



111834 - Ruling on bequests (wasiyyah)

the question

I am going into hospital for surgery. Do I have the right to leave instructions (wasiyyah) regarding anything before undergoing surgery, such as delegating someone to do Hajj on my behalf and other matters, if I am certain that the procedure is risky?

Detailed answer

Praise be to Allah.

We ask Allah, may He be Exalted, to grant you healing and well-being.

With regard to bequests (wasiyyah), in some cases it is obligatory and in some cases it is recommended.

If you owe anything to other people and there is nothing to prove it, then you must leave instructions concerning that, so that there will be no loss to those people, such as if you owe a debt to someone and it was not witnessed, and you did not write it down on a piece of paper and give it to your creditor.

With regard to making a bequest to donate some of your wealth, that is recommended for one who leaves behind a lot of wealth and his heirs are not in need of that wealth. In that case, he may bequeath one third or less to charitable causes, such as building mosques, or on having Hajj done on his behalf, or feeding the poor, and so on.

The scholars of the Permanent Committee for Ifta' said:

If someone wants to make a bequest with some of his wealth, he must hasten to write down his instructions lest death come suddenly, and he must make sure to document it and have it witnessed. This wasiyyah is divided into two categories:



The first category is the obligatory wasiyyah, such as instructions explaining what he owes to others and what others owe to him of debts or loans; or what people owe for items that they bought from him; or items left with him for safekeeping; or what other people owe to him. In this case, writing the wasiyyah is obligatory, in order to protect his wealth and ensure that what he owes to others is cleared, so that there will be no dispute after his death between his heirs and people to whom he owed anything, because the Prophet (blessings and peace of Allah be upon him) said: "It is not right for a Muslim man who has anything concerning which he needs to leave instructions to stay for more than two nights without having his will written with him." Narrated by al-Bukhari and Muslim; this version was narrated by al-Bukhari, vol. 3, p. 186.

The second category is the recommended wasiyyah, which is a pure donation, such as if a person bequeaths one third or less of his wealth to a relative who is not an heir who will receive an allocated share of the estate, or to someone else, or to good causes such as giving charity to the poor and needy, or other charitable causes, such as building mosques and other good works. That is because of the report narrated by Khalid ibn `Ubayd as-Sulami, according to which the Messenger of Allah (blessings and peace of Allah be upon him) said: "Allah, may He be Glorified and Exalted, has granted to you when you are dying one third of your wealth that will be added to your good deeds." Al-Haythami said in *Majma` az-Zawa'id*: It was narrated by at-Tabarani, and its isnad is hasan (sound). Imam Ahmad narrated a similar report from Abud-Darda' in his *Musnad*. In the hadith of Sa`d ibn Abi Waqqas (may Allah be pleased with him) that was narrated by al-Bukhari and Muslim, it says: The Prophet (blessings and peace of Allah be upon him) came to visit me [Sa`d ibn Abi Waqqas] in Makkah when I was sick – and he did not want to die in the land from which he had migrated –. The Prophet (blessings and peace of Allah be upon him) said: "May Allah have mercy on Ibn `Afra'." I said: O Messenger of Allah, can I bequeath all of my wealth to him? He said: "No." I said: Then one half? He said: "No." I said: One third? He said: "One third, and one third is a lot. Leaving your heirs independent of means is better than leaving them dependent, holding out their hands to people..." This version was narrated by al-Bukhari. According to another version narrated by al-Bukhari: I said: I want to make a bequest, as I only have one daughter. I said: Can I bequeath half? He said: "Half is a lot." I said: Then one third? He said: "One third, yet one third is a lot (or a large amount)." So he told people that one third of his estate was to be



bequeathed, and the Prophet (blessings and peace of Allah be upon him) allowed that.

Shaykh `Abd al-`Aziz ibn Baz, Shaykh `Abd al-`Aziz Al ash-Shaykh, Shaykh `Abdullah ibn Ghadyan, Shaykh Salih al-Fawzan, Shaykh Bakr Abi Zayd

Fatawa al-Lajnah ad-Da'imah, 16/263-266.

It should be noted that if a Muslim dies without having done Hajj, Hajj should be done for him on his behalf using his wealth, whether he left instructions to that effect or not.

But if he had done the obligatory Hajj, then Hajj should not be done on his behalf using his wealth unless he left instructions to that effect and the cost of that does not go beyond one third of his estate.

The scholars of the Permanent Committee for Ifta' said:

If a Muslim dies without having done the obligatory Hajj, and he met the conditions of Hajj being obligatory, then Hajj must be done on his behalf using wealth that he left behind, whether he issued instructions to that effect or not. End quote.

Shaykh `Abd al-`Aziz ibn Baz, Shaykh `Abd ar-Razzaq `Afifi, Shaykh `Abdullah ibn Ghadyan, Shaykh `Abdullah ibn Munayyi'. (*Fatawa al-Lajnah ad-Da'imah*, 11/100).

So you should write your wasiyyah and instructions whether you are going to go into hospital or not, for death may come suddenly.

And Allah knows best.