



# Islamic Will

26/4/2019

Hussaini Association of Calgary

# What is a will?

A Will is purported to direct that after one's death, a certain task be completed, or that a portion of his property be given in ownership to someone, or that the ownership of his property be transferred to someone, or that it be spent for charitable purposes, or that he appoints someone as guardian of his children and dependents.

Forms of will	Important Terms
Written	Testator
Said	Executer /executrix/ trustee
Indicated	Guardian
	Supervisor

## Making will in Quran and Sunnah

كُتِبَ عَلَيْكُمُ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِن تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ  
بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

فَمَنْ بَدَّلَهُ بَعْدَمَا سَمِعَهُ فَإِنَّمَا إِثْمُهُ عَلَى الَّذِينَ يُبَدِّلُونَهُ إِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ  
فَمَنْ خَافَ مِنْ مُوصٍ جَنَفًا أَوْ إِثْمًا فَأَصْلَحَ بَيْنَهُمْ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ

Surah 2/180-182

- عنه (صلى الله عليه وآله): ما ينبغي لامرئ مسلم أن يبيت ليلة إلا ووصيته تحت رأسه
- الإمام الباقر (عليه السلام): من لم يوص عند موته لذوي قرابته ممن لا يرثه فقد ختم عمله بمعصية
- عنه (صلى الله عليه وآله): إن الله عز وجل أعطاكم ثلث أموالكم عند وفاتكم زيادة في أعمالكم

## Who cannot make a will?

- Underage (less than 10) only for relatives and charitable works
- Safeeh/ mentally impaired
- The one who commits suicide

## Who Must make a Will?

- The one who has debts
- The one who has Shar'ii dues
- The one who is afraid of **unfair distribution** of his/her assets
- The one who has underage kids
- Legal complications and expenses

# What happens to your assets after death?

Real asset (some control)	1/3 <sup>rd</sup> (full control) The main subject of your Will	2/3 <sup>rd</sup> (no control)
<ul style="list-style-type: none"><li>✓ Debts</li><li>✓ Unsettled Mahr</li><li>✓ Khumus, zakat, Mazalim, wajib Hajj</li></ul>	<ul style="list-style-type: none"><li>✓ You can spend for any Halal cause:</li><li>✓ Qaza Salat &amp; fasting,</li><li>✓ Kaffara</li><li>✓ Relatives not inheriting</li><li>✓ Relatives you want to have more</li><li>✓ Donations</li></ul>	<ul style="list-style-type: none"><li>✓ Must be divided according to Islamic Laws</li><li>✓ You cannot customize</li></ul>

# What would happen with the 2/3<sup>rd</sup>

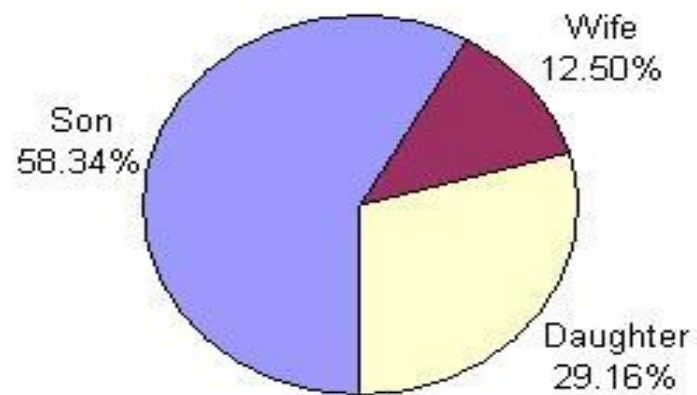


- Even a single person from the previous group will exclude others
- The surviving spouse cannot be excluded

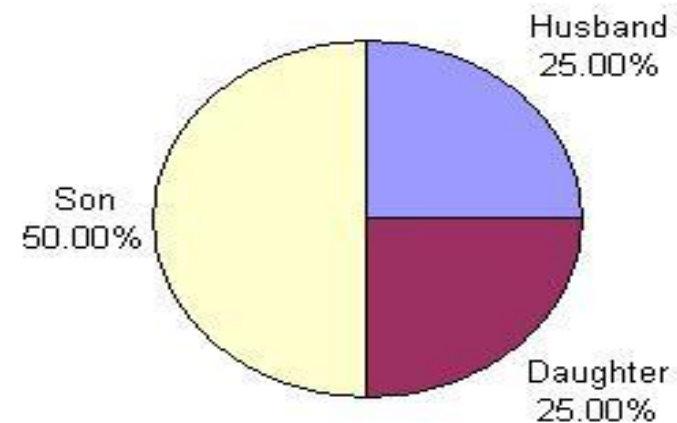
Shareholder	Situation	Shares
Father	If you don't have kids	2/3
Mother	If you don't have kids	1/3
Father	If you have kids	1/6
Mother	If you have kids	1/6
Wife	If you don't have kids	1/4
Husband	If you don't have kids	1/2
Wife	If you have kids	1/8
Husband	If you have kids	1/4
Children	If you don't have parents	After wife's share, all the assets will be divided among them in a way male child/children receive the double of female children
Children	If you have parents	After wife & parents' shares, all the assets will be divided among them in a way male child/children receive the double of female children



