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MODULE 1

UNIT 1 LEGITIMATE MEANS OF ACQUIRING WEALTH IN ISLAM

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1.0 Introduction

To eat from one's labour is praised by the Prophet. This shows the importance of the source of wealth in Islam. When property is being acquired, one should be able to take into considerations the purpose of life (i.e to worship Allah). If this is well understood, one will be careful in the process of wealth acquisition. In this lecture, you will learn the real owner of wealth and that the creatures are trustees. You will also learn about private ownership of wealth and the three ways of acquisition of property.

2.0 Objectives

At the end of this lecture, you should be able to:

- Explain the definition of wealth
- Discuss how Allah is the real Owner of everything
- Discuss the trusteeship of man in relation to property
- Mention the three of the ways by which wealth is acquired
- Bring out some lessons from relevant Quranic quotations in this lecture.

3.0 Main Contents

3.1 Property and its Ultimate Owner

Property is referred to as *māl* (plural *amwāl*). Allah is the creator of everything. In fact, His divine attributes of creation are seen in all living and non-living things

He said, "Our Lord is He who gave each thing its form and then guided (it) Q20:50

On the issue of ownership, Islam affirms that the ultimate owner of everything is Allah. The Quran Says:

لَهُ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَمَا بَيْنَهُمَا وَمَا تَحْتَ الثَّرَى

To Him belong what is in the heavens and what is on the earth and what is in between them and what is under the soil Q20:6

In this verse, Allah tells us that He is absolute owner. This verse carries a comprehensive definition of everything we can conceive of. It mentions all that is in heaven, on earth, in between, or within the bowels of the earth. Therefore, man is never a real owner, but a trustee. The Quran says: Q57:7

آمَنُوا بِاللَّهِ وَرَسُولِهِ وَأَنْفَقُوا مِمَّا جَعَلَكُمْ مُسْتَخْلِفِينَ فِيهِ فَالَّذِينَ
آمَنُوا مِنْكُمْ وَأَنْفَقُوا لَهُمْ أَجْرٌ كَبِيرٌ

“Believe in Allah and His messenger and spend out of that in which He has made you successive inheritors (trustees) for those who have believed among you and spent, there will be a real reward”.

This verse clearly shows that “*khalq*” (creation) is only meant for Allah for He is the Creator of all those things that have fallen to the lot of man as His vicegerent. He did not only create everything (including man), he also subjugated to human being the basic requirements of life such as fire, water and food crops. What man does is to use basic ingredient provided by Allah such as air, water nerves etc to produce some other facilities and materials man does not create from nothing (ex-nihilo)

Q..... Allah say: And have you seen that which you sow? Is it you who makes it grow, or are We the grower? If We willed, we could make it (dry) debris, and you would remain in wonders..... And have you seen the water that you drink? Is it you who brought it down from the clouds, or is it We who bring it down?... and have you seen the fire that you ignite? Is it you who produced its tree or are We the producer?”

All these assertions are obvious things man also confirms. Man came into this world with nothing and found everything therein. Who created them? It is Allah, the Owner of various forms of wealth on earth. From these self-evident truths, nothing should be really attributed to man or regarded as his property. Allah owns everything. All the things considered to be the property of man and whose ownership he has assumed should be ascribed to Allah, the true Creator and Owner.

Despite all the realities, Allah still gives man the opportunity of amassing wealth or property. He does not deprive man of owning property. He even allows him to enjoy the fruits of his labour. Allah wants man to search for ways of making progress within His creations and property. Allah gives man sense of possession to develop property for his use. Through His grace wealth or property has been ascribed to man.

3.2 Private Ownership of Property in Islam

The Qur'an attributes property to man to foster progress among them. The attribution of property is contained in the Quran. "And do not consume one another's wealth unjustly or send it (in bribery) to the rulers in order that (they might aid) you to consume a portion of the wealth of the people in sin, while you know (it is unlawful). The examples of those who spend their wealth in the way of Allah and other verses related to man's ownership are contained in the Quran(Q2:267, Q4:5, Q47:36 etc).

In many verses of the Quran, man is urged to spend in the way of the original Giver, Allah. Who is it that would loan Allah a goodly loan so He may multiply it for him many times over? (Q2:245)

Man should see himself as a trustee who holds everything he has on behalf of Allah. Man should surrender his right to Him and so His wish. It is when a person believes that the wealth he has amassed is absolutely his, that he finds it difficult to spend it. But if he is convinced that all his properties are not ultimately his own, he would readily transfer some the property in his custody to the owner by spending it to those people that deserve it. He will not hoard it instead it will be spent in His cause. Allah warns man not to lose his focus so as to gain His pleasure. This explains why on death of man, Allah, the ultimate owner legislates on the redistribution of the wealth through inheritance. Allah Says:

Say (O Muhammad), "if your fathers, your sons, your brothers, your wives, your relatives, wealth which you have obtained, commerce where you fear decline and dwelling with which you are pleased are more beloved to you than Allah and His messenger and Jihad (i.e. striving) in His cause, then wait until Allah executes His command. And Allah does not guide the defiantly disobedient people (Q9:24)

So, it is when the conviction that their worldly possessions belong to them and not to Allah, and that they are not holding them only in trust that they find it extremely difficult to spend in the cause of Allah. But if they are totally convinced) that they own nothing and that their

worldly possessions belong to Allah they would be able to spend in Allah's cause.

3.3 Three ways of Acquiring Wealth in Islam

As mentioned earlier in this course, in Islam property can only be legitimately acquired through *kasb* or *Iktisāb* (earning work), *Mīrath* (inheritance) and *Hibah* (gift).. It should be noted that *iktisāb* may be through salaries, paid jobs, self-employment, proprietorship etc. Whatever may be the case the sources of wealth must be Sharī'ah compliant. It means it should not be from unlawful means such as brewery, prostitution, armed robbery and kidnapping. It is allowed for both males and females to work. The Quran says: men shall have the benefit of what they earn and women shall have the benefit of what they earn (Q4:32). It must be mentioned that Islam does not discourage people (males and females) from becoming very rich even to the extent of being millionaires or multi-billionaires, but the emphasis is on the source of wealth and the manners of spending. Therefore, no limitation is placed upon the property which an individual may acquire provided it is not sourced illegitimately.

Acquisition of wealth through unlawful means is discouraged. Many Quranic verses such as Q4:29 and Q2:188 speak against unlawful means of getting wealth. Allah says: O you who believed, do not consume one another's wealth unjustly but only (in lawful) business by mutual consent. And do not kill yourselves (or one another). Indeed, Allah is to you ever merciful (Q4:29). The following Quranic verses also speak against fraudulent means of acquiring wealth (Q2:188, Q4:58, Q5:33,38, Q2:219, Q5:90)

In Islam, dignity of Labour is given priority as has earlier been explained.

4.0 Conclusion

It is clear that everything belongs to Allah and He is the absolute owner of all that exists, and that man is only a trustee of whatever Allah has bestowed upon him. When the conviction that man's worldly possessions belonged to Allah and that he is holding them only in trust is firmly embedded in his hearts, he is enjoined to spend in the way of Allah what is left of his wealth after meeting his basic needs. In fact, spending in the way of Allah will not be difficult. It will be as easy as water flowing from the top of a high mountain down the earth. He will not feel the pain of departing with the wealth given to him because the Owner is the one taking it back.

5.0 Summary

In this lecture, you have learned:

- That property is referred to as *māl* in Arabic

- From Q20:6 that all that is in heaven, on earth, in between or within the bowels of the earth belongs to Allah alone
- That the corollary of Q20:6 is that man owns nothing. He is only a trustee. He came to this world with nothing and found everything that makes his sojourn there comfortable. The day he is leaving, he is not taking anything along. All these indicate that he is not the owner. From these self evident truths, it should not be difficult for him to spend the wealth given to him or acquired through inheritance, Hibah (gifts) and work in the way of Allah.

6.0 Tutor – Marked Assignment

- State the content of Q20:6 and relate it to ownership of property
- Discuss the private ownership of property in Islam
- What are the three ways of acquiring wealth in Islam

7.0 References / further Reading

Abdul Azim A (1978), Faridatu Allah Fil Mirath, Wal Wasiya, Darul Ansar, Cairo.

Abubakr b. Hasan Al-Katsin awi (nd) As-halul Madarik Lebanon: Darul Fikr.

Asaf A.A. Fyzee (1981), Outlines of Muhammadan Law New Delhi: Oxford University Press.

Muhamad Asad (1980), The Message of the Qur'an, Gibraltar: Dar Al-Andalus.

Salih Abdul Sami Al-Azhari (nd) Jawahirul iklil, Commentary on Khalil's Muhkhtasar Lebanon: Darul Fikr.

UNIT 2 ISLAMIC PROVISIONS FOR WEALTH CIRCULATION

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- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Quranic Basis for Wealth Circulation
 - 3.2 Islamic Institutions for Circulation of Wealth
 - 3.3 Prohibitions of Exploitations and Hegemony
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- 4.0 Conclusion
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1.0 Introduction

The Shariah (Islamic Law) aims at a just and equitable society where all segments of the society is fairly treated. It is natural to have disparity in materials possessions of individual members of the society but efforts should, and is made under the Islamic system, for re-distribution of wealth to alleviate and remove the burden of poverty from the disadvantaged and vulnerable groups in the society. Inheritance, with its well articulated guidelines is one of such formal institutions in Islam. Efforts will be made in this unit to call attention to some of the Islamic provisions for poverty reduction and the interconnection among the various institutions.

2.0 Objectives

At the end of this unit, you should be able to:

- Discuss Islamic attitude to wealth circulation
- List some of the provisions made by Islamic Law for wealth distribution
- Locate law of inheritance as part of the general provisions for wealth re-distribution in Islam
- Write on gender equity in Islamic law of family maintenance and inheritance

3.0 Main Content

3.1 Quranic Basis for Wealth Circulation

God in explaining why booty and other wealth should circulate among the citizens states in the Qur'an chapter 59 verse 7 that:
“So that (circulation of wealth) is not restricted to only the rich among you...” Qur'an 47 verse 38; 2 verse 271 among others stipulate acts of

charity involving redistribution of wealth. As a follow up Islam makes provisions for various channels through which wealth can be made available to the under-privileged through the acts of benevolence of the rich and virtuous acts of the citizens. Certain acts that are detrimental to equitable re-distribution of wealth are proscribed while provisions were made for institutions that promote circulation of wealth among the citizens.

3.2 Islamic Institutions for Circulation of Wealth

Islam establishes and makes elaborate details for the following poverty alleviation devices which, if properly executed in the society. The institutions include:

- (a) Education
- (b) Zakat – compulsory due from the well to do to the less privileged in the society. It is generally about 2 ½ % of the net property of the rich. It means 40 rich persons can annually turn a person in abject poverty into a rich person. Also prescribed are mandatory gift of prescribed quantity of food items for the poor at the end of Ramadan fast (zakatul-fitr)
- (c) Inheritance – It is also a veritable means of wealth circulation to those connected with the deceased by:
 - Blood (kinship)
 - Matrimony (Marriage bond)
 - Master / servant (slave – bond)
 - Common-citizenship (Public Treasury)
- (d) Charity – Recommended acts of charity:
 - Sadaqah
 - Hibah
 - Qaqf
 - Wasiyyah
 - Hard-work labour
- (e) Restitution (Kafarah) – When a person commits an error or omission in its religious rites and has to rectify them through some prescribed acts of charity to the poor. Such included feeding of prescribed number of poor persons; manumission of those in bondage; gifts etc.

