PRACTICE AND PROCEDURE IN THE APPLICATION OF WILL (WASIYYAH) UNDER THE ISLAMIC LAW BEING A PAPER PRESENTED BY HON. KADI ABBA A. MAMMADI SHARIA COURT OF APPEAL, DAMATURU – YOBE STATE.

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INTRODUCTION

In the name of Allah the beneficent the merciful, may the peace and blessings of Allah be upon our noble Prophet, Muhammad (SAW), members of his family, his companions and those who follow in their path Ameen.

I am highly honored by the invitation from the National Judicial Institute to present a paper on the topic: ***the practice and procedure in the application of Will (Wasiyyah) under the Islamic and customary Law*** to this August Conference. Wasiyyah is one of the ways through which property devolves from one to another. The institution is so comprehensive with respect to economic activities, wealth generation, humanitarian services, promoting empowerment among the Muslim community etc. Thus, bequest is an important subject matter that should be encouraged and discoursed especially through gathering of legal research, continuing legal education and mutual interactions. Because through such activities, exchange of ideas and accumulated experience are promoted to not only refresh the minds of the Muslims, but to also educate them to actively embark in making bequest to empower the poor and needy Muslims who are in dare needs.

The concept of Will making or (Wasiyyah) under the Islamic Law is a wide subject matter that cannot be covered in a paper presentation like this one considering the difference of opinions of notable school of jurisprudence like The Hanafi, Maliki, Shafi'i, Hambali and others just to mention a few.

However, for the purpose of this paper and easy understanding of the topic, I prepared my paper base on the principles of the Maliki Schools of thoughts as it is the applicable laws in Northern Nigeria.

WASIYYAH IN PRE-ISLAMIC DAYS

In pre-Islamic Arabia, persons were free to dispose of their property in favor of any one including heirs. The entire property could be given in favor of a stranger leaving his own children, parents and kindred. A person was also at liberty to give his entire property to one heir and could exclude others. In pre- Islamic days Wasiyyah was the same as contained in English Wills Act, 1837 where all property could be disposed of by will. But to remove the injustice of a man to himself and his heirs, as represented by Timothy Tanloju Adesubun Vs. Rasaki Yunusa,[1] Islamic

Law gives each heir specific fraction of the estate and limits the right of the testator to make a Will to one third of the estate.

ORIGIN OF WASIYYAH

The Hadith of the Holy Prophet Muhammad (S.A.W) reported by Bukhari as follows is the origin of Wasiyyah in Islam; 'Sa'd Ibn Abi Waqqas said. The messenger of Allah, peace be upon him, used to visit me at Mekkah, in the year of the farewell pilgrimage on account of my illness which had become very severe so I said, my illness has become very severe and I have much property and there is none to inherit from me except a daughter. Shall I then bequeath two thirds of my property as charity? He said "NO" I said, "Half" he said "NO" then he said 'Bequeath one third and one third is much, for if you leave your heirs free from want, it is better than that you leave them in want begging other people. You do not spend anything seeking the pleasure of God except that God rewards you including what you put in the mouth of your wife.[2] Islamic law gives each heir specific fraction of the estate and limits the right of the testator to make a will to one third of the estate. The concept is that a Muslim as well as what he earns in life belongs to God. When the former dies the ownership of all he had reverts to God, who decides what to do with his property. The one – third for the Wasiyyah is God's grace. It was reported that the Prophet peace of God be on him, said; Allah the most High said:- Oh Son of Adam, you have no control over two matters by the time I take your life. I gracefully grant you power over a portion of your estate for the purpose of purifying you and keeping you holy. You have no control over the prayers of my servants for you after the expiration of your life. (It is a matter of grace of God)[3].

