



IN THE NAME OF ALLAH THE MOST GRACIOUS THE MOST MERCIFUL

UNDERSTANDING THE CONCEPT OF WASIYYAT (A WILL) IN ISLAM

(A) INTRODUCTION

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ
بِالْمَعْرُوفِ ۗ حَقًّا عَلَى الْمُتَّقِينَ

It is prescribed for you, when death approaches any of you, if he leaves wealth, that he make a bequest to parents and next of kin, according to reasonable manners. (This is) a duty upon Al-Muttaqoon (the pious).

(Surah Al Baqarah 2:180)

Based on this verse from the Qur'an, it was earlier obligatory upon the Muslims to make a will before death. But after the revelation of the verses on inheritance (i.e. **Surah Nisa 4:11-12**), wherein Allah SWT legislated fixed shares of inheritance for deserving heirs, it is now not compulsory in Islam for a person to write a will in his lifetime, because his estate is divided as prescribed in *Shari'ah* among his living heirs.

1. living in an Islamic country

So after the revelation of Surah Nisa 4:11-12, in an Islamic country where Islamic *Shari'ah* is followed, it is not required to make a will.

2. living in a non-Islamic country which has a separate Muslim Personal Law

In a non-Muslim country like India AND Singapore that has a **separate Muslim Personal Law**, to make a will is optional. If a Muslim fears that the non-Muslim country where Muslim Personal Law is followed has chances of deviating from the Shari'ah in this respect, it is preferable to make a will as per Qur'anic guidelines – otherwise it is not required.

3. living in a non-Islamic country with NO SEPERATE Muslim Personal Law

However, in a non-Muslim country like the UNITED KINGDOM. that does not have a separate Muslim Personal Law, according to me it is compulsory for a Muslim to make a will as per the guidelines laid by Allah (swt) in Surah Nisa 4:11-12, so that it forces the law to execute Islamic Shari'ah as per your will.

It is the right of every citizen of a non-Muslim country, to will his property as per his desire, because in the absence of will each country has its own method of distributing the wealth.

It may be obligatory as well on a person to make a will, with regard to the dues of others where there is no proof, lest they be lost or neglected, because the Prophet (SAW) said:

“It is not permissible for any Muslim who has something to will to stay for two nights without having his last will and testament written and kept ready with him.”

[Narrated by al-Bukhari, *al-Wasaayaa* 2533].

One should also ‘will’ if he fears some kind of corruption or dispute among the heirs, especially in a non-Muslim country.

However, one does not have the right to make a will for the legal heirs as per his own inclinations (or wishes), because Allah (SWT) has defined the share of each heir, and He has explained who inherits and who does not inherit. So it is not permitted for any person to transgress the limits set by Allah (SWT).

“And whoever disobeys Allah and His Messenger and transgresses His limits – He will put him into the fire to abide eternally therein, and he will have a humiliating punishment”

[Surah An Nisa 4:14]

4. Making a will to other than legal inheritors

Allah (SWT) has permitted us to make a will to whomsoever we wish other than the legal inheritors for a maximum of one-third of our wealth.

The Prophet (SAW) said:

“Allah was being generous to you when He allowed you to give one-third of your wealth (in charity) when you die, to increase your good deeds.”

[Ibn Maajah, *Kitaab al-Wasaayaa*, Hadith No. 2709]

Therefore one can will upto one-third of his wealth to be used for charitable purposes or else one can also give it to the people apart from the legal heirs, because the Prophet (pbuh) said: "There is no will for the heirs. [Tirmidhi, *Kitaab al-Wasaayaa*, Hadith No.2120]

(B) A 6-STEP GUIDE TO MAKING YOUR WILL

Making your will need not be very difficult. All you really need is a commitment to do it, to contact the right people and draft it.

PLEASE NOTE: This is not a legal advice. Circumstances will vary by individual. This is why you MAY HAVE TO CONSULT A SOLICITOR, BUT IT IS NOT NECESSARY TO HAVE A SOLICITOR'S SIGNATURE FOR A WILL TO BE VALID IN STRAIGHT FORWARD CASES.

Step One - Find an executor.

You will need to find someone to ensure that your estate is divided up as specified in your will. This person is called the executor/executrix of the estate. This person must be someone in good health, of sound mind, honest, trustworthy, and of course a good Muslim. Find at least three people for this job. They should be younger and at least one of the selected people should be outside the family circle. This is so that if there is a family tragedy where members of the same family die together, at least someone else is present to execute the will.

Step Two – You may have to contact solicitors if your case involved property in other countries, or where you have a business to run

Contact a few wills and estate solicitors and ask how you can ensure that your estate is divided Islamically. Get all of the details. This will vary by country, state and province, so it's important to get a wills and estate solicitor, not just any solicitor. Mention to the solicitor who the executors of the will are.

Step Three – a scholar/imam with good knowledge

Look for a Muslim scholar who can give you the correct understanding of how the shares need to be divided. Inform this scholar that the executor will contact him at the time of your death to consult him about how to divide up your estate Islamically, burial and funeral arrangements, and any other issue that has to be

clarified from an Islamic perspective with regards to your will.

Step Four – Choosing 2 witnesses

Find two witnesses to your will. These are people who will witness the signing of the will so that in case there is any question that you wrote it after your death, you will have people to testify that you did indeed write this will and that you were in a sound state of mind when you did this.

Witnesses cannot be people entitled to inherit, so most family members are disqualified for this responsibility. The pool of witnesses has to be from friends and those who are not family members. This would also exclude extended family.

