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The Rules of the Will

Issue 945: The will (Wasiyah) is that people seek to establish a particular act after their death. This will is called the covenant will (Al-Wasiyah Al-'Ahdiyyah), like someone making a will regarding matters related to his burial shroud (Kafan), the place of his burial and his ceremonies. Or someone makes a will that part of his property is the possession of an individual after his death. This will is called the will of transfer of property (Al-Wasiyah At-Tamleekiyyah). Or he specifies a caretaker or guardian for his children.

Issue 946: It is permissible for he who intends to make a will that he note what he desires by words or writing. When he is unable to speak or write, it is permissible to make a will by gestures which convey his intent.

Issue 947: In addition to the will, it is permissible to perform all of transactions (Mu'aamalah) by means of writing or undertaking an action according to what is common in our present time whereas records are completed by the method of receipts and signing it. However, in marriage and divorce, it is objectionable to be content with writing.

Issue 948: Conditional in the one making the will is that he be mature (Baaligh) and sane ('Aaqil). However, the child who is in the age of ten who can distinguish between good and evil, when he desires to will a certain righteous act, like building a Masjid and school and hospital or he wills some matters for his relatives (that are) appropriate and reasonable, his will is proper.

As such it is conditional that the one making the will not be incompetent (Safeeh) nor restricted from utilizing his property by the ruling of the Religious Authority and that he make the will with intent and free will and is not compelled nor forced.

Issue 949: When people witness the effects of death and its signs in themselves it is obligatory upon them to surrender deposits (Amaanaat) and immediately return them to the (appropriate people). Just as it is obligatory upon he is indebted and the term of his debt has arrived (it is obligatory) that, without delay, he will immediately pay it. When it is not possible that he can act like that or the term of payment of his debt had not arrived, it is obligatory that he make a will (regarding it). When he is not content that

they will come to know of his will, it is obligatory upon him to bring someone as a witness for it. When he is content that his heirs will pay his debts, a will is not obligatory upon him.

Issue 950: He who witnesses the effects of death and its signs and has Khums, Zakah and the restitution of an injustice obligatory upon him, it is obligatory that he immediately set out to pay that which is obligatory upon him. When that is not possible, then, if he has property or does not have property but there is a probability that his relatives will pay it on his behalf, it is obligatory that he make a will (to that effect).

Likewise, when one has an obligatory pilgrimage upon him and when the Qadhaa' of a prayer or fast was in his responsibility, it is obligatory upon him to make a will, according to obligatory precaution (with the observance of that which has passed in the prayer and fast for hire).

Issue 951: He who has a debt, an obligatory pilgrimage, Khums, Zakah and whatever is similar to that in his responsibility, and, then, dies, it is obligatory to pay these matters from the principle of his property, although he had not made a will. When some is in excess, if he had willed to disburse of third of it or something from its third in a particular area, it is obligatory to act according to his will.

When he had not will anything to anyone, there is not third for him, rather, whatever is in excess of the payment of his debts is for his heirs.

Issue 952: It is not permissible for people to make a will for more than one third of his property, except when the heirs give permission for that, whether this permission was before his death or after his death. It is not permissible for the heirs to revoke their permission after his death, whether they had permitted it and given permission before his death or after it, according to obligatory precaution.

Issue 953: When there were various will for various actions for a person and the third (of his property) is not sufficient, it is obligatory to act according to what has come in his will in the first sequence. Then, the first until it reaches a third and the remaining will is invalid (except with the permission of his heirs).

As for when one mentions in his will the obligatory acts (like the pilgrimage, Khums, Zakah and injustices) also this part of the will is taken from the principle of his inheritance and the remaining from the third.

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