DEFINATION OF WILL (WASIYYAH)

The word (Wasiyyah) may be understood to be a gift which may be in form of cash, claim of debt or any other benefit in which the transfer of the right from the benefactor to the beneficiary becomes effective only after the death of the benefactor. It covers any instruction by a person that certain obligations in respect of certain outstanding duties against him, which he did not carry out before his death is fulfilled.[4] for example an order or instruction made by a testator that a debt he owed be paid to his creditor or the (Zakah) outstanding against his wealth

be deducted from his estate or that a property entrusted to him be handed over to the rightful owner, or a portion of his property he left behind be utilized for charitable deed in favor of an individual or organization or the like of it.

In other words, it offers to the testator an opportunity of correcting to a certain extend the law of succession, by enabling some of those relatives who are excluded from inheritance to obtain a share in his goods and or recognizing the services rendered to him by a stranger.

Usually, it is the practice of scholars to venture a definition whenever they discuss a term in order to have better perception and appreciation of it. Wasiyyah in this context is not an exception. The concept of al-waṣiyyah or al-Tawsiyyah (will-making) emerged. Al-Jibali defines Al-waṣiyyah as a set of instructions given by a person to individuals whom he expects to survive him which include monetary distributions, assignment and rights.[5] According to Imām Muhammad Idrīs al-Shāfiʻī, al-Waṣiyyah means "authorizing possession of one's wealth or possession to someone else after one's death by way of charity (tabaruʻ).[6]

- Jarman on will says:- "It is an instrument by which a person makes disposition of his property to take effect after his death, and which is in its own nature ambulatory and recoverable during his life"
- The Fatwa – I – Alamgiri defines a "will" (Wasiyyah) "as a conferment of a right of property in a specific thing, or a profit or a gratuity, to take effect on the death of the testator."[7]
- Durrul Mukhtar defines, "Will "(Wasiyyah) "As an assignment of property to take effect after one's death"[8]
- Hasiyatud Dasuki, "It is a contractual transaction which gives legatee a right in testators one third, and becomes binding after the death of testator.[9]

From the above definition, (Wassiyyah) may be understood to have salient feature. Which include: - Offer and acceptance, presence of a testator, a legatee, its limitation to a maximum of one third, can only come to effect after the death of testator.

LEGALITY OF WASIYYAH

Under the Islamic Sharia, all Principles of Islamic Law must have justification for their existence in either the primary or secondary sources of Islamic law before they can command any respect or compliance. Wasiyyah in this context is not an exception when we consider the following verse and Hadith.

The Qur'an says: 4: 180

> "It is ordained for you when death approaches any of you and is leaving behind march wealth to make a bequest in favour of parents and other next of kin in accordance with what is fair, this is binding on all who are conscious of Allalh"

From the Hadith, the following have been reported:- Abdullahi Ibn Umar (RA) narrated that Allah's Apostle (SAW) said;

> "it is not permissible for any Muslim that has something to bequeath to stay for two nights without having the bequest written and kept"

It should be noted that the whole purpose of allowing Muslims to bequest one third of their property at the period of their death is to maximize reward after they have physically lost control over it.

ABROGATION OF VERSE 180, CHAPTER 2

The will or bequest is one of the fundamental practices enjoined upon Muslims at the early stage of Islam as enshrined in Q2:180 before it was legally abrogated with verses of inheritance and hence; it became recommendatory and discretionary for Muslims to activate al- waṣiyyah term from their estate in as much it does not exceed stipulated quota of one-third of the total estate;[10] and even after its abrogation, it became a germane requisite of the whole succession process which must be done with before the devolution of the estate. This was affirmed in Q4:11 and 12 where Allah says "… After the payment of bequest or debt…"

Some jurist are of the opinion that verses 11,12, and 176 on inheritance in chapter 4 of the Holy Qur'an have repealed verse 180 of chapter 2 on Wasiyyah. Al-Qasimy, one of the commentators of the Qur'an opine that verse 180 of chapter 2 which sanctions making bequest to parents and near relatives has been repealed by the above verses in chapter 4.

And to apportion to them another share under bequest may amount to duplication on their own part and deprivation on the part of others.