3.3 Prohibitions of Exploitations and Hegemony

Islam prohibits the use of wealth to pauperise the poor. This explains why Islam prohibit usury through the wealthy exploit the poor and subjugate them to abject and perpetual poverty.

Islam also prohibits hoarding, profiteering, monopoly and cheating. These vices widen the gap between the rich and the poor in the society. Islam therefore sets to create a just and balance society where the poor is provided with an environment to get out of poverty.

3.4 Nafaqah and Inheritance Versus Gender Rights and Responsibilities

Islamic law makes balanced provisions of rights and obligations in socio-economic activities of each segment of the community. A member of the family enjoys, when appropriate, a share of the wealth of his or her dead relations as a benefit of their relationship through marriage or blood ties. Conversely, the same person has the obligation of maintenance, where applicable of his or her poor relations. Some rights and responsibilities are in kind while some are material and in cash. For example, keeping company of spouse and looking after a sick relation is non-material responsibility and rights. On the other hand, maintenance and inheritance are largely material.

To whom much is given, much is expected. The closer the blood tie, the heavier the responsibility of maintenance of the relation as well as the right of inheritance from the relation. In the same vein, male are entrusted with a large percentage of material responsibility of maintenance in the family.

For example as husband, son, father etc, the male is charged with the material responsibility of the female as contained in, among others, the following quotations from the Qur'an:

(a) Qur'an 2 verse 33 – 4

“men shall take care of women with the bounties which Allah has bestowed more abundantly on the former than the later, and with what they spend of their wealth”

(b) Qur'an 65:6

And mothers shall give such to their children..... And the man to whom the child belongs shall be responsible for their (mothers) food and clothing in a befitting manner.

(c) Qur'an 17:23

“Lodge them (your wives) where you live within your capacity and do not hurt them to incapacitate them. And if they are pregnant, spend on them until they deliver their burden. Then if they suckle for you, give them the recompense...

It is therefore expected that in inheritance too, general material benefits in favour of male, should be understood as justifiable. In many cases males have advantage in inheritance just as females have in

maintenance. It should however be noted, from subsequent units of this lecture, that, there are situations in inheritance where female are equally treated or even allotted greater portion of inheritance than their male counterparts.

It is thus not gender discrimination but gender equity which pairs legal rights with legal responsibilities. Since laws are made based on what is normal and most usual, exceptions to the rule, where the female discharges the legal responsibilities of the male cannot be made the basis of the norm.

4.0 Conclusion

It has been clearly shown that inheritance in Islam is one of many Islamic provisions for redistribution of wealth and that each of the provisions are interlinked with the others in order to allow circulation of wealth among the citizen. It is also clear that equality is not the same as equity. It is just to be equitable by weighing rights along with responsibilities. This is the case of Islamic provisions on Nafaqah (family maintenance) and inheritance.

5.0 Summary

The unit has been made to provide the primacy of just and equitable society where the poor are relieved by the rich and wealth is not allowed to be restricted to a particular group. The Quranic basis of the goal and some of the provisions for poverty alleviation are enumerated along with inheritance which is the subject of this course. We have also explained how rights are balanced with responsibilities in the Islamic law of inheritance.

6.0 Tutor – Marked Assignment

- Examine the position of Islam on exploitation and hoarding
- List some of the institutions of Islam which alleviate poverty in the society
- Explain the prohibition of usury and selfishness in Islam
- Compare the responsibilities of male members of the family with those of the female members in maintenance of the family
- Justify occasional gender disparity in Islamic law of inheritance

7.0 References / further Reading

Doi, A.R. (1984) Shari'ah The Islamic Law, London: Ta Ha Publishers.

Kareem M.K. (2011) Advanced Study of Muslim Law, Ibadan: University of Ibadan

Khan S.A. (2005) How to Calculate Inheritance: A Simple Approach, New Delhi: Good Books.

Majlisul Ulama of South Africa (n.d) The Book of Inheritance I, Lagos, Al-Waseelat

MODULE 2

UNIT 1 CONCEPT OF *AL-INFĀQ*

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- 5.0 Summary
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1.0 Introduction

One of the ways by which a Muslim can receive Allah's pleasure is to spend in His cause and for His sake only. In fact, in many places in the Quran, there are exhortations to spend one's wealth in the cause Allah to gain His love and blessings on the Day of Judgement. In this lecture, you will be exposed to the meaning of *infāq* and other acts that are associated with *infāq*. You would also learn various kinds of *infāq*. This will serve as an introductory step to the next lecture.

2.0 Objectives

At the end of this lecture, you should be able to:

- explain the meaning of *infāq*
- state the objectives of *infāq*
- mention and explain kinds of *infāq*
- list six categories of people that are entitled to *infāqas* contained in Q2:177

3.0 Main Contents

3.1 The Meaning of *al-infāq*

Infāqis is a word derived from an Arabic word *Anfaqa*. It is a verbal noun which means an act of spending or expenditure. Technically, *al-infāq* means spending for the sake of Allah. To show the importance of the

word, it is mentioned directly or through its derivatives about 166 times in the Quran. Q2:215

يَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلْ مَا أَنْفَقْتُمْ مِنْ خَيْرٍ فَلِلَّوَالِدَيْنِ وَالْأَقْرَبِينَ وَالْيَتَامَى
وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ وَمَا تَفْعَلُوا مِنْ خَيْرٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

Those who spend their wealth (in Allah's way) by night and by day, secretly and publicly – they will have their reward with their Lord. And no fear will there be concerning them, nor will they grieve. (Q2:274)

The salient lessons contained in these verses are to:

- spend from our wealth particularly the one which we love most.
- spend lawful things – spend what is lawful.
- be rest assured that for every money we spend, there is rewards for it.

3.2 Validity of *al-infāq*

Validity of *al-infāq* – it is clearly stated in many Quranic verses that it is not enough for people to worship Him with their parts of the body as in salat, but they should endeavour to spend out of their wealth in His cause to gain His favour and to achieve their desire. Two Quranic verses are quoted here to bring home our points

لَيْسَ الْبِرَّ أَنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ آمَنَ بِاللَّهِ
وَالْيَوْمِ الْآخِرِ وَالْمَلَائِكَةِ وَالْكِتَابِ وَالنَّبِيِّينَ وَآتَى الْمَالَ عَلَى حُبِّهِ ذَوِي الْقُرْبَى
وَالْيَتَامَى وَالْمَسَاكِينِ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ وَأَقَامَ الصَّلَاةَ وَآتَى الزَّكَاةَ
وَالْمُوفُونَ بِعَهْدِهِمْ إِذَا عَاهَدُوا وَالصَّابِرِينَ فِي الْبَأْسَاءِ وَالضَّرَّاءِ وَحِينَ الْبَأْسِ أُولَئِكَ
الَّذِينَ صَدَقُوا وَأُولَئِكَ هُمُ الْمُتَّقُونَ

“Righteousness is not that you turn your faces toward the east or the west, but (true) righteousness is (in) one who believes in Allah the Last Day, the angels, the Book and the Prophets and gives wealth in spite of love for it, to relatives, orphans, the needy, the traveller, those who ask (for help), and for freeing slaves; (and who) establishes prayer and gives Zakah, (those who) fulfill their promise when they promise; and (those who) are patient in poverty and hardship and during battle. Those are the ones who have been true, and it is those who are the righteous”(Q2:177).

This verse emphasizes spending in the way of Allah even before the issue of salat is mentioned. Six categories of people are mentioned in this verse as regards spending in the way of Allah: kin, orphans, needy, wayfarer, those who ask and the ransom of slaves. All those six categories are mentioned before salat. This is to show the importance of spending. The other verse that encourages spending and discourages miserliness is Q47:38

هَآأَنْتُمْ هَؤُلَاءِ تُدْعَوْنَ لِتُنْفِقُوا فِي سَبِيلِ اللَّهِ فَمِنْكُمْ مَّنْ يَبْخُلُ وَمَنْ
 يَبْخُلْ فَإِنَّمَا يَبْخُلْ عَن نَّفْسِهِ وَاللَّهُ الْغَنِيُّ وَأَنْتُمُ الْفُقَرَاءُ وَإِن
 تَوَلَّوْا يَسْتَبْدِلْ قَوْمًا غَيْرَكُمْ ثُمَّ لَا يَكُونُوا أَمْثَالَكُمْ

“Here you are – those invited to spend in the cause of Allah but among you are those who withhold (out of greed), and whoever withholds only withholds (benefit) from himself; and Allah is free of need, while you are the needy. And if you turn away (i.e refuse) He will replace you with another people, then they will not be the likes of you (Q47:38)

Therefore, it is good to spend one’s wealth to bring succor to the life of the suffering ones. From these verses and many others that are contained in the Quran, the objectives of spending should be in line with the intent of the Quran.

3.3 Objectives of *al-Infāq*

One of the basic objectives of spend is to win Allah’s favour in this world and the hereafter. Other objective is to give charity to fellow men with a view to relieving them of bodily pain or suffering. It is also to relieve people of adversities or hardships of all forms during the periods of peace and war. Another aim of spending is to spread the messages of Islam and to sponsor less privileged people in our society on education, health and shelter.

3.4 Kinds of *al-Infāq*

Infāq covers all forms of spending. It may be spent on the poor, needy, oneself, one’s family, society and relatives. The four kinds are:

- *Al-Infāqas* a religious personal obligation
- *Al-Infāqas* a religious circumstantial personal obligation
- *Al-Infāqas* a religious community obligation

- ***Al-Infāqas* a religious voluntary contribution**

3.4.1 *Al-Infāqas* a religious personal obligation – it is a kind of spending that is religious in nature. It is a religious obligation on all Muslims that are capable of spending. An example of this category is Zakah which is expended on 8 categories of people (Q9:60)

إِنَّمَا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ
وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ وَابْنِ السَّبِيلِ فَرِيضَةً مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَكِيمٌ

Zakah expenditures are only for the poor and for the needy and for those employed for it and for bringing hearts together (for Islam) and for freeing captives (or slaves) and for those in debt and for the cause of Allah and (for the stranded) travellers an obligation (imposed) by Allah. And Allah is Knowing and Wise

3.4.2 *Al-Infāqas* a circumstantial obligation. It is when a person is spending as a result of certain circumstance such as spending on those that are near such as education, marriage, needy neighbours, libel, tort, civil liability and kaffarah.

3.4.3 *Al-Infāqas* a religious community obligation.

It is *al-Infāq* that is expected of every Muslim. The moment a person takes charge of fulfilling it, others are relieved of the personalisation of the duty e.g. construction of roads, public utilities, mosques, cemeteries, scientific research etc It is *farḍul kifāyah*.

3.4.4 *Al-Infāqas* a religious – based voluntary spending

As the name indicates, it is *al-Infāq* that deals with a running-stream spending and one-short spending. Helping the poor, the needy, the hungry, etc are some people in this category, Running-stream *infāq* is the spending on establishing trusts.

1.0 Conclusion

From the foregoing, it is clear that Quranic verses and Hadith are replete of this concept. *Al-Infāq* covers all kinds of spending and expenditure, the purpose of which is to seek Allah's favour in this world and the hereafter. This institution covers many areas. In fact Islamic economic system stands on the shoulder of the participants.

