

AN ANALYSIS OF DIFFERENCE OF RELIGION AS A DISQUALIFICATION FROM INHERITING IN TERMS OF THE ISLAMIC LAW OF SUCCESSION: A SOUTH AFRICAN CASE STUDY

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SUMMARY

A Muslim man can marry a maximum of four women at a time in terms of Islamic law. These women may include Muslim women, Christian women, and Jewish women. It is noted that a Christian and Jewish widow would not inherit from the intestate estate of her deceased Muslim husband in terms of the Islamic law of intestate succession. This article analyses the problems with this type of discrimination within the South African context. Interfaith marriages between Muslims and non-Muslims are looked at first. Then the disqualification of a Christian widow inheriting from her deceased Muslim husband's estate in terms of the Islamic law of intestate (compulsory) succession and testate (optional) within the South African context is discussed. The article concludes with an overall analysis of the findings and makes a pertinent recommendation.

1 INTRODUCTION

This article analyses difference of religion as a disqualification with regard to inheriting in terms of the Islamic law of intestate (compulsory) succession within the South African context. It looks at a scenario where a Muslim male (W) from Cape Town dies on 23 May 2021, leaving behind a Muslim widow (X), a Christian widow (Y) and a Muslim son (Z) as his only relatives. He also leaves behind a gross estate of R1 000 000.¹ The liabilities against his gross estate are R100 000. He drafted a will two years prior to his death, stating that his intestate estate (estate after all liabilities and testate succession claims have been deducted), which is R900 000 in this scenario, must devolve in terms of the Islamic law of succession. It should be noted that he

¹ The gross estate refers to the estate left behind by W prior to any deductions.

made no bequest according to the Islamic law of testate (optional) succession in terms of this scenario.² The will further states that an Islamic distribution certificate must be drafted by a recognised Islamic institution or qualified Islamic law expert, and must state who his lawful beneficiaries are in terms of the Islamic law of succession.³ This article focuses on the position of the Christian widow (Y) in terms of the Islamic law of intestate (compulsory) succession within the South African context.⁴ The status of interfaith marriages in terms of Islamic law in South Africa is looked at first. Y's disqualification from inheriting from her deceased Muslim husband's estate in terms of the Islamic law of intestate (compulsory) succession within the South African context is discussed next.⁵ The position of Y inheriting in terms of the Islamic law of testate succession is then looked at. The article concludes with an overall analysis of the findings and makes a recommendation.

2 THE STATUS OF INTERFAITH MARRIAGES IN TERMS OF ISLAMIC LAW WITHIN THE SOUTH AFRICAN CONTEXT

Muslim males are allowed to marry a maximum of four wives at a time; these may include Muslim wives, Christian wives, and Jewish wives. Al Quraan (5)5 states:

“(Lawful to you in marriage) are chaste women from the believers [Muslims] and chaste women from those who were given the Scripture (Jews and

² The following should be noted for purposes of the above scenario. The gross estate of W less the liabilities would be the net estate, which is R900 000. The net estate is divided into the testate estate and intestate estate. The testate estate is up to a maximum of one-third of the net estate and may be bequeathed in favour of testate (optional) beneficiaries. The remaining two-thirds must be distributed to the intestate (compulsory) beneficiaries. There are no claims against the testate estate and therefore it is R0 and the intestate estate is R900 000. It should be noted that there are exceptions to the above rules, but a further discussion on this is beyond the scope of this article.

³ The Muslim Judicial Council (SA) based in the Western Cape is an example of an Islamic Institution that offers the service of drafting Islamic distribution certificates for the Muslim community. See Muslim Judicial Council (SA) “Fatwa” (undated) <https://mjc.org.za/departments/fatwa/> (accessed 2021-05-22) where it is stated that “[a] Distribution Certificate is a document listing the heirs of a deceased and the portions each one receives according to the Islamic Laws of Inheritance. The Certificates are issued to clients and attorneys as soon as all relevant documentation is forwarded to the Fatwa Department”.

⁴ The Islamic law of intestate succession could also be referred to as the Islamic law of compulsory succession as the intestate beneficiaries cannot inherit through testacy.