According to Imam makili bequest to an heir without the approval of other heirs is invalid[11]

There are however, some scholars who insist that verse 11,12, and 176 have neither restrained the application of verse 180, nor abrogated it. They said the two verses can operate concurrently with those of inheritance conveying gift from Allah (SWA) to heirs and that of Wasiyyah conveying gift from the testator. They concluded by saying that their interpretation accords better with instructions mentioned many times across the Qur'an where we are enjoined to show compassion to our relatives, kith and kin.

It should be noted that the commandment about making a will was made at the time when the law on inheritance had not been prescribed. And its objective was to safeguard the lawful heirs against injustice.

But afterward this commandment was modified in two ways by the noble Prophet (SAW) in the light of the law of inheritance laid down in chapter 4 of the Qur'an.

First no one could bequest anything to legal heirs, i.e no legal heir could get anything more than his legal shares. Secondly, bequest was limited only to one third of the property.

It should be noted however that, the availability of witnesses to the writing and pronouncement of bequest is one of the fundamental aspects of al-Wasiyyah.[12] The witness/witnesses must be Muslim and if not possible, two non-Muslims are accepted provided that their testimonies is validated as explained in Q5:106-108. The Jurists also unanimously agreed that quantum of wealth or property of which a bequest or legacy can be bequeathed with equity must be an abundant wealth in tandem with various aḥādith in which the Prophet advised the dying companion who sought his opinion on what to give out as legacy or bequest. He told him that leaving their heirs wealthy is better for them than leaving them poor. This was the views and verdicts of A'ishah, Ali bn Abi Ṭālib and some Sahābah.[13] All in all, it is important to point out the following:

- Al-waṣiyyah was mandatory before the revelation of the verses of inheritance.

- The bequest verses were abrogated by inheritance verses in the cases of legal heirs but remain valid in favor of non- heirs.
- Al-waṣiyyah is voluntary and recommendatory as a form of Istiḥsān (doing well).
- The core value of bequeathing; that is, justice, usefulness to the legatee and not exceeding mandate of (1/3) must be upheld at any time.
- Al-waṣiyyah is unacceptable and has no merit when the wealth of the Mūsiy (The Testator) is meager and scanty.

AL-WAṢIYYAH ACCORDING TO THE MĀLIKI SCHOOL OF THOUGHT

The Māliki School defines al-wasiyyah as a "aqd (contract) that obligate one-third of the testator's property to be given out to legatee with the occurrence of testator's death".[14] It is shown from the above definition as given by the Māliki School that al-wasiyyah entails the transference of certain portion of someone's estate (not exceeding one-third) to his legatee (al-Muhsa lahu) while alive and which must be executed after his death before the devolution of whole property among the heirs.

CONDITIONS AND BENEFITS OF AL-WAṢIYYAH

Al-waṣiyyah in Islam must be Sharī'ah-compliant wills in the sense that:

i. Testator (al-Mūṣiy) can only give away up to one-third of his or her property.
ii. The Legatee (al -Mūṣālahu) must not be an individual who is a legitimate heir to inheritance.[15]
iii. The utmost benefits behind Al-waṣiyyahis is its adoption as a valuable tool that affords the testator flexibility to bequeath assets to those he or she deems deserving; and it also safeguards the close kin who are entitled to their share under Sharī'ah law from being disinherited.
iv. It gives non-Inheriting relatives such as adopted child and non-biological parents' leverages of being legitimately enriched and accommodated into the testator largesse.[16]

v. There must be an existence of a genuinely written will by the testator or a witnessed verbal pronouncement attested to by relatives as made by the testator while the Sīqah (pronouncement) of Ijāb and Qubūl- offer and acceptance- is necessary.

vi. The willed property (Mūṣā bihi) must not exceed one-third of total estate.

vii. The Testator (Al-Mūṣiy) must be an adult, sane and has the legal capacity to dispose of whatever he bequests.