5.0 Summary

In this section, you have learned that *Al-Infāq* is an act of spending in the way of Allah if it is viewed technically. This is done to win His favour. We have also taught you the best objectives a person who wants to spend his property should have at the back of his mind. Various kinds of *Al-Infāq* such as *Al-Infāq* as a religious obligation and as a circumstantial obligation were discussed.

6.0 Tutor – Marked Assignment

1. Define literally and technically *al-Infāq*.
2. List 3 objectives of *al-Infāq*.
3. Give the six people mentioned in Q2:177 that are entitled to *al-Infāq*.
4. Mention and explain 2 with examples 3 of the divisions of *al-Infāq*.

7.0 References / further Reading

DLC.

Kareem M.K. (2011) Advanced Study of Muslim Law, Ibadan: University of Ibadan

Oloyede Is-haq O, Kaura J.M, Kareem M.K. and Abbas L.O. (2003) Exam Focus Islamic Studies for WASSCE and SSCE, Ibadan: University Press Plc.

Oloyede Is-haq O. (1987) Shariah Versus Secularism in Nigeria, Lagos: IPB

Quadr Y.A and I.O Oloyede (1987) Al-Izziyah for the English Audience, Ijebu-ode: Sebiotimo Publications

UNIT 2 WAQF: ENDOWMENT

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1.0 Introduction

Besides zakat and sadaqah, one of the other ways by which poverty can be alleviated in our society is through *waqf*. The socio-economic problems facing the country can be solved with ease if this institution is given the place it deserves in our society. In the light of its importance, you will learn in this unit the meaning of *Waqf*, its legality from the Quran and the sunnah; types of waqf; management of waqf, its disposal and the significance of *al-waqf*.

2.0 Objectives

At the end of this lecture, you should be able to:

1. Define *waqf* literally and technically.
2. Mention the reference to *al-waqf* in the Quran and the Sunnah.
3. State clearly the types of *al-waqf*.
4. Discuss how *waqf* should be managed.
5. List the importance of *waqf* in relation to poverty alleviation.

6. Discuss the ways to dispose or liquidate *waqf*.

3.0 Main Contents

3.1 The Meaning of *Waqf*

Waqf literally means to tie down, to forbid movement, to become still or stationary. Other synonymous words used for *waqf* are *ḥabs* or *taḥbīs* and *tasbīl*. Lexically, *ḥabs* and *waqf* are very close in meaning to each other as both convey the idea of endowing, restricting, confining and detaining. *Tasbīl* which is a verbal noun of four letter-verb is coined from *sabīl* Allah which means in the cause of Allah.

In Islamic law, it means the settlement in perpetuity of the usufruct of any property for the benefit of individuals or for a religious or charitable purpose. It may simply be defined as tying up a specific thing in a way that the owner's proprietary title in it may subsist and the profits thereof may go to charitable purposes. *Waqf* is usually referred to as endowment.

However, the Arabic terminology "*waqf*" is still favoured by many scholars. Far it conveys the meaning of retaining the ownership of the substance of a property and devoting its fruit to the course of Allah. *Waqf* can, therefore, be referred to a property which its proceeds are devoted to charitable purpose but its ownership or proprietorship is retained by the owner.

3.2 Legality of *al-Waqf*

Waqf is established by the Quran and the Sunnah. *Waqf* was originally introduced by the Religion of Islam. Although the word *waqf* is not used in the Quran, there are many verses that allude to it. Some of them are

يَسْأَلُونَكَ مَاذَا يُنْفِقُونَ قُلْ مَا أَنْفَقْتُمْ مِنْ خَيْرٍ فَلِلْوَالِدَيْنِ وَالْأَقْرَبِينَ الْيَتَامَى
وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ وَمَا تَفْعَلُوا مِنْ خَيْرٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

They ask you (O Muhammad) what they should spend. Say, "Whatever you spend of good is (to be) for parents and relatives and orphans and the needy and the traveler. And whatever you do of good indeed Allah is Knowing of it. (Q2:215)

لَنْ تَنَالُوا الْبِرَّ حَتَّى تُنْفِقُوا مِمَّا تُحِبُّونَ وَمَا تُنْفِقُوا مِنْ شَيْءٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ

Never will you attain the good (reward) until you spend (in the way of Allah) from that which you love. And whatever you spend indeed Allah is Knowing of it. (Q3:92).

These verses and other many ones in the Quran encourage people to take care of under-privileged people irrespective of their religion, race and sex (male or female). *Waqf* is one of the ways by which one can sacrifice what one cherishes for Allah's sake. It is also one of the ways one can do good things that would make him successful not only in this world but also in the hereafter.

It must also be mentioned that many cases of *waqf* are stated in Hadith of the Prophet. The Prophet's companions were moved and determined to do away with their most cherished assets when they listened to Q3:92. In reaction to this verse, Abu Talhab decided to give away his most cherished property (i.e. date plantation) that faced the Prophet's Mosque in Madinah. The Prophet was fond of going there to take water.

Anas said when Q3:92 was revealed, Abu Talhah said: Oh messenger of Allah, Allah said, "you cannot attain piety unless you spend out of what you cherish",

The most valued of my property to me is the date plantation. I declare it as charity to God expecting the reward it can earn me. I keep it with God, the Most High. Oh Prophet, put it anywhere God directs you to place it. The Prophet, (PBUH) reacted saying that is beautiful and that is a profitable venture. I have heard you and my opinion is that you endow it for the (your) relatives. "Abu Talhat replied, Do as you wish Oh Prophet" Abu Talhat then shared it among his relations and the children of his uncle (Bukhari and Muslim)

Upon listening to Q3:92, Umar went to the Prophet and said: I have never had any property that is more precious to me more than my share of parcel of land which is at Khaybar. What do you advise me to do with it? He replied him saying, "Retain the substance of the property and devote the proceeds to the cause of God".

This is to mention instant reactions of some companions of the Prophet to Q3:92. The importance of *Waqf* is also clear in another Hadith that says all the actions of man cease to generate reward, when a person dies except or is from three acts.

إذا مات ابن آدم انقطع عنه عمله إلا من ثلاث: صدقة جارية أو
علم ينتفع به أو ولد صالح يدعو له

“When a person dies, his work ceases except three categories of deeds that perpetually continue to yield reward: charity in perpetuity (*waqf* for charity), knowledge which is beneficial to people or good offspring who prays for him”.

It is evident from the Quranic verse and the Hadith that the roles of *waqf* in raising the standards of living of people are obvious.

3.3 Types of *Waqf*

There are two types of *Waqf* in Islamic law:

- *Al-Waqful Ahliyy / Dhuriy*
- *Al-Waqful Khayriy*

3.3.1 *Al-Waqful Ahliyy / Dhuriy*

It is endowment made for the purpose of using the income generated or the fruits of the *waqf* for a donor's family. The donor may also include himself among the beneficiaries of the fruits of his *waqf*.

3.3.2 *Al-Waqful Khayriy*

It is endowment made in favour of people other than the donor and his immediate family. Anybody can benefit from this type of *waqf* such as the rich the poor, Muslims and non-Muslims, females and males, young and old etc.

3.4 Object that cannot be used as *Waqf*

It is not permissible to use perishable items as *waqf* items: thus money, dirhams, food, drinks, cannot be use as *waqf*. What cannot be benefited from while its capital still remains cannot be *waqf*. A *waqf* must be an item from which people can benefit and the capital asset will still remain.

3.5 Management of *Waqf*

3.5.1 *Wāqif* (the donor)

Before a *waqf* is valid, the *wāqif* must be the owner of the property i.e. the ownership of the property must not be in doubt. The ownership must be devoid of encumbrance. It must have been acquired through lawful means in the first instance by the donor. The donor must also be

an adult, sane and has full right to dispose his property. Therefore, a minor, a slave and an insane person cannot be a donor. This is because their property is supposed to be under the care of sane and reliable people who could manage it for them effectively. In Islamic law, a woman can give out her property as *waqf*. But it should not be more than 1/3 of her property. If it will be more than that, her husband must consent to it

The *wāqif* has every right to appoint on agent (*mutawwalli*) who is going to manage the affairs of the *waqf*. He has the right to give conditions for the operation of the *waqf*. He may give the agent the sharing formula for the proceeds from the *waqf* for the benefit of people. As said, he may also be one of the beneficiaries.

3.5.2 *Mawqūf* (property)

The subject-matter i.e the property must not include unlawful things in Islam. It is forbidden for a muslim to acquire or use as *waqf* things that the Sharī‘ah has declared *haram*. The property must be owned. Its owner must be clear and not in doubt. There should be also no encumbrance or right attached to the property if someone should give a building that has been used for mortgages, such a *waqf* is null and void. This is because the rights of creditor are linked to the mortgaged property which can be disposed of so as to recoup their money.

The property must be in existence. It is not right to use as *waqf* what is not in existence. The Hadith of the Prophet:

لا يبيع لمن ليس عندك

“Do not sell what is not with you” may be relevant. The *wāqif* cannot use as *waqf* what he does not own. The subject matter of *waqf* must be precisely determined as regards its quantity, essence and value. A *waqf* should not be utilized for criminal or sinful goals.

3.5.3 *Mawqūf alayh* (Donee)

In Islamic law, the beneficiaries of *waqf* can be poor individuals, students, institutions, (mosques, schools, hospitals, libraries etc). *Waqf* is not confined to Muslims alone. Non-Muslims can also benefit from it if they are qualified as beneficiaries. They also can benefit from the subject-matters such as schools, hospitals, recreation grounds and libraries can be used by both Muslims and non-Muslims.

3.5.4 *Sīghah*(Form)

Sīghah is the instrument or the means by which an endowment is made. An endowment may be made in a number of ways such as by speech and by writing. If it is made by speech, it is in order because words are considered to be the basis of all kinds of expression. It can be said in a number of ways that could not pose doubt. It may be said thus:

“I have given this property as *waqf* in the way of Allah”.It may be written down according to Q2:282. There is no fixed format. But what is important is that it should not leave a doubt in the minds of the beneficiaries.

3.5.5 The roles of management of *Waqf*

Management of *Waqf* can also be referred to as the agents that are in charge of the operation of the *waqf*. Mutawalli has to follow the instruction of *wāqif*. The property should be managed based on the rules and regulations laid down by the *wāqif* (the donor)

Mutawalli should not be a minor nor an insane person. He should not be a person under interdiction. He must be competent to carry out the assignment i.e. he should possess the capacity to carry the work. He should be honest and pious. He should also know that he is holding the property on behalf of the donor, and that he is answerable to him in this world and to Allah on the Day of Judgement. He should exercise due care and skill. He should not allow a conflict of interest to arise i.e. he is not allowed to keep for himself proceeds of the *waqf* that are not part of his salary or to make use of the property in a wrong way. The agents of *waqf* can be terminated by *wāqif* through mutual agreement, unilateral termination, destruction of the subject-matter, loss of legal capacity and death.

3.6 Features of *Waqf*

Waqf can be done for a specific period say, a week, a month, a year or ten years etc. it depends on the *wāqif* (the Donor). When the time expires or lapses the ownership reverts back to the original owner and that marks the end of *waqf*. It is also allowed to restrict the proceeds to a specific cause. The proceeds may be used to give only scholarship to indigent Muslim students in tertiary institutions. Another form may be to ask the management to divide the proceeds into say three and allocate each share to three different projects for the benefits of people in the cause of Allah. *Waqf* can also be total (i.e. *mutlaq* in Arabic). Its donor allows the agent managing the *waqf* to use all the proceeds in the cause of Allah based on their discretion. The agents can then decide on

the number of projects to finance using the proceeds to give scholarship, construct roads, build mosques and hospitals and to feed the poor. The instruction of the *wāqif* must be obeyed and followed to the letter whether he is alive or dead.

