

FATAWA AWQAF AND TRUSTS 2004

Family Waqf

Subject: Writing a Will for an Heir or creating a Waqf for her/him

The question

From: Islam on Line

Sent: Tuesday, May 18, 2004 12:21 AM

To: Monzer Kahf

Name: Abdul Bari

Country of Residence India

Assalaam alay kume dearest scholars. May Allah bless you all for your kind efforts towards pouring islamic knowledge to the poor muslims. My Question is as follows:- A Muslim Individual has some property for which he has drawn up certain option to deal with. This individual has three sons and a daughter, The eldest son is very caring and takes good care of him, the other children are not that much attached to him. He wants to know what does Shariah say about the various options he has. The various options are as follows : Q. 1 : To transfer the whole property to his eldest son during his life time, leaving aside all the other children? Q. 2 : To keep the whole property in his possession till his life time and after death let it be distributed amongst the heir, as per the Quaranic proposed ratio. Q. 3 : To donate the whole property to a madarsa during his life time. Q. 4 : To write a will to pass on the whole property to the Eldest son after his death. Q. 5 : To write a will to pass on the whole property to one of his closest friend after his death. Q. 6 : To write a will to pass on 1/3 of the property to a Madarsa after his death. and the balance be distributed as per Quaranic proposed ratio. Q. 7 : To write a will to pass on 1/3 of the property to his eldest son and the balance be distributed as per Quaranic proposed ratio. Please elaborate on the rights of this muslim individual as per Shariah seperately and the moral code of conduct seperately.

Notes: Please give me the answer at the earliest, since I am in big jeopardy. Jazak Allah Khayran Bari

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. Abdul Bari

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Please allow me first to make two notes:

- 1) You mentioned the phrase "Qur'anic proposed ratios" more than once in your question. This is wrong!. It is rather the "Qur'anic mandatory ratios" as it is clear from the last part of 4: 11 that reads: "Faridatan mina Allah [an ordinance from God]."
- 2) The Islamic definition of ownership is limited to the life time of a person. A person ceases to become an owner the moment she/he dies. Humans are vicegerent of God on earth and they are given properties by God until they die; once a person dies the property she/he owned goes back to its true Owner Who has already decided its distribution. Abu Bakr al Siddiq, may Allah be pleased with him, is reported to

express this meaning in a good way: "God had given a charity to you, one third of your estate that you can dispose of in order to gain more reward."

Now let us come to your question!

1- All options that violate the Qur'anic distribution, give more than one third of the estate, or give, by a will, to an heir any amount that end up disturbing the Qur'anic distribution are not permissible and sinful.

2- A person is completely free to dispose of a person's own property, while alive and with full legal competence, any way a person likes including giving it to a school, a child or any other person or noble cause. This is giving, gifts, grants and charity and no potential heir has any right to limit the authority of a person of person's properties. Of course when a person gives to own children, one must be fair among them as the Prophet, pbuh, prohibited giving some and not giving others equivalent amounts as this is in violation of the principle of justice. It is apparent that financially rewarding a kind and good doer child is permissible and just (for other children, we tell them; be equally kind and good doers and the parent will equally reward you). Giving to children (because they are potential heirs) is an act in the life time, i.e., it cannot be through a last will. Being a gift, giving to children must also equate the females with male, i.e., the rule of Verse 4: 11 does not apply to giving during the life time of a parent/giver.

3- A person, by means of a last will, may give up to a maximum of one third of the net estate, i.e., after debts and expenses, to any person or any cause provided potential heirs are not included in such giving.

4- A person may create a Waqf to the benefit of a noble cause such as an Islamic school, the poor and needy or to the benefit of one or more of her/his children (say, the good doers) and their descendents. A Waqf may also be established by virtue of a last will within the limit of one third.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Temporary Waqf

Subject: Awqaf, al Manihah

The Question

Shukran and Salaams Dr Kahf

Thank you for your prompt and enlightening responses.

The usufruct may be given as waqf. In other words, the revenues derived from the properties may be deicated as waqf. In that way charities/sadaqah will not be spent but capitalised as the "waqf as nuqud" for further investment. Would that not then fit into the awqaf structures as a permamnent waqf and not as "temporary".

Shall we call them "Waqf al Maniha" and "Waqf al Umra" in addition to the ones that I mentioned previously. In both cases property income is made into a waqf or "waqfised" for limited periods. In the case of Al Umra, the property may or may not be made into a waqf, depending on the wishes of the waqif. In the case of al maniha, the property is simply returned, or depending omn the wishes of the waqif, may at that expiry time, decide on what he/she would like to do.