viii. The willed property (Mūṣā bihi) must not be made in favour of legal heir at the time of death of testator because "there is no bequest for the heir".[17]

ix. The Legatee (Al-Mūṣā lahu) must be in existence at the time of death of the testator.

x. The appointed will executor (Al-Wālī Al-Mukhtār / Al-Wāsī Al-Mukhtār) appointed by the testator must endeavour to carry out the wishes of the testator.[18]

PILLARS AND CONDITIONS OF AL-WAṢIYYAH

In unison, three Schools (Māliki, Shāfi'ī and Hanbali) opined that the Pillars of al-wasiyyah are four (4); these are:

i. The Testator (Al-Muhsy) the one who makes the bequest.

ii. The Legatee (Al- Muhsa lahu) the one whom the bequest is made for.

iii. The Estate or Property (Al-Muhsa bihi)- the property to be taken as bequest by the legatee.

iv. The Language of offer and acceptance (Sīqat al-Ijāb wa al-Qubūl).[19]

In their own submission as regards the pillars of al-waṣiyyah, the Hanafi school believed that there is only one pillar of al-wasiyyah; that is, al-Ijāb wa al-Qubūl (offer and acceptance) which they believed has encapsulated the other three pillars propounded by other schools.[20]

They believed the bequest entails the condition of offer and acceptance in which the offer must be made by a capable testator while the acceptance is validated only after the death of the testator. They opined strictly that the bequest execution involves "right of ownership" only after the death of the testator.

Some scholars of this school also opined that offer and acceptance or offer and rejection has no meaning except after the death of the testator while some further opined that acceptance is not a condition of al-waṣiyyah since al-waṣiyyah itself is a micro-mechanism in Islamic law of inheritance; and that acceptance might either be by vocal response or by way of gesticulation (Ishārah). The school also explained that the conditions of al-Wasiyyah entails the testator to be "matured", must be a sane person, must never be in damning debt, must not be a fugitive or criminal, not a slave and must not be suddenly afflicted with dumbness (al-akhras) at the time of giving bequest and that the legatee must be known to the testator and that he/she must not be the killer of the testator either unintentionally or intentionally. The school concluded that it is not mandatory for a legatee to be a Muslim; thus giving a bequest to ahl al dhimmi (the protected non-Muslim) is allowed except the apostate (al- Murtad) who is not eligible to benefit from the Muslim bequest.[21]

There are two conditions that must be upheld as regards al-wasiyyah according to Māliki School. These are:

i. The testator must be a free man (Al-Hurr).
ii. He must be a sane person (al- ʻĀqil).

On the issue of offer and acceptance, the Maliki scholars opined that it must be an explicit utterance which stipulates the offer and that the acceptance occurs after the death of the testator. It was further legalised that even if the legatee died before accepting the bequest, his heirs would stand his stead in accepting the bequest except when the waṣiyyah is not specific like the one bequeathed to the poor and indigents. They also discussed a case whereby the bequest devolution was delayed to be accepted after the death of the testator until the bequeathed property appreciated. The scholars of the school opined thus:

i. Some believed that all of the bequeathed properties belong to the legatee.
ii. Some scholars believed that the bequest belong to the testator, while others.
iii. Believed that the legatee has only one-third of the appreciated property.[22]

THE JUDICIAL PRONOUNCEMENT OF AL-WAṢIYYAH

Abdur-Rahman al-Jazīrī opines that in some cases, al-waṣiyyah becomes mandatory, recommendatory and forbidden; and on these, there are divergent opinions enunciated by the four schools. In Maliki School, the judicial verdict of al-waṣiyyah is divided into five; these are:

i. Compulsory bequest which must be made by an indebted testator to pay off his debt or to return legacies to the rightful owner.
ii. Forbidden bequest such as making a request for people to wail after his death.
iii. Recommendatory bequest such as the bequest made for the poor relatives.
iv. Detestable bequest such as a bequest made by someone who possess meager property in the midst of his heirs
v. Acceptable bequest is a bequest made without any issues raised above.[23]

It's clear from the fore-going that all the Sūnni Schools unanimously agreed on some form of judicial pronouncements on al-waṣiyyah classification which is recommendatory, compulsory, detestable, forbidden and acceptable except that they gave some different instances under each classification.

