



The Association of Muslim Lawyers

THE IMPORTANCE OF WRITING AN ISLAMIC WILL

If you want your wealth to be distributed in accordance with the Shari'a of Islam after your death, it is essential for you to leave a Will which is valid under English law and which expresses that wish, writes Ahmad Thomson.

Malik related to me from Nafi' from 'Abdullah ibn 'Umar that the Messenger of Allah, may Allah bless him and grant him peace, said: "It is the duty of a Muslim who has anything to bequeath not to let two nights pass without writing a Will about it." (Al-Muwatta' of Imam Malik: 37.1.1)

The beauty of the *Shari'a* is its simplicity and certainty. When you are writing your Islamic Will, you do not have to try and figure out which of your relatives will still be alive when you die in order to make sure that they will receive something. Whoever administers your estate will ascertain which of your relatives are still alive and what fixed shares they are automatically entitled to inherit by applying the criteria of the *Shari'a*. If, however, you wish to make a bequest to someone who is not a relative, or to a charity or to a project, then you must specifically record this in your Will, remembering that only up to a third of your estate can be bequeathed in this way. The remaining two thirds must go to your relatives in the fixed shares prescribed by Allah. If you do not make any bequests of up to a third of your estate, then all of your estate will be divided between your surviving relatives.

In a Muslim community, these principles of the *Shari'a* are applied automatically as a matter of common sense and best practice, but in many countries today including the United Kingdom, if you do not leave an Islamic Will which states that you wish these principles to be applied – and which is valid in the eyes of the law of the land – then different criteria will be applied.

There is not a country in the world today whose rulers can claim that all its laws are in accordance with the *Shari'a* of Islam. Accordingly all Muslims living today are faced with the challenge of living in accordance with the *Shari'a* as far as they are able to do so, while realising that they will not always be able to put what they know into action. In the United Kingdom, for example, all Muslims at one time or another are obliged to submit to man-made laws which either conflict or are not in harmony with the *Shari'a* of Islam. It is, however, often possible to follow the *Shari'a* without breaking the English law, and *vice versa*. It is also possible at times to do something in accordance with the *Shari'a* by *utilising* the English law, rather than by trying to avoid it.

Writing a valid Will which will be recognised by the English courts, even though it expresses the deceased's wish to have his or her wealth distributed in accordance with the *Shari'a*, is one example of this – even though many of the principles governing the English law of inheritance are different from the criteria which are applied within the *Shari'a*. For example:

- If you do not leave a valid Will, then under English law you are deemed to have died 'intestate', and your wealth will be distributed to certain relatives in fixed shares – which are not the same as those laid down by the *Shari'a* – or if there are no such relatives, then it will go to the Crown, that is, the government.
- If you are married, and if both you and your spouse die leaving children under 18 years old, and if there is no valid Will stating whom you would like to be the guardian of any minor children who survive you, then they might be taken into care by the Local Authority.
- If you have been married only in accordance with the *Shari'a* in the United Kingdom, you will not be regarded as having been legally married for the purposes of English law. This means that if you die without having made a Will, your spouse will be regarded as an 'unmarried partner' and would not be permitted to inherit anything from your estate.

- If, on the other hand, you married both under the *Shari'a* and under English law at a registry office, and were then subsequently divorced under the *Shari'a* but not under English law, then under English law you would still be regarded as 'married', and if you then died without having made a Will, your former spouse would then inherit from your estate even though he or she would no longer be entitled to a fixed share under the *Shari'a*. If you were also in the process of being divorced under English law, but the decree absolute had not yet been pronounced at the time of your death, then again, under English law you would still be regarded as legally 'married'.
- Similarly, if a Muslim man married a non-Muslim woman both under the *Shari'a* and under English law at a registry office, and then he died without leaving a Will, then under English law she would be regarded as his married partner and accordingly entitled to a certain share of his property, whereas under the *Shari'a* she would not be entitled to a fixed share of his property – although he would have been entitled to make a specific bequest to her out of a third of his property, provided that it did not exceed the fixed share that she would have received had she been a Muslim.

In other words, there are contradictions between the English law and the *Shari'a*. When each is applied separately to an identical situation, the outcome is different, depending on which set of criteria is applied – although of course there are times when there is an overlap between the two and some of the criteria are identical.

Since English law is at present not subject to the *Shari'a*, and is inevitably regarded in the English courts as having precedence over the *Shari'a*, it follows that where there is any apparent contradiction between the two, the English law will always be applied. This means, in practical terms, that it is necessary to comply with all the legal formalities required by English law before a Will can be regarded as valid. Provided that this is done, the English courts will then be prepared to give effect to your intentions as expressed in your Will – including having your property distributed in accordance with the *Shari'a* after your death – provided that these intentions are clearly expressed and are free from ambiguity.

In other words, it is possible, under English law, to prepare a valid Will stating that you wish your wealth to be distributed in accordance with the *Shari'a* of Islam – and so to subsequently have your wealth distributed in this manner after your death – *provided that* you have complied with all the legal formalities required by English law. In order to do this, it is necessary to have an understanding of both the *Shari'a* and English law, since both require certain conditions to be fulfilled. Thus, for example, if the requirements under English law are not fulfilled, then your Will will not be considered valid; and if these requirements have been satisfied and your Will is valid, then you must also have ensured that the wishes expressed in your Will are in accordance with the *Shari'a*.

So in order to ensure that your assets are distributed in accordance with the *Shari'a* after your death, you *must* write a Will, and that Will *must* comply with the requirements of English law in order to be valid. If you do not do this, your wealth will not be distributed in accordance with the *Shari'a* after you die.

It may appear to be a relatively minor way of going about things, but by ensuring that your wealth is distributed in accordance with the *Shari'a* after your death, you are also helping to establish the *deen* of Islam – and in the eyes of Allah there is no better *deen* than this: “Surely the *deen* with Allah is Islam.” (*Qur'an*: 3.19) May we live to see all of the *deen* of Islam established by wise and sincere people, in all its beauty and majesty. Amin. This is the meaning of those well known words, “Peace in our time.”

[Ahmad Thomson is a practising barrister and co-author of *The Islamic Will* (by Hajj 'Abdal-Haqq and 'A'isha Bewley and Ahmad Thomson), Dar Al-Taqwa Ltd., London, 1995]

Counsel on Death

Prepare yourself for death, O my brother, for it will descend.
Do not draw out your hopes
in case your heart treats you harshly.

Persevere in reflection which will make you aware
and move you to do good works, for life will soon depart.

Constantly reflect on the states of the Last Hour, the Rising,
the Gathering, and the Balance of actions which is set up.

Then there is the Bridge which will have obstacles laid out on it
to make the crossing difficult for the rebellious.

While whoever was obedient and sincere towards Allah
will pass over it like a flash of lightning or a wind and will go on.

If you wish to be given a drink from the Fountain
on the Day of Gathering,
you must love the Prophet and his descendants.

And bless the Guide who intercedes for mankind. He is the one
who will plead for us when creation is terrified.

May the blessings of Allah be upon him in every land,
and on his family and Companions and those who love him.

I ask the Lord, Allah, for the gift of true happiness
and a seal of goodness for me and those who draw near.

(From the *Diwan* of Shaykh Muhammad ibn al-Habib)