If it is not a *waqf* for a specific period, the *waqf* is said to be complete and irrevocable the moment the property (*mawqūf*) is transferred to the possession of *mūwqaf alayhi* (donee). The transfer of the property should be done during the lifetime of the donor, otherwise, the property is part of the inheritance. It cannot be *waqf* again. If a donor is declared bankrupt before the transfer of *waqf* to donee, the *waqf* is cancelled. If a donor could not transfer his *waqf* before he dies, such a *waqf* is cancelled. The property earmarked for the *waqf* should be part of the inheritance. If a donor should give an heir a *waqf* but he has not transferred it before he dies, such a *waqf* is cancelled i.e is ineffective. Other heirs may allow the heir to take the *waqf*. But if the donee is not an heir, the *waqf* can be deducted from the deceased's property within the allowable one-third of the property.

Therefore, taking possession of *waqf* called *Hawz* by donee is very important in the operation of *waqf*. *Hawz* is assumed to have taken place the moment a mosque, a road, a toilet etc have been declared open for public use.

Hawz is assumed to have taken place the moment the subject-matters of the *waqf* such as mosques, roads, toilets, recreation grounds, hospitals have been declared open.

3.7 Cancellation or liquidation of *Waqf* – it is not allowed to liquidate *waqf*. One should not sell, dispose inherit, give it as a gift or use it as a collateral security for a loan. It may be leased because the lease payment is used for the beneficiaries of the *waqf*. It can be modified or rebuilt if the structure is dilapidated because it may stop providing the benefits.

3.8 The importance of *Waqf* in alleviating poverty

Waqf is one of the ways by which poverty can be alleviated in our society if it is properly managed. It allows redistribution of wealth in a society. If a *waqf* is used to construct roads, build toilets, schools and hospitals, the standards of living of people would be raised. Where *al-waqf* is used judiciously it creates jobs for people.

Waqf that is used to give scholarship for indigent students has prepared the leaders of tomorrow for that society. Bequest in the cause of Allah is a kind of gratitude to the beneficent and an acknowledgment of his blessings and gifts. Through *waqf*, basic needs can be provided for people in a society.

Through *waqf*, the poor are given their rights when Allah praises such givers:

وَالَّذِينَ فِي أَمْوَالِهِمْ حَقٌّ مَّعْلُومٌ
لِلسَّائِلِ وَالْمَحْرُومِ

“And those within whose wealth is a known right
For the petitioner and the deprived (70:24-25)”.

4.0 Conclusion

Allah has provided for His creatures what is sufficient for them to live a comfortable life. The rich have been admonished by Islam to share their wealth with the poor. While general charity is good, *waqfis* better as it provides sustainable inflow of resources for the purpose of the *waqf*. A society can flourish when its members do not spend all their wealth on the satisfaction of their own desires but reserve a portion of it for others particularly the under privileged and the general good of the society. *Waqf* is one of the ways by which this can be done.

5.0 Summary

In this lecture you have learned:

- the meaning of *waqf* to be endowment in the cause of Allah
- that the Quran and the sunnah establish the legality of *waqf* particularly Q3:92
- the reactions of the Prophet’s companions to the issue of spending in the way of Allah when Q3:92 was revealed. Many companions spent the property they cherish most in the way of Allah
- that everything will stop when a person dies except the acts of *waqf* knowledge one imparts on others, and prayer by one’s offsprings
- The two divisions of *waqf*, one for one’s family and oneself and the other for the public
- Elements of *waqf*, how *waqf* can be managed, its features,
- *Waqf* liquidation and its management and
- how it can alleviate poverty in our society.

6.0 Tutor – Marked Assignment

- Define *waqf* fully both literally and technically
- Write notes on the validity of *al-waqf*
- What are the reactions of the Prophet's companions to Q3:92?
- List 4 of the examples of items that can be used as *waqf*
- Mention and explain 2 types of *waqf*
- What are the objects that cannot be used as *waqf*
- List and explain 3 of the elements of *waqf*
- What are the features of *waqf*
- Discuss liquidation of *waqf*
- State the roles of management of *waqf*
- What are the ways to show the importance of *al-waqf*

7.0 References / further Reading

DLC.

Kareem M.K. (2011) Advanced Stud of Muslim Law, Ibadan: University of Ibadan

Oloyede Is-haq O, Kaura J.M, Kareem M.K. and Abbas L.O. (2003) Exam FocusIslamic Studies for WASSCE and SSCE, Ibadan: University Press Plc.

Oloyede Is-haq O. (1987) Shariah Versus Secularism in Nigeria, Lagos: IPB

Quadr Y.A and I.O Oloyede (1987) Al-Izziyah for the English Audience, Ijebu-ode: Sebiotimo Publications

Module 3

UNIT 1 CONCEPT OF WAṢIYYAH (Bequest)

CONTENTS

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- 2.0 Objectives
- 3.0 Main Contents
 - 3.1 Interpretation of *Waṣiyyah*
 - 3.2 Literal meaning of *Waṣiyyah*
 - 3.3 Legal meaning of *Waṣiyyah*
- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment
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1.0 Introduction

When a person's life comes to an end, he will not be able to act again except what he has done before death comes to him. When Allah created man, he gave him everything that could make his life comfortable. All the provisions given to him would not be able to save him when he is asked to leave this world. He is left with *Tbādah* and his good deeds or bad deeds. He would no longer be able to share his property the way he wishes. All his heirs have been given their shares in the Quran. However, before he dies, he has been graciously favoured that he can allot 1/3 of his property. He has a say on only 1/3 of his property but he can give out immediately as much of his wealth as he wants as gift which should be with immediate effect but commitment which becomes effective at the death of a donor is called bequest. *Waqf* can also be effective at death but it will be treated as bequest which is subject to a maximum limit of 1/3 of the estate. *Wasiyyah* or bequest has its rules and regulations in Islam. In this unit, you will learn the rules and regulations attached to the right given to the maker of the bequest.

2.0 Objectives

At the end of this lecture, you should be able to:

- Give both literal and legal meanings of *wasiyyah*.
- Mention the religious obligation of *wasiyyah*
- Differentiate between inheritance and will
- Mention the maximum share a person has the right to share
- Mention those that should be present when the will is being sealed
- List the elements of will / bequest
- Mention some abuses and violations of will

3.0 Main Contents

3.1 Interpretation of *Waṣiyyah*

1.2 Literal meaning of *Waṣiyyah*

Bequest/Will is called *waṣiyyah* in Arabic. The three-letter verb *means to convey*. The word *waṣiyyah* is commonly used instead of the more technical word *tawṣiyyah*.

The word is at times used in the Qur'an to mean being fore-told. Examples of such use are as follows:

وَلَقَدْ وَصَّيْنَا الَّذِينَ أُوتُوا الْكِتَابَ مِنْ قَبْلِكُمْ وَإِيَّاكُمْ أَنْ اتَّقُوا اللَّهَ وَإِنْ تَكْفُرُوا فَإِنَّ لِلَّهِ مَا فِي السَّمَاوَاتِ وَمَا فِي الْأَرْضِ وَكَانَ اللَّهُ غَنِيًّا حَمِيدًا

“And we have instructed (*waṣiyyah*) those who were given the scripture before you and yourselves to fear Allah...

(Q29:8)(Q46:15) Q31:14

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ حُسْنًا

And we have enjoined (*waṣiyyah*) upon man goodness to parents...

(Q6:15 1-153)

To convey a list of prohibitions and commands to us

(Q103:3)

The Quran also states the true believers are those who give each other *waṣiyyah* of saying the truth. They also advise each other to persevere

(Q2:132)

waṣiyyah is also given by a person who is about to die e.g. Prophet's Ibrahim and Ya'qub

It is clear from the examples that *wasiyyah* can also mean being instructed or commanded.

1.3 Legal meaning of *waṣiyyah*

The legal meaning is evident in the Quran as contained in Q4:11, 12. It is said that property left should be divided after payment of a bequest that may have been made or a debt.

Waṣiyyah refers to “a gift which can 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” (Ambali, 1998)

It is evident from this definition that *waṣiyyah* is not confined to bequest of gift. Liabilities or debts owed by the deceased can also be stated in the will. Whether stated or not, the debt, once confirmed, is to be settled from the estate of the deceased or by his/her heirs if the estate is insufficient to bear the debt.

1.4 Legality of will

The Quran and Hadith permit the making of will or bequest with some regulations. There are Quranic injunctions relating to will. One of the Quranic verses on will is Q2:180

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ
بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

“It is prescribed for you when death approaches (any) one of you if he leaves wealth (is that he should make) a bequest for the parents and near relatives according to what is acceptable – a duty upon the righteous”

مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ

... After any bequest they (may have) made or debt...Q4:11

مِنْ بَعْدِ وَصِيَّةٍ يُوصِيَنَّ بِهَا أَوْ دَيْنٍ

... After any bequest they (may have) made or debt (Q4:12)

مَنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ

... After any bequest you (may have) made or debt (Q4:12)

مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ

.... After any bequest which was made or – debt, as long as there is no detriment (caused)(Q4:12)

Mention of a bequest is made in the verses that give *aṣhābul-furūd* (fixed sharers) their divinely – fixed shares. In verse 11, bequest is mentioned once while in verse 12, this is done three times with some variations in the morphological patterns of the verb used. The Prophet also encouraged the writing of the will in his traditions. He said:

من حق امرئ مسلم له شيء يوصي به بيت ليلتين إلا ووصيته مكتوبة عنده

“It is not rightful for a Muslim who has property to bequest to sleep two consecutive nights without having his bequest written with him”.

Therefore, the obligation of writing will or bequest is confirmed in this prophetic tradition. In fact, the origin of will is stated in Hadith reported by Sa’d ibn Abi Waqqas.

“Sa’d Ibn Abi Waqqas said, The Messenger of Allah (PBUH) used to visit me at Makkah, 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 a 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”.

It is clearly shown here that the maximum a person may bequeath in his will is one-third of the entire property. The one-third must be taken out of the property before dividing the rest among the legal heirs as contained in the Quran. It is better a person has sincere intention to please Allah when bequeathing for people in his will so as to have good rewards after his death. It is evident here that inheritance and will are two of what Allah has provided for people to assist others. One should not take law into one’s hand by changing the rules and regulations of inheritance and will.

All these confirm that writing will is not borrowed from other culture. It is within Islam as shown above.

3.5 Legal heirs and Will Beneficiaries

In the Quran and Hadith, the people that are entitled to inheritance have been stated clearly. Their shares are also mentioned. Our concern is not about the inheritance. However, before giving fixed sharers their

sharers, the chaff must be removed from the wheat. Therefore three things are deducted from a deceased estate. The first which it has been discussed earlier is burial expenses. We also said debts must be paid based on the injunctions of the Quran. We mentioned in passing, the third aspect “will” for those that will not share from inheritance. Who are the beneficiaries of will and who should not be given? These are the questions that we will answer here.