WILL ACT A KIN TO BEQUEST IN ENGLISH LEGAL SYSTEM

In English legal system, bequest is called a Will. And under the Will Act, an English man was given unlimited power to transfer his property by Will before his death in favor of persons outside the families leaving members of his family in dare need and want.

Going by the provisions of Section 3 of the Will Act 1837, a statute of general application which applied in this country, in October, 1960, the right to make a Will in terms of absolute freedom was almost the same.

However, Section 3 of the Will Act 1837 did not find favors in the Northern State of Nigeria as same was contrary to the provision of the Sharia Laws. Section 3 of the Will Act provides that:

It shall be lawful for every person to devise, bequest, all property or dispose of, by Will executed in Manner hereinafter required all real estate and all personal estate which he shall be entitled to either at law in equity, at the time of his death, and which if not so devised, bequeathed, or disposed of, would devolve (upon the heir – at – law or customary heir of him, or if he became entitled by descent of his ancestor, or) upon his executor or administrator.

CONSTRUCTION OF A WILL

As a general rule no formality is required for making a will. Any expression of unequivocal intention is sufficient. A will may be made in writing or be made orally.

(a) Where it is made orally, it is necessary to have two men, or one man and two women, testify as witnesses to the validity of the bequest.[24]

The witnesses must be respectable persons of good moral character who have not violated Islamic law.[25]

The testimony of heirs (even one) also is sufficient to certify a written or oral bequest, provided they are trustworthy and can support their testimony under oath.[26]

Another method of confirming a bequest is by a declaration of the testator (Musi) of her wishes in front of a Judge, the contents of which are then recorded in a registry.[27]

(b) In the case of a written will, there are two types: a holographic will, and a bequest under – seal. A holographic will is one that is entirely prepared dated, and signed, by the testator himself or herself. Although a holographic will requires no attestation it is only permitted if the hand writing of the Musi is distinct and recognizable.

In other words, a signature is not necessary to confirm a Will, as long as it can be confirmed through hand writing analysis that the bequest was made by the decedent.[28]

But a signature of the Musi is important to certify a Will that has been typed or has been drown by someone other than the testator.

Holographic wills are common and are often created in emergency situation such as when the testator is alone, trapped or seriously ill.

A bequest under seal is the one prepared and written by a lawyer, or lawyers or witnesses. In other words it is a Will prepared by professionals or at least witnesses to the desires of the testator. Jurist requires that witnesses in both types of Will should be aware of the contents of the documents that the testator signs.[29] A formal attestation clause, such as, "We, the undersigned witnesses affirm the correctness of this document....." is not necessary, but is regarded as desirable.[30]

TESTAMENTARY POWER AND ITS LIMIT

The testamentary capacity of a Muslim is limited in two ways. He does not possess an unlimited power of making disposition by will.

There are two restrictions: One is in respect of person and the second is as to the extent to which he can dispose of his property.

In respect of person, there are two notable exclusions from that status. First, a person who causes the death of the testator cannot profit from his wrong doing by being a beneficiary. Second, potential heirs who has fixed share as designated by the Qur'an. However, there is an exception: A Qur'anic heir can be a beneficiary of a legacy if the consent of other heirs is obtained at the time of or after death of the testator.

As to the extent to which he can dispose of his property the disposition is subject to the one – third cap rule during his lifetime by way of bequest. In other words, no bequest maybe made in excess of one – third of the deceased person's net - estate. A bequest made in favour of the legal heir or in excess of one – third of the net – estate is called ultra-bequest. And it is not valid unless consented to by the heir. The excess of the one – third is normally subtracted from the share of the consenting heir.

