


HAJJ WITH AE

YOUR
GUIDE TO AN
ISLAMIC
WILL





“Every soul will taste death, and you will be paid in full only on the Day of Resurrection. Whoever is kept away from the Fire and admitted to the Garden will have triumphed. And what is this present world except an illusory pleasure?” (Ale-‘Imran, 185)

A NOTE FROM SHAYKH ABU EESA

With the Name of Allah, the Most Merciful, the Especially Merciful

One of the blessings of the Hajj is that it makes many of us acutely aware of death, which often requires us to make preparations before we embark.

However, complicated Islamic financial matters frighten many of us, forget about documents with technical legal terms that make no sense, let alone combining the two into that wonder that's known as your "Last Will & Testament"! What drama!

Of course it doesn't need to be that way, and hopefully this small guide, the attached Islamic Will template and video will help you fulfil this key obligation.

DO I NEED AN ISLAMIC WILL?

Because so many of us live in non-Muslim countries, we are absolutely obligated to prepare legal documentation that will ensure our inheritors – our close family members that Allah has told us receive a share of our wealth in the Qur'an – get their obligatory share. Otherwise the ruling legal and taxation systems will eat up that wealth in an impermissible way. Hence we have to write a Will to give power to our Trustees to take over our wealth and divide it as per the Shari'ah.

The free Will attached is only legally recognised in England and Wales but you can use it as a basis to get similar ones made up in your own countries too with the help of a solicitor. For the full details of the legal system concerning Wills, the Islamic principles concerning wealth pre- and post-death and then the Islamic Will, the Bequest (the Wasiyyah) as well as the Rules of Inheritance, these are all subjects that certainly need to be studied in detail such as in my class "The Fiqh of Death". For now, some basic knowledge is being assumed with this free template and this guide is just a brief set of notes to help you understand what you're doing.

If you find that it's not appropriate for your situation, then you'll need to get a professional one made up by a legal specialist. Nowadays there are many solicitors that offer this service so shop around and you'll find a solution. However, I have to say that I would only ever recommend iWill from Birmingham when it comes to this field. I've known Haroon and worked with him on a number of projects for over ten years, and he's without doubt mA the leading expert in the UK for bespoke Islamic Will solutions. But more importantly for me, he's a guy who takes fiqh and research the most seriously, always looking for novel solutions that are backed by the 'Ulema to try and help the Muslim community and I like folks like that. They'll always get a plug and my respect.

Anyway, this free Will template will be suitable for many people. Watch the video, follow the instructions here, and you should be fine iA.

With my best regards,

AE

WHO IS THIS FREE ISLAMIC WILL TEMPLATE DESIGNED FOR?

This free Islamic Will template is most appropriate for a person who fulfils the following two criteria, with none of the other complicating factors mentioned later:

- A single person or a married couple with no (or very little by way of value) jointly owned assets
- Having an estate consisting mostly of shares and or cash worth (ideally much) less than £325,000

The template is ideal for those who want to comply with their Islamic obligation and provide for Guardians for their young children and perhaps leave a percentage of their estate to charity.

For those who can afford it, we strongly recommend you obtain independent advice from a qualified firm of solicitors. Many firms now appear to be offering this service, and we advise you choose a firm who has been offering the service for a number of years and who have some form of Shari'ah compliance.

WHO SHOULD NOT UTILISE THIS FREE ISLAMIC WILL TEMPLATE?

There are numerous complicating factors, which if present, make the use of this template by an individual, inadvisable. These include (but are not limited to the following):

- Married couples with joint assets, particularly a jointly-owned home.
- Those with beneficiaries/inheritors who are disabled, financially imprudent or who could have potential marital issues.
- Those who wish to leave to those who do not inherit automatically under Islamic law or have other non-standard wishes.
- Those with estates of close to or over £325,000.
- Those with complex financial circumstances (including property/asset ownership being ambiguous, owning property/assets jointly or having pensions and life policies).
- Those with business assets.
- Those who are not UK domiciled.
- Those who own foreign assets.