⁵ See Sunan Abi Dawud (“Shares of Inheritance (Kitab Al-Fara'id) - كتاب الفرائض » Hadith 2911 [Reference: Sunan Abi Dawud 2911, In-book reference: Book 19, Hadith 27, English translation: Book 18, Hadith 2905]” (undated) <https://sunnah.com/abudawud:2911> (accessed 2021-05-24)) where is written: “Can A Muslim Inherit from A Disbeliever? Narrated Abdullah ibn Amr ibn al-As: The Prophet (ﷺ) said: people of two different religions would not inherit from one another.” It is noted that this disqualification applies only to the Islamic law of intestate (compulsory) succession and not to the Islamic law of testate (optional) succession. The word in the Prophetic tradition refers to the inheritance in the form of “meeraath” which is the intestate (compulsory) succession and the “wasiyyah” which is the testate (optional) succession.

Christians) before your time, when you have given their due Mahr (bridal money given by the husband to his wife at the time of marriage).⁶

Al Quraan 1404H (4) 3 states:

“And if you fear that you shall not be able to deal justly with the orphan girls, then marry (other) women of your choice, two or three, or four.”⁷

W was lawfully married to both X (Muslim) and Y (Christian) in terms of the first verse above.⁸ The second verse allowed the polygynous nature of the marriages. It is interesting to note that a Muslim female is not allowed to marry more than one husband at a time in terms of Islamic law.⁹ It is also

⁶ See Khan *The Noble Qur'an: English Translation of the Meanings and Commentary* (1998) 1404H (5) 5.

⁷ See Khan *The Noble Qur'an* (4) 3.

⁸ Muslim institutions in South Africa have restricted the practice of interfaith marriages by stipulating the necessary requirements in terms of Islamic law. See, for e.g., the Muslim Judicial Council (SA) Fatwa “Re: Marriage to non-Muslim females” (2021) [A copy of document available with the author of this paper] where it states: “Re: MARRIAGE TO NON-MUSLIM FEMALES ... The view which we espouse is that of the Shāfi‘ī madhhab ... In terms of this view, the Ahl al-Kitāb are, in line with the literal purport of the verse from Sūrah al-Mā‘idah above, only those to whom Scripture was actually given. Scripture was given to the Jews, and then to the Christians ... However, the early Christians to whom Sayyiduna ‘Īsā ‘alayhi s-salām was sent were, ethnically speaking, Jewish. This is supported by both the Qur‘ān and the Bible: i) In Sūrah al-Şaff 61:6 the Qur‘ān states: “And when ‘Īsā the son of Maryam said, ‘O Children of Israel, indeed I am the messenger of Allah to you.’” The term, Banī Isrā‘īl explicitly refers to the twelve tribes descended from Sayyiduna Ya‘qūb ‘alayhi s-salām, and in this verse Sayyidunā ‘Īsā ‘alayhi s-salām states unambiguously that it was to them that he was sent. ii) The New Testament states in Matthew 15:24: “I was sent only to the lost sheep of the House of Israel.” ... It follows from the above that the woman from the Ahl al-Kitāb to whom marriage would be permissible must as a rule belong to the Jewish race, in addition to subscribing to either Judaism or Christianity ... In widening the circle of permissibility to include adherents of these two faiths who are not ethnic Jews, our jurists relied upon two criteria: i) The first forefathers to have converted to that religion (either Judaism or Christianity) must be known to have done so before that religion became abrogated. ii) The conversion of those earliest converts in the line of genealogical ascent must also be known to have occurred before corruption set into that religion ... Marriage to women from the Ahl al-Kitāb is thus permitted, provided - a) she is ethnically descended from Banī Isrā‘īl; b) and if not, that her first forefathers to have converted to Judaism or Christianity are known to have done so before either naskh (abrogation) and taḥrīf (corruption) set in.”

