



STUDENT THESIS

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LAWS RELATING
TO THE DECEASED

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LAWS RELATING TO THE DECEASED

BATHING * SALAT AL-JANAZAH * BURIAL * TA`ZIYAH * INHERITANCE & ESTATES
* ISAL AL-THAWAB * WILLS & TESTAMENTS

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

FOREWORD BY MUFTI EBRAHIM DESAI (HAFIDHAHULLAH)
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Mufti Hanif Yusuf Patel (hafidhahullah) has prepared this detailed document of janāzā, burial and related issues as part of his thesis for the Iftā course.

The interesting part of the document is the practical guidance on Wills and Estates. I have read the document in detail.

May Allah Ta`ālā grant Mufti Hanif Yusuf Patel barakah in his ilm. Amīn.

- Mufti Ebrahim Desai



BEFORE DEATH

The person on his deathbed should be turned to his right side facing the Qiblah . It is also permissible to lie him on his back and to raise his head slightly to face the Qiblah .

The words of Shahadah should be proclaimed near him for him to hear and thus indirectly prompt him to proclaim it too. This is called Talqin. However, he should not be instructed and compelled to recite it .

It is Mustahab (desirable) for the deceased`s close relatives, friends and neighbours to be present to advise him on his last will, assist him in encountering this critical moment and read Surah Yasin and Surah Ra`d onto him .

AFTER DEATH

It is Fardh Kifayah to bathe, to enshroud, to observe the Janazah Salah of, and bury the deceased .

When he passes away, his eyes should be shut and jaws should be closed using a band fastened from the lower chin to the top of the head .

The one who has shared the most companionship with the deceased is most worthy of undertaking this task and he should say while closing the eyes :

بِسْمِ اللَّهِ ، عَلِقْ لَوِةَ عَدُوِّهِ . اللَّهُمَّ إِنِّي أَسْأَلُكَ بِمَا بَلَغْتَ بِهِ نَبِيَّكَ مُحَمَّدًا ، أَنْ تَجْعَلَ لِي فِيهِ حَسَنَةً ، وَأَنْ تَجْعَلَ لِي فِيهِ حَسَنَةً ، وَأَنْ تَجْعَلَ لِي فِيهِ حَسَنَةً .

Then the deceased should be covered with a sheet of cloth and fragrance should be placed near him .

A piece of iron or anything reasonably heavy should be put on his stomach so that it does not inflate .

The hands of the deceased should be placed to his sides while his fingers and joints should be loosened .

It is Makrooh Tanzihi to recite the Qur`an by the deceased from his death until he is bathed .

It is Mustahab (highly desirable) to hasten in settling his debts and release him from his liabilities .

It is desirable to inform the deceased`s neighbours, relatives, friends and the people of the locality of his demise so that they can supplicate for him and extend reward for him .

The process of bathing and burying the deceased should be hastened .

Upon the demise of her husband, the woman should immediately sit in iddah. A woman in her iddah must remain in the marriage home for the complete duration of her iddah, without leaving the house, except for dire necessity . The waiting period of iddah is for four months and ten days (according to the lunar calendar). If the husband passed during the middle of the month, then the iddah will be 130 days. Furthermore, if a woman is pregnant, her iddah will be till she gives birth to the baby irrespective of it being more or less than 4 months and 10 days .

The Qur`an should not be recited upon the deceased but at a distance from him or only after he has been bathed .

BATHING THE DECEASED

WHO SHOULD BATHE THE DECEASED?

It is unanimously agreed that it is Fardh Kifayah upon the living people to bathe the deceased .

It is desirable that the washer should be one who is the closest of the people to the deceased or a person of piety .

The woman is allowed to bathe and shroud her deceased husband; but the husband is not allowed to bathe his deceased wife . The husband must not touch or bathe the deceased wife; however, he is permitted to see her .

If there is no one from the same gender to bathe the deceased, Tayammum will be performed on the deceased using a cloth .

A young child may be bathed either by a male or a female .

It is permissible to kiss the deceased

It is the responsibility of the man to arrange the shroud and the burial of his wife .