- Those who cannot read or understand English.
- Those with family issues/disputes or where there is a significant potential for such disputes occurring.
- Those who worry about how best to provide for vulnerable beneficiaries.

For anyone falling into one or more of the above scenarios, we strongly recommend that you take further legal advice from a qualified firm of solicitors who specialise both in English law (and the associated tax implications) as well as the relevant Shari'ah-compliance aspects, and who are experienced in this field.

We recommend iWill Solicitors, who are the leading specialists in the UK in Islamic Will writing and the associated fields of inheritance-tax planning and estate administration (Probate). Please visit www.iwillsolicitors.com for more information.

There is no formal association between HajjwithAE and iWill Solicitors and you are of course free to use whichever practitioner you please. HajjwithAE accepts no responsibility connected with advice provided by iWill Solicitors, or any other practitioner, or for use of the template as its appropriateness depends on how it is used.

TAX CONSIDERATIONS

Inheritance tax is payable at a rate of 40% on all wealth, including the family home, valued over £325,000 for a single person, or £650,000 for married couples.

This allowance is known as the nil-rate band allowance (NRB allowance). In addition to the standard NRB allowance, if you are a home owner, you may be entitled to a residence nil-rate band allowance (RNRB allowance), although this comes with conditions related to the value of the property, living in the home for which the allowance is claimed and the passing of the home to descendants.

All wealth transferred to a (UK domiciled) spouse on death is exempt from inheritance tax, provided the marriage is legally recognised in the UK (please note, a nikah conducted in the UK would not be recognised as a valid marriage if the nikah was not subsequently registered). Wealth transferred to anyone else on death is only exempt up to a limit of £325,000, together with a potential RNRB allowance of £175,000. This limit can vary over time, and is applicable for the tax year beginning 6th April 2023. Of course in the future, these figures will probably change slightly although your Will will remain valid in principle.

EXECUTORS AND TRUSTEES

The person/people who take over the responsibility of sorting out your estate after you pass away is called an Executor. They value your estate by assessing your assets and liabilities, pay any taxes, bills, debts, funeral costs and then distribute the estate. The one who then administers the distribution of your estate (which is now sometimes called a “Trust Fund”) is called a Trustee. They distribute the assets in that estate or invest and manage the capital, as you have best trusted them to do so.