3.6 Beneficiaries of a Will

Relatives who are not legal heirs are entitled bequests if made by the deceased within the limits of the 1/3 or the property. This should be taken out of the property after the burial expenses and debts have been deducted. The rest is then shared to legal heirs.

Unrelated individuals, institutions, such as hospitals, schools and libraries may be beneficiaries of a bequest. Some people that are excluded from inheritance can also be accommodated in the will or bequest. For instance, a non-Muslim can be accommodated in a will if a Muslim should have a non-Muslim wife, the wife cannot inherit the Muslim man because the Prophet said

لا يرث الكافر المسلم ولا المسلم الكافر

“A non-Muslim cannot inherit a Muslim, nor does a Muslim inherit a non-Muslim”. Similarly, a non-Muslim mother, daughter or wife can be accommodated in a will within the one-third. This provides an opportunity to assist such individuals after one’s death.

3.7 Non-Beneficiaries of a Will

Some people are not only excluded from inheritance, they are also excluded from a will i.e. they are not also accommodated in a will. A person that kills another person cannot inherit the victim i.e. the killer cannot inherit the killed person. He is not also entitled to the will of the killed.

You cannot eat your cake and have it. This is true of legal heirs that have divinely-fixed shares. Since they are entitled to inheritance, they should not be given a share in a will. This is because Allah has given them their shares. In relation to this, the Prophet is reported to have said in a speech during his farewell message

إن الله قد أعطى كل ذي حق حقه فلا تنفق المرأة شيئاً من بيتها إلا بإذن زوجها

“Allah has ordained for everyone his due right, thus no bequest may be made to a legal heir. And a woman may not spend anything from her

house without her husband's permission". A bequest to an heir is subject to approval of other heirs

3.8 Presence of witnesses and their Qualifications –

It is part of control that Allah puts the verses in the Qur'an in respect of writing a will. The Qur'an (5:106 – 108) specifically spells out the roles and the number of witnesses. The removal of witnesses is also clearly mentioned in the following:

يَا أَيُّهَا الَّذِينَ آمَنُوا شَهَادَةٌ بَيْنَكُمْ إِذَا حَضَرَ أَحَدُكُمْ الْمَوْتُ حِينَ لَوْصِيَّةِ اثْنَانِ ذَوَا عَدْلٍ مِنْكُمْ أَوْ آخَرَانِ مِنْ غَيْرِكُمْ إِنْ أَنْتُمْ ضَرَبْتُمْ فِي الْأَرْضِ فَأَصَابَتْكُمْ مُصِيبَةُ الْمَوْتِ تَحْسُونَهُمَا مِنْ بَعْدِ الصَّلَاةِ فَيُقْسِمَانِ بِاللَّهِ إِنْ ارْتَبْتُمْ لَا نَشْتَرِي بِهِ ثَمَنًا وَلَوْ كَانَ ذَا قُرْبَىٰ وَلَا نَكْتُمُ شَهَادَةَ اللَّهِ إِنَّا إِذَا لَمِنَ الْأَثِمِينَ (106) فَإِنْ عَثَرَ عَلَىٰ أَنَّهُمَا اسْتَحَقَّا إِثْمًا فَآخَرَانِ يَقُومَانِ مَقَامَهُمَا مِنَ الَّذِينَ اسْتَحَقَّ عَلَيْهِمُ الْأَوْلِيَانِ فَيُقْسِمَانِ بِاللَّهِ لَشَهَادَتُنَا أَحَقُّ مِنْ شَهَادَتِهِمَا وَمَا اعْتَدَيْنَا إِنَّا إِذَا لَمِنَ الظَّالِمِينَ (107) ذَلِكَ أَدْنَىٰ أَنْ يَأْتُوا بِالشَّهَادَةِ عَلَىٰ وَجْههَا أَوْ يَخَافُوا أَنْ تُرَدَّ أَيْمَانٌ بَعْدَ أَيْمَانِهِمْ وَاتَّقُوا اللَّهَ وَاسْمَعُوا وَاللَّهُ لَا يَهْدِي الْقَوْمَ الْفَاسِقِينَ (108)

“O you who believe, testimony (should be taken) among you when death approaches one of you at the time of bequest (that of) two just men from among you or among others outside your circle. If you are travelling through the land and the disaster of death should strike you. Detain them after the prayer and let them both swear by Allah if you doubt (their testimony saying), “we will not exchange it (i.e. our oath) for a price (i.e. worldly gain), even if he should be a near relative, and we will not withhold the testimony of (i.e. ordained by) Allah. Indeed, we would then be of the sinful. But if it is found that those two were guilty of sin (i.e. perjury) let two others send in their place (who are) foremost (in claim) from those who have and lawful right. And let them swear by Allah, “Our testimony is truer than their testimony, and we have not transgressed indeed, we would then be of the wrong doers. That is more likely that they will give testimony according to its (true) objective, or (at least) they would fear that (other) oaths might be taken after their oaths. And fear Allah and listen (i.e. obey Him) and Allah does not guide the defiantly disobedient people” (Q5:106 – 108).

Based on the Quranic verses quoted above, it is allowed for a person to write his will when two men are required as witnesses to the authenticity of the will or bequest. These two men must witness the verbal or written will. It is expected that both should all be Muslims that are close to the owner. In case Muslims are not around, non-Muslims may be asked to be witnesses.

The witnesses have to swear that they will testify accordingly without favour or prejudice for or against beneficiaries. It is also allowed to replace any two witnesses that violated their oath. They should be replaced by two other witnesses.

3.9 Kinds of *Waṣiyyah*

Waṣiyyah is divided into five categories which are on the injunctions of the Qur'an and the Sunnah. Circumstances dictate the status of a bequestor will. A *waṣiyyah* may be compulsory in a situation while it is not in another situation. If it is compulsory, we say the omission is punishable, and if it is done it is rewardable. Being punishable may not mean it is punishable in this world it means the person that failed to write it will be punished for denying the beneficiaries of such will. Islamic law of inheritance is not like common law that can only have its cases brought to the court of law in this world. The cases of Islamic inheritance and will in Islam are both taken in this mundane world and the hereafter. In fact cases that escape right judgment here because parties to the cases are smart cannot escape on the Day of Judgment because nothing is hidden as far as Allah is concerned. The punishment of the hereafter awaits such offenders. These five classifications assist Muslims to know the right from the wrong.

3.9.1 *Waṣiyyah*(Compulsory)*Wājibh*

It is compulsory to write a will if he has some obligations which he must perform particularly if he must discharge some liabilities. For instance, if he has some debts he must pay or he has some articles of trust (*amanah*) which he must return to their owner, he must say them openly or write them down in his will. This is to prevent loss of property of others or mixing other people's property with his own. The Quran is very clear on these issues. The Hadith on the reactions of the Prophet to the three dead persons brought to him for *salatul janāzah* as cited below speaks volume. No Muslim should play with these two issues : debts and items of trust in his will. He should neither reduce nor remove anything from them. He should say them or write them they the way they are.

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا

“Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing” (Q4:58).

عن سلمة بن الأكوع رضي الله عنه قال: كنا جلوسا عند النبي صلى الله عليه وسلم إذ أُتيَ بجنّازة فقالوا صلّ عليها فقال هل عليه دين؟ قالوا لا، قال فهل ترك شيئاً؟ قالوا لا فصلّى عليها. ثم أُتيَ بجنّازة أخرى فقالوا يارسول الله صلّ عليها قال هل عليه دين قيل نعم، قال فهل ترك شيئاً قالوا ثلاثة دنانير فصلّى عليها. ثم أُتيَ بالثالثة فقالوا صلّ عليها قال فهل ترك شيئاً؟ قالوا لا، قال فهل عليه دين؟ قالوا ثلاثة دنانير، قال صلّوا على صاحبكم، قال أبو قتادة صل عليه يا رسول الله وعليّ دينة فصلّى عليه.

Salamah, son of Akwa, narrated that: “(one day) when we were sitting with the Prophet (PBUH), a dead person was brought (to us). They said (O Prophet), Pray for the deceased. He said, “Is he in debt”. The people replied “No”. He said, “Has he left any wealth?” They said, “No”. So, he led his funeral prayer. Another dead man was brought and the people said, “O Allah’s messenger! Lead his funeral prayer. “The Prophet said, “is he in debt”. They said, “Yes” He said, “Has he left any wealth?” They said, “Three Dinars” so, he led the prayer. Then a third dead man was brought and the people said (to the Prophet), please lead his funeral prayer”. He said, “Has he left any wealth?” They said, “No” He asked, is he in debt? “They said, (“yes he has to pay) three Dinars”. He (refused to pray and) said, “Then pray for your dead companion. “Abu Qatadah said, “O Allah’s messenger! Lead his funeral pray and I will pay his debt “.So, he led the prayer (Sahih Bukhari).

It is also compulsory to make a will of restitution for Zakah, Ramadan fast and kaffārah outstanding against one.

3.9.2 *Waṣiyyah* (Desirable)*Mustahābah*

It is desirable to make a will for the poor, relations that are not heirs, charitable works such as Mosque, and Quran Arabic schools if one has abundant wealth. This is because the poor needy and others have right in his abundant property. The Quran say

وَفِي أَمْوَالِهِمْ حَقٌّ لِّلسَّائِلِ وَالْمَحْرُومِ

And from their properties was (given) the right of the (needy) petitioner and the deprived (Q51:19)

3.9.3 *Waṣiyyah* (Disliked)*Makrūhah*

It is disapproved and disliked to make a will when the wealth is not much because this will reduce the share of heirs.

3.9.4 *Waṣiyyah* or *Jā'izah* (Tolerable / Permissible)

It is permissible to make *waṣiyyah* of all things that are considered permissible in Islam. For instance, it can be included in a will the name of a person who should conduct one's *salatu Janāzah*.

3.9.5 *Wasiyyah* (Prohibited) that is Haram

It is prohibited to make a will of anything which is not permissible in Islam. For instance, if the aim of making *waṣiyyah* is to harm the heirs. It is unlawful to bequest wealth for a person or an institution that will utilise the funds in unlawful activities or criminal acts. It is also unlawful to dispose one's property during one's lifetime with a view to depriving one's heirs their inheritance. If anyone is involved in making unlawful will, the person has transgressed the limit and he will be punished on the Day of Judgment

3.10 Essentials of *Waṣiyyah* (Bequest/will)

Before a *waṣiyyah* is valid, the following elements must be present.

3.10.1 *Mūsī* (the Testator) – This is the person that makes the will. He must be an adult, sane and independent. He must not be coerced in making his decision to make a will. He is free to withdraw his decision any time before he passes away to the great beyond.

3.10.2 *Al-Mūsā Lahu* (the Beneficiary of *Waṣiyyah*) –

The beneficiary of *Waṣiyyah* should not be one of those people that the Quran has given their shares in inheritance because the Prophet said:

لا وصية لوارث

“No will should be made in favour of an heir”.

However, if other co-heirs approve it, he can enjoy it. If some heirs refuse to approve it, the will shall affect only the shares of those that approve it.

3.10.3 The quality of the item of property –

The property on which will is made must be valuable at the time of the death of the testator and it should be lawful (*halāl*).

