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## Dialogue on writing a will

My father started today's session with a hadith from Imam Ja'far as-Sadiq, "Leaving a will is a (religious) duty; the Prophet (s.a.w.) had done so, and so should Muslims".

- \* Yet, some people do not write wills under the false impression and pessimism that their death has drawn nigh.
- Making a will is a commendable act (mustahab); it is widely believed to prolong life. Conversely, leaving out the making of a will is makrouh and not a good thing to do.

After all, isn't death inevitable?

\* Yes, and rightly so. Allah, the Exalted says in His Holy Book,

## "Every soul shall taste of death ..." (3/185).

- If this was the case, why should any one of us try to evade the inevitable?

We have to be practical and get ready for that which will befall us all, whether we lived a long or a short life.

- \* How should I go about making a will?
- It is mustahab you start your will with the du'a (supplication, or invocation) that the Prophet (s.a.w.) taught Imam Ali (a.s.).
- \* What does it say?
- My father stood up, went to his library and came back with a book entitled "Al-Wasaa'il". He read out the text of the supplication.

I was writing what he dictated to me. It reads thus:

"O Lord! Originator of the heavens and the earth, the Only Source of knowledge of the unseen and the

seen, the All-compassionate, the All-merciful. O Lord! I bear witness that there is no god but You, that You have no associates, and that Mohammad is your servant and messenger. That paradise, hell, resurrection, reckoning, destiny, and justice are true. That religion is as You described, Islam as You made plain, the word as You narrated, The Qur'an as You stated. That You are God – The Glaring Truth.

May Allah reward Mohammad with the best recompense. May He bless Mohammad and his Progeny and grant them peace.

O Lord! You are my refuge at times of fear, my ally at times of trouble, and the Giver of my boon. My God and the God of my ancestors! Do not make me rely on my soul, for if You do, it will tempt me to incline to that which is evil, and allure me to abandon that which is good. Make my loneliness in the grave friendlier. And make me a pledge that I return to You with the best outcome".

After this introduction, the person can state his will.

- \* What are the matters that could be included in a will?
- Things like a) taking care of one's offspring, especially the minors among them, and the rest of his family, b) to be kind to his kindred, c) to pay his debts, if any, and d) releasing deposits in his trust. He could leave in his estate the amount of expenses that shall arise from paying for people who shall carry out certain obligations he did not perform in his lifetime, such as prayer, fasting, hajj, and paying out any amounts of khums and zakat that are outstanding. He could state that the poor be fed, and make out payments of sadaqah in his memory. He could ask for certain things to be done after his departure. In short he could ask for the implementation of anything he wished.

However, it is important to note that there are certain conditions that should be met by the person making the will. These are, they should be adult, sane, of a full legal age, hence the will of the incompetent (safeeh) shall not be in order. Nor shall be the will of a person who was coerced into making the requirement in the will. The will of the boy who is under ten years of age, provided the provisions of his will were in the sphere of what is good and for the benefit of his immediate family and relatives.

At the time of making the will, the testator should not be resigned to taking his own life. In such a case, his instructions as to his estate shall, for example, be limited to that which relates to matters and expenses arising from his funeral and his children who are under-age.

The executor cannot appoint another person to carry out the will. He could, however, authorize a trustworthy person to handle any particular matter of the will, if the testator did not specify that the executor should attend to that particular matter himself.

\* Is it conditional that the will be written?

- No, any person can make a will verbally or by expressing any meaningful gesture. It suffices, too, for a will to be deemed as such, if there was any paper, bearing the signature, seal, or finger print, of the mandator, suggesting that he intended it to be executed after his death.
- \* Should any one of us make his will at the time of illness only?
- No, not only in sickness, in health too.
- \* You said earlier that one can cater for any thing he wished. Am I right?
- Yes, provided it should not be outside the pale of what is lawful and ethical.
- \* Could any one of us make a will, stating that all his estate, for example, be spent in a certain avenue?
- No, the will must be confined to one third of the entire estate.
- \* Should there be a person, who exceeded that limit, what shall be the ruling in this case?
- The will should be declared void and null, unless the heirs sanction the excess share.
- \* If the heirs agreed, how should they go about executing the will?
- That which should be set aside of the estate be: a) any outstanding debt, b) religious dues, c) compensations, and d) reserve money for any religious obligations that were not carried out during the lifetime of the deceased. Obligations such as hajj, prayer, fasting etc, should be performed on his behalf, irrespective of whether or not he made provisions in his will to cater for them.

That is, if the deceased did not specify that it should be taken out from his share of one third, in which case it must be taken out of it.

The remainder must be divided into three shares.

One third must be set aside to meet the provisions made by the testator and two thirds for his inheritors.

- \* Should provisions, made by the testator in his will, like paying a named person a specific amount of money, or granting them a property or a plot of land, and other ones pertaining to his funeral, for example, be acted upon?
- The testator has the right to make such provisions and the executors of his will should be bound by that, provided the cost did not exceed one third of his estate.
- \* Parts of the estate of the deceased person could sustain damage at the hands of the executor of his will. Should the latter be held responsible?
- The executor cannot be made to pay for the damage, provided that there was no negligence or malice

on his part.

However, making a will is mustahab as long as death was imminent, in which case attending to certain things as a matter of priority becomes wajib; among these are the following:

1. Settling one's debt, especially those that have become due, if one was able to do so.

As for a) the debt whose date of repayment was not due, b) that which was due but was not yet demanded by the creditors to pay, or c) that which he did not have the means to pay back, he should make a will to that effect before witnesses, if it was not common knowledge.

- 2. Releasing deposits in his safekeeping to their owners, notifying the owners, or making a provision to return them.
- 3. Settling unpaid khums, zakat, and madhalim (Material or moral restitution, or reparation, to people you have wronged), if you were liable and could afford payment.
- 4. Hiring a person, for money paid from his own property, to say obligatory prayers or perform hajj on his behalf. Even if he was not financially able to hire someone, and a volunteer came forward to carry such obligations out for him, making a provision in the will to this effect becomes wajib. In certain cases, however, informing a trusted person, such as the eldest son, to cater for meeting his obligations vis–avis prayer and hajj would suffice.
- 5. Advising his heirs of any money, property, or otherwise he has with other people, that they do not know of, so that their right in such dues would be preserved after his death.
- \* If a person did not make a will, what would happen to his estate?
- He shall forgo his right in having disposal over one third of his estate in the way he may have wished.
- \* How would his estate be divided?
- It be divided according to certain formula, that we will discuss in the next dialogue on inheritance.

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