

# FATAWA AWQAF AND TRUSTS

## I. A BRIEFING ON WAQF

This Briefing is prepared on request of the Council of the local Mosque.

### 1. BACKGROUND:

The idea of Waqf (p: Awqaf) existed in ancient cultures and civilizations; it took an expanded dimension in the Islamic society.

### 2. THE PRINCIPLE OF WAQF IN QUR'AN AND SUNNAH:

The first Waqf ever built for the worship of Allah was the Grand Mosque in Makkah. The Qur'an [2:127] tells that the pillars of this Grand Mosque (Ka'bah) were first raised by the Prophets Ibrahim and his son Ismail.

One of the first things made by the Prophet Muhammad in Madinah was to build the Mosque as a Waqf for all Muslim. This came to be known as the Mosque of the Prophet, pbuh, which is the second most sacred mosque in Islam.

The Qur'an refers to establishing mosques [9:18] and the Prophet, pbuh, mentioned that in several of his glorious Sayings (Hadiths).

Mosques make up the first and most dominant kind of Waqf in Islam. Next comes the Waqf whose revenues are designated to be spent on mosques' running expenditures, for social, charitable, and educational purposes and last comes the family or posterity Waqf whose revenues are devoted for future generations of the Waqf founder. Hence, there are three kinds of Awqaf in Islam: Religious Awqaf, Philanthropic Awqaf, and Family Awqaf.

### 3. OWNERSHIP OF WAQF:

One of the most important issues discussed in the Islamic Shari'ah (law) is who owns the Waqf properties in general and who owns Mosques and properties whose revenues are designated for mosques' maintenance and other expenses, in specific.

The Islamic Shari'ah considers Waqf as sacred and does not allow for disposition of the Waqf property in any way except one: to maintain it and improve its benefit to better fulfill the objective for which it is designated. A Waqf property cannot be sold, leased, given as a gift, bequest, mortgaged, or subjected to any transaction that changes its ownership or its availability for the fulfilling the objective for which it is devoted by the founder.

The majority of Muslim Jurists consider a Waqf, mosques and others, similar to being owned by Allah (because they cannot say "owned by Allah" since every thing in the whole world is owned by Allah, so by this statement they mean to draw a similarity with private ownership as if they say: privately owned by Allah).

According to the Islamic Shari'ah, Mosques and mosques related Awqaf must not be private properties of any person, natural or legal. Mosques are places for prayers and other religious and community activities for all Muslims in the area. Historically Muslim jurists consider Mosques open to all Muslims that they cannot be privately owned. It is an agreed upon position of all Muslim Jurists that the moment an owner of a real estate opens her/his property as a mosque for the public to pray, it becomes a Waqf. They

express strong reservation and doubt about a mosque that is closed to the public to an extent that the majority considers Friday sermon invalid in a mosque that is closed to the public.

4. PERPETUITY:

A mosque is a perpetual Waqf. A real estate designated as a mosque cannot be sold or disposed of in any manner what so ever, except for replacing it with another real estate that is better, more useful for a mosque. The only difference between Islamic Jurists in this regards is that while the majority allows substitution for better usefulness, some jurists, the Malikites do not permit any replacement, even if the area where the mosque is located becomes completely deserted by Muslims.

In the Islamic Shari'ah, Waqf's Trustee/manager has no power to liquidate it. The rules and conditions of substitution of a Waqf property for another make it almost impossible to eliminate a Waqf or affect its perpetuity. Further, a Waqf property, such as a mosque or a philanthropy, may not fall under any liabilities that may require its liquidation, while its Trustee/manager may become liable for any negligence.

5. STATUS OF MOSUQUES IN THE UNITED STATES:

The U.S. and State Constitutions provide for respect and equal treatment of all religions. However, protecting the Islamic characteristic of Awqaf (Mosques and others) goes beyond the existing limits provided by the laws on non-profit organizations. In fact, the protection of these characteristics calls for a special Federal Act of Awqaf for Muslims in the United States.