KILLING AS A BAR TO BEQUEST

On whether killing of the testator by the legatee constitutes a legal bar to bequest there emerged two legal authorities; where the testator made a bequest to a legatee who causes the testator's death and the testator is aware that the legatee was the cause of his death and does nothing to change the bequest in favour of his assassin, according to this authority the bequest is valid.

Execution of the bequest will be on both the original estate from which the bequest was made (net estate) and any compensation (Diyyah) which the assassin may be liable to pay to the heirs of his victim.
In a situation where the victim is not aware of the fact that his death was caused by the legatee there are two authorities:
i) That when the fact becomes known to the victim, the bequest is void as it is natural and human that a person will hardly do a favour to one who intends evil towards him.

ii) Second view is that the bequest is still valid in favour of the assassin despite the crime committed. Here, it is in line with Islamic teaching of returning good for bad and the quality of forgiveness as referred in the Qur'an. The second interpretation according to some opinion goes contrary to the basic principle of law which subject criminals to punishments according to the gravity of their crimes.

PAYMENT OF COSTS AND DEBTS

Before any payment out of an estate is made to an heir, two items must be paid. First, the costs of funeral of the decedent are due immediately at death. The size of these costs varies across families, places, and socioeconomic contexts. While Islam forbids cremation of a decedent, and requires burial with the face of the decedent facing Mecca, it does not require surviving relatives to spend a fortune, nor does it dictate an elaborate funeral.[31] Expenses under this category consist of cost incurred in respect of funeral expenses of the deceased person like:

a. Cost of washing the remains of the deceased including the wages for those who wash the body;
b. Transporting the body to grave yard.
c. Preparing the grave for burial
d. Perfuming the body and
e. Kafan (piece of white cloth) in which the body is shrouded.

Second any debt of decedent must be paid after his death. Majority of the Muslim jurist holds the opinion that the date on which payment stipulated does not fall due on the death of the creditor but it falls due on the death of the debtor. It will

be in the interest of the debtor (testator) if the debt is paid soonest, after his death and before the date falls due.

The jurists rely on the Hadith of the Prophet of Allah (SAW) which says:

> "The soul of the dead person will continued to be held in detention on account of a loan he has taken until the loan is paid"
>
> Where the debts consumes the entire estate, or worse yet, are larger than the estate, then the assets of the decedent are distributed in pari passu (In proportion to the claims of the creditors). Rights and obligations of a decedent for example, those associated with a contract do not survive the death of the decedent. Must contracts are terminated by the death of a contracting party. Likewise, death of a partner can be a termination event in a partnership agreement.

FACTORS VITIATING BEQUEST:

a. Apostasy of the parties, is a vitiating factor of bequest
b. If it is contrary to Islamic Law
c. It is vitiated if made with a subject matter, whose acquisition, possession, use, transfer, or consumption is declared unlawful by Islam.
d. If done in excess of the share of the one – third or in favour of the heir if not consented to by the other heirs.
e. It is vitiated for lack of capacity.
f. On the ground of consumption of the subject matter, its destruction or transfer to another person.
g. It is vitiated on the withdrawal of the offer
h. It is vitiated upon the ground of alteration of the subject matter, to an entirely new thing altogether.
i. It is vitiated on rejection of offer.
j. It is vitiated on the death of the legatee before the testator[32]

SAMPLE:

A STANDARD FORM OF ISLAMIC WILL[33]

LAST WILL AND TESTAMENT OF ----------

ARTICLE-1: PREAMBLE

In this article you are to praise Allah (SWT) before you start stating anything in the Wasiyyah.

For example:

All praise is for Allah (SWT) the creator of heavens. I praise Him; I seek His help and His forgiveness. I believe in Him and put my trust entirely in Him. I seek refuge with Allah (SWT) from the evils of myself and my deeds. Whom Allah guides no one can mislead, and whom Allah misleads no one can guide.

