

## BEQUEST TO AN HEIR

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### ABSTRACT

In this article, although it is considered a mustahab act to make a will, it is actually completely contrary to Qiyas Muhammad ibn Hasan Ash-Shaybani's work "Al-Asl" provides information on the places where a will can be executed. It briefly explains that after a person's death, he continues to own his property because he still needs some financial matters.

### INTRODUCTION

Islamic laws and regulations are so harmonious and complementary that the actions of people who follow the Shariah do not lead to any contradictions or disagreements in this worldly life or after death. One of the thousands of guidelines of our holy religion that lead to the preservation of good relations between people and the elimination of hatred and enmity towards each other is its instructions on the order in which the will of a deceased person should be. A large chapter is devoted to the topic of wills in Islamic jurisprudence, and these issues are covered in detail. As an example, we can cite the work "Al-Asl", which contains the teachings of the Hanafi school of thought of one of the greatest students of Abu Hanifa (may Allah be pleased with him). In this work, more than one hundred and fifty pages are devoted to wills and related issues. This book, whose second name is "Al-Mabsut", covers more than forty chapters on wills. Below, we will discuss one of the most important topics regarding wills, "Leaving a Will to an Heir."

The word "will" in the dictionary means "to convey." The person who makes a will conveys the good of this world to the hereafter. In Sharia terms, "to acquire property after death" is called a will. A will is not obligatory, but a recommended act. In the beginning of Islam, it was obligatory to make a will to parents and relatives. The Companions used to make a will before death, saying, "This much of my property should be given to my father, this much to my mother, and this much to someone else." Making a will is obligatory according to this verse in Surah Al-Baqarah.

"It is prescribed for anyone of you, when death approaches him, to bequeath wealth to his parents and relatives in justice and fairness. This is a duty upon those who fear Allah."<sup>1</sup>

Later, the inheritance verses were revealed, and the obligation to make a will was abrogated, and its ruling changed to mutsahabah.<sup>2</sup>

making a will is considered a mustahabb act, it is actually completely contrary to qiyas. Because making a will is the transfer of ownership of property to someone else when the right of ownership of a person has been lifted. It is actually impermissible for a person who has reached the end of his own right of ownership to transfer ownership to another person. According to Sharia, if a person says to another, "I have given this property to you tomorrow," even if he does not die tomorrow, this transfer is considered impermissible. Saying that so-

<sup>1</sup> Surah An-Nisa, verse 180

<sup>2</sup> The division of inheritance was revealed in detail in verses 11, 12, and 13 of Surah An-Nisa.

and so should be given such and such property after my death is an even greater act and should not be permissible in reality. However, Islamic Sharia has ruled that it is mustahabb based on istihadsan due to the needs of people regarding wills. A person is deceived by his own hopes and dreams during his health. When he should be working for the Hereafter, he forgets this and makes many mistakes and shortcomings. However, when he becomes ill and the time of death approaches, he wants to correct his mistakes, even if only a little. After passing away from this world, one wishes that his wealth be spent in the way of Allah. It can be said that the will was introduced into the Shariah to fulfill this wish of mankind regarding his wealth. Therefore, its mustahabb and permissibility are said to be based on the path of istihsan.<sup>3</sup> After a person's death, his ownership of his property does not end completely because he still needs to fulfill certain financial obligations. Examples of this include washing, shrouding, and burying the deceased, and paying off his debts from his property.

Allah Almighty says in the Holy Quran:

(These distributions) are made after paying off bequests and debts, without causing any harm to the heirs. (These rulings) are a decree from Allah.<sup>4</sup>

In a hadith narrated by Abu Hurairah (may Allah be pleased with him), the Prophet (peace and blessings of Allah be upon him) said:

"Allah has given you one-third of your wealth as charity at the end of your life, so that you may increase your deeds, so spend it wherever you wish."<sup>5</sup>

The Islamic Ummah has unanimously agreed that a will is mandatory. If a will is made to a stranger, even if the heirs do not give their permission, it is permissible to bequeath one-third of the property. If a will is made to a person other than the deceased, it is not permissible to bequeath more than one-third. This is because the heirs have a greater right to the property left behind by the deceased. If the heirs are responsible, that is, adults and sane people, and they agree to the deceased's will, a will made with more than one-third will be valid. The person to whom the will is made will be given what is bequeathed. However, if there are young children who are not responsible or mentally ill among the heirs, their consent to a will made with more than one-third will not be accepted.

"Al -Asl " by Muhammad ibn Hasan Ash -Shaybani, it is said in this matter:

"It has been narrated to us from the Messenger of Allah (peace and blessings of Allah be upon him) that he said: 'There is no will for an heir.'"<sup>6</sup>

If a person bequeaths his slave to some of the heirs and to a stranger, the amount of the share given to the heir in this bequest is void, and the one bequeathed to the stranger is one-third of the tarikah of the dead body.<sup>7</sup>

It is narrated from Sa'd ibn Abu Waqqas, may Allah be pleased with him:

"In the year of Conquest, I became ill and was close to death because of it. The Messenger of God, may God's prayers and peace be upon him, came to see me. Then:

I said, "O Messenger of Allah, I have a lot of wealth and no heir except my daughter. Should I

<sup>3</sup> Burhanuddin Ali ibn Abu Bakr al-Marghinani. "Al-Hidayah, Explanation and Bidayahil Mubtadi'". Damascus. Darul Faiha, 2019. - P. 628

<sup>4</sup> Surah An-Nisa, verse 12

<sup>5</sup> Narrated by Ibn Majah

<sup>6</sup>Narrated by Tirmidhi.

