

# The Individual Will (*Wasiyya*) and the General Rules of Inheritance (*Mirath*) In Islamic law

BY  
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## Sources:

1-The individual will, *wasiyya*, is mentioned in the Quran twice: in Sura 2 verses 180-182 and in Sura 5 verses 106-108.

The general rules of inheritance, *mirath*, are mentioned in Sura 4, verses 11-14, 176.

Besides, general moral and legal guidance is introduced in the same Sura verses 7-10 without specific details about the division of the inheritance.

2-Some traditions of the Prophet that are relevant to each will be referred to during the discussion.

## Areas of discussion

1- What is the relation between the rules of the individual *wasiyya* and the general rules of inheritance "*mirath*"? Do they work together? If so are they both considered at the same binding level and the Muslim has the right to choose? Or do they have to be taken together and they work in a certain way indicated by the Prophet's traditions and juristic elaborations?

2- According to such indications, is there a determination of a certain proportion of the inheritance that is allowed for the *wasiyya* which may be given by the bequeather to whoever or whatever he/she decides to give?

3- Within such allowed proportion for *wasiyya*, can the bequeather give one of the eligible heirs an additional share in the *wasiyya* added to what this heir gets according to the general rules of inheritance "*mirath*"?

4- Within the allowed proportion for the *wasiyya*, can a Muslim bequeath part of it or all of it to a non Muslim?

Let us now deal with these issues.

### 1-The relation between the individual *wasiyya* and the general rules of

#### inheritance:

A-The verse about *wasiyya* (2:180) has strong binding tone" *it is ordained for you, when death approaches any of you, and he/she is leaving wealth after him/her, to make a will in favor of the parents and (others)near of kin, observing what is*

*considered fair, this is binding on all who are conscious of God”* The verses 5:106-108 went further to regulate how the *wasiyya* should be made when one is suddenly facing death while traveling and no *wasiyya* has been made earlier, and this significantly points out the obligation of *wasiyya*.. This Sura, number 5, *Al-Ma’ida*, was revealed during the Prophet’s “*Farewell Pilgrimage*” and was the last Sura revealed.

**B-**A tradition of the Prophet ( *Hadith* ), states that: “*it is a strict obligation for a Muslim who has something to be bequeathed, that he/she should not spend three nights(or two, in another version) without having a will written under his/her head ( in bed )”*. (1)

**C-**Following this Hadith, in addition to verse 2:180, many jurists are of the opinion that making a *wasiyya* is mandatory. However others believe that *wasiyya* is only recommended and that the verses of *mirath* 4:11-14, 176 have become the general rules of inheritance, surpassing the verses 106-108 of Sura 5, *Al Ma’ida*, which was the last revealed Sura of the Quran.

**D-**Furthermore, the verses of *mirath* themselves state that the indicated shares are to be distributed only after setting aside what is included in a *wasiyya* or what is due as a debt.(4: 11-12). This exclusion is repeated four times through Sura 4.

**2-Maximum share allowed in *wasiyya*:**

The Prophet, in answering a question from the companion *Sa'd ibn Abi Waqqas* about how much he, *Sa'd*, may assign for charity in his *wasiyya*, indicated that: “*one third is more than enough, for it is better for bequeather to leave for his heirs what is enough for their needs rather than leaving them begging others*”. (2) This well accepted *Hadith*, though dealing with a specific individual case, is clearly discouraging giving the entire inheritance to charity, ignoring close family members. However it does not make a general rule that *wasiyya* should not exceed one third of the inheritance especially when this is meant to fulfil the special needs of close relatives in certain circumstances.

### **3-Wasiyya for an eligible inheritor “warith”**

There are various versions of *Hadith* reported by different narrators stating that a *wasiyya* should not bestow an extra share to an eligible “*warith*” by the general rules of inheritance, such as: “*God has given to each eligible heir his/her right and there should be no wasiyya for an eligible heir*”. (3) There is a version of the *Hadith* that allows additional shares through *wasiyya* for one or more heirs, if the other heirs agree: “*Wasiyya to an eligible heir is only legitimate if it is approved by the legal heirs*”.(4)

All these different versions of the *Hadith* have problems in their chain of narrators. This had been acknowledged by *Ibn Abi Shayba*, the authority on *Hadith*, but he

saw that the several defective chains of narration might support one another and so the *Hadith* could be accepted.

