

The rules on pilgrimage by proxy (Niyabah)

Rule 103: Qualifications of the agent:

First: Adulthood

An obligatory pilgrimage performed by a minor, acting as proxy, is not valid, be it Hajjatul Islam or any other type of pilgrimage, even if the minor is capable of rational action, as a matter of precaution (alal ahwat). However, it may be true to say that an optional pilgrimage performed by a minor, in his capacity as agent, with the approval of his guardian is valid.

Second: State of Mind

A pilgrimage performed by an agent of unsound mind is not valid, whether the disease is permanent or intermittent, if the pilgrimage is performed when the agent is experiencing a spell of the disease. However, there is no objection to employing an incompetent (safih) person as an agent.

Third: Faith

As a matter of precaution, a pilgrimage performed by an agent who is a non-believer would not count as valid, even if it was performed in accordance with the rules of our school of thought.

Fourth: The Agent's Freedom

The agent himself must not be obligated to perform an obligatory pilgrimage in the year in which he is appointed agent. If he is unaware or unmindful of his obligation he can still be appointed agent. This condition affects the validity of the appointment of the agent, not the validity of his pilgrimage.

Thus, even if there was an obligation on the agent to perform a pilgrimage personally, the obligation of his principal for performing pilgrimage will be discharged. However, the agent will not be entitled to the stipulated remuneration, but only to the usual amount.

Rule 104: It is not necessary that the agent be judicious (adil). However, he must be reliable insofar as performing pilgrimage is concerned.

Rule 105: The principal's obligation will be met only upon the proper completion of the pilgrimage by the agent. It follows that the agent must be conversant with the procedure of pilgrimage and its rules, albeit through coaching in every rite. When a doubt arises about his performing the rituals, he can ignore it.

Rule 106: There is no objection to the appointment of an agent for a discerning youth or an insane person. Indeed, an agent must be appointed if the pilgrimage became obligatory on a person of unsound mind during his period of sanity but died insane.

Rule 107: There is no requirement that the principal and agent be homogeneous. The appointment of a male agent for a female principal and vice versa is valid.

Rule 108: There is no objection to appointing, as agent, a person who has not been to pilgrimage before, irrespective of whether or not the principal had been on pilgrimage before. The gender of the agent or the principal does not matter. Some scholars say that it is discouraged (makrouh) to appoint, as agent, a person who has not been on pilgrimage before, but this is not proved.

However, in the case of a principal who is alive but has not been able to perform Hajjatul Islam or had a pilgrimage to perform, but died before performing it, it is preferable to appoint, as agent, a person who has not been on pilgrimage before.

Rule 109: It is necessary that the principal must be Muslim. Thus, acting as agent for an infidel is invalid, even if the infidel has died while still enjoying some wealth. If his heir is a Muslim, it is not obligatory on him to appoint an agent to perform an obligatory pilgrimage for the deceased.

As for an enemy of Ahlul Bait (the Household of the Prophet 's.a.w.'), acting as agent for him, it is not in order, except that it is permissible for a son of such a person himself to perform an obligatory pilgrimage for his father; for the other relatives there is *ishkal* (problem). However, there is no harm in performing pilgrimage and dedicating its reward (*thawab*) to a relative.

Rule 110: There is no objection to appointing an agent to perform an optional pilgrimage for a living person, whether gratuitously or for reward. The same goes for an obligatory pilgrimage for a person who is unable to do it personally for a valid reason. Performing pilgrimage by proxy on behalf of a living person is not permissible, apart from these two cases. An appointment of an agent for a dead person is always valid, whether gratuitous or for reward and whether for an obligatory or an optional pilgrimage.

Rule 111: It is necessary for the validity of the agency that the intent must be to perform pilgrimage for the principal, who should be known through any means of identification. Although it is not necessary that his name be uttered, it is recommended that the principal be remembered in all the ceremonies.

Rule 112: Just as performing an obligatory pilgrimage is valid, whether it is gratuitous or by permission,

so is it valid if it is for reward or in fulfilment of a condition of contract.

Rule 113: Apparently (adh'dhahir), the agent must act as if the pilgrimage is for himself with regard to the rules on incapacity, i.e. as though they would have applied to him in his own pilgrimage. Also, the rules relating to the order of the ceremonies must be observed.

However, in the final analysis, a pilgrimage can be valid in one case but not in the other. For example, if the incapacity occurs during the stay at Arafat, he can choose the emergency stay; thus, the pilgrimage be valid and the principal acquitted from the responsibility. However, if he was unable to remain in Arafat for either the normal or the emergency stay, his pilgrimage is invalid.

It is not permissible to employ a person who knows he will be unable to perform the optional rituals, as a matter of precaution (ihtiyat). Indeed, there is ishkhal (problem) in accepting as correct the performance of rituals of an unpaid volunteer agent. However, there is no objection to engaging a person who knows that he will move under a shade or will omit ceremonies which would not invalidate the pilgrimage, even though the omission was deliberate, like Tawafun Nisa, or staying in Mina for the evenings of 11th or 12th.

Rule 114: If the agent dies before wearing ihram , the pilgrimage is not valid for the principal and it is obligatory to appoint another agent to perform the pilgrimage again. If the agent dies after wearing ihram, the pilgrimage will be valid and it is clearly so if he dies after wearing ihram in the precincts of the Holy Mosque, as a matter of precaution. There is no difference in this regard between Hajjatul Islam and other types of pilgrimage, in the case of a paid agent; as for an unpaid volunteer one, judging the validity of pilgrimage so performed is not free from ishkhal.

Rule 115: If the agent dies after wearing ihram and entering the Holy Mosque, he is entitled to his full remuneration if his appointment was to have the deceased absolved from his obligation. However, if his appointment was to perform certain ceremonies, he will be entitled to so much of the agreed remuneration as would be commensurate with the ceremonies performed by him.

