



WHAT ARE THE LAWS APPLICABLE TO THE DRAWING UP OF YOUR WILLS AND TO THE ENFORCEMENT OF SUCH WILLS?

I. Conflict of Private International Law with practice and procedure in UAE – Domicile explored

What law would apply to the distribution of assets in the UAE upon the death of an Expatriate?

Domicile is commonly defined as “Place of a person’s true, fixed and permanent home and principal establishment and to which he has the intention of returning whenever he is absent from that place.”

Civil Law v. Common Law

The main difference is that under common law, there is the doctrine of stare decisis where judgments are considered binding upon the lower courts. Whereas in civil code countries, legislation is considered as a primary source of law. Judgments are not considered binding but persuasive. It is therefore difficult for lawyers to guarantee for certain outcome of Judgments.

II. UAE laws

a. UAE Personal Status Law

The Personal Status Law is silent as to the inheritance rights of foreigners in possession of UAE realty.

b. UAE Civil Transactions Code

While **Article 17 (1)** states : “Inheritance shall be governed by the law of the deceased at the time of his death.”, however, **Article 17 (5)** states : “The law of the United Arab Emirates shall apply to wills made by aliens disposing of their real property located in the State.”

Furthermore the Sharia Court of First Instance applies **Article 2** of the UAE Civil Transactions Code, which states : “The rules and principles of Islamic jurisprudence (fiqh) shall be relied upon in the understanding, construction and interpretation of these provisions.”

Due to the conflict between **Articles 17(1), 17(5), and 2**, different interpretations of the laws of the UAE have arisen.

III. Dilemma faced by Expatriates

a. What type of Will shall I draft and does it need to be notarised and legalised?

The Personal Status Law does not contemplate that a will with foreign Law or provisions contrary to Sharia could be issued. Reference is made to Article 1 (2) and Article 242.

Therefore there is no such thing as a UAE Sharia Will for non-Muslims. A will should be drafted by experts from the countries of domicile of the Expatriate (or nationality subject to review of the EU Brussels legislation, if applicable), having regard to the gifting problems, tax and other issues.

With increasing complexity as to what is the residency and domicile of a client, practitioners must ensure they understand the international aspects of drafting wills or they could face costly disputes. **Every Expatriate should be asked the following questions :**

- I. What is their domicile or should they specify their nationality (in view of EU provisions)?
- II. Do they already have a will?
- III. Do they have assets in the UAE and do they intend to keep these assets here?

Prior to 1 May 2015, there was no UAE legislation stipulating the provision of a Will for non-Muslim Expatriates, therefore there was no such thing as a UAE Will for non-Muslims.

b. Notary's rules – is this binding? Does this mean my Will, if notarised, would be enforced? Please note the fees involved and see Paragraph 12 of the attached scanned leaflet from the Dubai Notary.

c. Does Sharia Law therefore apply to Expatriates?

Dubai Court Cases explored.

- I. Presently the Sharia judges apply Sharia Law and ignore any Foreign Wills;
- II. You would have to appeal to the Courts of Appeal, it would take over 12 to 24 months and could cost more than Dhs 50,000 to Dhs 100,000 (Advocate fees, notarisation and legalisation of the Foreign documents, translation costs and foreign lawyers' fees).

What actually happens when a foreigner passes away and has assets in the UAE. What is the procedure in the Sharia Court? What entities require the Court Orders before they distribute the assets?