⁹ It is interesting to note that a Muslim male may marry a Jew or a Christian, but the opposite is not allowed in terms of Islamic law. See also Dar Al-Ifta Al-Missriyya (“Why a Muslim Woman Can’t Marry a Non Muslim?” (2021) <https://www.daralifta.org/Foreign/ViewFatwa.aspx?ID=6167> (accessed 2021-05-22)), where the following was stated regarding the rationale behind this rule: “[Interfaith Marriages in Islam] It is permissible in Islam for a Muslim man to marry a non-Muslim woman (Christian or Jewish) and not vice-versa. Though this may seem unfair, the rationale behind it becomes clear if the true reason is known. All legislations in Islam are based upon certain wisdom and a definite interest to all parties involved. Marriage in Islam is based upon love, mercy and peace of mind; a family must be built upon a firm basis to guarantee the continuity of the marital relationship. Islam respects all the previous heavenly revealed religions and the belief in all the previous Prophets is an inseparable part of the Islamic creed. A Muslim man who marries a Christian or a Jewish woman, is commanded to respect her faith, and it is not permissible for him to prevent his wife from practicing the rites of her religion and going to the church or synagogue. Therefore, Islam seeks to provide the wife with her husband’s respect for her religion which in turn protects the family from destruction. On the other hand, a non-Muslim man will not respect his Muslim wife’s faith. This is because a Muslim man believes in all previous religions and Prophets of God and respects them while a non-

interesting to note that a Muslim female is not allowed to marry a non-Muslim man in terms of Islamic law.¹⁰ Nevertheless, an instance has been recorded where a Muslim woman married a Christian man within the Western Cape.¹¹ A further discussion on this issue is beyond the scope of this article.

3 THE POSITION OF Y BEING DISQUALIFIED FROM INHERITING IN TERMS OF ISLAMIC LAW BASED ON HER RELIGION

The will drafted by W states that an Islamic distribution certificate must be drafted by a recognised Islamic institution or qualified Islamic law expert stating who his lawful beneficiaries are in terms of the Islamic law of succession. For purposes of this clause, an Islamic distribution certificate can be obtained from the Muslim Judicial Council (SA) based in Cape Town.¹² The certificate should state the identity of W's lawful beneficiaries in terms of Islamic law at the moment of his death on 23 May 2021. The certificate should provide that X inherits one-eighth of R900 000 = R112 500 and that Z inherits the remainder, which is seven-eighths of R900 000 = R787 500.¹³ Y would not be entitled to inherit in terms of Islamic law as,

Muslim does not believe nor acknowledges the Prophet of Islam; rather, a non-Muslim considers Prophet Mohammed a false prophet and usually believes in all the fabricated lies made against Islam and its Prophet. Even if a non-Muslim husband does not explicitly express this, a Muslim wife will constantly feel that her husband does not respect her faith. There is no room for compliments regarding this matter; it is a matter of principle. Moreover, mutual respect between spouses is a fundamental element for the continuity of their marital relationship. Islam follows its own logic when it prohibits a Muslim man from marrying a non-Muslim other than a Christian or a Jewess for the same reason it prohibits a Muslim woman from marrying a non-Muslim. A Muslim believes in only the Heavenly revealed religions; all other religions are human made. So, in the case when a Muslim woman marries a non-Muslim, the element of respect to the wife's religion will be non-existent. This will affect the marital relationship and will not achieve the love and mercy that is required in a marital relationship." It should be noted that the discrimination between males and females in this regard raises the question of discrimination based on sex or gender, which is prohibited in South African law; see s 9(4) of the Constitution of the Republic of South Africa, 1996.

¹⁰ See Muslim Judicial Council (SA) Fatwa "Re: Marriage to Non-Muslim Females" (2018) [document on file with the author of this article] which states: "Re: MARRIAGE TO NON-MUSLIM FEMALES With regards interfaith marriages kindly take note of the following: 1) The marriage of a Muslim female to a non-Muslim male is categorically and unconditionally prohibited. This prohibition rests on *ijmā'*, or consensus."

¹¹ See Hassen ("South Africa Witnesses First Interfaith Marriage" (2015) <https://www.aa.com.tr/en/world/south-africa-witnesses-first-interfaith-marriage/64796#> (accessed 2021-05-23)), who states: "A reception was held on the occasion of the marriage of Muslim woman Saieda Osman and Christian man Siegfried Milbert at what is known as the 'Open Mosque' in Cape Town."

¹² The Muslim Judicial Council (SA) based in the Western Cape is an example of an Islamic Institution that offers the service of drafting Islamic distribution certificates for the Muslim community. See Muslim Judicial Council (SA) "Fatwa", which states that "[a] Distribution Certificate is a document listing the heirs of a deceased and the portions each one receives according to the Islamic Laws of Inheritance. The Certificates are issued to clients and attorneys as soon as all relevant documentation is forwarded to the Fatwa Department."