In almost all the Muslim countries there are laws of Awqaf that provide necessary protection. Special departments of the governments, very often at ministerial level, are created to take charge of maintenance, and other expenditures of mosques and to keep the records of Mosques properties as being trustees. Similar Acts and Departments also exist in a few Muslim minority's countries such as India and Kenya.

Since there is no such department in the United States, many local Muslim organizations and communities resorted to conveying titles of their mosques, schools and other Awqaf properties to the North American Islamic Trust (NAIT) to serve this purpose of holding titles to mosques and other Muslim communities' public properties as a trustee, for the purpose of providing a minimum amount of protection for these Awqaf, while the use of the property remains in the hands of local Muslim organizations.

In response to a request of The North American Islamic Trust, I have prepared this brief memorandum. I have good expertise in the Economic, financial and Institutional areas of Islamic law. I will make myself available if needed.

Respectfully,

March12, 2001

Monzer Kahf

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## II. THE DIFFERENCE BETWEEN WAQF AND TRUST

SUBJECT: The difference between a Waqf and a trust

From: dialogue@islam-online.net

Date: 3/26/2001

Name of Questioner Muneer

Gender Male

Age 46-60

Education Post Graduate

Date Submitted 3/17/2001

Email

country of Origin Pakistan

User Ref. No. MJKVPR

cntry of Res. Pakistan

Question:

What is the difference between a Waqf and a trust, is it Islamic for a Muslim to transfer his property to a trust for the benefit of his daughter but putting a condition that if she marries a non-Muslim, she will no longer remain a beneficiary and the trust shall terminate and the property shall go to the closest Muslim relative of the person creating the trust. Can a Muslim make a trust during his lifetime over some of his property like non-Muslims for the benefit of an Art museum

My Answer:

Dear Br. Muneer,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

Your question is a composite of long issues that need more time than I can now devote for this answer. Let me be very brief and to the point and forgive me if I don't give full arguments and reasons for substantiating these points.

1- During one's life time a person is completely free to do what she/he pleases with one's properties, all of part, as long as the person has the legal capacity, not during death illness, and not under debts. This is a basic and general rule.

2- Waqf in Shari'ah is a very important issue. It has always been widespread in our Muslim societies. Education, health, social services, environmental services, public utilities, and many others were always finance by Waqf.

3- Waqf can be done during the lifetime, it can be done after death through a last will, but then it is restricted, along with all other donations to non-heirs, to one third of the estate only.

4- Waqf has to be for a purpose that is good and righteous. You cannot make a Waqf for any bad purpose, such as spending on a dog more that a dog normally handles.

5- If one makes a Waqf for the purpose of preventing one's heir from taking their shares after one's death, the Waqf is valid and correct and the person is sinful and only Allah Ta'ala hold the person accountable for one's intention.

6- In principle Waqf is permanent and there must be a clause in it that perpetuate its objective, such as income of the Waqf must be given to my daughter and after her death to the poor and needy in a given area or town. The Malikites allows a temporary Waqf, and this is very wise of them.

7- Waqf can be on persons, like one's descendants, to charity like poor and needy, to general welfare like utilities, and to mosques and religious activities.

8- You see that some forms of Waqf are very similar to some forms of trusts as known in Western countries

9- Yes, you can make any condition in a Waqf except discriminatory conditions such as giving male descendants and preventing females. Also a condition that violates the purpose of righteousness is not permissible.

10- The condition you mentioned is permissible, and a temporary Waqf is also

permissible. That is a Waqf for the lifetime of your daughter and after her to some other relatives or to be liquidated and distributed in a given way that you specify.

11- You can make a Waqf, during your lifetime to an art museum, but please keep an eye on the priority of the Ummah and make a wise decision that will give you the best reward, InShaAllah

finally if you prepare a Waqf document in the form of a trust, and you want to show it to me for further opinion, I think I can help, my Email is: <Monzer@kahf.com>

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

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### **III. RECORDING A NEW MOSQUE**

SUBJECT: Registering a new local mosque

Dear Br. Dr. Shakil

Assalamu Alaikum,

On your request, please receive a little write up on the Waqf of Mosques and Islamic centers (3 pages). Please feel free to contact me any time if I can be of any help in this area.

