

*'You receive one half of that which your wives' leave if they have no child. If they have a child, you receive one fourth of what they leave - after payment of any bequeathals that they had made or debts (that they had). And they receive one fourth of that which you leave if you have no child. If you have a child, they receive one eighth of what you leave - after payment of any bequeathals that you had made or debts (that you had). If the man or woman whose inheritance is in question has neither ascendants nor descendants, but has a (maternal) brother or sister, each one of them both receives a sixth; and if they were more than two, they share a third - after payment of any bequeathals that had been made or debts (that are owed), and that are not intended to cause harm (to the legal inheritors). This is a commandment from Allah; and Allah is ever Knowing and Tolerant.'*

Surah Nisa v 12

The above two verses of Sura Nisa in the Quran encapsulate the key principles governing how to distribute assets upon death. Whilst these verses are well known for being difficult to not only comprehend properly, but also to memorise, scholars have drawn out some universally accepted principles which allow the lay person to understand the key lessons within the verses more easily.

We would also recommend readers consult a local scholar for guidance on how to apply these verses to their own circumstances, or at the very least consult the following website which we have found is accurate in calculating the correct Shariah distribution.

<http://members.aol.com/IslamicSoftware/irthie.html#preferences>



## The main Shariah rules pertaining to distribution of assets upon death are as follows:

1. Any outstanding debts owed by the deceased should be repaid. If a situation arises where the debts exceed the assets left by the deceased, the family are not obliged to repay the shortfall. However, this would be strongly recommended so as to spare the deceased being held to account for these debts on the Day of Judgement.
2. All funeral expenses should be paid from the assets of the deceased. It is perfectly acceptable (and often the case) that the expenses are met voluntarily by one or more family members.
3. Any bequests (Wasiyya) made by the deceased should be honoured on condition the value of these bequests do not exceed one third of the value of the remaining net assets (assets left after deducting debts and funeral expenses if applicable), and also on condition the recipient of the bequest is not an individual who is entitled under shariah to receive a share (e.g. the spouse, child, parent etc. of the deceased.) Many Muslims choose to make a bequest to charity as a means of ensuring some good deeds continue to benefit them even after their death (Sadaqah Jarriyah). Making a bequest is optional not compulsory.

The following Hadith refers specifically to bequests:

*'It is a duty of a Muslim who has anything to bequeath not to let two nights pass without including it in his Will.*

(Wasiyya) (Sahih al-Bukhari)

Most contemporary scholars hold that in a country where Shariah law is not applied by the government to one's assets on death (as is the case in the UK), then the duty referred to in the above Haddith applies not only to bequests but to all assets owned.

4. The remaining assets, after deducting debts, funeral expenses and bequests (if applicable) are to be distributed according to Quranic injunction. The actual distribution depends entirely upon the number of surviving family members. Given the wide range of possible distributions, we would recommend consulting a scholar. We have however summarised below the Shariah position which applies to a conventional family situation where the deceased was married with children:

If the husband passed away, his parents (if surviving) would each be entitled to 1/6th of the value of the assets. His wife would receive 1/8th and the balance would be split amongst the children in a manner so that the sons received twice the share received by the daughters. If the wife passed away first, the above distribution would be the same except the wife's parents stand to inherit 1/6th each, and the husband would receive 1/4 of the assets (not 1/8th).

# Legal Considerations

Shariah law is not recognised under English law. This poses a problem, as if a family member of the deceased wishes to contest the will, the matter will invariably be resolved by an English court of law. Consequently, if a will is prepared according to Shariah law only, and is not drafted in a manner so as to comply with English law, then this will would have no legal standing.

It is therefore of vital importance to ensure a will is legally valid. It is however, insufficient to have a legally valid will which merely states that Shariah should be enforced. The English law courts lack the ability and inclination to enforce a different system, such as Shariah that they are unfamiliar with. *Shamil v Beximco* [2004] EWCA Civ 19. The will therefore needs to stipulate very clearly the exact percentages due to each of the beneficiaries.

Unfortunately, this is impossible to predict, as the shares received by each family member depend on who survives the deceased. No individual is able to predict with certainty whether their parents, spouse or children will predecease them, or sometimes even if they will have more children in the future. It therefore becomes very difficult to comply with English law by stating the exact shares due to each family member.