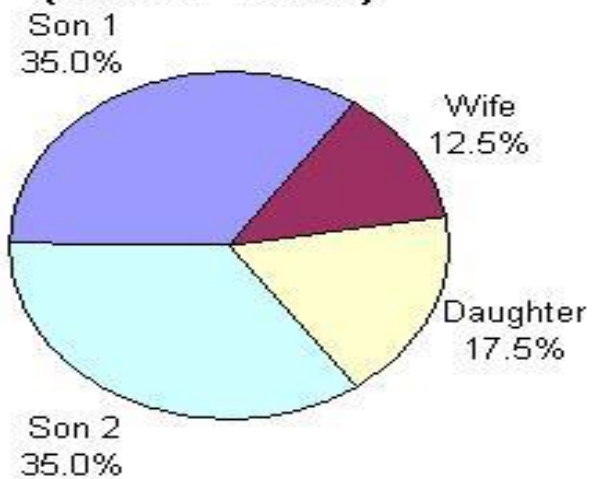
**(Out of 100%)**



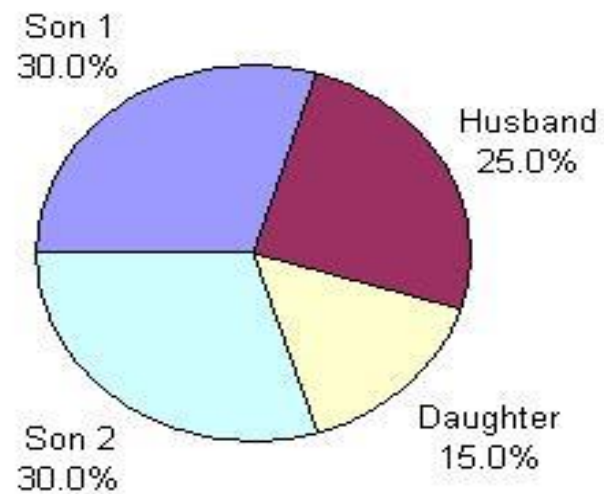
**(Out of 100%)**



**(Out of 100%)**



**(Out of 100%)**

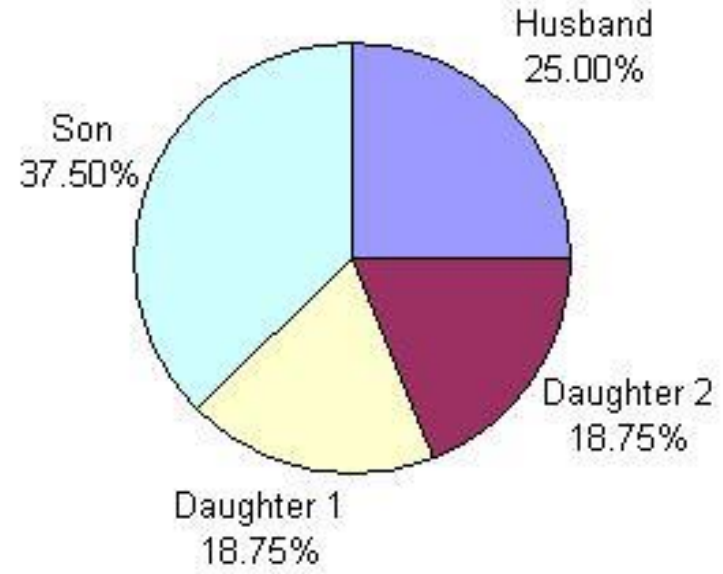




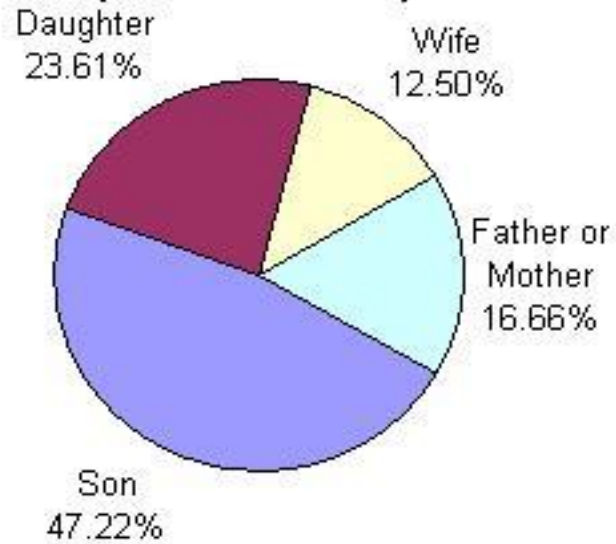
**(Out of 100%)**



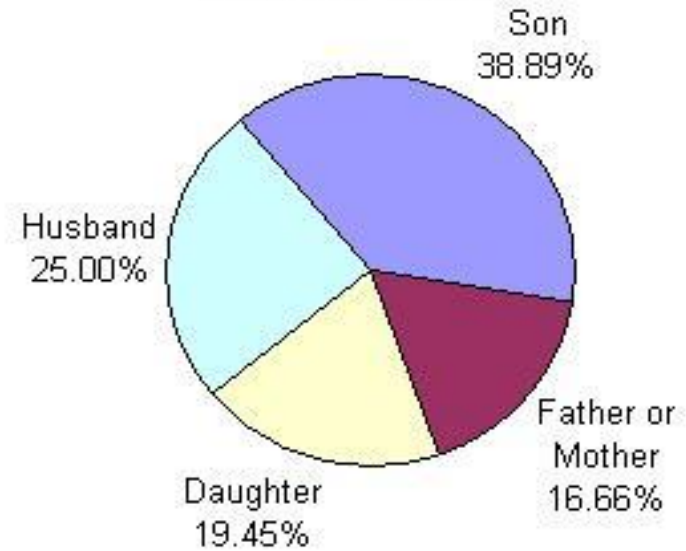
**(Out of 100%)**



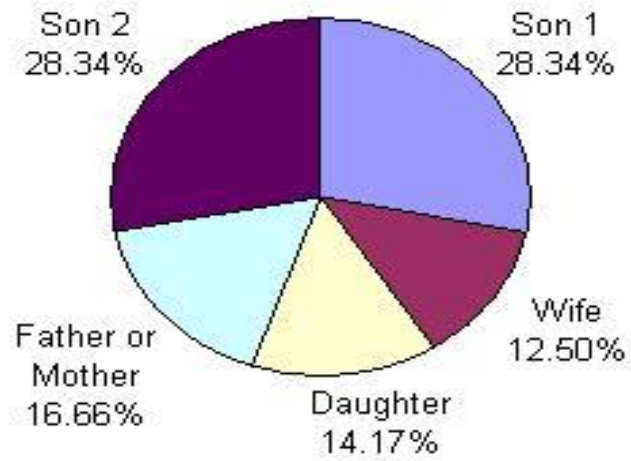
**(Out of 100%)**



**(Out of 100%)**



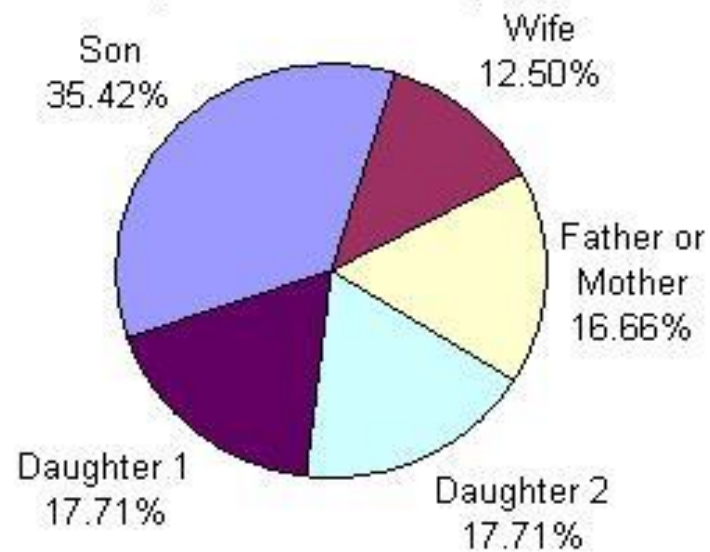
**(Out of 100%)**



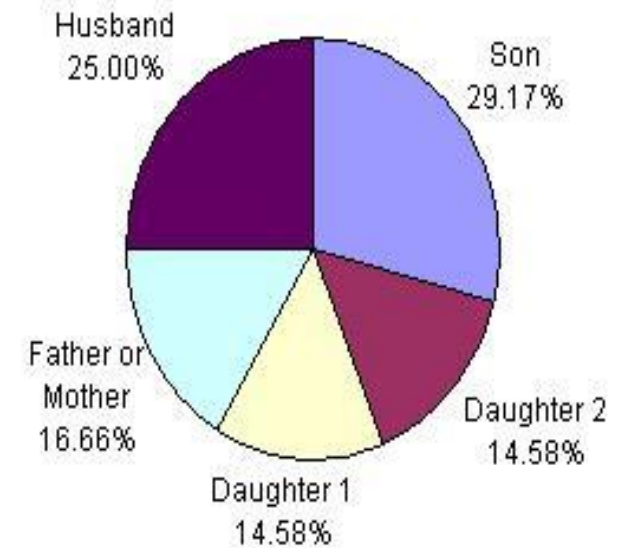
**(Out of 100%)**



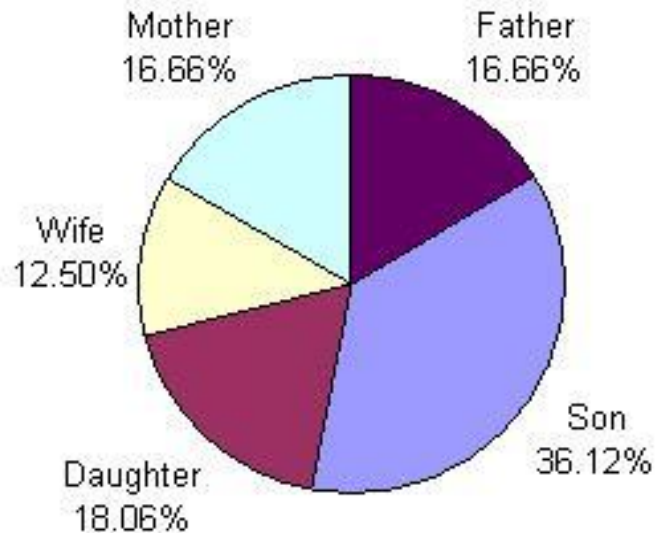
**(Out of 100%)**



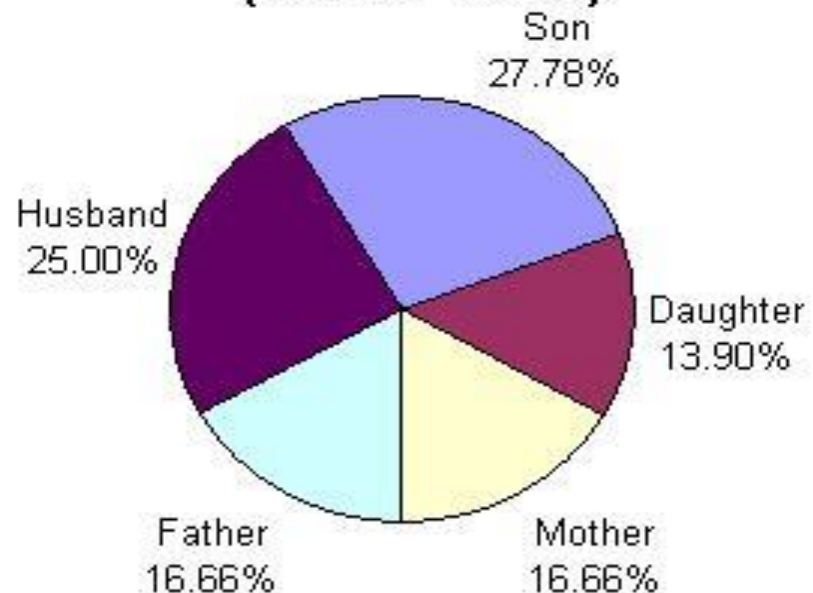
**(Out of 100%)**



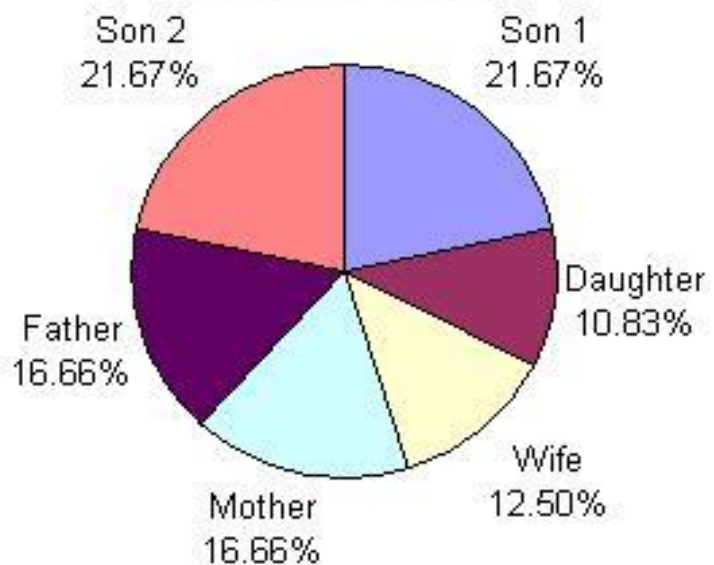
**(Out of 100%)**



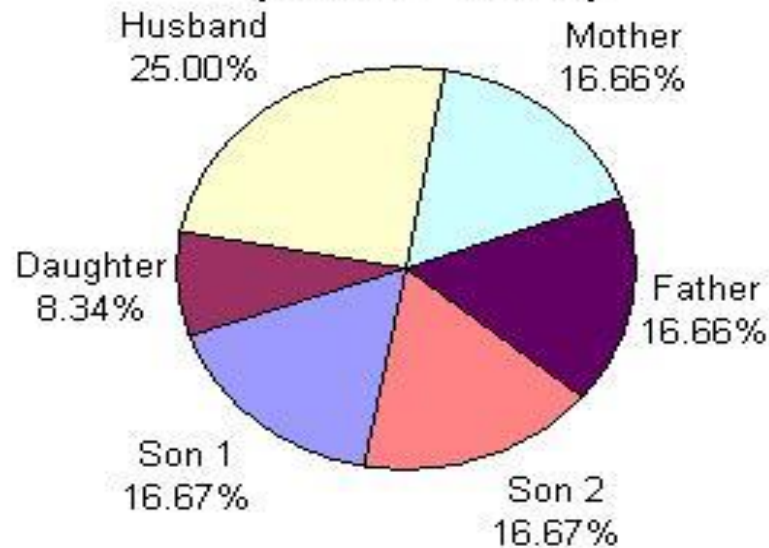
**(Out of 100%)**



**(Out of 100%)**



**(Out of 100%)**





Most of Maraje including Ayt. Sistani:  
only from moveable assets not from  
lands

