

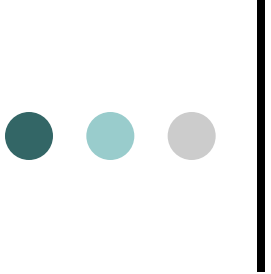
Islamic Wills & Estate Planning





What happens when you die?

- Probate is a legal process where a court determines if a will is valid or distributes a person's property if he or she dies without a will
 - Appoint Executor
 - Find Creditors and Pay Debts
 - Pay Income and Estate Taxes
 - Distribute Assets



Things to Consider

1. Making a Will
2. Consider a trust
3. Make health care directives
4. Make a financial power of attorney
5. Protect your children and their property



Things to Consider (con't)

6. Consider life insurance
7. Understand tax consequences
8. Cover funeral expenses and final arrangements
9. Long-Term Care
10. Organ Donations and Autopsy



What is an Estate?

- **Estate** is a total of a person's property, entitlements, and obligations
- **Property**
 - **Real Property**
 - Land
 - **Personal Property – movable property**
 - Cars, Cash, Jewelry, Artwork, Securities (Stock)
 - Copyrights, Patents, Trademarks and Goodwill



Power of a Will or Trust

- If create a valid, have the power to give according to Islamic Law
- Follow Islamic duties
- Abide by CA law to ensure property properly distributed
- If not a valid will, then falls to the rules of Intestacy, which do not follow Shari'ah



Why a Will?

- Under California law, one must have a valid will, otherwise all property (personal and real) in the estate are subject to the rules of intestacy.
- **Intestacy** = Dying without a legal will and all property is subject to the laws of the state.



If no will. . .

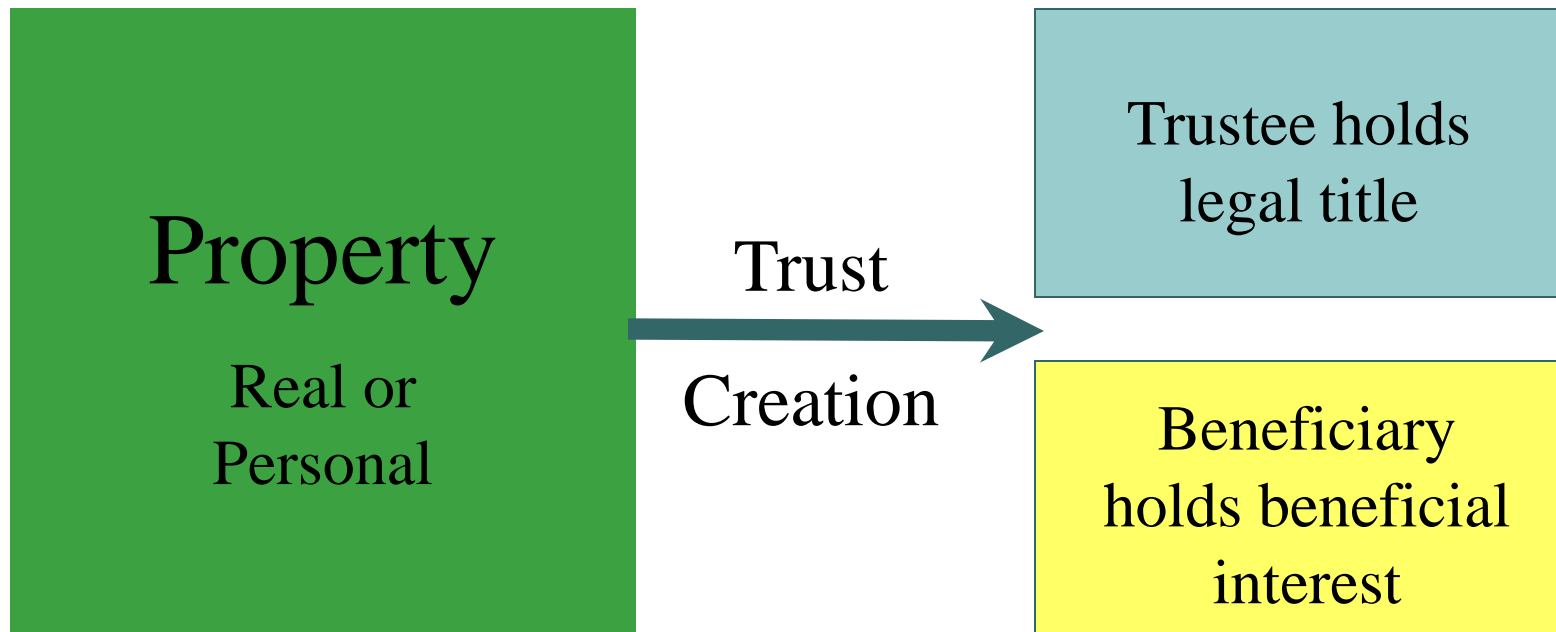
- Surviving Spouse gets 100% of community property, and
 - 100% of separate property (if no parent, sibling, issue)
 - If children, spouse shares an equal percentage of separate property with them
 - If have parent(s), spouse gets 50% of separate property, parent(s) the other 50%