A better way to resolve this issue is to place assets under trust, but only after death has occurred, not prior to death. A trust is a distinct legal entity recognised under English law and

is controlled by trustees on behalf of beneficiaries which are usually the family members. Specific trustees can therefore be nominated within the will, and the will can also place upon the Trustees the obligation of following Shariah principles. This arrangement resolves the above dilemma as the trust is an entity easily able to be enforced under English law. The responsibility of deciding how to apply Shariah is conferred upon the trustees, not the courts. As long as the trustees are honest and competent, the will can thus be implemented according to Shariah, in a legally enforceable manner.

The simplest type of trust recognised under English law is a bare trust. This gives the trustees no room to apply any discretion in applying the terms of the will. When a bare trust is used to enforce a Shariah distribution the role of the trustees is limited to establishing the Shariah position and then distributing shares accordingly. This type of will can be sufficient as long as there are no inheritance tax concerns and there is no fear of assets being taken unfairly from the beneficiaries.



## Laws of Intestacy

Those unfortunate to pass away without leaving a legally valid will are affected by the 'laws of intestacy' which effectively require the assets to be distributed amongst the surviving partner and children in shares set by English law.

However, if the surviving family of the deceased mutually agree to distribute the assets according to Shariah principles, according to English law they will have voluntarily relinquished the shares due to

then under the intestacy laws and chosen to receive a differing share as per Shariah law. However, if any member of the family wishes to dispute the share owing to them, then the voluntary arrangement cannot be legally enforced, and if the matter reaches court, then the family member concerned would only be legally entitled to whatever share is due to them under intestacy law.

It is therefore imperative a legally valid will is prepared prior to death.

## Jointly Owned Assets

Many couples choose to own their homes or other assets in joint names. If one partner passes away, only their half share in the asset will need to be distributed. Under English law jointly owned assets are usually held under a 'joint tenancy'. This means that on death of one of the partners, the entire ownership of the asset will automatically pass to the surviving partner. Whilst this may seem a sensible approach in that it will give the surviving partner security especially with regards to the family home, it is clearly against Shariah principles to allow the surviving partner to inherit more than her share of the property.

It is therefore better to own jointly owned assets as tenants in common. This allows the share of the deceased to be passed to the surviving family in accordance with the will of

the deceased, and hence allows for Shariah law to be applied.

The vast majority of assets are owned as 'joint tenants'. In order for the ownership of an asset to be converted from 'joint tenants' to 'tenants in common', professional advice is required. Please contact your own solicitor or 1st Ethical Limited for further advice.

There are sadly many instances where the surviving family members are locked into dispute over how to share the assets. In addition to preparing a will, it is also vital to clarify precisely who owns what asset, especially when all the family members are involved in running their own business. A clear written agreement specifying ownership of assets between the family members is essential.

## Free Islamic Will Template

A template of a bare trust will can be downloaded at no charge from [www.1stethical.com](http://www.1stethical.com). By filling in this template, it is potentially possible for the legal and Shariah issues to be fulfilled. It is vital to remember however, that there is no substitute for taking professional advice as there are many individual issues and scenarios which a template cannot accommodate. This template is therefore provided for information purposes only and does not constitute advice. It is only available for download subject to this condition.

For those individuals who have inheritance tax concerns or with protecting assets more robustly for beneficiaries a more sophisticated will is required. Our next section addresses these concerns more fully.

# Inheritance Tax and Asset Protection Considerations

Inheritance tax is payable at a rate of 40% on all assets, including the family home, valued over the nil rate band (NRB). The NRB for the tax year 2007/2008 is worth £300,000. Both the husband and wife are entitled to their own NRB, hence for married couples inheritance tax is normally only an issue if their combined assets are valued over £600,000. Assets transferred to a spouse on death are exempt from inheritance tax, irrespective of the amount transferred. Assets transferred to any other individual are only exempt up to the NRB threshold.

For wealthy individuals, ensuring assets are inherited only by the rightful family members becomes a major concern. Invariably, the likelihood of arguments and legal disputes increases when the deceased leaves behind substantial wealth.