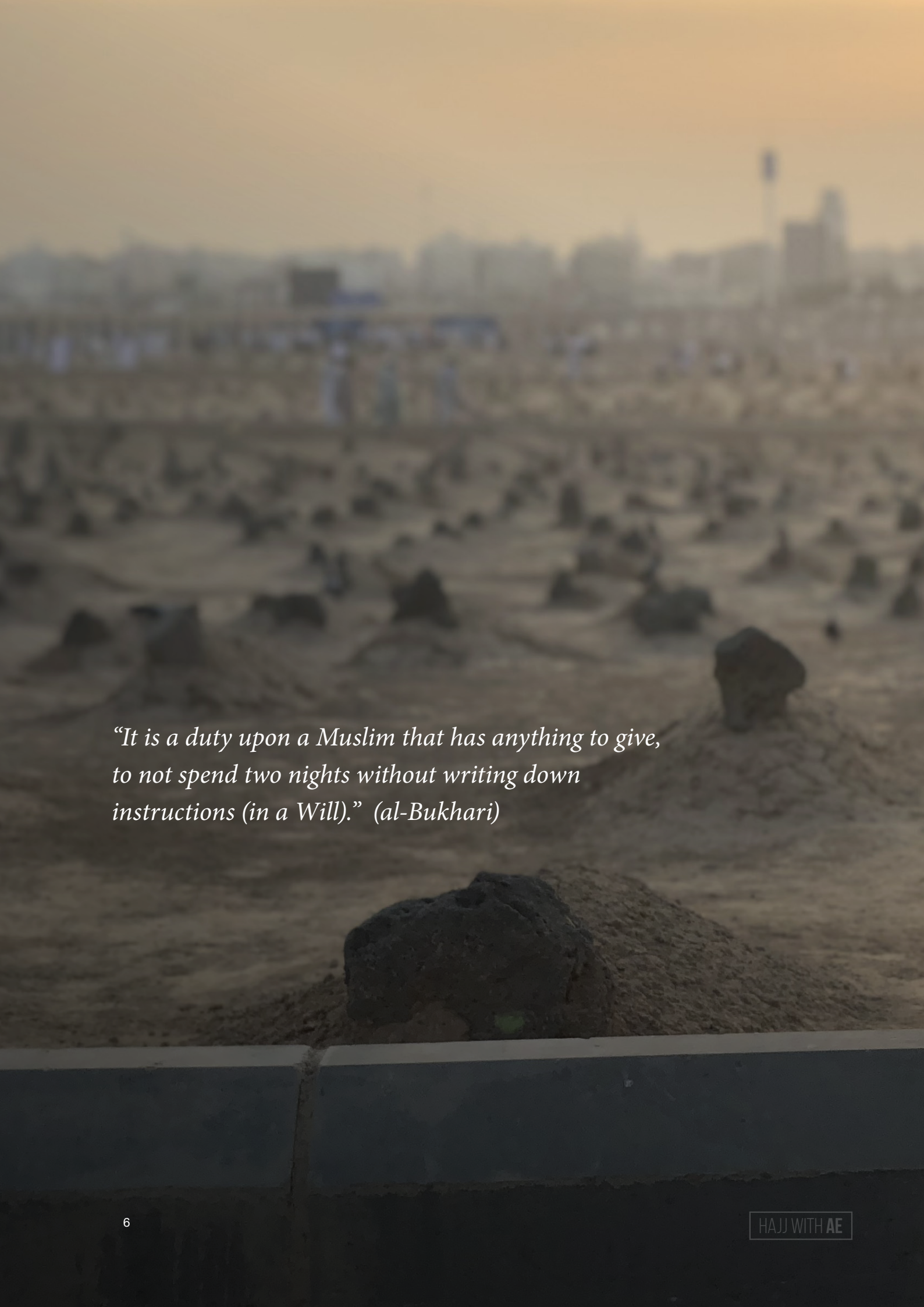
Often, the Executor and Trustee are both the same person, but just wearing different hats and different times. We advise there to be at least two Executors/Trustees so that they consult one another to achieve best practice. They can be direct family members but the most important factor is that they are close and trusted people who would understand the responsibility of the position and understand the needs of the deceased. You can appoint a professional Executor as well, such as a law firm.

JOINT ASSETS

Many couples choose to own their homes or other assets in joint names, usually held under a “joint tenancy”. This means upon the death of a partner, ownership of the asset will automatically pass entirely to the surviving partner, regardless of what is stated in the Will. This goes against Shari’ah principles. Changing jointly owned assets to “tenants in common” resolves this issue by allowing the Will to determine who inherits from the share of the partner who has passed. The Land Registry website contains step-by-step instructions on how to make this change (landregistry.gov.uk). For those uncertain as to how to proceed, we suggest you take legal advice on this matter.

GUARDIANSHIP

When preparing a Will, parents who have minor children may wish to consider who they would elect to look after their children if both parents were to pass away whilst their children were still young. Our free Will template allows Guardians to be nominated.



“It is a duty upon a Muslim that has anything to give, to not spend two nights without writing down instructions (in a Will).” (al-Bukhari)

THE BEQUEST


This section (which is 7.2 and 7.3 in the Islamic Will) deals with your Wasiyyah i.e. the Bequest, and is a recommended Sunnah to perform. Section 7.2 focuses on any charities you wish to support and you should enter their details. Section 7.3 covers any specific people who wish to leave a portion of your wealth to that wouldn't normally inherit from you, such as an adopted child etc. The total of both sections cannot be more than 33% of your estate, or the amount you enter at the beginning of Section 7.2. Your local scholars can advise you on the types of people and institutions you can include here, that would not normally receive a share from your actual inheritance.