3.10.4 *Sighah* Form

A bequest must not be ambiguous. It must be exact and direct specific format is required. The practice of the Prophet's companions is to start with the following:

هذا ما أوصى فلان ابن فلان أن يشهد أن لا إله إلا الله وحده لا شريك له وأن محمدا عبده ورسوله، وأن الساعة آتية لا ريب فيها وأن الله يبعث ما في القبور. وأوصى من ترك من أهله أن يتقوا الله ويصلحوا ذات بينهم ويطيعوا الله ورسوله إن كانوا مؤمنين، وأوصاهم بما أوصى به إبراهيم بنيه ويعقوب) أن الله اصطفى لكم الدين فلا تموتن إلا وأنتم مسلمون)

In the name of Allah, the Most Gracious, the Most Merciful. This is the instruction of X the son of Y. that he testified that nobody deserved worship but Allah. He is alone and He has no associate. He also testified that Muhammad was His servant and apostle. He testified that the appointed time shall no doubt come to pass and that God will cause the dead to resurrect. The testator instructed his people who survived him to fear Allah and keep alive the bonds of brotherhood among themselves. They should obey Allah and follow the footsteps of His apostle if they are faithful. The words he left behind for them are the same as those left behind by Prophet Ibrahim and Ya'qub for their children. God has chosen religion for you and ensure that death overtakes you only as Muslims. He then states his will.

3.10.5 Appointment of a *Wāsī* (Executor or administrator)

An executor is a person appointed by *amūṣī* (testator) to attend to his property when he dies. A *wāṣīcan* accept verbally or through his

conduct. His work starts when his testator dies. A non-Muslim should not be appointed as one's *wāṣī* if two executors were appointed, besides the funeral arrangements, all other acts and decisions must be jointly taken by the two.

3.11 Amendment of Request by the Administrators

If a will or bequests contain an apparent injustice or can lead to harm, the administrators are at liberty to vary the content. The Qur'an says:

فَمَنْ خَافَ مِنْ مُوصٍ جَنَفًا أَوْ إِثْمًا فَأَصْلَحَ بَيْنَهُمْ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ عَفُورٌ حَمِيمٌ

“But if one fears from the bequeather (some) error or sin and corrects that which is between them (i.e. the concerned parties) there is no sin upon him. Indeed, Allah is forgiving and merciful” (Q2:182). On the whole, we should not allow our sentiments to affect our relationship with our heirs. Allah's general command to the believers is to be fair even towards those whom they hate Q5:8.

3.12 Content of a Will

In addition to what is contained in 3.10.4 above, a standard bequest should contain the followings:

- Testator's expression of writing the will in sound health and without being under duress
- Starting with Basmalah (the saying of Bismillah Rahmān Rahīm) and declaration of Islamic faith i.e. monotheism (Sha hādah)
- Will or inheritance is one of the opportunities of admonishing a deceased's survivors – they should be advised and admonished in the will whatever they hear during that period is likely to have impact on them forever.
- **List of person's assets and Liabilities**
Special attention should be given to hidden or undocumented property.
- Executor and Guardian appointed should be stated in one's will. A note of warning is that all those in charge a deceased's property should be honest, reliable and they should take good care of the deceased's property. No injustice must be done Q4:9. An aspect of inheritance that is for “will” must be set aside. Legal heirs must be consulted.
- A note of warning against a person who wants to change the will (Q2:181)

فَمَنْ بَدَّلَهُ بَعْدَمَا سَمِعَهُ فَإِنَّمَا إِثْمُهُ عَلَى الَّذِينَ يُبَدِّلُونَهُ إِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ

“Then whoever alters it (i.e the bequest) after he has heard it- the sin is only upon those who have altered it. Indeed, Allah is Hearing and Knowing”

- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment

7.0 References / further Reading

- Abdul Azim A (1978), Faridatu Allah Fil Mirath, Wal Wasiya, Darul Ansar, Cairo.
- Abdul Hamid Sidiqi (nd), Sahih Muslim, Lebanon: Dar Al-Arabia.
- Abdul Rahman (1986), The Book of Jurisprudence on the Four Schools, Lebanon: Darul Fikr.
- Abdul Rahman Al-Jazairi (1986), The Book of Jurisprudence on the Four Schools, Lebanon: Darul Kutubul Ilmiyyah.
- Abubakr Jabir (1976), Minhajul Muslim, Lebanon: Darul Fikr.
- Asaf A.A. Fyzee (1981), Outlines of Muhammadan Law New Delhi: Oxford University Press.
- Muhamad Asad (1980), The Message of the Qur'an, Gibraltar: Dar Al-Andalus.
- Muhammad Asad (1980), The Message of the Qur'an Gibraltar: Dar Al-Andalus.
- Muhammad Rida (1975), Muhammad Rasulullah, Lebanon: Darul Fikr.

UNIT 2 ISLAMIC CONCEPT OF GIFT (*HIBAH*)

CONTENTS

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1.0 Introduction

Exchange of gifts is a common feature in the society. Various reasons are behind gift. Some are given in anticipation of similar gesture while some are done simply to please the beneficiary. The gift made for the sake of Allah alone is known as sadaqah (charity) Hibah, on the other hand, is a kind of gift which requires some explanations. The meaning, essentials and purpose of Hibah would be listed in this unit, while the possibility or otherwise of its revocation will also be addressed.

2.0 Objectives

At the end of this lecture, you should be able to:

- Give different definitions of *hibah* in Islam
- Mention the status of *hibah* in Islamic Law
- State clearly the essentials of *hibah*
- Explain revocation and the rule of exception in relation to *hibah*
- Describe how lack of possession can render *hibah* null and void
- State the similarities and dissimilarities between *hibah* and other forms of transfer of property

1.0 Main Contents

3.1 Definition of *Hibah*

The concept of hibah is very difficult to define for it belongs to the category of terminologies, which are not amenable to a single definition. Lexically, *hibah* is a verbal noun of *wahaba* which means to

dash,bless, endow etc. In the Quran the word and its derivatives are used 25 times.

Hibah can therefore be translated as gift. Other terms which are synonymous to it are *hadiyah* and *atiyah*. Although *sadaqah* also involves transfer of ownership, it is not totally the same with *Hibah* for it is done to win the pleasure of Allah on the Day of Judgment. This is not the case with *Hibah* to some extent. *Hibah* is done to win the heart of the beneficiary. *Hibah* is defined by various jurists in different ways. These are some of their definitions:

- *Hibah* is a transfer of the right of the property in the substance (*tamlikul'ayn*) by one person to another without any return (Ameer Ali)
- *Hibah* is a transfer of a tangible property from the offeror to the offeree with a view to obtaining the pleasure of the latter without asking for any compensation or attaching any condition (ibn Arafah)
- *Al-Hibah* is transfer of the ownership of the substance of a property unconditionally to the donee to seek his favour. It is also called *hadiyah*, (gift)
- It is unconditional transfer of the right of ownership of the property which is transferable in Islamic Law by (a Rāhid), a person who is sane, mature and capable in Shariah to administer all his/her affairs by himself or herself. (Sirajus-salik)
- *Hibah* is a contract which a person transfers, during his lifetime, the right of ownership of what he owns to another person without demanding any compensation (Sayyid Sabiq)

All these definitions and meanings have a common feature of stressing the point that *hibah* involves transfer of the right of the property from a giver to a receiver during the giver's lifetime to the receiver when he is alive without necessarily expecting any return except the pleasure of the beneficiary.

3.2 STATUS OF *HIBAH*

When a Muslim does something, he must not only know the legality of the thing but also he must know the status of the thing whether it is punishable or rewarding. This will assist him to take a decision that will benefit him in this world and the hereafter. Therefore, our attempt to discuss here the status of *Hibah* as well as its legality is to assist you to make a decision anytime you confront a case of this nature. *Hibah* has only two status. ***Wājib*(compulsory) and *mandūb* (recommended)**

Wājib means it a compulsory duty, the omission of which the person who leaves it undone is punishable in the hereafter while **mandūb** means giving out *hibah* is recommended, but the person that leaves it undone will not be punished. But if he does, it he is rewarded.

3.2.1 **Hibah aswājib (compulsory)**

Circumstances will determine the obligation of *hibah* on a rich person. If a person is exposed to a serious problem or some challenges such as hunger, sickness and lack of shelter to the extent that if he is not helped, he would not get out of the difficult situation, *hibah* becomes compulsory for a rich person to get the person suffering out of the problem. The Quran say:

وَفِي أَمْوَالِهِمْ حَقٌّ لِّلسَّائِلِ وَالْمَحْرُومِ

And from their properties was (given) the right of the (needy) petitioner and the deprived (Q51:19)

If a rich person fails to give *hiba* to a person in a very serious situation, he will be punished for neglecting him and for failing to use Allah's wealth to assist Allah's creatures. He is not the owner of the wealth he has, he is only a trustee that is holding the property on behalf of the real owner.

3.2.2 **Hibah as Mandūb(Recommended)**

It is *mandūb* for a rich person to give *hibah* if the situation is not serious. If a rich person gives *hibah*, he is rewarded. But he fails to give it when the situation is bearable for a person that is suffering from tribulations, the rich will not be punished for not giving it. However, he is encouraged by the following verses to come to the aids of those who need his help.

“And help one another in righteousness and piety” (Q5:2)

And spends his property however such he himself may cherish it – upon his near of kin and the orphans and the needy and the way farer and the beggars and for freeing of human beings from bondage. (Q2:177)

The Prophet also encouraged giving of gift when he said, “Exchange gift to promote love”.

It is clear that while sadaqah seeks the pleasure of Allah, the main target of Hibah, is to please or ameliorate the suffering of the beneficiary who may on the basis of the act love the benefactor and promote social integration.

3.3 Essentials of *Hibah*

Hibah has some principles called *arkanul Hibah* for any *Hibah* to be complete, the four principles or elements must be present. They are:

3.3.1 Al-Wāhib(The donor)

He must have the ownership of the property if he is not the owner, he cannot give it. He must not suffer from insanity (*junūn*). Insanity serves a barrier for a person suffering from it. Bankruptcy (*taflīs*) prevents one from giving *Hibah*. A person is bankrupt if his debts exceed his assets, and court on the demand of his creditors passes a prohibitory order restraining all alienation by him, and directs the sale of his property for the benefit of his creditors.

He must not be under duress when he is giving it. If he is suffering from partial insanity (‘*atah*) and forgetfulness (*nisyān*), he cannot make a valid gift. *Safah* is another factor that can prevent a person from making a valid gift. *Safah* is weakness of intellect which urges a person to act with respect to his property contrary to the dictates of intellect with the non-existence of mental disorder *safah* is opposite of *rushd* which means the handling of financial matters in accordance with the dictates of reason.

A sick person particularly if it is *maradul mawt* (death-illness) cannot dispose more than one-third of his estate as *Hibah* because it is likened to *wasiyyah* if he should die in the process. And *wasiyyah* cannot be more than one-third of a person’s property. A wife is expected to inform her husband if the *hibah* she is giving out is more than one-third of her property. However, if it is less, the consent of her husband is irrelevant.

3.3.2 *Mawhūb lahu* (donee) A gift should not be given to a person that is not qualified to use it. A golden ring cannot be legally received by a male for it is unlawful for him to use it. Another example is that a Muslim slave should not be given as *hibah* to a non-Muslim. The non-Muslim is not qualified to have a Muslim slave for the reason of difference in religion. (Q4:141) Allah will not grant the disbelievers a way to prevail over the believers (Q4:141)

3.3.3 *Al-mawhūb* (the actual gift) - The subject matter of *hibah* must be something that is permissible in Islam. It must be religiously and legally clean e.g pork, intoxicants etc. The gift must be fully owned by the benefactor and must exist.