English law provides for two other types of trust beyond the bare trust. These are known as the discretionary trust and the interest in possession trust. One or both of these trusts can be incorporated into an Islamic will. Like a bare trust will they are only created at the time of death, not before, and enable assets to be distributed in a legally enforceable Shariah-compliant manner. Unlike a bare trust will, the discretionary trust has the added advantage of strengthening asset protection. When an interest in possession trust is combined with a discretionary trust, this provides a further advantage of mitigating inheritance tax liability as well as strengthening asset protection.

A discretionary trust will gives trustees complete discretion over how to distribute assets. This allows the trustees to consider the particular circumstances of each beneficiary and use their discretion in deciding both the timing and the amount to be transferred. Using this discretion is of particular benefit when it is feared the beneficiary may be the victim of a malicious or unwarranted claims against their wealth (for example, from a

separated partner or from a mischievous damages claim etc.)

When an interest in possession trust is combined with a discretionary trust in a will it usually has the added advantage, for married couples, of allowing all assets, irrespective of value, to be transferred into the trusts exempt from inheritance tax. This type of will is therefore ideal for individuals with substantial assets.

For the very wealthy, there is an almost inexhaustible array of yet more tax planning options, ranging from offshore structures, to non domicile planning through to creating trust structures prior to death. Professional advice should be sought if these options are to be considered. 1st Ethical have a specialist division - 1e tax, which deals exclusively with bespoke tax solutions. Please visit [www.1etax.com](http://www.1etax.com) for more information.

In summary, for those individuals whose total assets are worth less than £300,000, and who are also very confident their families will not require asset protection on death, a bare trust will can suffice. A template for an Islamic will incorporating a bare trust can be downloaded at no charge from our website. For all other individuals, professional advice is required.

Completing the wealth calculator will help you better decide which type of will is right for you.

# Wealth Calculator

In order to calculate your total wealth, please complete the following:

Assets			
Husband		Wife	
Family Home	£.....	Family Home	£.....
Bank Balance	£.....	Bank Balance	£.....
Shares/Gilts/Bonds etc	£.....	Shares/Gilts/Bonds etc	£.....
Other Property	£.....	Other Property	£.....
Home Contents	£.....	Home Contents	£.....
Cars	£.....	Cars	£.....
Jewellery	£.....	Jewellery	£.....
Other	£.....	Other	£.....

**Total Combined Assets (A) £.....**

Liabilities			
Husband		Wife	
Mortgages Outstanding	£.....	Mortgages Outstanding	£.....
Bank Loan	£.....	Bank Loan	£.....
Car Loan	£.....	Car Loan	£.....
Overdraft	£.....	Overdraft	£.....
Credit Card	£.....	Credit Card	£.....
Other Debts	£.....	Other Debts	£.....
Funeral Expenses	£.....	Funeral Expenses	£.....

