

# Before, During, and After the Shiva Call

## RELIGIOUS CONSIDERATIONS IN ESTATE PLANNING

September 26, 2024

Northern Ohio Charitable Gift Planners – **Planned Giving Day**

Abbie R. Pappas

[apappas@ubglaw.com](mailto:apappas@ubglaw.com)

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# Why are religious considerations important for estate planning advisors?

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- Cultural Competency
- Ability to ask meaningful questions
- Awareness of basic and/or widely-known principles

# DONNY, I DON'T ROLL ON SHABBOS!



## Shomer Shabbos

... On it, he doesn't f\*\*\*'n roll.

# Cuyahoga County, Ohio - County Membership Report (2020)

Religious Bodies	Tradition	Family	Congregations	Adherents	Adherence Rate
Catholic Church	Catholic	Catholic Liturgical Family	116	339,163	268.15
Non-denominational Christian Churches	Evangelical Protestant	Other Groups Family	90	149,150	117.92
National Missionary Baptist Convention of America	Black Protestant	Baptist Family	61	29,144	23.04
Muslim Estimate	Islam	Islam Family	17	22,134	17.50
American Baptist Churches in the U.S.A.	Mainline Protestant	Baptist Family	31	21,171	16.74
National Baptist Convention, USA, Inc.	Black Protestant	Baptist Family	28	16,950	13.40
United Methodist Church	Mainline Protestant	Methodist Family	36	16,506	13.05
Jehovah's Witnesses	Jehovah's Witnesses	Adventist Family	56	15,250	12.06
Orthodox Judaism	Judaism	Judaism Family	8	12,000	9.49
Lutheran Church-Missouri Synod (LCMS)	Evangelical Protestant	Lutheran Family	40	10,923	8.64
Evangelical Lutheran Church in America	Mainline Protestant	Lutheran Family	30	9,812	7.76
United Church of Christ	Mainline Protestant	Congregationalists (United Church of Christ) Family	34	9,751	7.71
Reform Judaism	Judaism	Judaism Family	5	8,797	6.96
Christian and Missionary Alliance	Evangelical Protestant	Holiness Family	11	7,490	5.92
Assemblies of God, General Council of the	Evangelical Protestant	Pentecostal Family	26	7,473	5.91
Conservative Judaism	Judaism	Judaism Family	3	6,521	5.16
African Methodist Episcopal Church	Black Protestant	Methodist Family	14	6,414	5.07
Presbyterian Church (U.S.A.)	Mainline Protestant	Presbyterian/Reformed Family	19	5,717	4.52
Church of God in Christ	Black Protestant	Pentecostal Family	24	5,314	4.20
Seventh-day Adventist Church	Evangelical Protestant	Adventist Family	18	4,969	3.93
Church of Jesus Christ of Latter-day Saints	Latter-day Saints	Latter-day Saints (Mormonism) Family	9	4,617	3.65
Southern Baptist Convention	Evangelical Protestant	Baptist Family	49	4,604	3.64
Episcopal Church	Mainline	Anglican/Episcopal	17	4,590	3.63

Source: Association of Religion Data Archives, [Congregational Membership Reports | US Religion \(thearda.com\)](https://www.thearda.com)

# Religious Considerations in Estate Planning

- Technical requirements: Testamentary imperatives and necessary religious documents.
- End-of-life planning and impact on health care directives.
- Client relationship management and burial and funeral customs.

# Testamentary Imperatives and Religious Documents

- Halachic Estate Planning
- Islamic Estate Planning
- Charitable/Tithing Imperatives
- Disinheritance Clauses

# Testamentary Imperatives and Religious Imperatives: *Halachic Estate Planning*

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Halachic Estate Plans vs. Halachic Living Wills:  
not the same!

**no.**

# Testamentary Imperatives and Religious Imperatives: *Halachic Estate Planning*

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- **Halacha**: Jewish religious law deriving from the Torah and other sources, such as subsequent Talmudic and rabbinic laws.
- **Beit Din**: A Jewish religious court. Under U.S. civil law, a Beit Din is treated as an arbitration Court.
- **Yerusha**: Specifically the body of halacha covering the laws of inheritance.