Ayt. Khamenai: From both moveable  
and lands' price

# How to increase daughters & or wife's share?

- Gift in lifetime/ Hiba
  - Can a person during his/her life time allocate their whole assets to one of their children or relatives?
- Use 1/3<sup>rd</sup> portion
- Seek the male children's consent (irrevocable)





## **Habwah (fathers personal belongings)**

Quran, ring, used cloths







## A wrong practice

- ➔ It is perceived that after the demise of mother all her jewelry should go to her daughters.

Which one will go first, will or inheritance?

مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ

## Their fair shares

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِن كُن نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثَلَاثًا مَّا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ فَإِن لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثَّلَاثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنِ آبَائِكُمُ وَأَبْنَاؤُكُمُ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِنَ اللَّهِ إِنِ اللَّهُ كَانَ عَلِيمًا حَكِيمًا

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِن لَمْ يَكُن لَّهُنَّ وَلَدٌ فَإِن كَانَ لهنَّ وَلَدٌ فَلِكُمُ الرِّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرِّبْعُ مِمَّا تَرَكَنَّ إِن لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثَّمَنُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِن كَانَ رَجُلٌ يُورِثُ كِلَالَةً أَوْ امْرَأَةً وَلهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِن كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثَّلَاثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةٌ مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ



# Formal Will and a Holographic Will

- ✓ The entire Will must be in the handwriting of the testator
- ✓ Holograph Wills do not have to be witnessed
- ✓ Recognized in provinces: Alberta, Saskatchewan, Manitoba, Ontario, Quebec, New Brunswick and Newfoundland.

The cost of interpreting a handwritten Will by a lawyer and a court could be more expensive than paying for a properly drafted Will in the first place.

- ✓ A formal Will is a Will typed out, drafted by lawyers or Wills created from Will kits
- ✓ The testator must be mentally capable.
- ✓ The Will must be dated and signed.
- ✓ It must also be witnessed by 2 witnesses, present at the same time.
- ✓ The witnesses to the Will should be of legal age and cannot be beneficiaries of the Will or spouse of the testator.



## A risky situation

- If you make your children your heirs they will end up paying tax
- But if you make your wife the executrix of your will and also leave everything to her...
- Will your heirs end up paying Khumus?





## **A useful website/resource**

<https://www.shiawills.org/example>