METHOD OF BATHING

It is better for the washer[s] to make the intention of bathing the deceased .

When the people decide to bathe the deceased, they should put him on a broad bench or a bier. The deceased may be layed in any direction suitable, even though the feet may be facing the qiblah .

The bench or platform should be perfumed odd number of times by rotating the incense around the bier .

The clothes of the deceased should be removed and a cloth should be placed to cover the deceased` s area from the knees to the navel while the rest of the body could be kept exposed.

Perform Wudhu for the deceased without rinsing his mouth or nose . However, the washer may use a thin cloth to clean and enter water in the mouth and the nose and wipe the teeth and lips .

Water should be poured over the deceased.

The water should be boiled with leaves of lotus tree or saltwort. However, if one does not possess any of them, even simply pure warm water is sufficient.

The head and beard should be washed with khitmī (marsh mallow plant) or any soap available .

Then he should be made to lie down on the left side and be washed with water and leaves of lotus tree until is seen that the water has reached that part which is adjacent to the bench.

The deceased should then be made to lie down on the right side and should be washed with water and leaves of lotus tree until is seen that the water has reached that part which is adjacent to the bench.

Then the deceased should be made to sit and lean against the washer and the stomach of the deceased should be wiped gently .

Any impurity emerging from the deceased should be washed but there is no need to repeat the Ghusl or Wudhu or to replace afterwards the shroud .

The deceased should then be turned to his left side again and washed to complete Sunnah of completing virtuous acts in threes .

The water should be poured over the deceased thrice each time his side is turned .

The body of the deceased should then be dried and wiped with a cloth .

Hanut or any other fragrance should be placed on his head and beard and camphor on the forehead, the nose, the hands, the knees and the feet .

If after birth, the child shows a sign of life, including making noise, yawning, crying etc. it should be named, given a bath, shrouded and prayed upon . However, a miscarried foetus and a child who does not show signs of life after birth, should be washed, wrapped in any cloth and buried without the funeral Salah being observed over it .

It is desirable for the washer to take a bath himself after bathing the deceased .

SHROUDING THE DECEASED

The shrouds may be any of any type or colour usually worn by the deceased but preferably of nice quality and white cotton . The shroud of both, men and women , should be perfumed with incense an odd number of times before the deceased is wrapped in them. It is preferable to burn incense at three times: when the soul is leaving the body, at the time of bathing the deceased, and when the deceased is shrouded .

The hair and the beard of the deceased should not be combed or braided and the nails should not be cut .

It is Sunnah that a man is shrouded in three clothes :

Izar – a loin cloth extending from the head to the feet like the Lifafah

Qamis – an upper garment extending from the shoulders to the feet

Lifafah – (chador) a complete wrapper extending from the head to the feet

It is also permissible to restrict the man`s shroud to only the Izar and Lifafah .

The deceased male should be put in the shrouds. Firstly, the Lifafah should be spread out and thereafter the Izar should be unfolded on top of it. The deceased should be wrapped in a Qamis without sleeves and put onto the Izar to be folded into it first from his left and then from his right and then similarly into the Lifafah . The additional wrapper should be wrapped around the deceased beginning with the left side, putting the shroud over him, then the right side. The shroud may be fastened with a knot .

It is Sunnah that a woman should be shrouded in five cloths:

Izar

Qamis

Khimar – a scarf which should be on top of the Qamis under the Lifafah

A cloth with which her bosom is tied

Lifafah

It is also permissible to restrict the woman`s shroud to only Izar, Khimar and Lifafah .

The deceased female should be put in the shrouds. Firstly, the Lifafah should be spread out, then the cloth to place on the bosom, then the Izar on top of it. The deceased should be wrapped in a Qamis and put onto the Izar to be folded into it, then the cloth and then into the Lifafah.

The two hair plaits of a woman should be placed on her chest on top of the Qamis. Then the woman should be made to cover the head and face wear the Khimar below the Lifafah and on top of the Qamis. Then she should be wrapped in an Izar. The piece of cloth should then be fastened on top of that behind the chest on the bosom and then the Lifafah should be fastened .