You can put a line through any extra spaces you don't use (to avoid someone tampering with your Will), and if you need to add extra people to receive a portion of your bequest, you can add it in writing in this section but it must be counter-initialled by yourself and your witnesses at the same time as signing the Will. We do not recommend this process in truth, and normally when there are specific bequests then it is better to get a professional Will made up. Please note that if you do not leave a bequest, or choose to leave say 10% of the 33% you are permitted to leave, the balance of your estate is directed to be held in accordance with the Shari'ah. It is not essential to leave a bequest but as advised it is a Sunnah, particularly to leave to charity.

ASSETS & LIABILITIES

It is recommended that you have extra sheets kept with your Will where you make a note of your assets as well as any debts or obligations you owe to others. You should also leave helpful instructions on such sheets such as details of accounts, or personal advice to the Trustees to make their job easier.

These are not legally part of your Will, but being in the same envelope they are a set of notes that reflect your thoughts, wishes, advice, tips and changes in financial circumstances that can help your Trustees and family execute your requests and solve any disputes.



“Men shall have a share in what their parents and closest relatives leave, and women shall have a share in what their parents and closest relatives leave, whether the legacy be small or large: this is obligated by Allah.” (al-Nisa’, 37)

CLARIFYING OWNERSHIP OF WEALTH BEFORE PREPARING A WILL

During life, some parents fail to clarify whether their home is owned jointly by husband or wife, or solely by one of them, or whether children are co-owners or employees in the family business. This type of uncertainty is Islamically incorrect and also a significant cause of disputes after death.

We suggest those who have an ambiguous ownership of assets seek further legal advice on how this may be clarified in order to avoid dispute and unintended tax consequences.

PROCEDURE FOR COMPLETING AND SIGNING YOUR WILL

- 1** Please watch the guidance video from Shaykh Abu Eesa for a basic explanation on how to understand the Will template and what extra documents you should complete with it as well.
- 2** Download the file to your computer and open it in a dedicated PDF reader (do not open it in a normal web browser). Type in the relevant text on the dotted lines when requested, using the guide text in RED underneath. If you are not going to fill in the blanks on a computer/phone and instead want to fill it in by hand instead, you can print out the Will and write in the requested information on the dotted line in black pen, using the guide text in RED underneath each dotted line/text box. Once you have typed in your relevant details, ensure to save the PDF file on your computer and print it out from there.
- 3** Where the text has been coloured BLUE, you should choose between the two options and delete one as appropriate.
- 4** If you are including details of Guardians for minor children then these should be added in Section 4. Otherwise, this section should be deleted.
- 5** If you would like to leave some percentage of your estate to any individuals or distant family members that are not from the “obligatory inheritors” of your estate, and/or any charities, (the “Wasiyyah”), then you should enter a total percentage (for

e.g. 10%) at the beginning of Section 7.2. In the rest of Section 7.2, you have the option of including the name and registered charity of the charities you wish to benefit. At 7.3 you have the option of including any relatives/friends who are not inheritors. You should specify the percentages in 7.2 and 7.3 so that together they match the total Wasiyyah at the beginning of 7.2. If you do not want to leave anything to non-inheriting family/friends or charity you should write 0% as appropriate.

6 Once the Will has been fully completed, you should carefully read the entire document and make sure it has been correctly completed.

7 You will then need to find TWO witnesses who need to see you (the Testator) signing the Will in person. The TWO witnesses will then need to sign and complete their name and address and occupation.

8 Please ensure the TWO witnesses are NOT family members/inheritors, or married to family members/inheritors and are independent adults of sound mind.

9 The Will finally needs to be dated on the front page and where the signatures are placed. It can then be printed out.

10 You should store the completed Will in a safe place and inform family members and Executors and Trustees of its location and perhaps also give them copies.

11 If you have not followed the correct procedure for completing and signing the Will it will not be valid and so you need to follow all the steps carefully.

12 If you are unsure after reading all the guidance on how to complete the template then you should seek appropriate legal advice.

13 For guidance on who your Islamic inheritors are, you should seek the advice of your local scholars or available online resources. There is also an Islamic Inheritance App offered by iWill Solicitors that can be downloaded for free for Apple [here](#) and for Android [here](#), but other resources will also be available.

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