To Create a Valid Will in CA

- Signed by:
 - By the testator
 - witnessed by two persons who are present for signing and understand that this is a will
- Comply with the laws of the state
 - No oral wills, must be in writing
 - To ensure spouse and children are included
 - Cannot strikeout portions of document

Trust





Benefits of a Trust

- Wills go through probate:
 - Public court hearing
 - Takes time, which takes money
- Trusts can do what wills cannot
 - Can ensure that parents/grandparents are supported
 - Can ensure wife and daughters are supported
 - Often a tool to avoid hefty estate taxes



Trusts

- **Living Trust**

- **Trust** = a fiduciary relationship with respect to property where by a trustee holds legal title for the benefit of another.



Trustee

- Must follow interests of Settlor, so long as legal
- Must invest for benefit of Beneficiaries
- May dictate Islamic investment vehicles



Can't Escape Death and Taxes

- Federal tax on estate where a decedent's assets are greater than \$2,000,000
- No gift tax on gift of \$12,000 or less per person per year
- Inheritance tax rate starts at 18% at \$2,000,000 and then percent increases as total assets increase up to 55%

*** Congress will be changing for better or worse ***

Islamic Law (Shari'ah)

- Slight differences depending on the school of thought
- The following will focus on the Shia teaching



Islamic Duties

Must pay before estate distribution:

- All debts (legal and religious)
- Provide for funeral expenses

Oh you who believe! It is prescribed upon you that when death approaches. . .he should make a will. . .This is a duty upon the pious. (2:177)

Koranic Source: Surah 4: 11-12

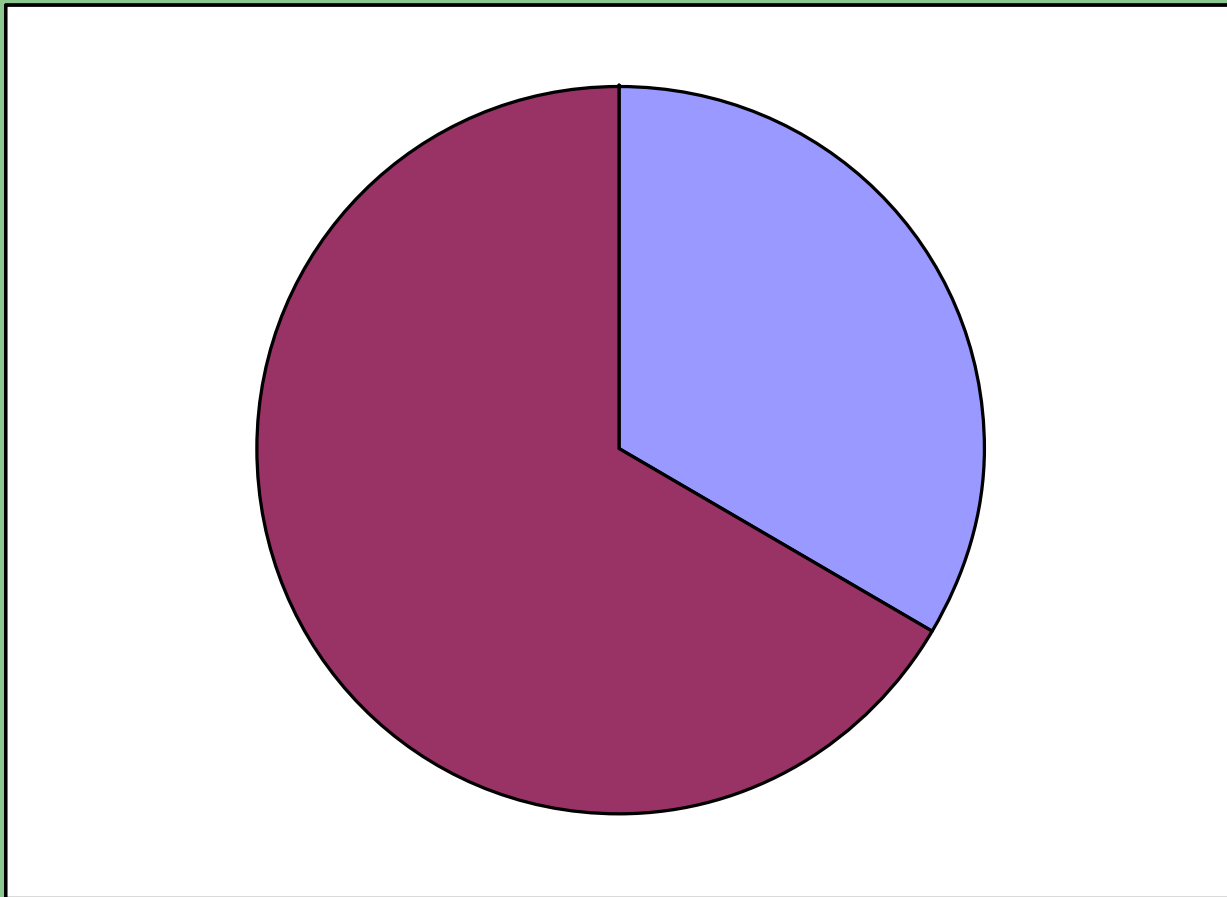
“God commands . . . the male shall have equal portions of two females, but if there are more than two females. . . have two-third of what he has left. . . his parents, each of them shall have the sixth of what he has left, if he has a child . . . but if he has brothers, then his mother shall have the sixth. . . you shall have half of what your wives leave if they die without issue; but if they have a child, then you shall have a fourth of what they leave after payment of any bequest . . . or a debt . . .”