Feb. 18, 2001

Sincerely

Monzer Kahf

#### THE ISLAMIC WAQF:

##### 1 BACKGROUND:

The idea of Waqf existed in ancient cultures and civilizations; it took an expanded dimension in the Islamic society.

##### 2 THE PRINCIPLE OF WAQF IN QUR'AN AND SUNNAH:

The first Waqf ever built for the worship of Allah was the Grand Mosque in Makkah. The Qur'an tells that the pillars of Ka'bah were raised by the Prophets Ibrahim and his son Ismail.

One of the first things made by the Prophet Muhammad in Madinah was to build the Mosque as a Waqf for all Muslim. This came to be known as the Mosque of the Prophet, pbuh.

The Qur'an refers to establishing mosques (9:18) and the Prophet, pbuh, mentioned that in several Hadiths.

Hence, Mosques make up the first and most dominant kind of Waqf in Islam. Next comes the Waqf for social and charitable purposes and later the family or posterity Waqf.

##### 3 OWNERSHIP OF WAQF:

One of the biggest issues discussed in the Islamic Fiqh is who owns the Waqf in general and specifically Mosques.

The Islamic Shari'ah considers Waqf as sacred and does not allow for disposition of the Waqf property in any way except one: to maintain it and improve its benefit to the objective for which it is designated.

The majority of Muslim Jurists consider a Waqf, mosques and others, similar to being owned by Allah (because they cannot say owned by Allah since every thing is owned by Allah, so they mean to draw a similarity with private ownership as if they say privately owned by Allah). A few argue that Waqf is owned by the beneficiaries or users and some say it is owned by the founders, yet all minority jurists believe that ownership by users/founders is a sort of limited ownership because, unlike private owners, they have no right of disposition and they cannot sell the Waqf, lease it, nor mortgage it.

Mosques, in specifics, are not private properties. They are places for prayers and other religious and community activities for all Muslims in the area. Historically Muslim jurists consider Mosques open to all Muslims that they cannot be privately owned. In all four schools of Fiqh the moment an owner of a real estate opens her/his property as a mosque for the public to pray, it becomes a Waqf. They express strong reservation and doubt about a mosque that is closed to the public to an extent that the majority considers Friday sermon invalid in a mosque closed to the public.

#### 4 PERPETUITY:

A mosque is a perpetual Waqf. A real estate designated as a mosque cannot be sold or disposed of in any manner what so ever, except for replacing it with another real estate that is better, more useful as a mosque. The only difference between Islamic Jurists in this regards is that while the majority allows substitution for better usefulness, some jurists, the Malikites do not permit any replacement, even if the area where the mosque is located becomes completely deserted by Muslims.

#### 5 LEGAL STATUS OF MOSQUES IN NORTH AMERICA:

The present legal status of mosques, and other Muslim community's real estates, is that they are owned by their respective organizations. While it is true that US Constitution provides for respect and equal treatment of all religions, the Islamic characteristic of such real estates as Waqf falls beyond the existing limits provided by the law for non-profit organizations.

Without any single exception, all Islamic centers, mosques, etc. are owned by incorporated organizations, normally as non-profit religious corporations. The system is likely to slightly vary from one State to another, but their common feature is to grant the incorporated organizations a corporate status which allows them to own properties and be treated as legal entities, which are similar, in most legal respects, to natural persons. Consequently, all public properties of the Muslim community are registered as properties of these Islamic non-profit corporations.