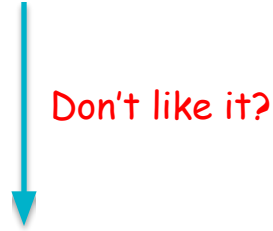




# Testamentary Imperatives and Religious Imperatives: *Halachic Estate Planning*

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- Under Yerusha: a man's sons are his sole heirs.
  - > The “bechor” (oldest son) is entitled to a double portion.
  - > Widow and any single unmarried daughters receive basic necessities such as food, clothing, and shelter.



- Options:
  - > Ignore it. (“Dina d’malchuta dina” - “the law of the Government is the law”)
  - > Use a *Shtar Chov*.

**CONDITIONAL SHETAR CHOV**

WHEREAS, the undersigned testator, ABRAHAM GOLDBERG (the "Testator"), hereby declares:

I, the Testator, hereby accept upon myself this Chov to my wife, RACHEL GOLDBERG, and to my daughter LEAH GOLDBERG, the sum of Four Million Dollars (\$4,000,000), effective immediately, but not payable until one minute before my death, on the condition that I do not retract this obligation at any time prior to my death. All the property which is mine at that time, both real and personal, shall serve as security for the payment of the said obligation.

I hereby stipulate that my heirs, as defined by Biblical law (Torah) as interpreted in accordance with Orthodox Jewish law (halakhah) (the "Heirs") shall be given the option of paying the above obligation, or, in lieu thereof, of carrying out the terms as specified in my Last Will and Testament executed on November 8, 2022, and, in addition, carrying out all transfers of property upon my death which are considered "non testamentary transfers" in accordance with the laws of the State of Ohio. Should my Heirs choose and comply with this option, then this Conditional Shetar Chov shall become void.

The above conditions are made in accordance with the laws of the Torah, as derived from Numbers 27:5-11.

Any dispute arising out of this document, or the transactions contemplated hereunder, shall be brought before, and settled in, a court of Jewish Law, a Beit Din.

I hereby affix my signature on this 8th day of November, 2022.

Hebrew date: 14 Cheshvan, 5783

\_\_\_\_\_  
ABRAHAM GOLDBERG,  
TESTATOR

The Testator executed all this, knowingly and willingly, with sound of mind and without duress or pressure, in front of us, the below signatories, and we signed at the direction of the Testator.

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Witness:

# Testamentary Imperatives and Religious Imperatives: *Halachic Estate Planning*

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- Issues with the Shtar Chov approach??
  - > IRS treatment of debt instruments; interest rates.
  - > Religious protections from government interference?

# Testamentary Imperatives and Religious Imperatives: *Islamic Estate Planning*

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# Testamentary Imperatives and Religious Imperatives: *Islamic Estate Planning*

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Mr. Yaser Ali, Esq.

# Testamentary Imperatives and Religious Imperatives: *Islamic Estate Planning*

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- Sharia Law Regarding Inheritance:
  - > Sharia Law: the moral, ethical and social code by which a Muslim lives his or her life, based in the Quran and other teachings.
  - > Instruction to create an estate plan:
    - “Do not let two nights pass without writing a will.”

# Testamentary Imperatives and Religious Imperatives: *Islamic Estate Planning*

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- Priority of Distribution:
  - > (1) Funeral, burial, and administration expenses;
  - > (2) Legally enforceable debts;
  - > (3) **Wasiyah share**: The (optional) discretionary 1/3 share.
  - > (4) **Faraid share**: The non-discretionary residuary share.

# Testamentary Imperatives and Religious Imperatives: *Islamic Estate Planning*

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- Use of Revocable Trusts and Probate Avoidance for Muslim clients:
  - > 2010 Oklahoma “Save Our State Amendment”.
  - > Anti-Sharia law copycat bills.





