

FISA CONFERENCE 2020

OVERVIEW OF THE ISLAMIC LAW OF SUCCESSION WITHIN THE SOUTH AFRICAN  
CONTEXT

DR MUNEER ABDUROAF

LLB (SHARIAH) LLB LLM LLD

SENIOR LECTURER AT THE UNIVERSITY OF THE WESTERN CAPE FACULTY OF LAW

DEPARTMENT OF CRIMINAL JUSTICE AND PROCEDURE

## DISTRIBUTION OF A DECEASED ESTATE IN TERMS OF ISLAMIC LAW

X PASSES AWAY LEAVING BEHIND A GROSS ESTATE OF R100,000.00

HOW SHOULD THE ESTATE BE DISTRIBUTED IN TERMS OF THE ISLAMIC LAW OF SUCCESSION?

(1)

**DEDUCT ESTATE LIABILITY CLAIMS FROM THE GROSS ESTATE**

(FUNERAL EXPENSES, RELIGIOUS DEBT, OTHER DEBT AND ADMINISTRATION COSTS)

BALANCE WOULD BE THE NET ESTATE

(2)

**DEDUCT TESTATE SUCCESSION CLAIMS FROM THE NET ESTATE**

OPTIONAL BENEFICIARY IN TERMS OF ISLAMIC LAW

(MUST NOT BE MORE THAN 1/3 OF THE NET ESTATE)

(MUST NOT BE MADE IN FAVOUR OF A COMPULSORY BENEFICIARY IN TERMS OF ISLAMIC LAW)

(BEQUEST MUST NOT BE IN VIOLATION OF ISLAMIC LAW)

(3)

## **DEDUCT COMPULSORY SUCCESSION CLAIMS FROM THE REMAINDER OF THE NET ESTATE**

(PERSONS WHO INHERIT HERE MUST HAVE A COMPULSORY SUCCESSION TIE [POTENTIAL COMPULSORY BENEFICIARY] AND MUST NEITHER BE DISQUALIFIED NOR TOTALLY EXCLUDED FROM INHERITING IN TERMS OF ISLAMIC LAW [INHERITING COMPULSORY BENEFICIARY])

*DISQUALIFICATIONS INCLUDE DIFFERENCE OF RELIGION AND DIVORCE*

## **A DISQUALIFIED PERSON MAY INHERIT AS AN OPTIONAL BENEFICIARY**

[CHRISTIAN DAUGHTER]

## **PARTIAL EXCLUSION V TOTAL EXCLUSION**

[SITUATION OF A FULL SISTER]

## TYPES OF COMPULSORY BENEFICIARIES WHO INHERIT FROM THE REMAINDER OF NET ESTATE

SHARER BENEFICIARIES – FRACTIONAL SHARES

RESIDUARY BENEFICIARIES – RESIDUARY BENEFICIARIES

DISTANT KINDRED BENEFICIARIES – DISTANT KINDRED BENEFICIARIES

# ISLAMIC WILL WITHIN THE SOUTH AFRICAN CONTEXT

## (ISLAMIC LAW PROVISIONS IN A WILL)

### ESTATE LIABILITY PROVISIONS

### OPTIONAL BENEFICIARIES

### COMPULSORY BENEFICIARIES

[ISLAMIC DISTRIBUTION BY AN ISLAMIC INSTITUTION LIKE THE MUSLIM JUDICIAL COUNCIL SA]

*MOOSA NO AND OTHERS V MINISTER OF JUSTICE AND CORRECTIONAL SERVICES AND OTHERS (CCT251/17) [2018]*

THE END

ANY QUESTIONS?