Accordingly, non-profit corporations have full and unequivocal rights to dispose of their properties, whether they are in the form of real estates or in the form mobile assets. This is a principle inherited from the system of corporation in the Western legal traditions. Keeping in mind that some Islamic organizations may have made it more difficult, in their own articles of incorporation or by-laws, to sell a mosque or an Islamic center or to engage such a property as collateral in a mortgage contract, yet the problem remains. After fulfilling certain conditions, the decision-making body of the Islamic non-profit corporation has a legal power to eliminate a mosque or any other public property of the Muslim community. This is in one hand.

On the other hand, outsiders and any third party, Muslim or otherwise, can sue the Islamic organization for any possible or potential liability and force it to liquidate its assets, especially, its real estates to discharge of its liability.

*Waqf*, in the Islamic *Shari'ah*, is not like that. Its Nazer (manager) has no power to liquidate it. The rules and conditions of substitution of a *Waqf* property make it rather impossible to eliminate a perpetual *Waqf*. Further, perpetual *Waqf* does not fall under liabilities that may necessitate its liquidation, while its manager may be liable for any negligence.

The conclusion is that if we want to provide protection and preservation of the public properties of the Muslim communities, Islamic centers, mosques, schools and the like, it is not sufficient to amend the articles of incorporation by limiting the power of the decision-making bodies of our Islamic non-profit organizations. What is needed is a lot more than that. WE NEED A SYSTEM THAT INSPIRES THE ISLAMIC PRINCIPLE OF WAQF WITH THE CHARACTERISTICS OF PERPETUITY, NOT BEING SUBJECT TO LIABILITY AND LIMITED AUTHORITY OF THE MANAGER.

The fact is that the Islamic system of Awqaf does not only protect the real estate properties of the Muslim communities but it also protects the mobile assets, personal property of the Muslim Organization and income-generating real estates.

#### 6 SUGGESTED SOLUTION:

The first best and the ultimate solution of this problem are to seek new laws that protect the public properties of the Muslim community. Such laws should be designed in accordance with the principles of *Waqf* as known in the Islamic *Shari'ah*. We need to work towards this goal. We can co-opt other charitable organizations that have similar concerns. We can cooperate with all other non-profit organizations, religious and otherwise, to achieve this kind of improvement in the American legal system of non-profit properties for the common objective of protecting them from their own decision-making bodies as well as from outside liabilities.

In the meanwhile, we need to design suitable legal documents on the basis of permanent irrevocable trusts in which any liability is charged to the Manager rather than to the trust property. A rough example of such principles is sketched in the following:

The organization that owns the property gives it in trust to a managing organization with strong conditions that perpetuate the property for the benefit of the local Muslim community. These conditions include limitation on the authority to dispose of the property except in accordance with the principle of substitution as defined in *Shari'ah* (details can be given later), they also include the responsibility of the managing organization in all ways that result in relieving the property itself from any liability.

The document shall emphasize that this religious Trust (*Waqf*) is permanent and irrevocable. It must be preserved until the Day when God resurrects all men and women. Usage of the Trust's assets is restricted to the religious Islamic purposes and within the limits ordained by the Islamic *Shari'ah*. No part of these assets can be used for any activity, what so ever, that may violate the Islamic moral, social religious and spiritual norms, regulations and guidance.

All capital gains, appreciation and revaluation accruing to the trust's assets shall be added to the principal of the trust and become inseparable part thereof, whether such gains accrue to the properties named in this document or to any other properties for which any part of existing properties is substituted. All and any additions to the assets of this trust shall constitute an intrinsic and inseparable part of this trust and shall be covered by this document as if it were named in the document itself.

The beneficiary organization/trustee shall have full, unequivocal and unchallenged rights to use any and all the assets of the trust for any and all of its activities and at the discretion of its appropriate decision making body in accordance to its own articles of incorporation. All this within the limits and conditions of this document and the Islamic Shari'ah.

The founders, trustees, managers, and beneficiaries have neither power nor authority of disposing of the assets of this trust or any and all of its capital gains under any and all circumstances. The properties of this trust cannot be mortgaged, put as collateral, forsaken, or disposed of in any manner by any of its founder, managers, trustees, beneficiaries or other persons. These properties do not enter under the ownership of the founders, trustees, managers, or beneficiaries. Any contract, commitment or obligation made to the contrary of this clause is null, void and invalid.