# Testamentary Imperatives and Religious Imperatives: *Islamic Estate Planning*

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- Use of lifetime gifting for Muslim clients:
  - > *Hiba*
  - > Outright gifts to non-Islamic heirs.
  - > SLATs

# ***Statement of Intent to Comply with the Islamic Law of Inheritance***

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“I am creating this revocable living trust and any separate trusts established under this instrument with the intent that assets transferred to the trust be held for my benefit while I am living and be distributed upon my death to my Islamic Heirs in accordance with my religion of Islam and the Islamic Law of Inheritance, as defined in Section \_\_\_\_ of this trust instrument. I understand and acknowledge that my decision to do so may result in:

- > (a) distribution to relatives who are not my heirs by state law;
- > (b) unequal distributions to my children on the basis of their sex;
- > (c) additional federal and/or state estate taxes payable by my estate; and
- > (d) liquidation and distribution of assets that may otherwise benefit a surviving grantor, causing him or her to receive a smaller share than he or she may be entitled to under the state’s default community property rules or statutory elective share.

I further instruct my Trustee to invest the trust assets in a Sharia-compliant manner, as outlined below.

Islamic law requires that the acquisition of wealth be achieved through lawful means that promote mutual consent and goodwill. As such, investments in illicit industries, such as alcohol, pornography, and gambling, are deemed impermissible. Where a company has a permissible primary income source but also has certain ancillary businesses or business units that are engaged in impermissible activities, such activities must only constitute a de minimis component of the company’s overall revenue...”

**For full model statement, see Yaser Ali, *Estate Planning for Muslim Clients*, National Academy of Elder Law Attorneys Volume 18, Spring 2022.**

# Testamentary Imperatives and Religious Imperatives: *Charitable Giving Imperatives*

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- *Tithing* (Church of Jesus Christ of Latter Day Saints) vs. *Maaser* (Judaism)
- “One-tenth”
- Lifetime charitable giving vs. testamentary charitable giving.

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# RELIGIOUS IMPERATIVES: Disinheritance Clauses?

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# RELIGIOUS IMPERATIVES: Disinheritance Clauses

- Common law discourages restrictions placed on otherwise legal marriage:
  - > *Loving v. Virginia*
  - > *Skinner v. Oklahoma*
  
- Is disinheritance different?
  - > *In Re Estate of Max Feinberg*, by the Supreme Court of Illinois, in 2009.

## **RELIGIOUS IMPERATIVES: Disinheritance Clauses**

“A descendant of mine other than a child of mine who marries outside the Jewish faith (unless the spouse of such descendant has converted or converts within one year of the marriage to the Jewish faith) and his or her descendants shall be deemed to be deceased for all purposes of this instrument as of the date of such marriage.”

***-Max Feinberg's Will***



# **RELIGIOUS IMPERATIVES: Disinheritance Clauses**

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“The record... reveals that Max's intent in restricting the distribution of his estate was to benefit those descendants who opted to honor and further his commitment to Judaism by marrying within the faith. Max had expressed his concern about the potential extinction of the Jewish people, not only by holocaust, but by gradual dilution as a result of intermarriage with non-Jews. While he was willing to share his bounty with a grandchild whose spouse converted to Judaism, this was apparently as far as he was willing to go.

...There is no question that a grandparent in Max's situation is entirely free during his lifetime to attempt to influence his grandchildren to marry within his family's religious tradition, even by offering financial incentives to do so. The question is, given our public policy of testamentary freedom, did Max's beneficiary restriction clause... violate any other public policy of the state of Illinois, thus rendering it void?”

# RELIGIOUS IMPERATIVES: Disinheritance Clauses

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“We conclude, reading [various other case law], that no interest vested in the Feinberg's grandchildren at the time of Max's death because the terms of his testamentary trust were subject to change until Erla's death. Because they had no vested interest that could be divested by their noncompliance with the condition precedent, they were not entitled to notice of the existence of the beneficiary restriction clause. Further, because they were not the Feinbergs' heirs at law, the grandchildren had, at most, a mere expectancy that failed to materialize for four of them when, at the time of Erla's death, they did not meet the condition established by Max.”

“Finally, it has been suggested that Michael and Leila have litigated this matter rather than concede to Michele's demands because they wish to deprive the grandchildren of their inheritance. The grandchildren, however, are not the heirs at law of Max and Erla and had no expectancy of an inheritance, so long as their parents were living, even if Max and Erla had died intestate. In addition, Michael and Leila are the co-executors of their parents' estates and, as such, are duty-bound to defend their parents' estate plans.... Although those plans might be offensive to individual family members or to outside observers, Max and Erla were free to distribute their bounty as they saw fit and to favor grandchildren of whose life choices they approved over other grandchildren who made choices of which they disapproved, so long as they did not convey a vested interest that was subject to divestment by a condition subsequent that tended to unreasonably restrict marriage or encourage divorce.”