PARENTS



HUSBAND

PARENTS



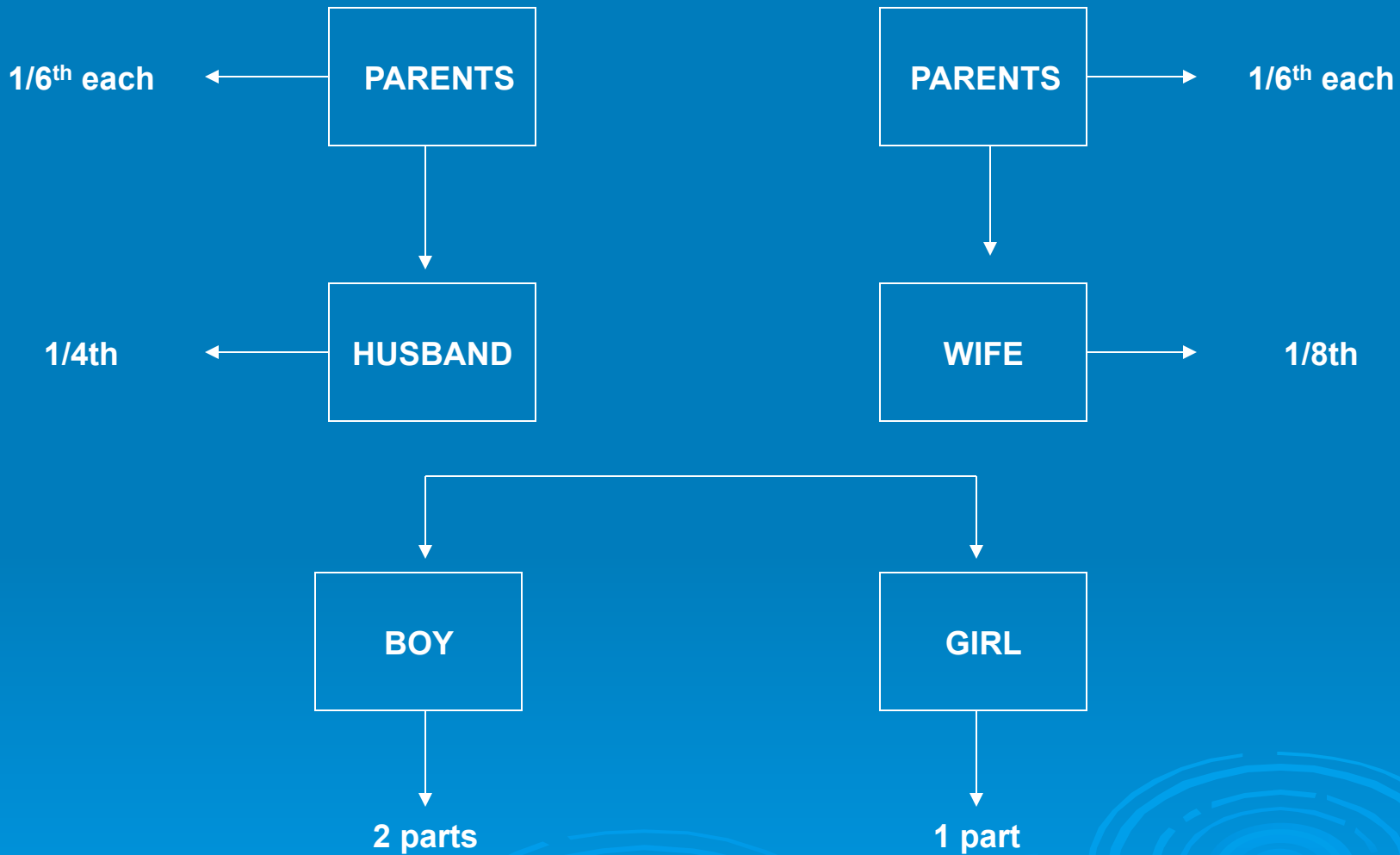
WIFE



BOY



GIRL



Property

Mortgaged

Bank

Master
Developer

DLD

Property

Not Mortgaged

Master
Developer

DLD

**Bank
Accounts**

Individual/
Joint

Bank

Cars

Financial
Institution

RTA

**Termination Benefits
or Shareholding
Interests**

Company



Property

Mortgaged



Sharia POAs

Property

Not Mortgaged



Corporate Structure

**Bank
Accounts**



Individual Bank accounts



Offshore Bank accounts

Cars



Sharia POAs