Since this trust and its document are of public benefit and interest to all members of the Muslim community in ...(county or city)..., any member of this community is in a position to supervise and control the faithful and proper implementation of the texts and spirit of this document.

Monzer Kahf

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#### IV. SALE OF AWQAF PROPERIES

SUBJECT: Selling a Mosque

From: dialogue@islam-online.net

Date: 4/12/2001

Name of Questioner Arshad

Gender Male

Age 31-45

Education Post Graduate

Date Submitted 4/10/2001

Email

country of Origin Pakistan

User Ref. No. 2Y6P6E

country of Res. U K

Question:

Can we sell a Mosque in the United Kingdom to any person to be converted into Flats or anything else? The reason being we have purchased a large building but we need funds to convert it. The current Mosque used to be a corner shop and was converted into a Mosque over thirty years ago. About twenty years ago we doubled the size of the existing Mosque by building a new extension from the foundations. It was the first Jamie Mosque in our town. I would greatly appreciate your help. WA Salam

My Answer:

Dear Br. Arshad

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

A mosque is a religious Waqf. In principle it cannot be sold, given as a gift, inherited, etc. That is in principle. But in a case like you described a mosque that has become too small, or inconvenient for the local Muslim community or any similar reason, we have in Shari'ah what is called replacement or substitution of a Waqf property. Substitution means that if a Waqf property, Mosque or otherwise, becomes unable to fulfill its objective and it can be substituted for another property which does that better, you can sell that property provided that you get another property that fulfills the objective of the Waqf to a better extent. The substitution must be done immediate if possible and any money taken from the old mosque must be all put in the new mosque.

The case you described involves a fact that you already bought a new building for the mosque and you need the money you get from the sale to complete payment for the new one or to make necessary renovation to make it usable as a mosque, at the same time the community does not need anymore the old structure, UNDER SUCH CIRCUMSTANCES IT IS PERMISSIBLE TO SELL THE OLD MOSQUE AND PUT THE PROCEEDS, ALL, IN THE NEW MOSQUE.

BUT if there is now a need for both of them and there are people who still use the old location, being in a residential or work area, so that for a part of the community the old mosque is still fulfilling its objective, in such case what you need in fact is a second mosque not to exchange the old one for a new one. IN SUCH A CASE IT IS NOT PERMISSIBLE TO SELL THE MOSQUE and the Muslim community is required in Shari'ah to contribute to establish a new mosque.

Wa Allahu A'lam

Wassalam

Sincerely,

Dr. Monzer Kahf

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## V. WAQF AND ESTATE PLANNING

SUBJECT: Waqf and Estate Planning

From: dialogue@islam-online.net

Date: 1/23/2002

Name of Questioner Rebhi Gender Male

Age 31-45

Education Post Graduate Date Submitted 1/12/2002

Email

country of Origin Palestine User Ref. No. B21DSK

country of Res. U SA

Question

Has anyone done work on estate planning in the USA. This would include preparing legal documents on inheritance and use of money. I am aware of the Islamic Will prepared by



ISNA which does not get into legal advices or guidelines. Are there guidelines and advices? Any websites or references? Thank you

My Answer:

Dear Br. Rebhi

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Al Hamdu li Allah wa al Salatu wa al Salam ala Rasuli Allah.

You have touched on a very serious and sensitive question. The plain answer is an unfortunate: NO. BUT.