***-The Supreme Court of Illinois***

# **RELIGIOUS IMPERATIVES: Disinheritance Clauses**

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## *Shapira v. Union National Bank:*

“(b) My son Daniel Jacob Shapira should receive his share of the bequest only, if he is married at the time of my death to a Jewish girl whose both parents were Jewish. In the event that at the time of my death he is not married to a Jewish girl whose both parents were Jewish, then his share of this bequest should be kept by my executor for a period of not longer than seven (7) years and if my said son Daniel Jacob gets married within the seven year period to a Jewish girl whose both parents were Jewish, my executor is hereby instructed to turn over his share of my bequest to him. In the event, however, that my said son Daniel Jacob is unmarried within the seven (7) years after my death to a Jewish girl whose both parents were Jewish, or if he is married to a non Jewish girl, then his share of my estate, as provided in item 8 above should go to The State of Israel, absolutely.”

***-Dr. Shapira's Will***

# **RELIGIOUS IMPERATIVES: Disinheritance Clauses**

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“In the opinion of this court, the provision made by the testator for the benefit of the State of Israel... demonstrates the depth of the testator's conviction. His purpose was not merely a negative one designed to punish his son for not carrying out his wishes. His unmistakable testamentary plan was that his possessions be used to encourage the preservation of the Jewish faith and blood, hopefully through his sons, but, if not, then through the State of Israel. Whether this judgment was wise is not for this court to determine. But it is the duty of this court to honor the testator's intention within the limitations of law and of public policy. The prerogative granted to a testator by the laws of this state to dispose of his estate according to his conscience is entitled to as much judicial protection and enforcement as the prerogative of a beneficiary to receive an inheritance. It is the conclusion of this court that public policy should not, and does not preclude the fulfillment of Dr. Shapira's purpose, and that in accordance with the weight of authority in this country, the conditions contained in his will are reasonable restrictions upon marriage, and valid.”

***-The Ohio Court of Common Pleas for Mahoning County***

# **New Case Study: Disinheritance, and the interplay between religious and political opinions**

“Further notwithstanding anything contained herein to the contrary, if a child, grandchild, or more remote issue of mine (referred to in this paragraph as the “beneficiary”) hereafter (i) marries a person then not of the Jewish faith (as determined by Orthodox Jewish standards), (ii) cohabitates together with a person then not of the Jewish faith (as determined by Orthodox Jewish standards) with intention to continue to cohabitate permanently, or (iii) publicly espouses any views which are, in the sole determination of the Trustee, pro-Palestinian or anti-Zionist, then such beneficiary shall be treated hereunder as being deceased with no issue surviving, and such beneficiary’s share of the trust estate shall cease and terminate, and any general or limited power of appointment contained in this Declaration of Trust otherwise exercisable by such beneficiary shall have no force and effect, and such beneficiary shall not be the permissible appointee of any power of appointment set forth in this Declaration of Trust. The Trustee shall determine in its uncontrolled discretion whether the provisions of this paragraph apply to any beneficiary hereunder at any given time, and the determination of the Trustee with respect to the application of this paragraph shall be conclusive and binding on all interested parties.”

## End-of-life planning and impact on health care directives

Religion might affect end-of-life views related to:

- Withdrawal of life sustaining treatment.
- Pain relief to the point of unconsciousness.
- Life-saving measures for pregnant women.
- (And so much more!)

## directives:

### *Withdrawal of life-sustaining treatment*

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- Judaism, Islam, most Christian denominations: generally approve removal of life-sustaining treatment at the appropriate time.
- Church of Jesus Christ of Latter Day Saints: Pre-mortal, lifetime, and post-mortal framework.
- Catholicism?
- Hinduism?