The child close to maturity will be shrouded with the same clothes as an adult. If the child is younger, it is better to enshroud him also with the full kafn, although it is permissible to enshroud the young boy in a single cloth and the young girl in two clothes .

Once the deceased has been wrapped in the shrouds, it is compulsory upon the people to pray over the deceased .

THE JANAZAH SALAH

The funeral salāh is Fardh Kifāyah .

The most worthy of people to pray over him is the ruler if he is present; if not, then the Imam of his locality then the Walī .

If the deceased is buried and the people have not observed the funeral Salah over him yet, the Salah could be performed over his grave for few days .

The Salah should not be observed over a deceased in a Masjid

The Imam leading the funeral Salah should stand in line of the chest of the deceased

The Imam and followers should intend to observe the salāh of janāzah for the sake of Allah and as a supplication for the deceased . The specification of the deceased in the intention is not required . The intention could be pronounced from the tongue or simply made in the heart . It is not necessary for the Imam to make an intention for the followers .

The Imam will proclaim the Takbir (Allahu Akbar) four times. The observance of four takbīrs and the salām is compulsory for the validity of the salāh al-janāzah while the recitation of prescribed portions between the takbīrs is sunnah .The hands should be raised only upon the first Takbir

After the first Takbir, the Imam and followers should read the Thana (praise of Allah)

After the second Takbir, they should extend salutations (Salat and Salam) on Prophet Muhammad (peace be upon him) with the same words as usually read in salāh .

After the third Takbir, they should supplicate for themselves, for the deceased and for all the Muslims . The following supplication may be read :

Transliteration: Allāhummaghfir lihayyinaa wa mayyitinaa wa sagheerinaa wa kabeerinaa wa zakarinaa wa unthaanaa wa shaahidinaa wa ghaa`ibinaa allaahuma man ahyaytahu minnaa fa ah`yih alal islam wa man tawaffaytahu minnaa fatawaffahu alal eemaan allahumma laa tahrinnaa ajrahu wa laa tudhillanaa ba`dahu

Translation: O Allah forgive our living and our dead, our young and our old, our menfolk and our womenfolk, those who are present and those who are absent. O Allah, whomsoever you give life from among us give him life on Islam, and whomsoever you take away from us take him away on faith. O Allah, do not forbid us their reward and do not send us astray after them.

After the fourth Takbir, they should make salām both ways. As for the position of the hands, there are three views expressed: (a) to untie and loosen the hands after the fourth takbīr; (b) to untie the right hand when turning right for salām and the left hand when turning left for salām; and (c) to loosen the hands after both salāms . The last option has been preferred .

ADDITIONAL RULES OF JANAZAH SALAH

It is makrūh tahrīmī (impermissible) to observe the Janāzah (funeral) salāh in those timings in which salāh is generally impermissible, i.e at the time of sunrise, istiawā (zenith) and sunset, if the janāzah was presented before such timings. However, if the janāza is presented at that time and prayed upon at the same time, then it is permissible to observe the salāh at that time .

However, if the deceased is buried without salāh being observed upon him, then it should be read by his grave as long as it is within three days of burying him .

If there are multiple janāzāh, the janāzah of the deceased menfolk should be kept the closest to the imam, and then the boys, and then the women and then the girls . It is more virtuous to observe separate salāh for each; however, even if observed collectively, one salāh of janāzah will suffice for all those deceased . The supplication for the children should be read after the supplication for the adults.

If an individual misses any takbīr, then he should join the Imām in the takbīr he is in and compensate for the missed takbīrs in order after the Imām completes the salāh .

The best of rows in the salāh of janāzah are the last rows .

It is mustahab to have an odd number of rows .

The salāh of janāzah is a supplication in itself for the deceased. There is no basis for raising the hands and supplicating after the janāzah salāh and thus to do such is impermissible .

There is no salāh janāzah upon a miscarried baby who has not lived for any moment out of the womb .

It is impermissible to observe the salāh of janāzah in the masjid without any genuine reason . However, it is permissible to observe the salāh within the courtyard of the masjid, open yard or the graveyard as long as graves are not directly in front .