If he died before wearing ihram, he would not be entitled to anything. However, if the part relating to preliminaries is included in the agreement of the agency, he would be entitled to an amount proportionate to the tasks performed by him.

Rule 116: If the appointment was from the country of the principal but the route to be taken by him to Makkah was not specified, the agent is free to choose the route. However, if the route has been laid out in the agreement, it is not permissible to disregard it. If the agent uses another one, completes the ceremonies, then and if the provision of the route in the agreement of agency was only as a condition, and not a specific term of the agreement, the agent is entitled to his full remuneration.

The other party is entitled to repudiate the agreement for breach of the condition, in which event the agent will be able to recover only the usual remuneration paid for the pilgrimage and not the agreed

wage. If the specified route was a term of the agreement, the other party can again repudiate it. If it is repudiated, the agent is entitled to the usual remuneration for the parts of the agreement he performed, but not for the route he took; the parts he did not comply with will be ignored. If it is not repudiated, the agent is entitled to the agreed remuneration.

Rule 117: If a person agrees to become an agent for a person to perform an obligatory pilgrimage in a specified year, and then agrees with another to perform an obligatory pilgrimage on his behalf in the same year, the second agreement is invalid. The two agencies would be valid if they are taken out in respect of different years, or if one or both of them were not to be performed immediately.

Rule 118: If a person agrees to perform a pilgrimage as an agent in a specified year, it is not permissible for him to do so in an earlier or subsequent year than that specified. He can do so only with the consent of the principal who will be acquitted, of the obligation, by the performance in the different year. The agent will not be entitled to claim his remuneration, if he hastened or delayed the pilgrimage without the consent of the person who appointed him.

Rule 119: If an agent is prevented or blocked from performing the ceremonies, the same rules apply to him as would have applied to the principal if he had been performing the pilgrimage personally. These rules will be set out below. If the agency agreement was confined to that year, it becomes annulled. If it was not, the liability to perform it remains on his shoulders, and the principal can repudiate it, if there was a condition that the pilgrimage be performed in that year.

Rule 120: If the agent commits an act which attracts a kaffarah, he must pay for it from his own property, regardless of whether the agency is gratuitous or for a reward.

Rule 121: If the remuneration for pilgrimage is a fixed sum which proved insufficient for the expenses, it is not obligatory on the principal to meet the shortfall. Likewise, if the remuneration proved in excess, the agent would not be obliged to refund the excess.

Rule 122: If a person is appointed agent to perform an obligatory or an optional pilgrimage but vitiates it by having sex before reaching Mash'ar, it is obligatory on him to complete the pilgrimage, which will be valid insofar as the principal is concerned.

It is obligatory on the agent to perform an obligatory pilgrimage in the ensuing year and pay a penalty. However, it is obvious (*adh'dhahir*) that he is entitled to his remuneration. If he does not perform the pilgrimage in the ensuing year, for good reason or without it, the rule still applies, requiring him to perform the pilgrimage at his own expense.

Rule 123: Although according to the agreement, the remuneration becomes the property of the agent, it is not obligatory to make payment to him until he has completed the pilgrimage unless there was express agreement for earlier payment. It is clear that the agent can stipulate that the remuneration be paid before the pilgrimage, for generally it is not usual that an agent should proceed on the pilgrimage

and undertake all the ceremonies without having received the remuneration.

Rule 124: If a person is appointed agent for pilgrimage, he cannot subcontract it to another person without the consent of the party who appointed him. However, should the hire be in return for a debt, and no date was appointed to start pilgrimage, the principal is free to hire another person.

Rule 125: If a person is appointed an agent to perform Hajj-ut-Tamatu' in good time but, per chance, the time became short and the agent changed Hajj-ut-Tamatu' into Hajj-ul-Ifraad, and after completing it performs the Umrat-ul-Mufradah, the obligation of the principal will be discharged.

However, the agent will not be entitled to his remuneration, if his appointment was conditional on performing the ceremonies. If, on the other hand, it was conditional on the obligation of the deceased being discharged, he will be entitled to the remuneration.

Rule 126: If the pilgrimage is optional, there is no objection to the agent performing it on behalf of a number of people. With regard to obligatory pilgrimages, an agent can perform it on behalf of one person only, except if the pilgrimage has become obligatory on two or more persons jointly.

For example, if two persons make a vow that they will together with a third jointly contribute towards the remuneration of an agent to perform a pilgrimage, it is permissible for them to appoint one agent on their behalf.

Rule 127: If the pilgrimage is optional, there is no objection to a number of people becoming agents in one year on behalf of one person, living or dead, gratuitously or for reward. The same rule applies to obligatory pilgrimages, if they are many. For example, there may be two pilgrimages obligatory on a person, living or dead, in respect of two vows, or one of them may be Hajjatul Islam and the other obligatory by reason of a vow. In such circumstances, it is permissible to appoint two agents, each to perform one of them.

Similarly, it is permissible to appoint two agents, one of them in respect of an obligatory pilgrimage and the other an optional one. It is not far from correct to say that two persons can be appointed agents for the same obligatory pilgrimage like Hajjatul Islam, as a matter of precaution, in the fear that the pilgrimage of one of them may be spoiled.

Rule 128: tawaf is a recommended act of worship in itself. It is, therefore, permissible to appoint an agent to do it on behalf of a deceased and also a living person who is away from Makkah, or in it, but was unable to perform it himself immediately.

Rule 129: There is no objection to an agent, on completion of the pilgrimage for which he was appointed, performing an Umrat-ul-Mufradah for himself or another person. Likewise, he can then make tawaf for himself or another person.

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