

“It is prescribed, when death approaches any of you, if he leave any goods, that he make a bequest” (*al-Baqarah* 180). The Messenger of Allah (peace be upon him) said,

مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ يَبِيتُ لَيْلَتَيْنِ إِلَّا  
وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ

“It is not right for any Muslim, when he has something that he wants to bequeath, to spend two nights except that his bequest is recorded with him.” [Recorded by al-Bukhari.]

## What Constitutes the Making of a Bequest

A bequest can be made in one of three ways: (1) by speech, (2) by recording or (3) by understood signaling.

(1) By speech: There is no disagreement among the jurists that a bequest can be made by explicit speech, such as a person saying, “I bequeath this to so and so.” It can be done by implicit speech if it is understood by the context to refer to a bequest, such as, “I make such and such for so and so after my death,” or, “Bear witness that I have bequeathed such and such to so and so.”

(2) A bequest may be through writing if it is from a person who is mute and cannot speak.

(3) A bequest may also be made by understood signaling if the person is mute or is not able to speak for some reason. However, this is conditional upon the fact that the person is not able to speak.

## Topic One:

### The Types of Bequests and Its Legal Status

#### The Legal Status of a Bequest

A bequest is both legal and recommended, as Allah has said,

يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةٌ بَيْنَكُمْ إِذَا حَضَرَ أَحَدَكُمْ الْمَوْتُ  
حِينَ الْوَصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِنْكُمْ أَوْ آخَرَانِ مِنْ غَيْرِكُمْ  
إِنْ أَنْتُمْ ضَرَبْتُمْ فِي الْأَرْضِ فَأَصَابَتْكُمْ مُصِيبَةُ الْمَوْتِ

“O you who believe! When death approaches any of you, (take) witnesses among yourselves when making bequests, two just men of your own (brotherhood) or others from outside if you are journeying through the earth, and the chance of death befalls you” (*al-Maaidah* 102).

#### The Types of Bequests

(1) The obligatory bequest: This is a bequest upon a person who is in debt and who has some rights against him or some trusts or pacts that he must fulfill. It is obligatory upon him to make such matters clear by writing a definitive, explicit will that delineates the debt and states whether it is to be paid promptly or over time. It should also state what trusts or pacts he must fulfill so that the matter can be clear for his heirs when they take care of the dispositions that he has put them in charge of.

(3) The recommended and desirable bequests: This is wherein one bequests up to one-third of his wealth to persons

other than his rightful heirs. This [distribution] is recommended and can be given to charitable causes and other righteous outlets, regardless of whether it be to a specific relative, a non-relative or specific causes, such as a specific mosque, or general purposes, such as for the sake of mosques, schools, libraries, refugees, clinics and so on.

## **The Amount of a Bequest**

It is not allowed for the bequest to be more than one-third of one's wealth. This point is based on the Prophet's statement to Saad when Saad said, "Can I give all of my wealth away in a bequest?" The Prophet (peace be upon him) replied, "No." He then asked, "How about one-half?" The Prophet (peace be upon him) said, "No." Then he said, "How about one-third?" He replied, "One-third [is permissible] but one-third is [still] much." (Recorded by al-Bukhari and Muslim.)

It is not permitted to make a bequest for a rightful heir or to make a bequest beyond one-third of one's wealth unless it is done by the permission of the other rightful heirs.

## **What is Taken Into Consideration for the Bequest to Be Valid**

- (1) It must be something fair and just.
- (2) It must be in accord with what Allah has legislated through His Prophet (peace be upon him).
- (3) The one making the bequest must do his deed purely for the sake of Allah and desire by his bequest the doing of righteous deeds and goodness.

## **Topic Two:**

### **The Conditions of a Bequest**

There are three factors or agents in a bequest: the one making the bequest, the one for whom the bequest is made and the object of the bequest. Each one of these has specific conditions that it must meet. The following notes the most important of such conditions:

#### **Conditions for the One Making the Bequest**

- (1) He must be someone who is qualified to make donations.
- (2) He must be the owner of the bequeathed property.
- (3) He must make the bequest out of his own free will and choice.

#### **Conditions for the One for Whom the Bequest is Made**

- (1) He must be a recipient for the sake of goodness or what is permissible.
- (2) The one for whom the bequest is made must be existing, in reality or theoretically [such as a child in his mother's womb], at the time of the bequest. It is not valid to make a bequest for someone who does not exist.
- (3) It must be a specified person.
- (4) It must be one who has the legal capability to own.
- (5) It cannot be the killer of the one making the bequest.
- (6) It cannot be a legal heir.

## **Conditions for What is Being Bequeathed**

- (1) It must be wealth that could be inherited.
- (2) The wealth bequeathed must be something of value according to Islamic law.
- (3) It must be something that can be owned, even if it does not actually exist by the time the bequest is made.
- (4) It must be part of the one making the bequest's property at the time of the bequest.
- (5) What is bequeathed must not be sinful or forbidden according to Islamic law.

## **Confirming a Bequest**

There is agreement that it is best to record the bequest, starting with the name of Allah, followed by praises to Allah and then prayers and blessings upon the Prophet (peace be upon him). Then the witnesses should make it known, either by writing or speech.

## **The Types of Executors**

The executors may be one of three categories:

- (1) A ruler
- (2) A judge
- (3) Any chosen one from among the Muslim individuals.

## **Topic Three:**

### **Nullifiers of the Bequest**

The following acts nullify the bequest:

(1) The person rescinds his bequest, either explicitly or by indication.

(2) The bequest was made conditional upon an act that did not occur.

(3) The thing that was bequeathed does not exist.

(4) The one making the bequest becomes no longer legally capable.

(5) According to some scholars, the one making the request apostatizes from Islam.

(6) The one for whom the bequest was made rejects the bequest.

(7) The one to specifically receive the bequest dies before the one making the bequest dies.

(8) The one for whom the bequest was made kills the one who made the bequest.

(9) The bequeathed property is destroyed or its rightful owners appear.

(10) The bequeath is voided if it is for a rightful heir and not approved by the other heirs.



## **Part Three: Family Matters**

This part shall be comprised of the following chapters:

Chapter One: Marriage and its rulings;

Chapter Two: Rulings particular for Muslim women.





## Chapter One: Marriage and Its Rulings

This chapter is comprised of an introduction and a discussion of the following two topics:

Topic 1: Conditions and Legal Status of Marriage;

Topic 2: What is Recommended and What is Forbidden in Relation to Marriage.

### Introduction

#### The Wisdom for Legalizing Marriage

Marriage is one of the established practices of Islam that was encouraged by the Messenger of Allah (peace be upon him). The Messenger of Allah (peace be upon him) said,

يَا مَعْشَرَ الشَّبَابِ مَنْ اسْتَطَاعَ الْبَاعَةَ فَلْيَتَزَوَّجْ فَإِنَّهُ أَغْضُ  
لِلْبَصَرِ وَأَخْصَنُ لِلْفَرْجِ وَمَنْ لَمْ يَسْتَطِعْ فَعَلَيْهِ بِالصَّوْمِ فَإِنَّهُ لَهُ  
وِجَاءٌ

“O group of young people, whoever among you who has the ability to marry should get married. Certainly, it [helps] in lowering the gaze and keeps the private parts chaste. Whoever cannot [get married] should fast for it will be a protection for him.” [Recorded, with this exact wording, by Muslim.]