¹³ See Khan *The Noble Qur'an* (4) 12, which states with regard to the inheritance of surviving spouses: "In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts ... This is a Commandment from Allah; and Allah is Ever All Knowing, Most Forbearing." See also, with regard to the residue of the intestate

based on her religion, she is disqualified from inheriting as an intestate (compulsory) beneficiary. This type of disqualification may be problematic in terms of South African law. Section 9(4) of the Constitution of the Republic of South Africa, 1996 (Constitution) states:

“No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3).”

Subsection 3 refers to discrimination based on

“race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.”

It can clearly be seen that discrimination based on religion is one of the prohibited listed grounds. Section 9(5) of the Constitution further states:

“Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.”

The discrimination against Y would thus be deemed unfair unless it is established that the discrimination is fair. Section 36 of the Constitution is the general limitation clause, and it can be used to argue that Y’s right to equality has been limited. Section 36 of the Constitution, 1996 states

“(1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including– (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose. (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.”

The fact that W has *inter alia* exercised his right to freedom of testation would play a big role insofar as balancing the rights of W and Y for purposes of section 36 of the Constitution is concerned. A further discussion on the constitutionality of W’s provision in the Islamic will is beyond the scope of this article. The constitutionality of the provision is, in the final analysis, left to the South African courts to decide based on constitutional grounds.¹⁴ It is

estate being distributed to the son in this scenario, Khan *The Translation of the Meanings of Sahih Al Bukhari (724)* vol 8 (2004), 477 where it states: “The Prophet said, ‘Give the Fara’id (the shares of the inheritance that are prescribed in the Qur’an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.’” The son, Z, is the closest as well as the only male in this scenario.

¹⁴ See Abduroaf (“A Constitutional Analysis of an Islamic Will Within the South African Context” 2019 52(2) *De Jure Law Journal* 257 266) for a discussion on the constitutionality of an Islamic will within the South African context. The issue concerning a son inheriting double the share of a daughter is the focus of the article. At 266 of the article, he states: “Based on the above [analysis], it would seem quite unlikely that [the daughter] would succeed in her quest to challenge the constitutionality of the Islamic will based on discriminatory grounds.” It is noted that an Islamic will was also the point of litigation in the case of *Moosa NO v Minister of Justice and Correctional Services* 2018 (5) SA 13 (CC), where the facts of the case concerned a situation where the sons inherited double the shares of the daughters. The court did not comment on the discrimination in this regard. See par 6 of the judgment where the court states: “Since then the deceased lived with both

interesting to note that, if W had stated in his will, without referring to an Islamic distribution certificate, that X should inherit one-eighth of his intestate estate and that the remaining seven-eighths of his intestate estate should be distributed to Z, Y would probably not be successful in an attempt to challenge her non-inclusion in the will.¹⁵

The following discussion is based on the assumption that a South African court would find the provision in the Islamic will to be unconstitutional. The court would then have a number of difficult questions to answer. Exactly what benefit should Y receive from W's estate? Should X and Z also not inherit in terms of the Islamic distribution certificate owing to the provision in the Islamic will being found unconstitutional? Should X, Y and Z now all inherit in terms of the Intestate Succession Act¹⁶ as there is no further instruction in the Islamic will as to how the estate should devolve in such an instance? If this be the case, then X, Y and Z would all inherit in terms of the Intestate Succession Act. In terms of this Act, X should inherit R300 000, Y should inherit R300 000, and Z should inherit R300 000.¹⁷ If, however, the court finds that Y does inherit in terms of the Islamic distribution certificate, should she inherit the same share as Y (one-eighth of R900 000 = R112 500) or should she share the eighth with X, as would have been the situation in terms of Islamic law of succession if Y were Muslim (which she is not)? Each of them (X and Y) would then inherit one-sixteenth of the R900 000, which is R56 250 for X and R56 250 for Y.¹⁸ The above instances are all problematic as they do not give effect to the Islamic law of intestate succession. It is submitted that should the provision in the will be found to be unconstitutional owing to it disqualifying Y, then a solution could be