Wassalaam.
Zeinoul

My Answer:

Bismi Allah al Rahman al Rahim
Al Hamdu li Allah Rabb al 'Alamin
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi
Ajma'in

Dear Br. Zeinoul

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Yes, you can use these names. Please notice two things. 1) A temporary Waqf of income does not have to be capitalized into a permanent one. This means it is still a temporary Waqf if for instance the giver wants it to be spent on teaching Islamic studies to kids in the weekend school. If you capitalize it (invite donors to give such temporary stream of donation to establish a stock fund of one million asset to spend its revenue for certain objective) you will be building for the future, the same way our for-fathers left for us such huge Awqaf properties. And 2) it is very small please notice that the pronunciation of the word is Manihah, with long ya' after the nun and short a after the ha' and ta' marbutah at the end (you may remove the last h to make it simpler).

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Creating Awqaf from Donations

Subject: Creating Awqaf from donations

The Question

From: AwqafSA

Assalaamualyikum

Desar Br Dr Kahf

If Al Maniha is a concept whereby one can give the proceeds of a property for a limited time, then it can be useful because not everyone wishes to dispose or give their property as waqf. Herein lies an opportunity where property income may be ceded for a while. This leaves the donor with another option of donating.

We have adopted the following forms of making a waqf:

1. ""1% per month"": This is a cash contribution out of a persons monthly income. This done by bank debit order
2. ""Lump Sum"" - Regular or occasional, large or small direct cash deposits
3. ""Al Maal"" - property, gold coins, share investments, jewelry, etc, tangible assets

4. "Al Tijarah" - a percentage or portion of ones business profits or turnover.

5. "Al Wasiyyah" - up to 1/3 of a persons estate via his/her will.

So we are constantly looking at other ways also. Al Maniha and Al Umra seem to be two other options of ceding the income of a property for different periods.

Your comments?

Wassalaam.

Zeinoul

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi

Ajma'in

Dear Br. Zeinoul

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

That is fine but unless you make a Waqf plan, every charity has similar donation schemes. We need something specific about Awqaf, all these and others should be tied to an Awqaf structure.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Waqf of Usufructs

Subject: Waqf of Usufructs

The Question

From: AwqafSA

Assalamulaykum

Dear Dr Kahf

Looking for advice on the following matter:

I am considering another ""product"" linked to Waqf and that is ""Al maniha"". Is it possible that I could be advised on the meaning, terms and conditions of Al minha or al maniha.

I understand that the property would be subject to a usufruct for the benefit of a third party or a family member for a specific period or subject to the an event occurring e.g., death. The property then reverts to the owner or an onward beneficial owner. I am looking at the both the usufruct beneficiary as well as the onward owner to be Awqaf SA. In other words, at some point the property could become a Waqf. This in a sense is a temporary waqf, as a usufruct.

Please advise. Jazakallah.

Wassalaam.

Zeinoul

My Answer:

Bismi Allah al Rahman al Rahim

Al Hamdu li Allah Rabb al 'Alamin

wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi

Ajma'in

Dear Br. Zeinoul

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Maniha is simply of gift of usufruct. You know except for the Hanafi school usufructs (al Manafi') are considered properties (amwal); they can be subjected to all the contracts to which properties may be subject.

The Malikites for example approves of the Waqf of usufructs. For instance, if you rent a property for ten years, you can make this Mal (the usufruct) a waqf, hence you have a temporary Waqf of the Manafi'.

The concept of Maniha does not help much because in a maniha you give the usufruct as a gift for a period of time and then the property goes back to the owner at the end of the period.

What helps more is the concept of 'Umra (العمرى). Al 'Umra is to give some one the usufruct of a property for life. It may be the life of the giver, the life of the recipient, or even the life of the recipient and the lives of the recipient's children as long as the give is still alive. Al 'umra is contrversial and there are conflicting views about it between the Shafi'ites and the Malikites.

In Awqaf, it is much easier to manipulate the conditions of the founder provided that we do not limit ourselves to one Mathhab. Whatever conditions one may find in a Mathhab are very often arbitrary and semantic only. The late Shaikh Zarqa argued that in Awqaf there is nothing agreed upon except that the objective must be a matter of goodness.

I suggest that you read my book on Awqaf (unfortunately in Arabic). It is all on my website and there is a paper on the web about different new formats of Waqf in our contemporary life.

I an also enclosing a contractual form for a special kind of Waqf that I called "Donation in Trust" that may give you a good idea about what kind of conditions one may put in a waqf deed.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf
