

# Hanbali Fiqh: Book of Wills

Explanatory Notes on *Akhsar al-Mukhtasaraat* Based on Lectures of Sh. Muhammad Gamal Aly al-Hanbali and Sh. Muhammad Bajabir

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- I. Definition of a will (*wasiyyah*): to **give away** or voluntarily **gift** a part of one's wealth **after** death
  - A. This section **only** deals with giving away property **voluntarily** and **not** fixed Islamic inheritance laws for family members. The latter is discussed in a different section
- II. It is **recommended** for the one who leaves behind **lots** of wealth to give **some** of it away in **charity**
  - A. Whether it is a lot or not is determined by **culture**
  - B. The **recommended amount** to give in charity in a will is **one-fifth**
- III. Following are **prohibited** to do in a will
  - A. Leaving **more than one-third** as **charity** for those who do **not** inherit
    1. It is **valid** with **permission** from all **inheritors**
    2. However, if the deceased has **nobody** that will inherit him/her except **one spouse**, then he/she can do even **more than one-third**
  - B. Giving **anything** more than the **prescribed** amounts in Islamic inheritance law to those who do **inherit** the deceased
    1. Ex: parents, kids, spouse, etc.
    2. It is **valid** with **permission** from all **inheritors**
- IV. It is **disliked** for the one who is **poor** and his inheritors are in **need** to leave something in charity for those who do **not** inherit
  - A. It is **better** to leave one's inheritors rich than poor begging others
- V. If the **one-third** was **not** enough, then it will be distributed **equally**
  - A. Ex: Ahmad puts in his will that three of his poor neighbors will receive \$1000 each from his wealth after death. However, it is found after Ahmad's death that he only has \$3000 in total wealth which means the one-third from it only equals \$1000. The rest will go to the inheritors. In this case, we distribute the \$1000 between the three neighbors equally
- VI. The following are **extracted** from the wealth, if applicable, **before** execution of the deceased's will. This is done **regardless** whether it is put in the will or not
  - A. Debts are settled
    1. Meaning if there are any debts, they will be settled
  - B. Zakkah
    1. Meaning if the deceased owes zakkah, then it will be paid
  - C. Hajj
    1. Meaning if the deceased never performed a Hajj in his life, then we take money out of his wealth to pay someone to do it on his behalf
- VII. The following are **valid** to be added in a will:

- A. If a **master** leaves his **slave** wealth in **fractions/percentages**, then the slave will be **free** in **accordance** to it. Anything **extra** will be **handed** to the slave
  - 1. Ex 1: a master writes in his will, "I leave my slave one-third of my wealth." Let's assume that one-third of his wealth is equal to \$2000 and the slave is valued at \$1500. In this case, the slave will be freed and handed \$500
  - 2. Ex 2: a master writes in his will, "I leave my slave one-third of my wealth." Let's assume that one-third of his wealth is equal to \$2000 and the slave is valued at \$4000. In this case, the slave will be considered half free
  - 3. Slaves **cannot** own any wealth so a master **cannot** leave something **specific** for them
    - a) Ex: a master **cannot** say in the will, "I leave my slave \$200" or "I leave my slave a horse", etc. He can **only** speak in percentages or fractions
- B. Leaving something for an **unborn baby** with the **condition** that the pregnancy is **real** and **exists**
  - 1. Meaning someone **cannot** leave something for a **possible pregnancy that may** occur in the future, rather, it must **exist** at the time of writing the will

VIII. The following are **invalid**, therefore, they **cannot** be added in a will:

- A. Giving something to a Christian church
- B. Giving something to a fire house of worship
  - 1. This is in reference to the Zoroastrian religion
- C. Giving to publish the Torah or Injeel
- D. Giving to any place of *shirk* or sin
- E. Giving something to a dead person

IX. The will is considered **valid** even if the wealth being given is unknown, absent, not identified clearly, or something **unable** to be delivered

- A. This is because the rules related to **wills** are **different** than those of **sale transactions**
  - 1. Wills resemble inheritance laws **not** sale transactions
- B. Because inheritors generally do **not** know what they will inherit and they neither gain nor lose

X. If anything **extra produces** after a will, it will be **added** to the will

- A. Ex: Ahmad writes in his will that his friend Zayd will get one-third of his wealth. At the time of writing the will, Ahmad had \$30,000 in his account. This means Zayd would get \$10,000. However, if Ahmad's wealth had multiplied by the time he died to \$75,000, then this means Zayd would get \$25,000
  - 1. Meaning we **base** it based on the wealth **at the time of the deceased's death** and **not** before it

XI. If a **particular** type of wealth mentioned in a will is **destroyed**, then it **invalidates** that part of the will

- A. Ex: Ahmad says that his friend Zayd will get his Honda Civic after his death. If this car was wrecked and destroyed, then it will cancel that part of the will and Zayd will get nothing

XII. If someone puts in his will that a person be given **wealth** in the **same amount** as one of his **particular inheritors**, then that person will receive the **same** as that particular inheritor