**Termination
Benefits**



Company Policy

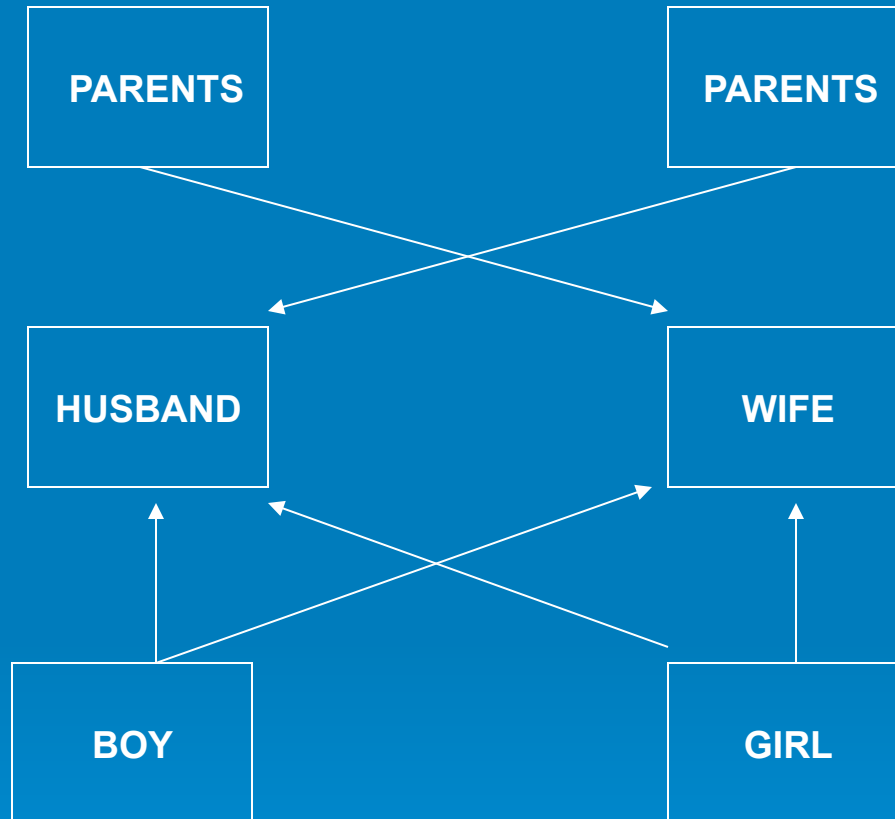
Sharia POAs

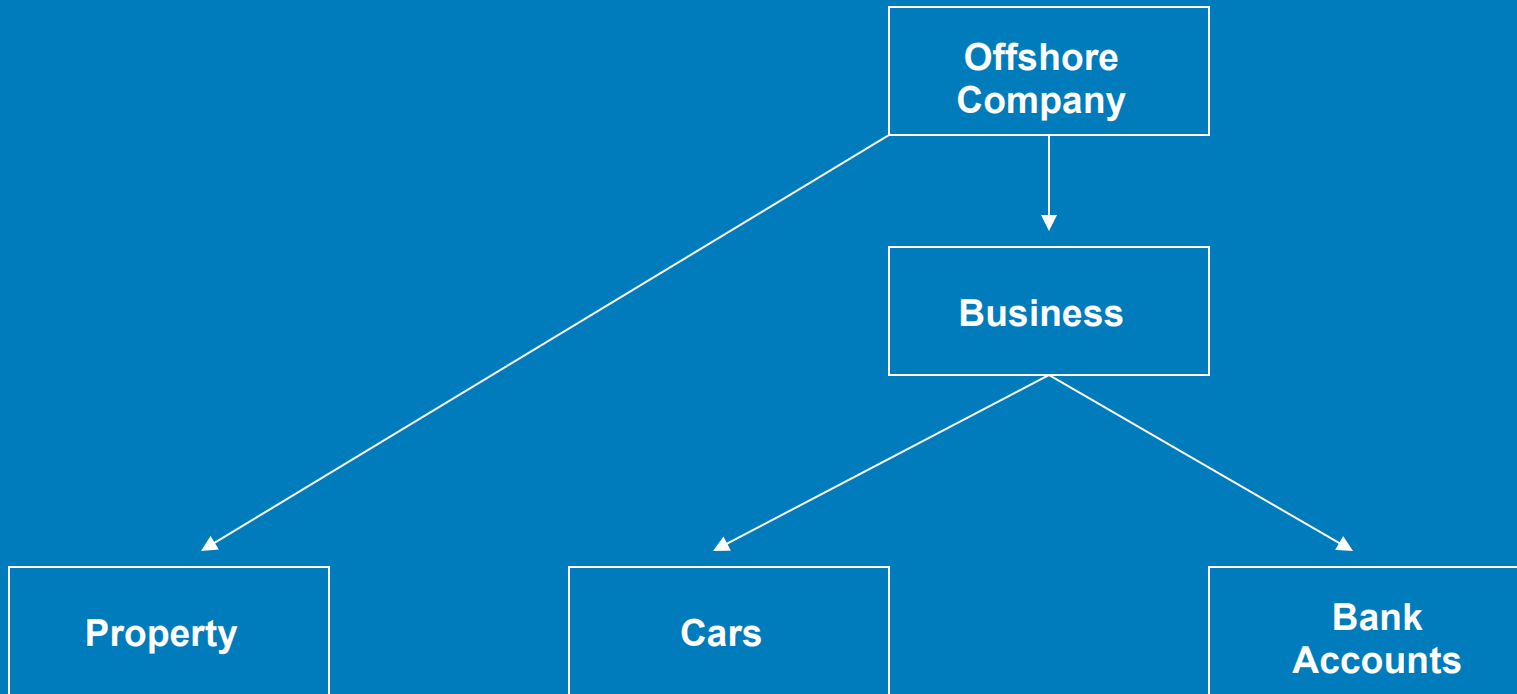
**Shareholding
Interests**



Corporate Structure

SHARIA POAS or WAIVERS





DIFC

Why is a DIFC Will therefore so much better?

- ◆ Common law jurisdiction – certainty of judgments
- ◆ Clarity of law, rules and process
- ◆ Before 1 May 2015, there are no laws in the UAE which enable a non-Muslim expatriate to draw up his / her Will here.

How can I have all my assets come under my DIFC Will?