3.3.4 *Sīghah* (Form) - It is the statement made by the donor that he gives a particular property as *hibah* to an individual or a corporate body. No contract in Islam can be regarded as complete without *al-hawz* i.e possession. If a person has indicated his intention to give out his property as *hibah* but has not transferred it to the donee, many things can happen that can make him cancel the *hibah*. Some of them are sickness, bankruptcy, lunacy and death. And in infact, he can cancel it without violating the principles of Shariah. Therefore, *hibah* is said to be complete after possession has taken place.

3.3.5 Al-Hawz (Possession) Taking of possession of gift completes the contract. A gift that has not be taken over by the donee is subject to review during the life time or after the death of the donor. It is so essential that some jurists make it the fifth essential of Hibah.

3.4 Revocation and the rule of exception

It is allowed in Islam to revoke Hibah . If a gift has not been taken (i.e.if it is not in the hands of done), it can be revoked. For instance, if a donor has not released the property to a donee and he dies, that marks the end of the *hibah*. However, if the heirs of the donor approve it,it is lawful and must not be more than 1/3 of the property. But if it is more than one-third, the consent of the heirs or other heirs if the donee is also one of them is compulsory. If they approved it, it is lawful for him to take it. Otherwise, the gift is null and void. If a donor is declared bankrupt and the gift has not been transferred to the donor, the gift is revoked.

A father can revoke his gift to his son if it has not been used by the son to serve as a collateral security for a loan or has not been used to contract a marriage or he has not given it out to another person. A mother can revoke her gift to her child if the father of the child is still alive. However, a mother cannot get back the gift he has given to her child if the child has thereafter lost his father. In every rule there is always an exception. This is also applicable to the issue of gift.If a wife should offer her husband a house and both of them are living there, she cannot rescind the *hibah*. This is because the husband has consented to the gift by living there with her. It is the duty of the husband to provide accommodation for her. For him to have consented, he has accepted the gift.

In conclusion, it is not morally right for a person to give a person *Hibah* and later rescind it. The Prophet discouraged it when he said

عن ابن عباس رضي الله عنهما قال: قال النبي صلى الله عليه وسلم العائد في هبته كالكلب يقى ثم يعود في قيئه. وفي رواية للبخاري ليس لنا مثل السوء الذي يعود في هبته كالكلب يقى ثم يرجع في قيئه

On the authority of Ibn Abbas, may Allah be pleased with him, the Prophet (PBUH) said: A person who rescinds his decision of gift is like a dog which vomits and returns to swallow its vomit (Bukhari and Muslim). In another form Bukhari reported it thus: we do not have an example that is as bad as a person who revokes his gift like a dog vomiting then going back to swallow it. The exception to the rule of revocation as stated earlier is contained in this Hadith

وعن ابن عمر وابن عباس رضي الله عنهم وعن النبي صلى الله عليه وسلم قال لا يحل لرجل مسلم أن يعطى العطية ثم يعود فيها إلا الوالد فيما يعطى ولده

On the authority of Ibn Umar and Ibn Abbas that the Prophet peace and blessings of God be on him said. It is not lawful for a Muslim to make an offer of gift and rescind his decision except in a gift from the father to his child.

3.5 **Hibah Sadaqah and Zakah**

Hibah is a gift to win the heart of a person. And it may only be for this world while sadaqah is given to win the pleasure of Allah in this world and the next. *Hibah* just sadaqah is not confined to a specific object, it can be made out of any articles of property that are shari'ah compliant. Zakah is compulsory dues on specific items while *Hibah* is not confined to any particular items. Zakah is given to 8 categories of people while Hibah can be given to all the 8 categories of recipients and others not mentioned in Q9:60. Zakah of money is given once while *Hibah* may be given as many times as possible for the giver. Zakah has specific amounts to be given and time. This is not peculiar to sadaqah. *Hibah* can be given to the rich and the poor, the young and the old, the male and females. Of all these, zakah cannot be given to the rich. It is meant for specific categories of person, including the poor.

3.6 **Hibah and Wasiyyah**

Wasiyyah is limited to 1/3 of the property a deceased person while there is no minimum and no maximum to be given as Hibah. Wasiyyah is given after the death of a person while Hibah is given when the

donor is still alive. Hibah is transferred immediately while the transfer of *wasiyyah* is after the death of a donor that the ownership is moved to receivers.

- 4.0 Conclusion
- 5.0 Summary
- 6.0 Tutor – Marked Assignment

7.0 References / further Reading

Abdul Azim Islahi (1988) Economic Concept of Ibn Taimiyyah Leicester: the Islamic Foundation.

Ambali, M.A. (1998) The Practice of Muslim Family Law in Nigeria. Zaria: Tamazd Publishing Company Ltd.

Anderson, J.N.D. (1970), Islamic Law in Africa, London: Frank Cass and Company Limited.

Fuad B. (1991), Al-Mu'jamul Al-Mujamul Mufahrisu li alfazil Qur'anil Karim Beirut: Da'rul Marifah.

Johnson Samuel (1976), The History of the Yorubas, Britain: Lowe and Brydone Printers Limited.

Maulana Muhammad Ali (1986), The Religion of Islam. New Delhi: Taj Company.

UNIT 3 SADAQAH AND ITS ROLE IN A MODERN ECONOMY

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1.0 Introduction

Prayer (salat) and charity (Zakat / Sadaqah) go together in the holy Quran to show their importance. This unit is devoted to the examination of Sadaqah and its role in a modern economy. You will learn the meaning, merits and spiritual effects of Sadaqah in this unit. Attention is also paid to the difference between Zakah and Sadaqah, attitudes of the givers. What should be the attitude of Sadaqah givers and takers is highlighted. You will learn some forms of sadaqah and those that should receive it in this lecture.

2.0 Objectives

At the end of this lesson, you should be able to:

- Define correctly Sadaqah
- Distinguished between Sadaqah and Zakah
- State forms of Sadaqah and its recipients
- List the differences between Zakah and Sadaqah
- Mention the socio-economic importance of Sadaqah and its spiritual benefits
- Describe the attitudes of both givers and takers of Sadaqah

3.0 Main Contents

3.1 Meaning of Sadaqah

Sadaqāt is the plural of sadaqah. The Quran uses sadaqāt to refer to all social expenditure or spending for the pleasure of Allah. The word sadaqah comes from the Arabic word *sadaqa* which means to speak the

truth, to be sincere. Other derivative of the word is sadaqah which means friendship. Sadaqah can also mean charitable deeds or gifts (Q2:263-264, Q9:79, Q58:13), obligatory tax of zakah and purifying dues. The Quran in some places uses the term sadaqat for Zakah (e.g. Q9:58, 60,103,104 etc). Zakah is a form of sadaqah. Sadaqah involves non-zakah voluntary charitable and social spending (*infāq*).

Technically, sadaqah can be defined as the voluntary offerings made for the sake of Allah by a Muslim out of love, and concern for others as well as what he is morally or legally obliged to give without expecting any worldly gains. It may also mean a voluntary charity given to individual over and above the payment of the compulsory zakat to relieve sufferings of fellow human beings

3.2 Forms of Sadaqah

Unlike Zakah which are to be given on specific items Sadaqah has no precise number of objects on which it can be paid. Zakah for instance, is confined to about six subject matters. They are: Zakat of animals, crops, gold and silver (minerals) commodities of business, and mines. There are also zakat of idul fitril. Both zakah and zakat tul-fitr Sadaqat is wider than zakah in the sense that it can be paid on any commodities that are lawful (*halāl*) in Islam. The Prophet stated some things that could serve as sadaqah some of them are:

- Removing from the road anything that may cause harm
- Doing justice among people
- Helping a person to ride his animal
- Uttering good words
- Every step one is taking in going to pray
- Showing the way for a lost person
- Salutation of people
- Enjoining what is good
- Forbidding what is evil
- Giving food to one's wife or one's children
- Maintaining oneself
- Birds and beasts eating in a farm tilled by a person
- Having sexual relations with one's wife or husband
- Giving money to beggars
- Offering any form of relief
- Parting with one's wealth or pleasure for the benefit of others
- Provision of facilities for common religious social or economic use
- Teaching (or any other positive use of knowledge including writing)

Zakah has specific recipients mentioned in the holy Quran (Q9:60). Sadaqah is wider than zakah in terms of recipients. Sadaqat has no specific beneficiaries; it can be given to any person or body. The most beneficial is for it to be given to those that need the gift.

3.3 Difference between Zakah and Sadaqah

- Zakah is an obligatory levy on all surplus wealth and agricultural income of a Muslim while sadaqah is not compulsory
- The objective is to provide financial support to specified categories (8) of people such as the poor and the destitute sadaqah provides financial supports for more than 8 categories of people
- Zakah has fixed rate and amounts that should be deducted or given as zakah. There is no limit as regards those who could benefit from sadaqah. There are specific time for the giving out of zakah. For instance, zakat is paid on money once in a year. For animals, it is paid when they attain certain age. Sadaqah has no time. It can be paid as many times as possible even in a day not to talk of a year. Sadaqah can be given to both Muslim and non-Muslims, this is not true of zakah.
- It is preferable to give zakah to Muslims while sadaqah can be given to both Muslim and Non-Muslims

3.4 Socio-economic importance of Sadaqah

In addition to the reward a giver of zakat and sadaqah would take on the Day of Judgment, there are socio-economic benefits of sadaqah. If a Muslim gives sadaqah, he experiences a rare feeling of satisfaction and tranquility in his heart that he has helped someone no matter how small the amount. The social relations between a giver and a recipient of sadaqah are strengthened.

Another merit is that in most cases, the poor who receive sadaqah would not feel jealous of the giver's wealth because they also benefit from it. The poor instead of being a giver's enemies, they pray for him, wish him well and look towards him with love and admiration. In fact, the world would hold him in high esteem for being generous to people that do not work for him. Everyone likes him and feels drawn towards him.

The promises of rewards attached to sadaqah can make people work i.e. it can encourage dignity of labour. This is because many poor people can go out in search of work so that they could earn some money to spend for the sake of Allah as it happened during the time of the Prophet. When his companions listened to Q2:261-262, the poor

ones who did not have money had to go out and search for jobs so that they could spend in the way of Allah. The multiplier effect of this would be the raising in the standards of living of people, reduction in the rate of criminal acts and abundant wealth.

The reverse of usury is charity while usury leads or fosters the concentration of wealth in the hands of a few, and breeds egotism, parsimony mistrust, covetousness. Sadaqah re-distributes wealth, promotes faith, develops the spirit of brotherhood and fellow-feeling and generates love in the hearts of the receivers.