his wives and some of their children in their family home until his death in 2014. He prepared a will three years earlier in which he referred to both marriages. Its terms direct his estate to be distributed under Islamic law. The Muslim Judicial Council certified that this required the estate to be divided in 1/16 shares to each of his wives, 7/52 to each of his sons and 7/104 to his daughters." See also Abduroaf "An Analysis of the Right of a Muslim Child Born Out of Wedlock to Inherit from His or Her Deceased Parent in Terms of the Law of Succession: A South African Case Study" 2021 42(1) *Obiter* 126 135 where the inheritance position of an adopted child in terms of the Islamic law of succession is looked at.

¹⁵ See Abduroaf (*The Impact of South African Law on the Islamic Law of Succession* (LLD Thesis, University of the Western Cape) 2018 187 <http://hdl.handle.net/11394/6211> (accessed 2021-05-24)), where this argument is made.

¹⁶ 81 of 1987.

¹⁷ S 1(1) of 81 of 1987 states: "If after the commencement of this Act a person (hereinafter referred to as the "deceased") dies intestate, either wholly or in part, and ... (c) is survived by a spouse as well as a descendant – (i) such spouse shall inherit a child's share of the intestate estate or so much of the intestate estate as does not exceed in value the amount fixed from time to time by the Minister of Justice by notice in the *Gazette*, whichever is the greater; and (ii) such descendant shall inherit the residue (if any) of the intestate estate." The current amount set by the Minister of Justice by notice in the *Government Gazette* is R250 000. See Chief Master's Directive 3 of 2015, Circular 58 of 2015, effective 17 August 2015, www.justice.gov.za/master/m_docs/2015-03_chm-directive.pdf (accessed 2021-05-18). It should be noted that s 1 of 81 of 1987 applies to both monogamous as well as polygynous marriages. See *Hassam v Jacobs NO 2009 (5) SA 572 (CC)* par 57, 3.2 where the court states that "[s]ection 1 of the Intestate Succession Act 81 of 1987 must be read as though the words 'or spouses' appear after the word 'spouse' wherever it appears in section 1 of the Intestate Succession Act."

¹⁸ See Khan *The Noble Qur'an* (4) 12. It should be noted that the 1/8 is shared between the widows in terms of the Islamic law of intestate (compulsory) succession.

application of the “compulsory bequest scenario” (a reform in the Islamic law of intestate (compulsory) succession), as is applicable in the law of succession in Egypt and Syria.¹⁹ Y could inherit her share in terms of the Islamic law of “testate (optional) succession” in the form of a compulsory bequest. This compulsory bequest scenario is generally in favour of a totally excluded grandchild in the event where a child of the deceased has predeceased him or her. For example, B passes away leaving behind a net estate of R600 000, a son (C), a son (D), and an agnate grandson (F) (who is the son of the predeceased son (E)) as the only relatives. The estate should ordinarily be inherited only by C and D (R300 000 each), and F would be totally excluded from inheriting. However, in terms of the compulsory bequest scenario, F would inherit the share that his predeceased father would have inherited from B if he were alive. It should be noted that C, D and E would each inherit R200 000 if E were alive. The compulsory bequest cannot be more than one-third of the net estate. In this instance, the share that E would have inherited had he been alive is exactly one-third of the net estate. F would therefore inherit R200 000.²⁰ It is submitted that, in the current scenario, the surviving non-Muslim spouse should take the status of the totally excluded grandchild in the form of a compulsory bequest. She would inherit the share she would have been entitled to had she been Muslim, which would be an amended version of the compulsory bequest application in Egypt and Syria.²¹ This could be seen as the lesser of two evils in the South African context. The outcome would then not affect the distribution in terms of the Islamic law of intestate (compulsory) succession. It would, however, affect the distribution in terms of the Islamic law of testate (optional) succession. The benefit in favour of Y must not be more than one-third of the net estate, which is generally the maximum bequest that can be made in terms of the Islamic law of testate (optional) succession. One-third of the net estate in the scenario to hand would be one-third of R900 000, which equals R300 000. Y would have inherited one-sixteenth of R900 000, which is R56 250, had she been Muslim. The intestate estate would then be R900 000 minus R56 250, which equals R843 750. X would then inherit one-eighth of R843 750 = R105 468,75 and Z would inherit seven-eighths of R843 750 = R738 281,25 for purposes of the Islamic distribution certificate drafted in terms of Islamic law. It is noted that no change would have been made in terms of the Islamic law of intestate (compulsory) succession, but the distribution would have an impact on the Islamic law of testate (optional) succession.

