

Making a will regarding pilgrimage

Rule 73: If a person on a deathbed has an obligation to perform his first pilgrimage and has adequate means, he must make sure that it will be performed after his death, even by directing in his will and in the presence of witnesses.

However, if he has no adequate means but thinks somebody will volunteer to perform pilgrimage for him, he must stipulate that in his will. If he dies, pilgrimage must be performed from his estate, as must also be done if he has made a general direction about it without qualifying that its expenses be defrayed from his bequeathable one-third.

However, if he directs that pilgrimage be performed from his portion of one-third in the estate and the expenses can be met therefrom, the expenses must be paid for from that portion and must take precedence over all other instructions in the will. If the bequeathable one-third of the estate is insufficient to meet the expenses, the balance must be defrayed from the entire estate.

Rule 74: It has been said that if a person dies without having performed obligatory pilgrimage but leaves a deposit with a person who fears that if he gave it back to the heirs, they will not have the obligatory pilgrimage performed on behalf of the deceased, it is obligatory on that person to perform pilgrimage himself, or by an agent and pay the heirs only the balance, if any, after meeting the expenses. However, this is not free from *ishkal*, i.e. arguable or problematic.

Rule 75: A person may die without having performed obligatory pilgrimage; they may leave debts and liability of *khums* and *zakah*; their estate is not sufficient to discharge all these obligations.

If the funds for such religious dues payable on the property were available, they must first be settled. If the deceased was indebted with same, pilgrimage will take precedence over their settlement; however, the settlement of debts takes precedence over pilgrimage.

Rule 76: If a person dies without having performed obligatory pilgrimage, it is not permissible for the heirs to have a free hand in his estate, without first meeting the expenses of the pilgrimage, irrespective of whether or not the estate is sufficient to meet the expenses. However, there is no objection to

transactions made after provision has been made for the expenses of pilgrimage.

Rule 77: If a person dies without having performed obligatory pilgrimage and his estate is not sufficient to meet the expenses of having it performed, the available assets must be used to repay the debts, and khums and zakah; the balance should be distributed among the heirs. It is not obligatory on the heirs to supplement the expenses of pilgrimage from their personal property.

Rule 78: If a person dies without having performed obligatory pilgrimage, it is not necessary to pay for the expenses of the pilgrimage from the country of residence of the deceased.

It is sufficient to pay from the Meqat. Indeed, it is sufficient to appoint an agent from the Meqat with the most reasonable cost. As a matter of preferential precaution (*al ahwatil awla*), if the estate is large, it is better to pay for the expenses from the country of the deceased. If the estate is very large and the heirs are absolutely determined to have the pilgrimage performed, expenditure from the estate is permissible.

This is also the rule in respect of the debts of the deceased. However, if the cost from the country of the deceased is higher than the cost from the Meqat, the share of the young heirs must not be used to meet the cost.

Rule 79: If a person dies without having performed obligatory pilgrimage, it, as a matter of precaution (*al ahwat*), is mandatory to have it performed in the same year the person died. If it is not possible to hire an agent from the Meqat in that year, it is, as a matter of precaution, obligatory to send an agent from the country of the deceased and defray his expenses from the gross estate.

It is not permissible to delay it to the succeeding year, even if it is known that in the following year, it will be possible to engage an agent from the Meqat. However, if the cost from the country of the deceased is higher than the cost from the Meqat, the share from the young heirs must not be used to meet the cost.

Rule 80: If a person dies without having performed obligatory pilgrimage and it is not possible to obtain an agent at a reasonable fee, it is, as a matter of precaution, obligatory to appoint one, even at a higher rate and defray the expenses from the gross estate. It is not permissible for the heirs to postpone the pilgrimage to the following year, even if some of them are young.

However, if the cost from the country of the deceased is higher than the cost from the Meqat, the share of the young heirs must not be used to meet the cost.

Rule 81: If any one among the heirs admits that there was an obligation on the deceased to perform pilgrimage, it is not obligatory on those who think so to have the pilgrimage performed, except to the tune of their shares of inheritance.