It seems that those who accepted these narrations have been influenced by the view that the rules of inheritance, “*mirath*” in Sura: 4 verses 11-14, 176, are the general mandatory rules of inheritance which specify the heirs and their legal shares, and so such a weak *Hadith* would strengthen that view. However, this *Hadith* may be stressing that “*wasiyya*” should be fair and avoid favoritism. It is quite reasonable to hold the view that the Prophet, as a leader of the Muslim community, was using his discretionary judgement in certain given circumstances of time and place, since the Quranic verses do not mention such an exception in the rules of inheritance and there are no clear indications in the *Hadith* that it is a permanent rule and represents a divine revelation. Furthermore, the rules of “*mirath*” and “*wasiyya*” are not acts of worship “*ibada*” and consequently their purposes have to be definitely decided. Both are considered in juristic sources as worldly human dealings “*mu‘malat*,” and hence “applying the rule goes with its reason in existence or absence”. A *wasiyya* should not be made merely for special desires, personal biases and favoritism, but rather to address the needs of different members of the family and to provide for those who have special needs like women without support, the elderly, the disabled or the chronically ill. Such persons in these given cases, may get larger shares than

other eligible inheritors who are equally related or even more close to the bequeather. *Ibn Rushd* and a majority of jurists are of the opinion that this is lawful if the other heirs agree, since this is a matter related to the rights of these heirs and not a matter of ‘*ibada*’.

It seems clear in the Quranic text that making *wasiyya* is an obligation, and it can have priority over the general rules of inheritance according the Quranic verses providing these rules.

However, *wasiyya* is to be made fair by a bequeather, knowing that he/she will be answerable to God in the eternal life to come. As *wasiyya* is a matter of *mu‘amalat*, tailoring the distributions of the bequeathed property according to the real needs of every heir, and not only to the strength of the biological relationship to the bequeather, will secure fairness while the basic rights of the other relatives are secured as well.

However, an abuse of the discretionary *wasiyya* is possible, the same as the case with the mandatory general rules of *mirath*. Sham sales and donations to increase the mandatory share of a certain heir or reduce the share of another, or even completely deprive eligible heirs from their legitimate shares according to the rules of *mirath* are known and practiced. Allegations against the bequeather’s psychological or mental health may be raised in a court of law by a wronged party.

God consciousness and ethical merits of all parties should essentially dominate and secure the rights and obligations in the society better than any law.

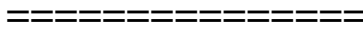
#### 4 -The wasiyya of a Muslim for the benefit of a non-Muslim:-

There is a *Hadith* that states “A *kafir* does not inherit a Muslim, and a Muslim does not inherit a *kafir*”(5). It seems that this *Hadith* cannot be applied to the “*People of the Book*”, as there are special rules in dealing with them differently from the *kafirs*. Looking back at the circumstances when this *Hadith* was said, it seems that it was related to dealing with apostates “*murtaddin*”.

Even the version of the *Hadith* that states: “*People of two faiths cannot inherit one another*” is to be understood in the context of the situation between *kufr* and Islam at that time in Arabia.

The *Hanafi* school of thought is explicitly accepting the *wasiyya* of a Muslim to a *dhimmi* , an individual from the *People of the Book*, who is living within the Islamic state, so long as this person is not fighting against Muslims or has not left to live in a country that is in war with Muslims. The *Hanbalis* consider legal the will of a Muslim not only to a *dhimmi* but also to a *kafir* even if the person resides in a country at war with Muslims, as long as the beneficiary himself / herself is not actually fighting Muslims.

It is clear then, that the *wasiyya* of a Muslim to a non-Muslim and vice versa is lawful, especially when Muslims are living as minorities in non-Muslim countries, since Muslim men may marry non-Muslim women. Such *wasiyya* would strengthen family relations and emphasize the principles of justice in *shari'a* as well as the good of the concerned family. Furthermore, this will stress the fact that *shari'a* is for all humans and secures their rights and needs.



### ***Hadith* References**

- 1-The Six (well known collectors of *Hadith*) and Malek, Ahmed and al-Dharmi.
- 2- The Six, Malek and Ahmed.
- 3-The Five (excluding Abu Daoud or al-Nasa'i).
- 4-Ibn Abbas, one version and Amr ibn Shu'ayb in another version, both narrated by al- Dharaqutni.
- 5-The Six and Ahmed.