

## Waseeyah

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This is a very thorny topic which many of us neglect and ignore. The word *waseeyah* means “recommendation”. This word is normally translated into English as “will”. We write wills in America, but the “will” (*waseeyah*) in Islam is different from the will we write in America. The American will could be completely contrary to Islam, or it could be commensurate with Islam. It depends upon how it is drafted.

Why do we write wills in America? If somebody dies without a will, the public trustee takes possession of his estate. The money is kept in the bank until the government gets its share, and then they distribute it in their own way, and, by the time the heirs receive any of it, half the estate is gone. The purpose of the will in this society is so Uncle Sam will not take the money after we die, and so our estate will not go to the government of the United States, and then to Yitzhak Shamir, in Israel, afterwards.

See the difference in the meaning of the words: the *will* implies that it is created by you, but the *waseeyah* is the recommendation from God to you. The Qur’anic verse says, it is prescribed to you that, if you are terminally ill or about to

die, and you have wealth, then you should make a recommendation (*al-waseeyah*) regarding its distribution.

*Al-waseeyah* is different from inheritance in Islam. The inheritance laws in this country are different from Islamic laws of inheritance. So when we write our wills in this country, we have to align them with Islamic laws with respect to both *waseeyah* and inheritance. Inheritance in Islam is spelled out very clearly: specific people have specific shares, and then the remainder goes to the rest of the inheritors, and this is done only after paying the *waseeyah* and the debts of the deceased.

I’ll tell you of an incident that happened in Canada<sup>1</sup> in the first month after my arrival from Egypt as an Al-Azhar missionary.<sup>2</sup> I was young, of course, and I was feeling a bit arrogant in my belief that I am a big *‘alim*<sup>3</sup> and I am somebody; the people don’t know anything, and I know everything. I was that way. But I learnt my lesson.

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<sup>1</sup> Edmonton, Alberta

<sup>2</sup> 1964. Imam was 32 years old

<sup>3</sup> Scholar

A Lebanese man died who had seven heirs. Four of them were in Edmonton and three were in Lebanon. And I am not going to mention the name of their village because someone here might take offence and be angry. That man left behind \$33,000 in the 1960's. A Canadian dollar in the sixties was \$1.09 American. The heirs were in disagreement with each other regarding its distribution. Everyone wanted the whole estate for himself. As a result, they entrusted the money to, what they call, the public trustee. The public trustee, when they send a letter to every heir, deduct the price of the envelope, the price of the paper, the price of the typist, the price of the stamp, and all that business. By the time Khattab arrived in Edmonton, the \$33,000 had dwindled to \$9,000.00. So what I did was put my own "self-restraint" on trial. I acquired the signatures of the seven persons, both in Lebanon and in Edmonton, to appoint me as their attorney to represent them. I did this partly to test myself whether I could resist the temptation of swindling the unwitting folks. Nine thousand dollars was a very big sum of money at that time, and I could have pocketed it and told them to go their way. All of them signed willingly for me, especially since I was the imam, and the idea is that an imam is supposed to be a man of God and will never, never make a mistake. I got the \$9000.00 from the public trustee. Then... sometimes the Shaytān<sup>4</sup> would whisper to me to keep the money for myself. Then... some other power would remind me: it's not yours. At last I defeated the Shaytān in that case, at least; not in every case. And I distributed the \$9000 to everybody according to the Islamic Law of inheritance regardless of whether the person was in Canada or in Lebanon. One thing could have saved the estate from needless expenses – a will.

The verse in Chapter Al-Baqarah which talks about waseeyah starts by "kutiba 'alaykum" – meaning it has been "prescribed for you". The word *kutiba* (written) could be modified to *al-kitaba* which means "writing". In colloquial Lebanese, the word *kitabah* means someone has written *ta'weez*<sup>5</sup> for some man to hate or love his wife, and all that. The word *maktūb*<sup>6</sup> is derived from the same root. If someone dies we say "maktūb", implying that it was written that this person was going to die in that specific manner. Someone divorces his

wife – maktūb! Someone lost something – maktūb! So this is another modification of the word "kataba".