Estate and financial planning for Muslims in the United States poses three major points: 1) it has a strong bearing on the implementation of property and inheritance laws of Shari'ah, especially distribution in accordance with Shari'ah, wife/husband inheritance and the Shari'ah given rights of heirs including immediate ownership. The very foundation of the Islamic definition of the right of ownership is at stake here because Shari'ah does not extend this right beyond death. When I go I cannot impose my views on what I used to own when I was alive! Am I not only a "Vicegerent" and God is the True owner. Even the last will within one-third is a mere exception, a special grace from God, as Abu Bakr al Siddiq put it! 2) It has a strong bearing on the future of the economic base of the Muslim communities, mosques and Islamic centers. Unless we apply the ideas of Waqf and Wasiyyah as major sources to finance the community activities they will remain weak and lacking long term planning. 3) it has the huge advantage of benefiting from the opportunities and protection of individual Muslims vis-à-vis avoidable taxes, smooth and fast transfer of ownership to their heirs, reduced cost of estate and preservation of privacy. LAST WILL as we made it in ISNA helps only in the distribution in accordance with Shari'ah, which is itself a great contribution. It does not take advantage of the economic opportunities and protection provided by available forms of estate and family financial planning.

The "BUT": Although there are several Muslim estate planning specialists, analysts, and consultants, unfortunately I did not come across ANY SINGLE ONE OF THEM WHO UNDERSTANDS AND INCORPORATES THE RELEVANT ISLAMIC RULES in estate and family financial planning.

I have a personal interest in the matter because I live in a State where owning a mere 20,000 dollars in real estate equity takes the estate to the probate court. I did one for my own in consultation with lawyers and estate planners. WE NEED TO COOPERATE IN THIS MATTER, MUSLIM LAWYERS, SHARI'AH EXPERTS AND FINANCIAL ANALYSTS TO PRODUCE BASIC FORM, AS WE DID IN LAST WILL, THAT HELPS PROVIDING THE CORE OF ESTATE AND FAMILY FINANCIAL PLANNING. That gives all the Shari'ah requirements within an acceptable legal framework. It still has to be adjusted to accommodate specifics of the state of the individual Muslim who is going to use it.

If you want to pursue this matter further, help in this regards, know more about my personal attempt and see if you can benefit from it, please contact me on my email published in my website [www.kahf.net](http://www.kahf.net).

Thank you,

Wa Allahu A'lam.

Wassalam  
Sincerely,  
Dr. Monzer Kahf

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**SUBJECT:** [Creating a family Trust \(Waqf\) for an ill child](#)

From: islamonline.net  
Sent: August 13, 2002  
Name of Questioner shamim                      Gender Male                      Age 21-30  
Education Graduate                      Date Submitted 6/30/2002                      Email  
country of Origin Bangladesh                      User Ref. No. Q1UUEC

#### Question

Assalamu Alaikum, I have a vast problem and I hope you will look into the matter with scrutiny. My father purchased plot and registered on my mother's name. After that my father built multi-story buildings including market places there and exposed my mother as the owner of the building and market which fetches huge income tax as owned by a single person. So, my mother wants to bequeath those property among our brothers and sisters with a view to diminishing tax-value.. I have one brother and four sisters. My parents intend to bequeath with a certain variation. My second sister is mentally abnormal. In her early life she was normal and ambitious and was firmly determined to get herself admitted into medical studies but in vain. She was extremely shocked and gradually developed mental problem. Parents left no stone unturned for treatment but she did not improve. At last parents got her married so that marriage might alter the situation. In her short time of conjugal life she gave birth to a daughter but the problem was not eliminated rather intensified. After the child birth my sister has been living with us away from her husband for about four to five years. Her husband after waiting for several years married another one. Is my sister still under wedlock or automatically got divorced as she have been living away from her husband for several years? My sister is still under treatment which costs thousand taka (currency of Bangladesh) per month. Now regarding the bequeathing will my parents want to deposit about five lakhs taka in my account so as to facilitate my bearing expenses for her treatment when I will be in charge. In this regard I must add that my parents want to do this without the knowledge of my elder brother. Parents lack in faith upon him for his being irresponsible and luxurious. Will this step that is going to be taken by my parents be valid or not? If invalid I may inhibit my parents but if it is valid then I have another ask. If five lakhs taka is deposited in my account it will make profit (in stead of usury I mentioned profit because I opened account in Islamic bank). Can I take the profit or it will be added with the capital and remain restricted for sisters benefit only. Pray for me, for my sisters and also for my elder brother so that he succeeds in attaining faith of parents.