<sup>7</sup>Muhammad ibn Hasan Ash-Shaybani. "Al-Asl". Beirut. In Ibn Hazm, 2016. - P. 444.

bequeath all my wealth?"

"No," they said.

"How about two-thirds of my wealth?" I said.

"No," they said.

"What about half?" I said.

"No," they said.

"How about a third?" I said.

"One third. That's a lot. But it's better than leaving your heirs rich and making them a burden to beg from people."<sup>8</sup>

If the heirs, having heard that the will made to a stranger is more than one-third, and have acknowledged and agreed to it before the death of the heirs, they may change their mind and express their displeasure after the death of the testator. This is because in the case of rights that have been transferred before they have arisen and are realized, it is possible to change their mind after the right has arisen. This is like a person whose father is not dead saying, "I have transferred my inheritance right from my father." Since the father is alive and the inheritance right has not been realized, the child's transfer of the inheritance is not taken into account. After the father dies, he will continue to inherit along with the heirs. If he wants to transfer the inheritance, he must only transfer it when the inheritance actually comes into existence.

The will of the deceased does not apply to the murderer who kills the deceased intentionally or accidentally. The Prophet (peace be upon him) said, "There is no will for the murderer."<sup>9</sup> Because the murderer hastened what God delayed. Therefore, he is deprived of inheritance as well as bequest.

Abu Hanifa (may Allah be pleased with him) and Muhammad (may Allah be pleased with him) say that in this situation, if the heirs acknowledge and give permission for the will made to the murderer, the will will be valid. Abu Yusuf (may Allah be pleased with him) says that even if the heirs give permission, the will made to the murderer will not be valid.<sup>10</sup>

Bequests made by the deceased to their heirs are also not passed on.

It is narrated from Abu Umamah, may Allah be pleased with him:

"The Messenger of God, may God's prayers and peace be upon him, said in his farewell sermon: "Indeed, Allah has given to every rightful owner his right. There is no bequest to an heir..."<sup>11</sup> Making a will for some of the heirs and depriving others of it will result in severing the ties of kinship. According to the hadith cited above, this is not a good deed on the part of the heir, but rather an injustice.

A gift given by a terminally ill person to one of his heirs is also considered a will and is subject to the consent of the heirs. This is called a mandatory will in Islamic law. Such a gift is also made from one-third of the estate left by the deceased.

If a person bequeaths certain property to a foreign woman, then marries her and dies after a certain period of time, the bequest to the woman becomes void. If a man confesses that he owes

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<sup>8</sup>The elders narrated

<sup>9</sup>Narrated by Daraqutni

<sup>10</sup> Burhanuddin Ali ibn Abu Bakr al-Marghinani. "Al-Hidayah, Explanation and Bidayahil Mubtadi". Damascus. Darul Faiha, 2019. - P. 631

<sup>11</sup>Narrated by Tirmidhi

a debt to a foreign woman, then marries her and dies after a certain period of time, the woman will be given an inheritance as well as the confessed debt.

If a person bequeaths a certain amount of property to his son, who is a slave or a Christian, and then the slave son is freed and the Christian son converts to Islam, the will becomes invalid on the day of the father's death, since both are considered heirs.

If a person confesses that he owes a debt to his Christian son, and then the son converts to Islam, that is, if he is a Muslim when the father dies, the father's confession of the debt becomes invalid.<sup>12</sup>

It is permissible for a Muslim to bequeath property to a non-Muslim, and vice versa, for a non-Muslim to bequeath property to a Muslim. However, a bequest made to a non-Muslim in a war zone is invalid.

At this point, it is important to note one delicate point. The person making the will must clearly understand who he is bequeathing to and what he is bequeathing, and must review and study the Shariah guidelines before making the will. Otherwise, he may become a sinner in the hope of gaining reward.

It is narrated from Abu Huraira, may Allah be pleased with him:

"The Prophet, peace be upon him:

"A man or a woman may serve Allah for sixty years, then death will come to them both. Then they will make a harmful will, and Hell will be obligatory for both of them." Abu Hurairah said:

He recited the verse: "After a bequest or a debt that does not cause harm."<sup>13</sup>

It is clear from this narration that one should be very careful when making a will, whether it is a man or a woman.

It is possible to spend a lifetime in obedience and worship, but make one harmful will before death and end up in hell.

It is haram for a Muslim to make a will that harms someone, especially his heirs, before his death. Bequests such as "Don't give my inheritance to such and such person" are among harmful bequests.<sup>14</sup>

making a will is considered a mandatory act , it can bring many benefits to the deceased. Because of his beautiful and just will, a person will have ongoing charity even after his death, and his rewards will continue to accrue to him until the Day of Judgment.

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<sup>12</sup> Muhammad ibn Hasan Ash-Shaybani. "Al-Asl". Beirut. In Ibn Hazm, 2016. - P. 445.

<sup>13</sup> Narrated by Abu Dawud and Tirmidhi

<sup>14</sup> Muhammad Sodiq Muhammad Yusuf. Hadith and life. Commandments and wills. Tashkent: Sharq Publishing House. 2005. - P.139.

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