Sexism?

- “the male shall have equal portions of two females, but if there are more than two females”
- “you shall have half of what your wives leave if they die without issue”

A person may will away up to $\frac{1}{3}$
of his/her estate to **ANYONE**
including Koranic heirs





Who gets the other 2/3s?

Two types of relationships, giving a right to inheritance:

1. *Nasab* – blood relationship
2. *Sabab* – Special causes i.e. marriage



Heirs by Nasab

(blood relationships)

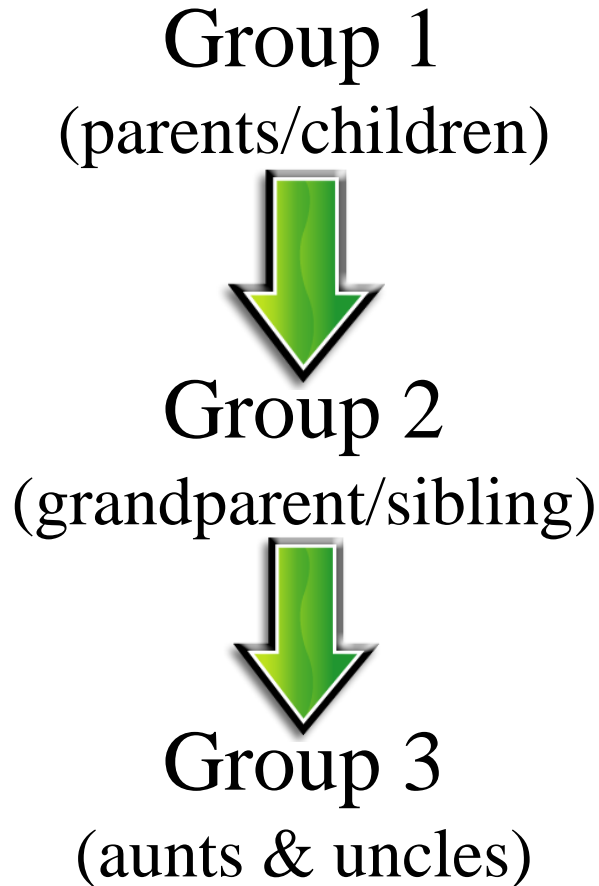
- Group 1: Parents and Children
- Group 2: Grandparents and Brothers & Sisters
- Group 3: Paternal & maternal uncles and aunts

Heirs by Sabab

(special relationship)

- Marriage: Spouse – Widow or Widower

Between the Nasab



- If members of Group 1 then members of Group 2 and Group 3 are excluded
- If no living in Group 1, then members of Group 2 will inherit
- Members of Group 3 will only inherit if no living in Group 1 and Group 2