- A. Ex 1: Ahmad puts in his will that his friend Zayd get in wealth the same amount as one of his sons. Let us assume that Ahmad has two sons. In this case, the wealth will be divided into three parts and each will get one portion
  - B. Ex 2: Ahmad puts in his will that his friend Zayd get in wealth the same amount as his son. Let us assume that Ahmad has one son and one daughter. In this case, the wealth will be divided into five parts. The son and Zayd will get two portions each and the daughter will get one portion
  - C. Ex 3: Ahmad puts in his will that his friend Zayd get in wealth the same amount as his daughter. Let us assume that Ahmad has one son and one daughter. In this case, the wealth will be divided into four parts. The son will get two portions and the daughter and Zayd will get one portion each
- XIII. If someone puts in his will that a person be given **wealth** in the **same amount** as **any** one of his **inheritors** but does **not** specify it, then that person will receive the **same** as the inheritor that gets the **least**
- A. Ex: Ahmad puts in his will that his friend Zayd get in wealth the same amount as any one of his inheritors. Let us assume that Ahmad has two sons and a daughter. In this case, Zayd will receive the same amount as that for the daughter
- XIV. If someone puts in his will that a **sahm** (سهم) of his wealth be given to so-and-so **without** specifying the exact amount, then that person will receive **one-sixth**
- A. This is because the Arabic word **sahm linguistically** means one-sixth
- XV. If someone puts in his will that so-and-so be given **something**, a **piece**, or **anything**, then the inheritors can give that person literally **anything** they **want** even if it is just \$1 and it would **suffice** and be considered **valid**

## Rulings Related to Those Appointed to Execute a Will

- I. Terms to know:
  - A. *Al-Moosiy* (الموصي): the **owner** of the will (i.e. testator)
    - 1. Meaning the **deceased** leaving the wealth **behind**
  - B. *Al-Moosaa bihi* (الموصى به): the **wealth** that will be **given** in the will
  - C. *Al-Moosaa lahu* (الموصى له): the **person** who is going to **receive** something from the will
  - D. *Al-Moosaa ilayhi* (الموصى إليه): the **person appointed** to **execute** the will
- II. It is **valid** for a person to be **appointed** to execute someone's will provided that the appointed person is:
  - A. Muslim
  - B. *Mukallaf* (pubescent and sane)
  - C. Mature
    - 1. Meaning he is able to handle the wealth in the best way and not foolishly
  - D. Just
    - 1. Even if he only **appears** that way
      - a) Meaning what we can tell from his public behavior is that he is a just person
- III. If a **disbeliever** appoints a **Muslim** to execute his will, it is **valid**. The opposite is **not** valid
  - A. As long as there is nothing in the will that **violates** Islamic law

- B. A **disbeliever** may appoint **another disbeliever** as long as the appointed person is **just** in accordance to his religion
- IV. It is **only valid** to appoint someone if:
- A. The **role** of the appointed person is clearly **defined**
    - 1. Meaning the **testator** needs to leave **clear guidelines** for the appointed person on what to do with the wealth
  - B. The appointed person has the actual **authority** to do it
    - 1. Ex: if the children are *mukallaf* and mature enough, then the testator **cannot** assign someone to look over his kids' wealth. This is because they are considered **owners** of their own wealth and able to handle it themselves
- V. If a Muslim **died** in a place where there is **no ruler** (desert, travel, etc.) and the deceased left **no will**, then the following is done by a fellow present Muslim:
- A. Occupy his possessions
  - B. Do what is **best** with his possessions
    - 1. Ex: pay off debts, pay for his funeral rites, loan it, rent it, etc.
  - C. If the deceased left **nothing**, then the person must **personally** take on the costs to prepare the deceased for **funeral rites** (washing, shrouding, praying, and burial)
    - 1. If the person while covering the costs **intended** to be **reimbursed**, then he falls into one of **two** cases:
      - a) The deceased left **some wealth** at his residence
        - (1) In this case, the person can go there and **request** to be reimbursed through his wealth for the **expenses** that he endured
          - (a) If he did **not** intend reimbursement while doing it, then he **cannot** request it because it would be considered **charity**
      - b) The deceased left **nothing** behind at all
        - (1) In this case, the person can **request** to be reimbursed by the one who was **obligated** to spend on the deceased (father, brother, grandfather, etc.)
          - (a) If he did **not** intend reimbursement while doing it, then he **cannot** request it because it would be considered **charity**
    - 2. If the **ruler** permitted the person to prepare the deceased for funeral rites and the person intended to seek reimbursement, then in this case the person can **request** reimbursement for the expenses endured as well
      - a) If he did **not** intend reimbursement while doing it, then he **cannot** request it because it would be considered **charity**
    - 3. The permission to **take reimbursement** is granted so that the people do **not** abstain from doing it in this dire situation
      - a) Meaning people may refrain from taking care of the deceased in such a situation due to fear of losing money, thus, it is permitted to seek reimbursement for it