[My Answer: \(the part relevant to Waqf\)](#)

[Bismi Allah al Rahman al Rahim](#)

[Al Hamdu li Allah Rabb al 'Alamin](#)

[wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in](#)

[Dear Br. shamim](#)

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

I understand your question and this kind of dilemma. You need to untangle such matters very carefully so that you achieve the objective of serving future needs of the unfortunate person without violating the laws of Shari'ah nor upsetting the laws of the land.

1) It is permissible, in Shari'ah and in the Anglo Saxon laws to establish a Waqf (trust) for the treatment and living expenses of your sister. Parents are required to spend on their needy children, even when they are adult. Your father/mother can establish a waqf to take care of such expenses. It can be set in such an amount so that its income in an Islamic bank can satisfy her annual needs. This Waqf is temporary and must terminate when she is cured or when she dies. Upon termination the waqf principal can either be given to charity or distributed to all four brothers and sisters according to the rules of inheritance (it can also be distributed in any other way but I think it is inappropriate to distribute to brothers and sisters in any way that is not consistent with the inheritance rules, 2 shares to a male and 1 share to a female because parents are required to make complete justice between their children). You can be the trustee (Nazir or Wasi or Qayyim) of this waqf by appointment from the waqf founder.

2) Inheritance in Islam is regulated by mandatory rules as specified in the Qur'an, mainly in Sura 4. therefore bequest must follow these rules without the slightest violation. If you have grand parents, each of them inherits 1/6 of the net estate of their child (i.e., after expenses, debts and any last will to non heirs within a maximum of one third). If your mother dies before her husband, he inherits 1/4, and if I assume she is survived by her two parents too, the remainder, 5/12 should be divided between the four of you on the basis that a son takes twice as much as a daughter. Should your father die before his wife, she takes 1/8 and with two parents surviving the remainder, 13/24 will be divided between the four of you the same way.

3) It is extremely important to notice that bequesting can only be done after death, giving while alive is gift and cannot be treated as inheritance. Gift to children must be equal between them and bequesting to children follows the rule of 2 to 1 male/female.

4) The income from the trust made for the treatment of your sister must be used for her treatment and any left over must be added to principal. The founder of the trust may add other objectives, if she/he so chose, and whatever stipulations mentioned in the waqf deed must be honored unless they are discriminatory against female beneficiaries. Finally, may Allah. Ta'ala, guide you, your brother and your family, me and all of us to the right path and to always do what pleases Him.

Wa Allahu A'lam

Wa Alhamdu li Allahi Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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## **VI. WAQF MUST BE FROM WHAT YOU OWN**

SUBJECT: Earned Interest can't be made a Waqf

From: islam-online.net  
Sent: March 25, 2003  
Name of Questioner basheer Gender Male Age 21-30  
Education Graduate Date Submitted 3/20/2003 Email  
country of Origin India User Ref. No. FY6WHL cntry of Res. India

Question

About banking interest (Riba). Shall I pay the interest to the poor as help. What can I do the same in a better way if it occurs on our life?

My Answer:

Bismi Allah al Rahman al Rahim  
Al Hamdu li Allah Rabb al 'Alamin  
wa al Salatu wa al Salamu 'ala Sayyidina Muhammad wa 'Ala 'Alihi wa Ashabihi Ajma'in

Dear Br. basheer

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Interest obtained from conventional banks is not money you own because it came to your hands by invalid contract. Therefore you should rid yourself of it as soon as you can by giving it to the poor and needy, better through Islamic charitable Organizations. It is not "clean or pure" money to give to the local mosque for instance. You cannot make Waqf out of it because Waqf, according to Shari'ah, can only be created out of one's owned money or assets. This is not considered Sadaqah for the same reason but you will be rewarded for you intention and action of keeping you money untainted by, or pure off interest.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

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