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Professional Certificate in Islamic Estate Planning and Risk Management (United Kingdom)

## Unit 2: Understanding Islamic Inheritance Laws and Wills

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**Mirath** – The Arabic word for inheritance is the cornerstone of Islamic estate planning. In the context of UK law, mirath describes the portion of a deceased Muslim's estate that is distributed according to the Qur'anic and Sunnah prescriptions. Understanding mirath requires familiarity with the hierarchy of heirs, the fixed shares (known as faraid), and the conditions that can modify these shares, such as the presence of a waqf or a valid wasiyyah.

**Faraid** – This term refers to the mandatory portions that the Qur'an assigns to specific relatives. The principle of faraid ensures that certain categories of heirs, such as children, parents, and spouses, receive a predetermined portion of the estate, regardless of the testator's wishes. The fixed shares are expressed in fractions (for example, one-half, one-fourth, one-eighth) and are calculated after the settlement of debts, funeral expenses, and any outstanding 'aqd (debts). In the UK, these shares must be reconciled with the requirements of the Administration of Estates Act 1925, which may necessitate the use of a "deed of variation" to align civil and Shariah obligations.

**Wasiyyah** – A will or testament in Islamic law is known as a wasiyyah. It allows a Muslim to bequeath up to one-third of their estate to non-heirs, charitable causes, or specific individuals, provided this does not infringe upon the reserved portions of the faraid heirs. The remainder of the estate must be distributed strictly according to the faraid scheme. In practice, a UK-based Muslim may prepare a civil will that incorporates a wasiyyah clause, ensuring compliance with both English probate law and Shariah principles.

**'Aul** – The term "awl" denotes a situation where the total of the fixed shares exceeds the available estate. When an awl occurs, each heir's share is proportionally reduced so that the estate is fully allocated. For example, if an estate is limited and the prescribed shares sum to more than one, the calculation involves dividing each share by the total sum of shares and then applying the resulting fraction to the estate. In the UK, an awl may affect the distribution of assets held in joint tenancy, requiring careful legal structuring to avoid unintended forfeiture of rights.

**Radd** – The counterpart to awl, radd occurs when the total of the fixed shares is less than the estate, leaving a surplus. The excess is returned (radd) to the heirs in proportion to their original shares. In practical terms, this means that heirs receive more than their strict Qur'anic portion, but the distribution remains within the limits of the faraid system. When drafting a will, the testator must anticipate the possibility of radd, especially if the estate includes assets that may appreciate before distribution (e.g., Property or investments).

**'Iqtas** – This concept refers to the portion of an estate that is not covered by the mandatory faraid shares. The 'iqtas consists of the residue after the fixed shares have been allocated. The 'iqtas can be freely

disposed of through a wasiyyah, used to establish a waqf, or allocated to other beneficiaries such as charities, friends, or distant relatives who are not entitled to a fixed share. In UK practice, the 'iqtas may be used to fund a family trust, provided that the trust's terms do not contravene the reserved shares of the legal heirs.

**Waqf** – A waqf is a charitable endowment that permanently dedicates assets for religious, educational, or social purposes. The donor (waqif) retains the benefit of the assets while the principal remains inalienable; only the income generated can be used for the specified charitable objectives. In the context of inheritance, a portion of the estate can be transformed into a waqf, thereby fulfilling the testator's charitable intentions while preserving the integrity of the Islamic inheritance scheme. In the UK, establishing a waqf may involve registration with the Charity Commission and compliance with the Charities Act 2011, ensuring that the waqf's assets are protected from creditors and that the donor's intent is legally enforceable.

**'Udhri** – The term "udhri" (or "udhr") describes a discretionary bequest that a testator may allocate to any person, irrespective of their status as a legal heir. This bequest is limited to one-third of the estate and must not prejudice the fixed shares of the faraid heirs. For instance, a father may allocate an udhri to his nephew who is not a legal heir, provided the allocation remains within the one-third limit. In practice, the udhri can be used to reward a trusted employee, support a charitable organization, or settle a personal debt.

**Quranic Share Categories** – The Qur'an identifies several categories of heirs, each with a specific share. The primary categories include:

- 'Umm al-Walad (the mother of a child) – entitled to one-sixth of the estate if the deceased has surviving children; otherwise, she receives one-third.
- Ab (father) – receives one-sixth if there are surviving children; if not, he may inherit the remainder after the fixed shares are allocated.
- Umm (mother) – similar to the father, receiving one-sixth in the presence of children, otherwise one-third.
- 'Ayn (son) – receives twice the share of a daughter; the son's share is typically half of the estate if he is the sole heir.
- Bint (daughter) – receives one-half if there is a sole daughter; otherwise, she receives one-third when there are multiple daughters.
- Husband/Wife – the spouse's share is one-fourth if there are surviving children, otherwise one-half.