3.5 Spiritual benefits of sadaqah

A giver of sadaqah becomes a friend of God. God bestows prosperity on him and multiplies his wealth. The Prophet is reported to have said: the mandate of God is ... O son of Adam! Go on spending the wealth I have given you (on the poor, the needy and the destitute): I shall give you more". There is every assurance from Prophet Muhammad that his Lord told him that "I can swear no one will become poor because of spending in the way of Allah" Despite the wealth is given to people by Allah, Allah places extra ordinary and enormous rewards on sadaqah given out of their wealth. If Allah is well pleased with the behavior and conduct of people when they give out sadaqah, and if the sources of their property are clean and He is pleased with them, He gives in the Quran the assurance of a rich and fantastic premium on their sadaqah. Allah says:

مَثَلُ الَّذِينَ يُنْفِقُونَ أَمْوَالَهُمْ فِي سَبِيلِ اللَّهِ كَمَثَلِ حَبَّةٍ

أَنْبَتَتْ سَبْعَ سَنَابِلٍ فِي كُلِّ سُنْبُلَةٍ مِئَةٌ حَبَّةٌ وَاللَّهُ

يُضَاعِفُ لِمَنْ يَشَاءُ وَاللَّهُ وَاسِعٌ عَلِيمٌ

“The example of those who spend their wealth in the way of Allah is like a seed (of grain) which grows seven spikes in each spike is a hundred grains. And Allah multiplies (His reward) for whom He wills. And Allah is all-encompassing and knowing. Those who spend their wealth in the way of Allah and then do not follow up what they have spent with reminders (of it) or (other) injury will have their reward with their Lord and there will be no fear concerning them nor will they grieve”. Q2:261-262. Allah makes three promises to those who give

sadaqah or spend in the way of Allah. One, they will be repaid hundred-fold in this world for spending in the cause of Allah. Two, on the Day of Judgment, Allah will give them enormous rewards and three, on that Day, they will neither fear nor grief.

The importance of sadaqah is also seen in the tradition of the Prophet which goes thus: “There are three things, whoever acquires them acquires the real joy of faith. First, to worship Allah and no one besides Him. Second, to believe sincerely in La ilaha illa Allah and the last (to pay the Zakat cheerfully on one’s possession every year”. The promises of reward by Allah can encourage dignity. Sadaqah cleanses the heart of a giver of conceit, selfishness and cruelty. It brings sanctity, effulgence and prosperity in the wealth of a giver through sympathy and solicitude for the poor and the downtrodden. This basic significance of zakat is pointed out in the Quran

خُذْ مِنْ أَمْوَالِهِمْ صَدَقَةً تُطَهِّرُهُمْ وَتُزَكِّيهِمْ بِهَا وَصَلِّ عَلَيْهِمْ إِنَّ
صَلَاتَكَ سَكَنٌ لَهُمْ وَاللَّهُ سَمِيعٌ عَلِيمٌ

Take, (O Muhammad), from their wealth a charity by which you purify them and cause them increase, and invoke (Allah’s blessing) upon them. Indeed, your invocations are reassurance for them. And Allah is hearing and knowing (Q9: 105).

This is also stated in Q30:39 when Allah is drawing the distinction between usury (i.e. interest) and charity. Usury cannot lead to increase in wealth. The effects of usury are seen in our society. There are many global financial crises in the society as a result of imposing usury. Allah promises increase for the acts of charity sadaqah in the same verse. Allah says.

Q.....“And whatever you give for usury (i.e. advantage) to increase within the wealth of people will not increase with Allah. But what you give in zakah desiring the face (i.e. approval) of Allah – those are the multipliers. If a person gives sadaqah, his infatuation for wealth will be softened and it will be a source of advantage to him in the end. In the Quran, charity is mentioned side by side with prayer on as many as 32 occasions.

3.6 Attitudes of givers and receivers of sadaqah

A giver of charity (sadaqah) should consider its charity very little because all the resources he uses the sadaqah were provided by Allah. Allah gave him eyes, intellect, hands, legs and all parts of his body free of charge. He also provided the capital and other factors of production for him. All the resources used to produce and market the produce are provided by Allah. Man should give something that is pure and lawful. A giver of sadaqah should not rebuke, ridicule or insult the beneficiary. If it is given it can be given openly to encourage others to give charity.

However, it is better to give it secretly in order to protect the dignity of the receivers. The attitude of a giver of sadaqah is to express gratefulness for the gifts of Allah by giving them out to the poor. A payer of sadaqah can look for those people when paying sadaqah. In addition to the eight categories of people (Q9:60) who should be given charity, a giver can also give charity to God-fearing men, students seeking knowledge, truthful and sincere people, poor people that refrain from begging, a person with a big family and near relatives.

Sadaqah receivers should increase their services (iba'adat) and thank Allah for giving them means of livelihood. They should be grateful to the givers by praying for them and praising them. They should think sadaqah as great and should not accept charity from unlawful sources. They should not take more than they need.

4.0 Conclusion

It is evidently clear from our discussion that sadaqah is a blessing in disguise and openly if it is made to work. It helps in the re-distribution of wealth. Sadaqah generates wealth which can assist in the performance of other pillars of Islam. With wealth from lawful sources, a person's faith is protected. Not only that, he is able to pray with full concentration; and he is able to get food and drinks to undertake fasting in the month of Ramadan. With wealth, pilgrimage to Makkah is possible. The corollary of these assertions is that the role of sadaqah is unique to the extent that other acts revolve around it for their correct performance

5.0 Summary

In this lecture, you have learned:

- That sadaqah mean charity
- Forms of sadaqah i.e. those actions and services that could amount to sadaqah e.g. removing harmful
- That objects from roads
- Recipients of sadaqah are not limited like that of zakah receivers
- The difference between sadaqah and zakah

- The socio-economic and spiritual roles of sadaqah e.g purification of wealth and poverty reduction
- That the givers of sadaqah should perceive what he gives as mere token no matter how large, while the receivers should consider it great and large no matter how small.

6.0 Tutor – Marked Assignment

- Give the literal and legal meanings of sadaqah
- What are the items of sadaqah?
- Mention the recipients of sadaqah
- Differentiate between sadaqah and zakah
- What are the socio-economic benefits of sadaqah?
- State with relevant quotations the spiritual benefits of sadaqah
- What should be the attitudes of zakah's givers and receivers?

7.0 References / further Reading

Abdul Azim A (1978), Faridatu Allah Fil Mirath, Wal Wasiya, Darul Ansar, Cairo.

Abdul Rahman (1986), The Book of Jurisprudence on the Four Schools, Lebanon: Darul Fikr.

Abubakr b. Hasan Al-Katsin awi (nd) As-halul Madarik Lebanon: Darul Fikr.

Abubakr Jabir (1976), Minhajul Muslim, Lebanon: Darul Fikr.

Asaf A.A. Fyzee (1981), Outlines of Muhammadan Law New Delhi: Oxford University Press.

Muhamad Asad (1980), The Message of the Qur'an, Gibraltar: Dar Al-Andalus.

Salih Abdul Sami Al-Azhari (nd) Jawahirul ikhil, Commentary on Khalil's Mukhtasar Lebanon: Darul Fikr.

References

- Oloyede Is-haq O. (1987) Shariah Versus Secularism in Nigeria, Lagos: IPB
- Quadr Y.A and I.O Oloyede (1987) Al-Izziyah for the English Audience, Ijebu-Ode:SebiotimoPublications
- Oloyede Is-haq O, Kaura J.M, Kareem M.K. and Abbas L.O. (2003) Exam Focus Islamic Studies for WASSCE and SSCE, Ibadan: University Press Plc.
- Kareem M.K. (2011) Advanced Stud of Muslim Law, Ibadan: University of Ibadan DLC.
- Fazul-Karim, M. (2001) Imam Ghazzli's Ihya Ulum-Din, New Delhi: yassar Publishers and perfumers.
- Sayid Mujtaba and Musawi Lari (1977) Western civilization through Muslim Eyes, Tehran: Foundation of Islamic C.P.W.
- Hammudah Abdalati (1975) Islam in Focus, Indiana: American Trust Publication.
- Doi, A.R. (1984) Shari'ah The Islamic Law, London: Ta Ha Publishers.
- Khan S.A. (2005) How to Calculate Inheritance: A Simple Approach, New Delhi: Good Books.
- Majlisul Ulama of South Africa (n.d) The Book of Inheritance I, Lagos, Al-Waseelat.
- Muhammad al-Jibali (n.d) Inheritance, Regulations and Exhortations, Al-Kitaab and As-Sunnah Publishing.
- Qaradawi Y (nd) The Lawful and the Prohibited in Islam Lagos: Al-Tawheed Publishing Company.
- Daura M.B. (1983) El-Risala Zaria: Northern Nigeria Publishing Company Ltd.
- Zubair Q (1998) Discourage on Islamic Law of Inheritance and Waqf Kano: Department of Islamic Law Publications
- Syed Khahd Rashid (1987) Shari'ah Social Change and Indiscipline in Nigeria Sokoto: Department of Islamic Law University of Sokoto.
- Khan M.A. (1994) An Introduction to Islamic Economics Islamabad: The International Institute of Islamic Thought.
- Omar, M.S. (2000) The Rules of Zakat, New Delhi Idara Isha'at-E-Diniyat (p) Ltd.
- Nadwi S.H. (1972) The Four Pillars of Islam, Lucknow: Islamic Research and Publications
- Kidwai M.A. (1979) What Islam is Lucknow: Islamic Research and Publications.
- Irfan ul Haq (1996) Economic Doctrines of Islam. Nerndon: International Institute of Islamic Thought.
- Abdur Rahim, M.A. (1994) The Principles of Islamic Jurisprudence. New Delhi: Kitab Bhavan.
- Abdul Azim Islahi (1988) Economic Concept of Ibn Taimiyyah Leicester: the Islamic Foundation.
- Maulana Muhammad Ali (1986), The Religion of Islam. New Delhi: Taj Company.
- Fuad B. (1991), Al-Mu'jamul Al-Mujamul Mufahrisu li alfazil Qur'anil Karim Beirut: Da'rul Marifah.
- Ambali, M.A. (1998) The Practice of Muslim Family Law in Nigeria. Zaria: Tamazd Publishing Company Ltd.

Anderson, J.N.D. (1970), *Islamic Law in Africa*, London: Frank Cass and Company Limited.

Johnson Samuel (1976), *The History of the Yorubas*, Britain: Lowe and Brydone Printers Limited.

Muhammad K.M. (1977) *Islamic Legal Philosophy*, Islamabad: Islamic Research Institute.

Ambali, M.A. (1995), *The Place of Women in Islamic Scheme of Things*, Ilorin: Kewulere Press Ltd.

As-Sayyid Sabiq (1983), *Fiqhus-Sunnah*, Lebanon: Darul Fikr.

Muhammad Rida (1975), *Muhammad Rasulullah*, Lebanon: Darul Fikr.

Abdul Hamid Sidiqi (nd), *Sahih Muslim*, Lebanon: Dar Al-Arabia.

Muhammad Asad (1980), *The Message of the Qur'an Gibraltar: Dar Al-Andalus*.

Abdul Rahman Al-Jazairi (1986), *The Book of Jurisprudence on the Four Schools*, Lebanon: Darul Kutubul Ilmiyyah.

Abubakr Jabir (1976), *Minhajul Muslim*, Lebanon: Darul Fikr.

Abdul Rahman (1986), *The Book of Jurisprudence on the Four Schools*, Lebanon: Darul Fikr.

Abdul Azim A (1978), *Faridatu Allah Fil Mirath, Wal Wasiya*, Darul Ansar, Cairo.

Muhamad Asad (1980), *The Message of the Qur'an, Gibraltar: Dar Al-Andalus*.

Asaf A.A. Fyzee (1981), *Outlines of Muhammadan Law* New Delhi: Oxford University Press.

Abubakr b. Hasan Al-Katsin awi (nd) *As-halul Madarik* Lebanon: Darul Fikr.

Salih Abdul Sami Al-Azhari (nd) *Jawahirul iklil, Commentary on Khalil's Mukhtasar* Lebanon: Darul Fikr.