NOTE

* Spouse will **ALWAYS** get his or her share of the estate



Nine sharers (Shia law):

1) Heirs by marriage

a. Husband

b. Wife

2) Ascendants Deceased

a. Father

b. Mother

3) Descendants of deceased

a. Daughter

4) Collaterals

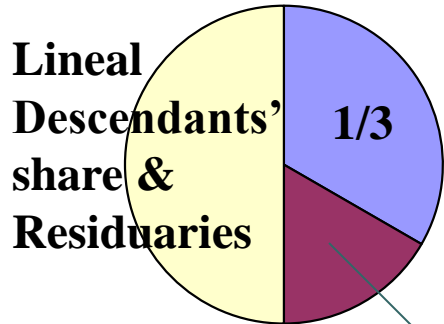
a. Full sister

b. Consanguine sister

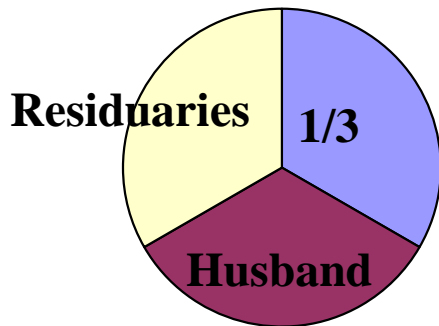
c. Uterine Brother

d. Uterine Sister

If Wife dies Leaving Husband

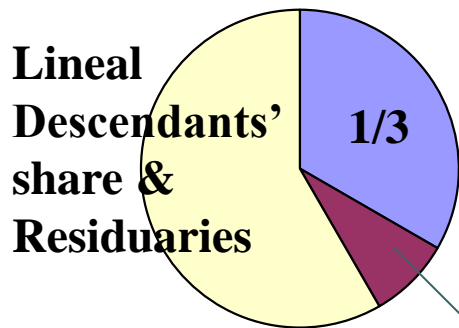


If wife dies and has lineal descendants (children/grandchildren), husband is entitled to $1/4$ of the estate; or



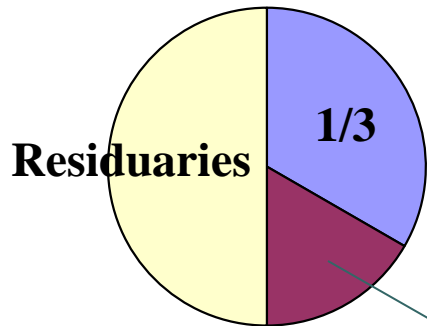
If wife dies without lineal descendants, the husband's share is increased to $1/2$.

If Husband dies leaving Wife



If husband is survived by lineal descendants, wife is entitled to 1/8 of the estate.