Understanding these categories is essential for accurate calculation of inheritance shares, especially when multiple heirs from different categories coexist.

**'Ikrar** – This term denotes a mutual agreement among heirs to accept a particular distribution of the estate, often used to resolve disputes or to accommodate a will's discretionary bequests. In the UK, an 'ikrar can be formalised through a deed of family settlement, which is then submitted to the probate registry as part of the estate administration process.

**'Mawali** – Mawali are individuals who have been freed from slavery or are the descendants of freed slaves. In Islamic inheritance law, mawali do not have automatic rights to a fixed share unless they fall under a specific category, such as a daughter or a spouse. However, they may be eligible for discretionary bequests

(udhri) or may benefit from a waqf established by the testator.

'Nasab – The concept of lineage or blood relationship. Islamic inheritance law is heavily based on nasab, as the allocation of shares depends on the closeness of the familial relationship to the deceased. In practice, a UK solicitor must verify genealogical connections through documentation such as birth certificates, marriage certificates, and, where necessary, genealogical charts, to substantiate claims of nasab.

'Umm al-walad – The mother of a child, distinct from the general category of mother (umm). The specific status of 'umm al-walad' becomes relevant when a mother is also a widow; her share may be adjusted depending on whether she has surviving children.

'Ashi – A term used to describe an heir who receives a share that is not fixed but is derived from the remaining estate after the allocation of the faraid portions. The ashiiy (plural) may receive a share equivalent to a fixed portion if no other heirs are present, or they may inherit the residue ('iqtas'). In the UK, ashiiy can be identified through the probate process, and their entitlement must be validated against the will and the Shariah calculations.

'Radd al-Mawla – The return of surplus assets to the heirs after the fixed shares have been allocated. This concept is closely related to radd, but specifically addresses the scenario where a non-heir (mawla) has been granted a discretionary bequest that exceeds the one-third limit, requiring a proportional reduction of the bequest and redistribution of the excess to the legal heirs.

'Mithaq – An oath or pledge that a testator may make regarding the disposition of their estate. In Islamic law, a mithaq is binding if it involves a clear promise to allocate a specific portion of the estate to a particular beneficiary. For example, a father may take a mithaq to give his son a certain amount of property, which would then be enforceable under both Shariah and civil law if properly documented.

'Tawarruq – A financial arrangement that can be used for estate planning purposes, allowing a testator to convert illiquid assets into cash that can be bequeathed. While tawarruq is not an inheritance term per se, it is often employed by Muslims in the UK to facilitate the distribution of assets that might otherwise be subject to restrictive inheritance rules.

'Maqasid al-Shariah – The higher objectives of Islamic law, which include the preservation of religion, life, intellect, progeny, and property. When interpreting inheritance rules, scholars may invoke maqasid to ensure that the distribution promotes justice, prevents hardship, and aligns with the broader ethical goals of Islam. In a professional setting, understanding maqasid helps advisers balance strict legal prescriptions with the testator's personal circumstances, especially when dealing with blended families or complex asset structures.

'Nass – The explicit textual evidence from the Qur'an or Hadith that forms the basis of an inheritance rule. For instance, the Qur'anic verse that grants a daughter one-half of the share if she is the sole female heir is considered a clear nass. In the UK, legal practitioners may reference nass to justify the allocation of specific shares in a will, particularly when the civil law framework does not automatically recognise those shares.

'Ijma – Consensus among qualified scholars on a particular legal ruling. In inheritance law, ijma may be

invoked to resolve ambiguities or to adapt traditional rulings to contemporary contexts, such as the treatment of step-children or adopted children. While *ijma* does not have statutory force in English law, it can inform the drafting of a will that seeks to reflect accepted Islamic practice.

'*Qiyas* – Analogical reasoning used to extend a known rule to a new situation. For example, the principle that a son receives double the share of a daughter can be applied by *qiyas* to determine the share of a grand-son when a direct son is absent. In the UK, the use of *qiyas* is often reflected in the explanatory notes attached to a will, providing a rationale for the distribution in cases where the statutory law is silent.

'*Urf* – Customary practice of a particular community. In the context of inheritance, *urf* may influence the interpretation of certain terms, such as the definition of "close kin" or the accepted method of dividing agricultural land. While *urf* is not binding under English law, acknowledging local customs can aid in avoiding disputes among family members.