In the Qur'an, three verses came in the form of *kutib* – prescription – and all three end by the same words: *la 'allakum tattaqīn*. They are in Chapter Al-Baqarah numbers 178, 180, and 183. The first verse is related to the crime of killing, the second one is related to waseeyah or will, and the third one is related to fasting. [Imam quotes Arabic verse. The English translation is:]

"It is ordained for you (*kutiba 'alaykum*), when death approaches any of you (إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ) and he is leaving behind much wealth (إِنْ تَرَكَ خَيْرًا), to make bequests in favor of his parents (*wālidayn*) and other near of kin (*aqrabīn*) in accordance with what is fair (*bil ma'rūf*): this is binding on all who are conscious of God –

(حَقًّا عَلَى الْمُتَّقِينَ) [2:180].

The verse starts with the word *kutib* which means, "written," and the translation of this verse into English, or any other language, should denote that this is a sort of an obligation: حَقًّا عَلَى الْمُتَّقِينَ. And the Prophet, peace be upon him, said: "Let not any of you sleep unless his will is written and ready; he doesn't know what time will be his hour."

إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا.

There is a big difference between إِذَا and إِنْ. إِذَا means it will take place *for sure, no doubt* about that. But إِنْ is called, in Arabic grammar, *shakk aw tashkeek, yā'ni*,<sup>7</sup> there is some doubt – it could happen, and then again, it could not. In the case of death, the Qur'an expressed it as إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ – it means death is coming to you for sure, and when it approaches, it is prescribed for you to do this: write your waseeyah. *Khayr* means "much wealth". إِنْ تَرَكَ خَيْرًا means, *if he has much wealth*. If he is leaving behind a large

<sup>4</sup> Devil

<sup>5</sup> An amulet (see sermon on Questions and Answers)

<sup>6</sup> Means: what is written/destined to happen

<sup>7</sup> An Arabic expression which has no equivalent in English and means, loosely, "I mean" or, "you know" or, "in other words" depending on the context

amount of wealth, then, in such a case, he should write, or dictate, his will or waseeyah.

What constitutes wealth? Will ten dollars be considered khayr? The ulama<sup>8</sup> of the olden times considered sixty dinars as enough khayr for the laws of inheritance to take effect. If we are to follow *Madrassa-til-Naql*<sup>9</sup> or the fiqh, then sixty dinars is the threshold. But what is sixty dinars equivalent to today? They will not buy you one pair of shoes. Sixty dinars in the olden times were of great value, but today they have no value. So the words **إِنْ تَرَكَ خَيْرًا** are subject to interpretation, in every time and in every place, according to the value of its money. You know what is happening in Lebanon? There are some people, until this moment, who are renting an apartment in the city of Beirut for ten cents a month. *Ten cents!* That is because the contract of rent was written in the distant past for 100 liras per month, when the dollar was three liras plus. Today one dollar is fourteen hundred liras. So the poor guy who owns the property in Beirut now is renting the four-bedroom apartment at ten American cents per month. That is the tyranny of the government because they stick to the law. These things have to be reconsidered. And that is why the Qur'an always urges us to utilize the brain.

In the case of borrowing money, the Qur'an says, "O you who believe, if you are borrowing money from one another, *write it in a receipt*," or in a promissory note, to use current terminology. But when it comes to the waseeyah, it did not say "write"; it says "express it to the people who are around you, the people who are visiting with you." Usually, at the time of death, there is no time to write or sign a paper; so you express your waseeyah or your will to the people around you. The will or waseeyah in the olden times was not in writing. They did not need that. Why? Because the people were muslim.<sup>10</sup> And, as muslim, they would not deny the facts or the truth; they used to pronounce the will on their deathbed in front of two witnesses, and that was sufficient. Even a marriage in the olden times was an oral proposal and acceptance before two witnesses, and that would suffice for it to take effect. Today, we not only have two witnesses but we have to register it duly in the court, because we anticipate

divorce not long after the marriage. Preparation for divorce is made before the marriage itself takes place, and that is because the spirit of Islam has diminished in the hearts of Muslims. In the olden times, a man's word was his contract, and the court in his heart held him accountable for his voluntary actions. That court is called *ad-dhameer*<sup>11</sup> in Arabic. It is mentioned in the Qur'an. [Imam quotes Arabic verse. The English translation is:]