I testify that there is no deity except Allah, He is one and has no partners, and I further testify that Muhammad (PBUH) is Allah's servant and last messenger.

I, _ _ __ _ __ _ _ _ _ _ _ _ _ _ _ _ _, a Muslim, presently resident of _ _ _ _ _ _ being of sound mind and memory, declare the following is my Will (Wasiyyah). I do hereby revoke any and all former Wills and codicles that I have previously made. I ask all my friends, relatives and others, whether they be Muslims or non Muslims, to honour the spirit and letter of this document and not to try to obstruct or change it in any way.

ARTICLE -2: MY IMMIDIATE FAMILY

1. I am married to _ ____ _ _ _ _ _ _ _ _ _ _ _ _ _ _ _ and all references in this will to my husband/wife are to him/her.
2. 2. I am the father/mother of the following children whose names and dates of birth are:
   i) _____

ii) _____

iii) _____

iv) _____

3. ARTICLE - 3: EXECUTOR AND BENEFICIARY

1. I hereby give all my estate :
   Cash, bank accounts, real property, shares in any business and any other property not mentioned in this will, to the person named below, who shall act as executor to serve without bond to distribute it according to the Sunni Muslim Sharia. My husband/wife __ _ _ _ _ _ or if he/she fails to survive me by 45 days, the Imam of the local Sunni Muslim community.
2. I ordain that the executor of this will be a Muslim.
3. I direct that the executor take all actions legally permissible to have the probate of my estate done as simple as possible.
4. I give my executor named above power to sell any property real, personal or mixed, in which I have interest without any order and without bond.
5. I give my executor to settle any claims for or against my estate.

ARTICLE - 4: BURIAL ARRANGEMENTS

I ordain that:

1. My body be prepared for burial in keeping with Sunni Muslim's law (Sharia).
2. Under no circumstances my body be voluntarily turned over for autopsy or embalming or for organ donation.
3. My body may not be transported over any unreasonable distance from the locality of death unless necessitated by circumstances or consensus of my Muslim family members.
4. My grave be dug in accordance with the Islamic practice. It should face the direction of the Qibla (towards the Ka'aba at Makkah, Saudi Arabia).

5. My body be buried without casket and the grave be covered with dirt only. And there should be no inscriptions or symbols on it.
6. My burial should take place as soon as possible, preferable before sunset on the day of my death or the following day.
7. No one is permitted to cry out, moan or wail. Only what comes out of the eyes is acceptable (tears). Muslims should say prayers for me that my grave be made spacious and comfortable.

ARTICLE - 5: CUSTODY OF MINOR CHILDREN AND GUARDIAN

If at my death any of my children are minors I recommend that my husband/wife _ _ _ _ _ _ _ _ _ _ be appointed guardian of the person(s) of my minor children provided he/she is a Muslim. If he/she is unable or unwilling to serve as personal guardian, I recommend that __ _ _ _ _ _ _ _ _ _ be appointed guardian of person(s) of my minor children. In all cases I urge that all minor children be raised to be practicing Muslims and not in any way be indoctrinated into any other faith or religion. And any property or inheritance that this will gives to any of my minor children should be administered by their personal guardian in the best interest of the children.

ARTICLE - 6: DEBTS AND EXPENSES

I direct my executor:

1. To return to the rightful owners all trust and properties that are in my care at the time of my death.
2. To pay any outstanding "obligation due to Allah (SWT) which are binding on me including unpaid Zakat, kaffarat of unperformed pilgrimage (Hajj), etc.
3. To first apply the assets of my estate to the payment of all my legal debts including such expenses incurred by my last illness and burial as well as the expenses of the administration of my estate, etc.

ARTICLE - 7: BEQUESTS

I direct my executor to pay the following amount from the remainder of my estate after paying all the expenses mentioned above, to the person(s) or

organization (s) named below.

The total must not exceed (one third) of the remainder of my estate.