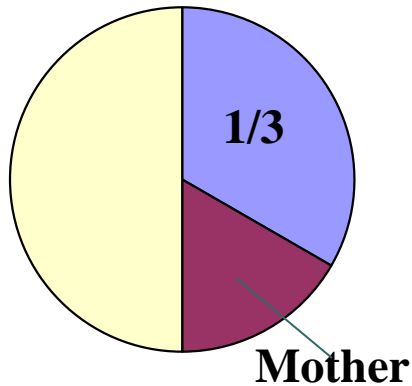
Wife



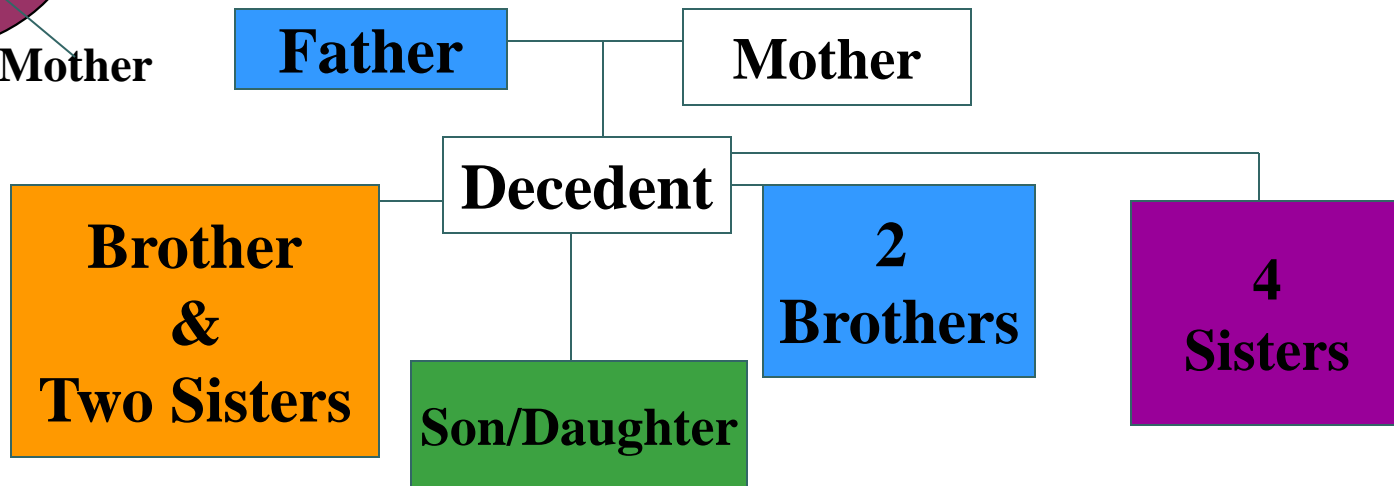
If husband is NOT survived by lineal descendants, wife is entitled to 1/4 of the estate.

Wife

Mother as Heir

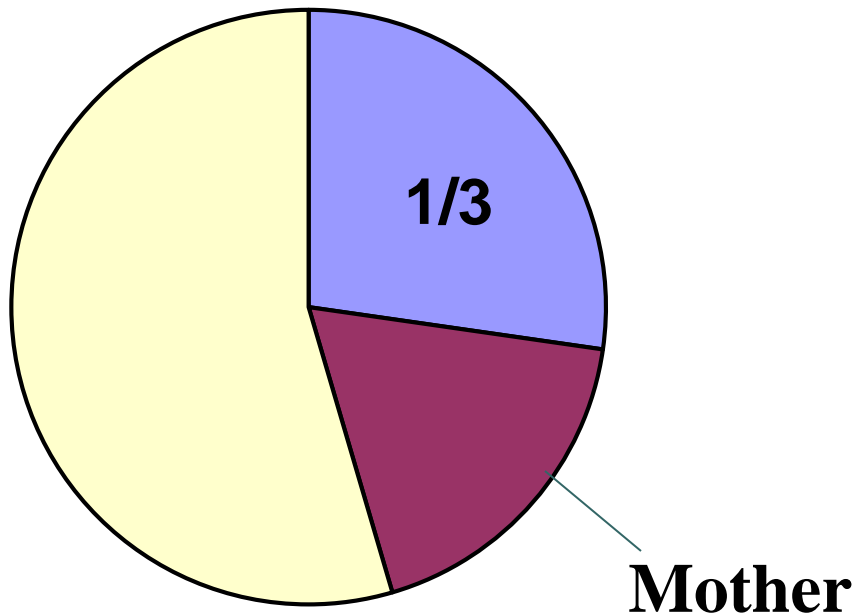


Mother of the decedent takes 1/4 of the estate if the decedent is survived by a **lineal descendant** or **survived by a father and two or more brothers** or **one brother and two sisters** or **four sisters**;



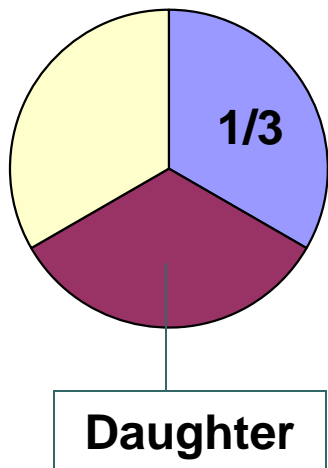
Mother as Heir

In the absence of shares (father, brothers, sisters), the mother's share increases to $\frac{1}{3}$.