"Nay! I call to witness the Day of Resurrection! But nay! I call to witness the accusing voice of man's own conscience!" [75:1- 2]

So there was no writing of a will in the olden times but if a person on his deathbed was being visited, say, by Amjad Hussain, he would tell Amjad that, after my death, I would like one sixth of my money to go to the Islamic Center, and that amount to go to the orphanage, and this, this, this. Amjad Hussain would be the responsible man, then, because he was the witness and would testify to that. Anyone who hears the recommendation or *waseeyah* of a dying person and changes it for the benefit of somebody else will take the sin upon his shoulders; and don't forget that the verse ends by:

**إِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ**. [Imam quotes Arabic verse. The English translation is:]

"And if anyone alters such a provision after having come to know it, the sin of acting thus shall fall only upon those who have altered it. Verily, God is all-hearing, all-knowing" [2:181].

It means that what you change will not affect the hearing and the knowledge of God. But, sometimes the one who makes the waseeyah favors one more than another, and in that case, the one who heard the waseeyah has the right to change it, or correct it, and he will not be a sinner. Therefore, if you are correcting the injustice made by the one who made the waseeyah, then there is no sin in that. [Imam quotes Arabic verse. The English translation is:]

"If, however, one has reason to fear that the testator has committed a mistake or a deliberate wrong and thereupon brings about a settlement between the heirs, he will incur no sin thereby. Verily, God is much forgiving, a dispenser of grace" [2:182].

Someone may read the last part of that verse: "Make bequests in favor of his parents (*wālidayn*) and other near of kin

<sup>8</sup> Scholars

<sup>9</sup> The School of the Text

<sup>10</sup> Used as an adjective

<sup>11</sup> Conscience

(*aqrabīn*) in accordance with what is fair (*bil ma'rūf*)" and think, that's good, I am sick and dying, but my father and mother are living and healthy, so I will leave all my waseeyah for my father and mother. No. That is wrong. You may counter that the Qur'an says **لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ** (parents and near of kin) so how am I declaring it wrong? This is based upon the saying of the Prophet: *la waseyyata li wārith* which means, "No will for someone who will inherit a share according to the Islamic Law." This means you cannot write waseeyah for your children because they are your heirs; you cannot write waseeyah for your wife or your parents because they will inherit you. God gave each of these a fixed share in the inheritance, so if you write waseeyah for them, they will be taking two shares. It is forbidden and, as a result, you cannot make waseeyah for your parents. The waseeyah should be for any person or organization that will not inherit you and *it is limited to one third of your estate*. You cannot write *all* your money to go to a certain person or place. That will be tyranny; that will be injustice.

How much can you write a waseeyah for? Islam limited it to *one third* of what you own. If you give, say, one half of your estate to the Islamic Center Foundation, it is not correct according to Islam, and if that waseeyah comes before a

Muslim judge, he will automatically reduce it to one third. Only one third is at your disposal; the rest is assigned by God, and must be distributed according to the stipulations mentioned in a long verse in Chapter an-Nisa<sup>12</sup> which talks about it clearly, showing who will take 1/2, who will take 1/4, who will take 1/8, who will take 1/6, and so on. What is left after that is to be distributed among the rest of the heirs.

As you know, back home, people will their money to the school of *Tahfeeth-ul Qur'an*,<sup>13</sup> or to certain orphanages. In view of that, we have established something new here: it is called the Islamic Center Foundation of Greater Toledo. This Islamic Center Foundation will be for the service of Islam in different endeavors. We expect that everyone of you, before he dies, should write it in his will because that will be *sadaqa jariyah* (continuous charity) and it will close a gap here. Already we have four or five persons who purchased life insurance in good, good amounts, and named the Foundation as the beneficiary. And, as a result, I am thinking of killing them very quickly! We would like that Foundation to be rich.

The main idea is to understand that a lot of our people think they can make the waseeyah to anybody they want, but that is not so.

<sup>12</sup> Chapter 4 in the Qur'an

<sup>13</sup> The school which teaches children to memorize the Qur'an