# End-of-life planning and impact on health care directives: *Pain relief to the point of unconsciousness*

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## Christian Orthodox churches and pain relief:

“I wish that all treatment and measures for my comfort, and to alleviate my pain, be provided, so long as they do not arise to the level of constituting euthanasia. In making decisions concerning the administration of pain relief I request that consideration be given to my Orthodox Christian beliefs, and in particular the importance of my having some level of consciousness prior to death to be able to participate in accepting Holy Communion and making a final confession of my sins, as well as participating in certain prescribed prayer services. I request that my health care agent and medical care providers endeavor to humanely and compassionately balance my desire for pain relief and my desire to participate in these my last religious observances.”



directives:

## *Life-Saving Measures for pregnant women*

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2. My agent does not have the authority to refuse or withdraw informed consent to health care if I am pregnant, if the refusal or withdrawal of the health care would terminate the pregnancy, unless the pregnancy or the health care would pose a substantial risk to my life, or unless my attending physician and at least one other physician to a reasonable degree of medical certainty determines that the fetus would not be born alive.

# End of life planning and impact on health care directives:

## Halachic Living Will

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### ADDITIONAL INSTRUCTIONS TO MY HEALTH CARE AGENT

**Jewish Law to Govern Health Care Decisions.** I am Jewish. It is my desire, and I hereby direct, that all health care decisions made for me be made with consideration of Jewish law and custom as determined in accordance with Orthodox interpretation and tradition. Without limiting in any way the generality of the foregoing, it is my wish that Jewish law and custom should guide the course of my health care with respect to such matters as the performance of cardiopulmonary resuscitation if I suffer cardiac or respiratory arrest; the performance of life-sustaining surgical procedures and the initiation or maintenance of any particular course of life-sustaining medical treatment or other form of life-support maintenance, including the provision of nutrition and hydration; and the criteria by which death shall be determined, including the method by which such criteria shall be medically ascertained or confirmed.

**Ascertaining the Requirements of Jewish Law.** In determining the requirements of Jewish law and custom in connection with this Health Care Power of Attorney, I direct my Agent to consult with and seek the guidance of the following:

Rabbi: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

If such Rabbi is unable, unwilling or unavailable to provide such consultation and guidance, then I direct my Agent to consult with and seek the guidance of a Rabbi referred by the following Jewish institution or organization:

Synagogue: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_

**Post-Mortem Decisions.** It is also my desire, and I hereby direct, that after my death, all decisions concerning the handling and disposition of my body be made pursuant to Jewish law and custom as determined in accordance with strict Orthodox interpretation and tradition. For example, Jewish law generally requires expeditious burial and imposes special requirements with regard to the preparation of the body for burial. It is my wish that Jewish law and custom be followed with respect to these matters.

Further, subject to certain limited exceptions, Jewish law generally prohibits the performance of any autopsy or dissection. It is my wish that Jewish law and custom be followed with respect to such procedures, and with respect to all other post-mortem matters including the removal and usage of any of my body organs or tissue for transplantation or any other purposes. I direct that any health care provider in attendance at my death notify the Agent and/or Rabbi described above immediately upon my death, in addition to any other person whose consent by law must be solicited and obtained, prior to the use of any part of my body as an anatomical gift, so that appropriate decisions and arrangements can be made in accordance with my wishes. Pending such notification, and unless there is specific authorization by the Rabbi consulted in accordance with the procedures outlined above, it is my desire, and I hereby direct, that no post-mortem procedure be performed on my body.

directives.

## *Preparation of health care directives prior to religious missions*

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- LDS Missions – younger missionaries
- LDS Missions – senior missionaries
- Yeshiva/Seminary

# Burial and Funeral Customs

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- Why? Client relationship management.
- Viewings/Wakes
- Prohibitions on timing
- Prohibitions on burial attendance
- Mourning periods: Judaism, Hinduism

# Burial and Funeral Customs:

## *Disposition of Bodily Remains*

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- Judaism, Islam – quick burial
- Buddhism – slow burial
  
- Christian denominations: Cremation?
- Eastern Orthodox: No cremation
- Hinduism: Cremation!



# Burial and Funeral Customs

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**Post-death visitations and billing mishaps!**



# Thank you.

ADDITIONAL QUESTIONS? PLEASE CONTACT:

Abbie R. Pappas

*Partner*

UB Greensfelder LLP

[apappas@ubglaw.com](mailto:apappas@ubglaw.com)

216.583.7230