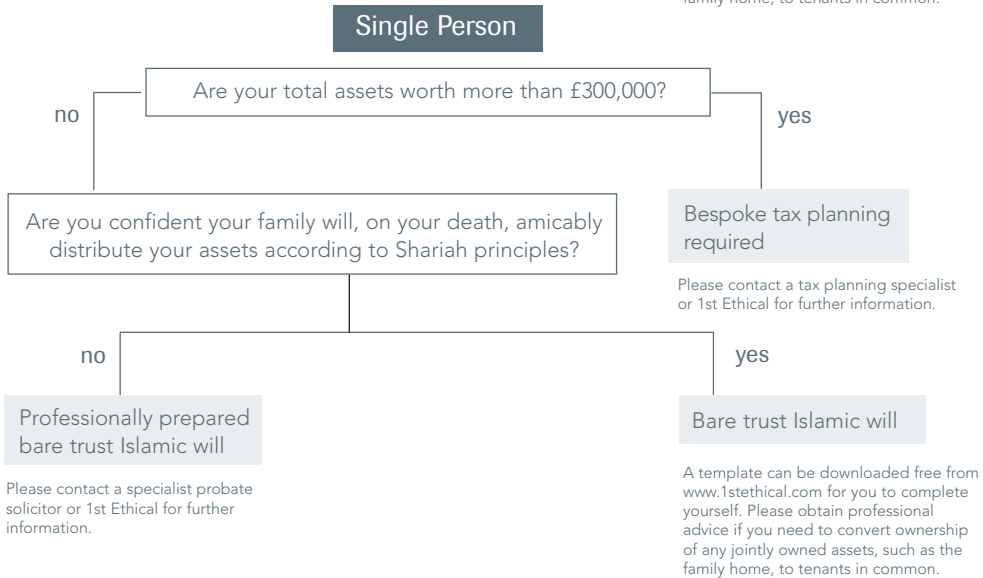
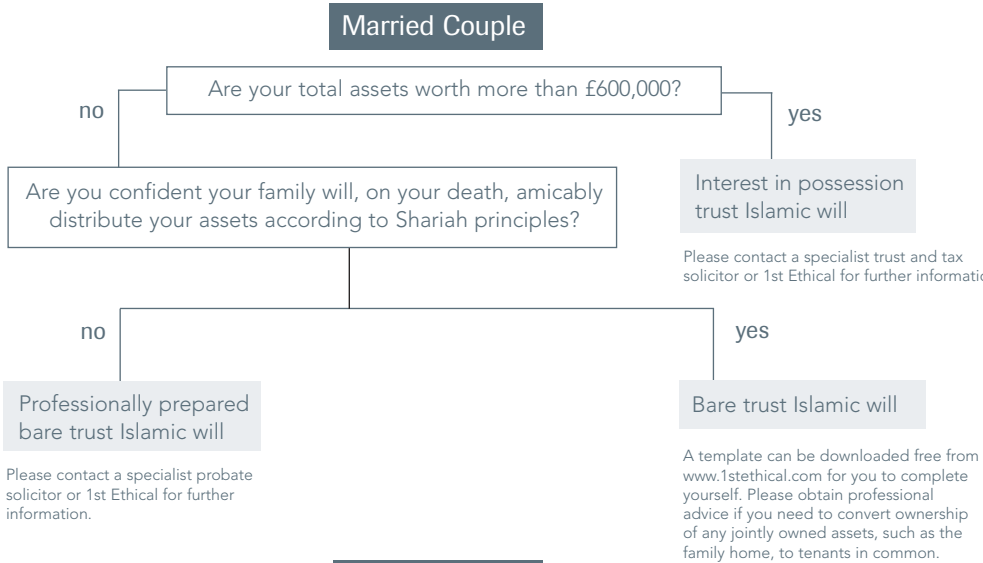
**Total Combined Liabilities (B) £.....**

Net Worth (Box A - Box B = C)	=	£.....
IHT Allowance	=	£600,000 or £300,000 if not married
Potential IHT Liability	=	(C - £600,000) x 40%

**Potential IHT Liability = £.....**

# 1st Ethical Solutions

Work through the flowchart below and identify which of the proposed solutions best suits your current circumstance.



# Summary

Islam has placed great emphasis on distributing the wealth of a Muslim in a pre-determined manner upon death. These principles have endured for over fourteen centuries and continue to play a vital role today, not just in allowing Muslims to fulfil their religious obligations, but also in preventing wealth from being overly concentrated in the hands of the few as well as ensuring the womenfolk in the family have guaranteed rights to wealth in their own capacity.

This Guide has been prepared by the 1st Ethical Charitable Trust in order to enable UK based Muslims to better understand how to put in place a legally valid Shariah-compliant will.

After addressing the Shariah concerns, and discussing the implementation of the Quranic verses on inheritance, we proceeded to look at the legal issues surrounding having a will for UK Muslims. We then looked at inheritance tax, before presenting a number of solutions which varied depending on wealth and family circumstances.

We also have provided a free Islamic will template which can be downloaded from our website, and which may be suitable for those whose assets are below the inheritance tax threshold, and those who feel their families will amicably resolve matters on their passing.

We pray the Almighty is pleased with this guide, and that it helps Muslims to better fulfil their Islamic obligations. Any errors contained herein are from ourselves, whilst any guidance is only from our Creator.



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[www.1stethical.com](http://www.1stethical.com) for  
more information about  
the activities of the  
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