Step Five – Write the will

Once you have done the above, you can start writing your will.

Some of the major things you need to be mention are:

1. State that you revoke any previous wills you have made. And that from this point onwards, all of your property, assets and estate in general must be divided according to this will.
2. Mention the names of the people you want to execute your will.
3. The funeral and your burial

How you want to be buried and your actual funeral-this is where it is important to specify that you must be buried according to the laws of Islam. This means no cremation, no casket, proper Ghusl before burial, etc. It should also be mentioned that you want a Janaza prayer at a mosque as soon after your death as possible, and your body must be buried at an Muslim cemetery.

You can also put in a clause that you don't want an autopsy done on your body unless it is legally required.

4. The guardianship of your children

if you have children that are not at the majority age, in other words, where they

need a guardian, then you have to appoint a guardian (please note: the age may vary by state or province). In this case, state in your will that the executor must consult the Islamic scholar to decide who this person will be, as it depends on which of the qualified family members are alive able to be guardians at the time.

5. Put a general clause that says the executor of the will has to pay off all debts first. This includes taxes owed to the state, province or country.

TIP: Keep your will in a folder with an updated list of all of your debt and assets. This way you don't have to keep changing your will every time you gain or lose a debt or asset.

6. Say this will is going to deal with all of your property.

7. Say that ALL debts are the first thing to be paid off. Once again, the Islamic scholar (give his name and contacts) must be consulted on this matter.

8. After this, funeral expenses must be covered.

9. Following this, what remains will be divided up amongst relatives. This must be distributed according to Islamic law in consultation with the aforementioned Islamic scholar.

Note: In some cases, it is also legally permissible to appoint an Islamic institution as an executor of your will. This is positive because the executor can get compensated for the work. So the execution of your will can benefit an Islamic institution as well.

10. Consult the solicitor on the legal status of a business corporation or partnership after death. And then instruct the executor to consult the Islamic scholar to decide how to distribute the assets from this business interest.

11. Real estate-speak to the lawyer, and then to the Islamic scholar. There may be laws governing what happens to joint ownership of a home, for instance, following the death of one of the owners.

12. If one wishes to donate part of the estate to an Islamic charity this can be done through a will. However, Islamically one should not donate more than one-third of the estate to charity. Once again one must be specific as to which charity.

13. Sign last page but initial the bottom right hand corner of every page apart from the last one. The witnesses should do the same.

14. It is preferable to get the witness to swear an affidavit. This is a form which indicates the witness swore to the truth of the document. Only one of the witnesses has to do this. This document should be attached to the will. This way you don't have to contact witnesses at the time of death.

Step Six – store the will safely

Put the original copy of your will in a safety deposit box. Give copies of the will to its executors. Make sure the executors know in which bank, for instance, your safety deposit box is located. Check with the bank about the conditions of your executors accessing your safety deposit box in the case of death.

(C) A Sample General Will

Disclaimer: This is not legal advice. It is just an outline for your guidance. Please consult your attorney and your accountant for proper legally sound advice.

In the Name of Allah, the Compassionate, the Merciful

Last Will and Testament

I,, declare this to be my last will and testament. This will revokes all prior wills.

I am in a sound state of mind and agree to everything outlined in this will.

Executors of my will

I name the following people to be executors of my will in the following order:

My friend(example Mr A1), residing at..... He can be reached at

If Mr. A1 is not available or capable at the time of my death to execute my will, this responsibility must go to my friend.....(example Mr. A2), residing at..... He can be reached at

If Mr. A2 is not available or capable at the time of my death to execute my will, this responsibility must go to my friend(example Mr A3), residing atHe can be reached at

Consultation with Islamic scholar

The executor, in all matters pertaining to my will, the division of my estate, issues of debate or controversy, etc. must consult with Shaykh, a graduate of University in(country), who is also Imam of the Mosque in London, United Kingdom. He can be reached at his office ator his home at His word

on all issues is final.

My funeral and burial arrangements

The following must be observed for my funeral and burial:

1. My body must be buried within 24 hours of death.
2. No autopsy must be performed unless required by the law of the land
3. All of my burial and funeral arrangements must be done by the dictates of Islamic law, and nothing less. This must be done by Shaykh, the aforementioned Islamic scholar, and preferably at his mosque, which is mosque in London, United Kingdom.

A1, A2, A3

Distribution of my inheritance

The executor of my will must base his division of all of my assets, property and my estate in general on the advice of the aforementioned Shaykh

An up-to-date list of all of my assets is found in the same folder as this will.

Generally, the following must occur:

1. All debts must be paid off. In the folder with my will is an up-to-date list of all of my debts. The executor must also clarify with the aforementioned Shaykh Mutawalli if there are any debts apart from the ones I have already listed which must also be covered prior to the division of inheritance shares.
2. Following this, all of my funeral expenses must be covered.
3. After these two above-mentioned issues have been cleared, the rest of my assets, property and estate in general must be divided up among my relatives. I stress once again that all advice pertaining to the division of shares of inheritance must be done in consultation with the aforementioned Shaykh, and his opinion is binding. In other words, my executor must divide up the shares according to what he advises.

Charity

One-third of my wealth must go to(Name of Charity Organisation), telephone number, as charity.

I,(your name), am signing this will on(date)

(Your signature)

This has been signed in the presence of the following witnesses:

1.(name, example Mr W1)

(Signature)

-Mr. W1 is a resident of(address) and can be contacted at

2.(name, example Mr W2)

(Signature)

-Mr. W2 is a resident of(address) and can be contacted at