1. _____ % of the remainder
2._____ % of the remainder
3. _____ % of the remainder

ARTICLE 8: DISTRIBUTION OF THE REMAINDER OF MY ESTATE

I direct my executor to:

1. Distribute the residue and remainder of my estate in accordance with tenets of the Sunni Muslim laws of inheritance.
2. Ensure that no part of the remainder of my estate shall be inherited by any non-Muslim no matter how he/she is related to me.
3. Ensure that should I die as a result of murder, no part of the remainder of my estate shall be inherited by my adjured murderer responsible for direct unlawful killing no matter how he/she is related to me.
4. Regard a fetus, conceived before my death, whose relationship to me qualifies it to be an heir according to this article if it is born alive within the limit of time specified by Sharia. If such fetus exists at the time of my death, the executor may delay the distribution of the remainder of my estate after the execution of Articles 1 to 7 until after the birth of the fetus then he must withhold a portion of the estate equal to the share of the fetus for distribution until after birth of the fetus.
5. That in case of any difficulty in distributing my estate according to this Will, the matter should be referred to a Muslim knowledgeable in Islamic inheritance law for advice and guidance.
6. That any portion of my estate refused to be received by any of the legatees referred to in this documents be donated to the following person(s) or organization(s) for establishment of Islamic communities and mosques.

ARTICLE - 9: SEPARABILITY

I direct that no part of this will be invalidated by a Court unless competent in Sunni Muslim's Law.

If any part of this Will is determined invalid by a court the other part shall remain valid and enforceable. I subscribe my name to this Will this day _ _ _ _at _ _ _ and do hereby declare that I sign and execute this instrument as my last Will and that I sign it willingly.
That I am of age of majority, legally empowered to make a will, and under no constraint or undue influence.

Name: _____ Signature: _____ Date: _____

WITNESSES:-

On this _____ day of _____
---------- declared to us, the undersigned, that the instrument was his/her Will and requested us to act as witnesses to it. He/she thereupon signed this Will in our presence, all of us being present at the same time. We now, at his/her presence of each other subscribe our names as witness and declare that we understand this to be his/her last Will, and that to the best of our knowledge the testator is of the age of majority, or is otherwise legally empowered to make a Will.

We declare under penalty of perjury that the foregoing is true and correct.

Witness 1: NAME.....DATE.....SIGN.....
Witness 2: NAME.....DATE.....SIGN.....

CONCLUSION

The institutionalization of al-waṣiyyah preceded al-farā'id in Islam and it was legislated by Allah for Muslims to give out of their wealth for non-heirs among their families, neighbors and relatives. The trend of al-waṣiyyah later changed with the revelation of āyāt al-mawārith- inheritance verses- which made the waṣiyyah discretionary and non-binding upon the legitimate heirs except as a gift with the consent of other heirs. The differences in opinions of these Scholars not on al-wasiyyah alone as a micro-mechanism of inheritance in Islam but on other religious verdicts were borne out of many reasons which include their divergent understanding of the revealed verses and prophetic traditions which discussed the subject matter; or the variance in time, location and materials availability. It's therefore concluded that, the variance of opinions by the Scholars of the Four Sūnni Schools as regard al-waṣiyyah on its definition, conditions, pillars, legality, types of bequest that can be made, the bequest maximum quotas and the will executor is seen as ultimate flexibility and accommodating tendencies that could only be found in Islamic law (Sharī'ah) aimed at giving Muslims leverage of practicing a fundamental tenet of their religion with ease and sense of purpose in order to be subservient adherents of Islam and true followers of the Messenger. From the principles of the Sharia Law on bequest, Muslim have been commanded to accord respect and compliance to the institution of bequest. They have also been cautioned to remain alert and dutiful that whenever there is something to bequest on, we should not be reluctant to do so in order to take advantage of having our account credited with the rewards from the almighty Allah in the day when any wealth not utilized in this life, will be of any use.

THANK YOU FOR YOUR PETIENCE!!

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