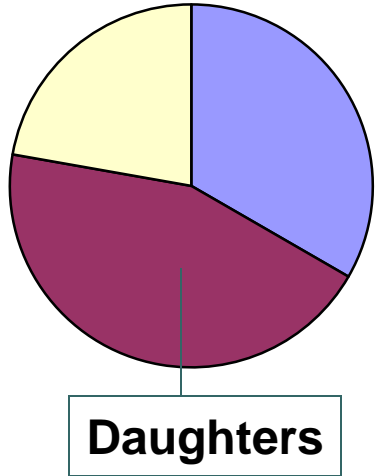
● ● ● | Daughter as Heir

In the absence of a son, the daughter takes as a Sharer



If decedent only has one living daughter then she is entitled to $\frac{1}{2}$ of the estate;

Daughters as Heirs

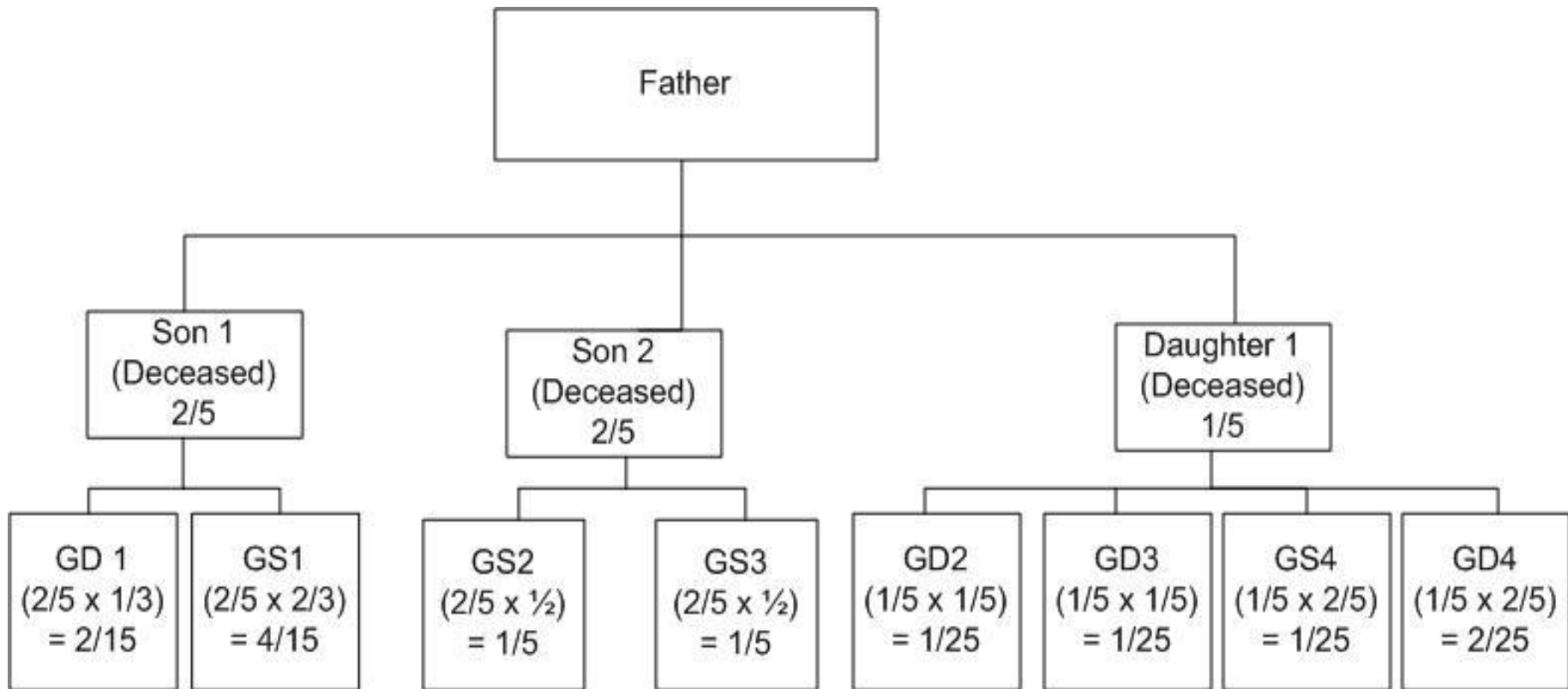


if there are two or more daughters then they receive $\frac{2}{3}$ of the estate collectively to be shared equally;

if there is a son, she takes as a residuary with the male taking double the portion of a female.

Principle of Representation

Example of Per Stripes:





Following Shari'ah and Wishes

- Islam allows flexibility
 - Establish Trusts
 - Lifetime Gifts
- Tax issues and alternatives:
 - Estate Tax – by pass via lifetime gifts
 - Gifting \$12,000 per person per year



Prohibition to Gifting – under Islamic and CA law

- Transactions or Gifts made during the last illness are considered as bequests
- Only valid within the limitation of the one third that can be willed away

Questions/Concerns

It's a lot
to take in!