It should be noted that Y could nonetheless argue that she would inherit less than the share that X inherits in the scenario above, and that this is still unfair discrimination based on religion. If the court rules in favour of Y, and orders that Y should inherit the equivalent of X’s share, then both X and Y would inherit one-eighth of the intestate estate. This would still be in line with the “compulsory bequest scenario”, on condition that the benefit in favour of

¹⁹ See Abduroaf *The Impact of South African Law on the Islamic Law of Succession* 29–30, for a discussion on this issue.

²⁰ See Al Subaa’ee *Sharh Al Qaanoon Al Ahwaal Al Shakhshiyah* 7ed vol 2 part 2 (2000), 101–105 for a discussion on this issue.

²¹ It should be noted that the compulsory bequest scenario is a reform and there is no consensus on its permissibility in terms of Islamic law.

Y is not more than one-third of the net estate (one-third of R900 000 = R300 000). One-eighth of R900 000 = R112 500, and this amount is definitely less than one-third of R900 000, which is R300 000. X would then inherit one-eighth of R900 000 = R112 500, Y would inherit one-eighth of R900 000 = R112 500, and Z would inherit the remainder, which is six-eighths of R900 000 = R675 000. The above would not be the best solution but it is an option available for consideration.

It should be noted that W always had the choice of bequeathing a maximum of one-third of his net estate in favour of his Christian widow (Y) as a normal bequest, as she is disqualified from inheriting as an intestate beneficiary.²² It should be noted that W could have stated in his Islamic will that Y should inherit the same share that his Muslim wife would inherit in terms of the Islamic law of intestate (compulsory) succession, albeit in the capacity of a testate (optional) succession beneficiary. X would then inherit as an intestate (compulsory) beneficiary, whereas Y would inherit as a testate (optional) beneficiary in terms of Islamic law. One-eighth of R900 000 is R112 500, which is definitely less than one-third of R900 000, which is R300 000. X would inherit one-eighth of R900 000 (which is R112 500), Y would inherit one-eighth of R900 000 (which is R112 500), and Z would inherit the remainder, which is six-eighths of R900 000 (which is R675 000). It is evident that the R112 500 that Y inherits in her capacity as a Christian (owing to her being disqualified from inheriting as an intestate ((compulsory) succession beneficiary) is more favourable to Y than the R56 250 she would have inherited if she were a "Muslim" at the time that her husband died. It is also noted that Y could argue that she is discriminated against as she inherits as a testate (optional) beneficiary, whereas X inherits as an intestate (compulsory) beneficiary. It is submitted that this argument should not succeed, as she would in fact inherit the same share as X.

4 CONCLUSION

This article has analysed difference of religion as a factor in disqualification from inheritance in terms of the Islamic law of succession within the South African context. The findings show that a Christian widow is not allowed to inherit as an intestate (compulsory) beneficiary in terms of the Islamic law of succession, owing to her being disqualified based on her religion. The findings highlight that the disqualification is problematic within the South African context, since the Constitution prohibits unfair discrimination based on a number of grounds, which include religion as a listed ground. The findings further highlight the difficult questions that would have to be answered by a court in the event that a clause such as the one that has a disqualifying effect on Y from inheriting as a beneficiary in terms of the Islamic distribution certificate is found to be unconstitutional. It is not certain what relief would be given to a Christian widow in the event that she challenges the constitutionality of such clause and it is found to be unconstitutional. The article concludes with a recommendation that a Muslim

²² See Abduroaaf *The Impact of South African Law on the Islamic Law of Succession* 30–32, which looks at testate succession limitations in terms of the Islamic law of testate succession.

testator should state in his will that he bequeaths the same share that his Muslim widow would inherit in terms of the Islamic distribution certificate to his non-Muslim wife. This would alleviate the possibility of the provision in the Islamic will being challenged on grounds of discrimination.