However, if the shares of those who consider so are not adequate to meet the expenses of the pilgrimage, it is not obligatory on them to meet the shortfall from their personal properties. If a donor comes forward to make up the shortfall, or it is met in any other way, deputizing someone to perform

Hajj for the deceased becomes obligatory.

Rule 82: If a person dies without having performed obligatory pilgrimage, and a person volunteers to perform it on his behalf gratuitously, the heirs will no longer be required to have one performed themselves. The same applies in the event of the deceased instructing that pilgrimage be performed from his bequeathable one-third.

However, in both the cases the cost that would have been incurred on pilgrimage should not revert to the heirs, but be disposed of in good causes closest to the deceased's heart.

Rule 83: If a person dies without having performed obligatory pilgrimage but directs in his will that an agent be appointed from his town to perform one, it is obligatory to do so. However, the extra amount of remuneration, over what would have been paid if the agent was appointed from the Meqat, should be met from the bequeathable one-third of the estate.

If, in the will, he directs that pilgrimage be performed without specifying the starting point, it is sufficient to appoint an agent from the Meqat, unless there was an expressed that the agent be appointed from his town, for example, by designating a sum for pilgrimage which would adequate as a fee for the agent from the town.

Rule 84: If a person directs in his will that, in the event of his death, the agent, who is going to perform pilgrimage for him, be appointed from his town, and if the executor or heir appointed one from the Meqat, the appointment is invalid; This is so only if the remuneration be paid from the estate of the deceased. However, the obligation of the deceased will be discharged by the performance of the agent.

Rule 85: If the will of the deceased stipulates that an agent be appointed to perform pilgrimage from another town or country, it is obligatory to act on it and the expenses in excess of what would have been paid to an agent appointed from the Meqat will be met from the bequeathable one-third of the estate.

Rule 86: If the will of the deceased stipulates that an agent be appointed to perform an obligatory pilgrimage on his behalf for a given wage, it is obligatory to act upon it. The remuneration should be paid from the gross estate, if it does not exceed what is commonly held as acceptable. However, if it does, the excess must be settled from the one-third bequeathable portion.

Rule 87: If the will of the deceased stipulates that pilgrimage be performed on his behalf from an identified property, and it is in the knowledge of the executor that there is a liability of khums or zakah on the property, these must first be paid from it.

The balance should then be used to meet the expenses of pilgrimage; if it is not sufficient, the shortfall must be met from the gross estate, should the obligation of the deceased be for Hajjatul Islam, otherwise the balance must be spent in good causes of the kind in which the deceased would have wished to donate.

Rule 88: If it becomes obligatory to appoint an agent to perform pilgrimage on behalf of a deceased, with or without a will, and the person charged with executing the obligation delays the appointment of the agent, so much so that the property, from which the expenses would have been paid, was damaged, he is personally responsible to employ an agent from his personal property.

Rule 89: If it was known that pilgrimage had become obligatory on the deceased, but it is doubtful if he had performed it, it is obligatory to have it performed for him and its expenses be met from the gross estate.

Rule 90: The obligation of the deceased would not be discharged by the mere appointment of an agent to perform a pilgrimage on his behalf. If it becomes known that the agent did not perform the pilgrimage for a good reason or not, it is obligatory to appoint another agent and meet the expenses from the gross estate.

If it was, at all, possible to recover the sum from the first agent, it is obligatory to do so, in the event that the money was paid from the estate of the deceased.

Rule 91: If there were numerous agents available, the one who should be chosen must be on the basis of the deceased stature. Accordingly, it is permissible to pay a higher remuneration. Evidently, that is so, even though the wage will be paid from the third allotted to the deceased, and that there was a minor among the heirs, who did not agree to that.

However, hiring an agent could prove problematic (*mushkil*), if it encroaches upon discharging other financial obligations the deceased stipulated in his will to be met, such as debt and *zakah*.

Rule 92: Whether the appointment of the agent is obligatory from the country of the deceased or Meqat is determined by the *`mujtahid'* followed by the heir or the heir's *`ijtihad'* and not that of the deceased. If the faith of the deceased was that it was obligatory to appoint an agent from his country, and that of the heir is that it is permissible to appoint one from the Meqat, it is not obligatory on the heir to appoint one from the country of the deceased.

