498802 - Should a patient be legally prevented from disposing of his wealth?

the question

If someone has cancer – may Allah protect the Muslims from it – should he be legally prevented from disposing of his wealth and donating it?

Detailed answer

Praise be to Allah.

I.

If the sick person feels that death is approaching him, he might start spending a lot in donations, hoping to make up for what he missed out on of giving when he was healthy, and that may lead to him squandering his wealth and depriving his heirs, therefore it is prescribed to prevent him from doing that.

The jurists are unanimously agreed that the terminally ill patient should be prevented from donating more than one third of what he will leave behind, because of the rights of his heirs. It is permissible for him to donate one third or less, and he should not be prevented from engaging in financial transactions such as buying and selling, giving loans, profit-sharing ventures, and renting or hiring, unless he is being too generous in his business dealings.

See: *Al-Mawsu`at al-Fiqhiyyah al-Kuwaitiyyah*, 11/215; and *Al-Fiqh al-Islami wa Adillatuhu* by az-Zuhayli, 6/4505.

Ibn Qudamah (may Allah have mercy on him) said: As for the sick person, if his sickness is not severe or it is not terminal, then he comes under the same ruling as one who is healthy.

But if it is a serious, terminal illness, then the ruling on his acting as a guarantor is the same as the ruling on him making donations: it should not exceed one third of his wealth, because he is voluntarily committing himself to pay compensation that he is not required to give and is not getting anything in return for that, so it is akin to giving a gift.

End quote from *Al-Mughni*, 7/81.

II.

The sickness for which a person should be prevented from donating more than one third of his wealth is serious sickness. This is sickness from which it is feared that he may die because many people die of it, and that is known from experience and what the doctors say, because it often leads to death.

And it was said that it is any sickness that leads to death, or the person thinks that he will die of it, or the doctors have stated that it is a sickness of which many people die.

These guidelines may differ from one person to another, according to the situation, and the opinion of the doctors who examine his case should be taken into consideration, because people vary in how they react to sickness, and the sickness may be serious in the case of one person and not in the case of another person.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said: Serious sickness is when it is a likely cause of death, so it is associated with it and it is possible that it may result in death.

The best that can be said (about what is meant by serious sickness) is sickness that often leads to death, and no attention should be paid to sicknesses that rarely lead to death, and no attention should be paid to a sickness that is more likely to end in death than recovery.

End quote from *Al-Fatawa al-Kubra*, by Ibn Taymiyah, 5/440.

If the doctors are agreed that this sickness in the case of this person is to be regarded as serious sickness, then he should be prevented from donating more than one third of his wealth, to protect

the rights of his heirs, then if the disease continues until he dies, his donation bequests are not to be executed except with regard to one third of the estate, and if he recovers, his instruction to give donations of more than one third of his wealth are to be regarded as valid and are to be carried out, because it has become clear that his sickness was not terminal.

III.

We should differentiate between different kinds of cancer and different levels of severity of this disease. If the doctors agree that the case of the cancer patient is serious, then it is permissible to prevent him from donating more than one third of his wealth. Then if his sickness continues until he dies, his donation bequests are not to be executed except with regard to one third of the estate, and if he recovers, his instructions may all be carried out.

Shaykh Muhammad ibn Ibrahim (may Allah have mercy on him) was asked about a bequest made by a cancer patient, who gave instructions that after he died, his three houses were to become a waqf (endowment) for his offspring, male and female, and their children after them, but for the offspring of the males only and not the females. Should these endowment instructions be executed for all the houses, or for one third only (that is, one house)?

He replied: If the matter is as you mentioned, then what appears to be the case is that his instructions should only be carried out with regard to one third (of the estate), unless the heirs allow it.

End quote from *Fatawa wa Rasa'il ash-Shaykh Muhammad ibn Ibrahim Al ash-Shaykh*, 9/223.

And Allah knows best.