'*Maqam* – The status or position of an heir within the family hierarchy. The *maqam* determines eligibility for certain shares; for example, a son's *maqam* outranks that of a daughter, affecting the calculation of shares when multiple heirs exist. In professional practice, understanding *maqam* helps advisors anticipate potential conflicts and design equitable distribution strategies.

'*Haq* – A right, particularly the right of a legal heir to receive their prescribed share. The concept of *haq* is central to the fairness of the inheritance process. In the UK, the probate court ensures that the *haq* of each heir is respected, provided the will complies with both civil and Shariah requirements.

'*Murtaza* – A term denoting a preferred or chosen heir, often used in the context of a bequest. While a *murtaza* may be a non-heir, the allocation must still respect the one-third limit of the *wasiyyah*. In drafting a will, the testator may specify a *murtaza* for a particular asset, such as a family business, ensuring that the chosen individual receives the asset without infringing on the reserved shares.

'*Shariah* – The Islamic legal system derived from the Qur'an and Sunnah. In the UK, Shariah is not a source of statutory law, but it can guide the personal wishes of Muslims in estate planning. Practitioners must therefore reconcile Shariah principles with the requirements of English probate law, often by creating a dual-layered will: A civil will for compliance with UK law and a separate Islamic will (or a supplementary clause) for adherence to Shariah.

'*Niyah* – The intention behind a legal act. In inheritance, the *niyyah* of the testator must be clear and documented to ensure that the bequest is valid under both Islamic and civil law. For instance, a testator's *niyyah* to allocate a portion of the estate to a charitable foundation must be expressed in writing and witnessed, mirroring the requirements for a valid English will.

'*Sadaqah* – Voluntary charity that can be incorporated into an estate plan. A testator may allocate a portion of the '*iqtas*' to a *sadaqah*, thereby fulfilling a religious duty while also reducing the taxable value of the estate. In the UK, charitable donations can be claimed as tax reliefs, creating a financial incentive for including *sadaqah* in the will.

'*Musharaka* – A partnership arrangement that may be used to hold family assets. When an estate includes a

musharaka, the testator can structure the partnership agreement to specify how shares will be transferred upon death, aligning with both Shariah principles (which prohibit riba) and UK corporate law. This is particularly useful for jointly-owned businesses or investment portfolios.

'Mawla – A term often confused with "guardian" but in inheritance contexts refers to a protector or patron who may be appointed to manage the affairs of an heir who is minor or otherwise incapable. The mawla's role is limited to safeguarding the heir's rights and does not extend to altering the prescribed shares. In the UK, the role of a mawla may be analogous to that of a court-appointed guardian, and the appointment must be recorded in the will.

'Mubashir – A direct descendant, typically a child or grandchild. The distinction matters because the shares of a mubashir differ from those of a more distant relative. For example, a son (mubashir) receives a larger share than a grandson (non-mubashir) when the son is alive; however, if the son predeceases the testator, his share may pass to his children, who become the primary heirs.

'Umm al-Walad (as a legal heir) – When a mother is also a widow, her status as 'umm al-walad' may affect her share. If the deceased has surviving children, the mother's share is one-sixth; if there are no children, she may inherit one-third as a widow. This dual status is critical in calculating the total shares and ensuring the estate is not over-allocated.

'Aul (excessive allocation) – The term 'awl is applied when the sum of the fixed shares exceeds the estate's value. In such cases, the shares must be proportionally reduced. For example, if an estate of £120,000 is to be divided among heirs whose combined entitlement equals £150,000, each share is reduced by a factor of 120/150 (or 0.8). The new shares are then applied to the actual estate amount. This reduction is a practical challenge for solicitors who must recalculate the distribution while maintaining compliance with both Shariah and civil law.

'Radd (remainder allocation) – Conversely, radd occurs when the fixed shares leave a surplus. The surplus is distributed among the heirs in proportion to their original entitlements. If the estate is £200,000 and the fixed shares total £180,000, the £20,000 surplus is added to each heir's share based on the ratio of their original allocation. In the UK, the radd may affect tax calculations, as the added amounts can push beneficiaries into higher tax brackets.

'Mahr – While not an inheritance term per se, mahr (the dowry a husband must give his wife) can influence the estate if the husband's death occurs before the mahr is fully paid. The outstanding mahr becomes a debt of the estate and must be settled before distribution. In the UK, mahr is treated as a preferential debt, similar to other contractual obligations, and is therefore deducted from the estate's gross value.