Rule 93: If the pilgrimage had become obligatory on a deceased person who does not leave any estate, it is not obligatory on the heir to appoint an agent; however, it is meritorious, especially for his relatives, to do so.

Rule 94: If the will of the deceased stipulates that an obligatory pilgrimage be performed on his behalf, and it becomes known that it was Hajjatul Islam, the expenses incurred must be paid from the gross estate, unless he has expressly directed that the expenses be settled from his bequeathable one-third. If it becomes known to the person so directed that pilgrimage was other than Hajjatul Islam, or if there is doubt, the expenses must be paid from the one-third.

Rule 95: If the will of the deceased stipulates that an obligatory pilgrimage be performed on his behalf by

a particular person, it is obligatory to comply with the instruction. If the nominated person does not accept the appointment except for a higher than the usual remuneration, the excess must be paid from the one-third portion of the estate, if the pilgrimage was Hajjatul Islam.

Rule 96: If the will stipulates that pilgrimage be performed for him for a particular sum to be paid to an agent, and the designated sum is such that it attracts no one, and if the obligation of the deceased was for Hajjatul Islam, it is obligatory to make up the difference from the gross estate.

If it was not for Hajjatul Islam, the sum earmarked for remuneration must be used for a good cause of the kind in which the deceased would have wished to donate. Otherwise, the stipulation lapses and the intended amount reverts to the estate

Rule 97: If a person sells his house for a sum of money and makes it conditional on the buyer that he should spend it in the performance of an obligatory pilgrimage after his death, upon his death the amount in question will form part of his estate. If the pilgrimage to be performed was Hajjatul Islam, the condition becomes operative and it is obligatory to spend the sum on the remuneration for the pilgrimage, provided it does not exceed the usual remuneration. If it does, the deficit will be met from the one-third of the estate.

If pilgrimage was not that of Hajjatul Islam, the condition will still be sound and the whole remuneration will be paid from the one-third. If that share is insufficient, the condition shall no longer be operative insofar as the shortfall is concerned.

Rule 98: If a person donates, for example, his house to another on the condition that he performs a pilgrimage on his behalf after his death, the condition is valid and operative. It ceases to be the property of the donor and will not form part of his estate after his death, even if the pilgrimage is optional; the testamentary rules will not apply.

The same rule applies to a transaction in which the owner of the house passes ownership to another so that after his death the latter can sell the property and spend the proceeds to have a pilgrimage performed for him. In such a case, the condition is valid and operative, even if the pilgrimage is optional; the heirs will have no right in the property. If the recipient fails to fulfil the condition, the right in the property does not shift to the heirs, but to the executor or the Marji', and if he nullifies the transaction, the property reverts to the estate of the deceased.

Rule 99: If an executor dies and it is not known whether he appointed an agent before his death, it is obligatory to appoint one from the estate if the pilgrimage is Hajjatul Islam, and from the one-third share, if it is not.

If, however, the executor had taken possession of a property to expend on the pilgrimage and it is available, it should be repossessed. If there is a doubt that the executor paid the agent from his property and then reimbursed himself from the property of the deceased and such property is not available, the

executor is not responsible as there would be doubt that it may have been lost without being negligent.

Rule 100: If the property was lost while in the possession of the executor without negligence on his part, he shall not be held responsible to compensate it. An agent must be appointed from the remainder of the estate if the pilgrimage is Hajjatul Islam and from the one-third portion, if not. If the remainder had already been distributed among the heirs, a sum sufficient for the remuneration of the agent should be recovered from them proportionately.

The same rule applies if a person is appointed an agent and dies before performing pilgrimage without leaving any estate, or if it is not possible to recover it from his estate.

Rule 101: If the property is lost in the hands of the executor before the appointment of an agent and it is not known if it was lost due to the negligence of the executor, it is not permissible to exact compensation from the executor.

Rule 102: If the will stipulates that a certain amount be spent on a pilgrimage other than Hajjatul Islam and there is doubt that it is in excess of the bequeathable one-third, it is not permissible to spend the whole of the amount without the consent of the heirs.

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