CARRYING THE DECEASED TO THE GRAVE

The people should then carry the deceased on his bier, holding its four ends and walking with it swiftly; neither running nor slowly .

It is Sunnah for the deceased to be carried by four people at a time. These four people should carry the deceased for forty steps .

Whilst carrying the deceased, the end in which the head lies, should be led first and not the feet . Those carrying and following the Janazah should remain silent. It is Makrooh to raise the voice in Zikr or in reciting the Qur`an while carrying the deceased .

BURIAL

The grave should be dug 3 or, preferably, 6 feet in depthness and the height of the human in length and an incision should be made in the direction of the Qiblah wherein the deceased can rest easily. A board or a piece of wood should be placed above which should not touch the deceased but act as a roof for the deceased. Hence the soil returned in the grave will not reach the deceased but the upper surface of the board. The soil which is taken out in creating the incision should be used to put on top of the grave to raise the level of the grave up to two spans .

The deceased should be entered from the Qiblah side.

It is also permissible when the earth is soft and wet to bury the deceased in a coffin .

The husband is allowed to touch the Janazah of his wife and place her into her grave .

A veil should be drawn around the area of the grave when the female deceased is being buried. This will ensure no non-Mahram is able to see any part of the deceased female .

Once the deceased is placed in the incision, is it Mustahab for the one placing the deceased in the grave to say:

Transliteration: Bismillahi wa alaa millati rasoolillah

The deceased should be made to lie on his right side facing the Qiblah and the knots on his shroud should be untied .

Unbaked bricks should be arranged in the incision. Baked bricks and wood should not be arranged. Furthermore, straw could also be used with unbacked bricks. The soil is then piled on the deceased.

The actual soil which is dug out to make a grave for the deceased should be used to fill the grave once the deceased has been buried. To add any additional soil will be Makrooh .

It is desirable for one who is present at the burial to pour soil back into the grave thrice with a handful. The person should recite with the first throw 'minha khalaqnaqum' with the second throw 'wa fee ha nu'iydukum' and with the third throw 'wa minha nukhrijukum taratan ukhra'.

AFTER BURIAL

The grave should be raised a foot above ground in the shape of a hump and not flattened .

After the deceased has been buried, it is Mustahab for the beginning verses of Surah Baqarah to be read where the deceased`s head is resting and the last verses of it by the feet side .

The attendants of the burial may supplicate collectively for the deceased after the burial while raising their hands and preferably facing the Qiblah .

It is Mustahab to sprinkle some water on the grave after having buried the deceased in the grave .
It is advisable to remain behind after having burying the deceased in the grave to occupy one`s self in making zikr and supplicating for the deceased . It is permissible to supplicate by the grave while either standing or sitting .

There is no Talqin after the deceased has been buried .

THE GRAVE

It is an innovation to adorn the grave with pulpits, lights, flowers and various other coverings .
It is permissible to engrave simply the name of a deceased on his grave, particularly if he is famous and pious, for the purpose of identification .
It is permissible to have the grave dug during one`s own life .
The deceased should not be buried away from the Muslim graveyard in an exclusive home or courtyard .
The deceased should be buried in the area he or she has passed away .
If the deceased had expressed a desire and will to be buried in a particular place, it is not necessary to execute this will and such will is void .
If there is a need then it is permissible to bury a new deceased in a grave wherein the old deceased has turned to dust or even to bury multiple deceased in a single grave .
The grave should be honoured and not tread or sat upon .
It is not permissible to unearth the grave and take out the deceased after being buried unless the land is proven to have belong to someone else who does not show his consent to the grave being in his territory .
It is vital to honour and respect the graves. However, when the deceased turns to soil due to the passage of long time, the ruling of it also changes it. It is permissible to construct a building on it or use that land for cultivation and growing crops .
It is desirable to visit the graveyard .

ADVICE TO THE BEREAVING FAMILY

1. Be patient and entertain complete believe, trust and hope in Allah the Al-Mighty
2. It is more appropriate for the bereaving family to delegate a reliable, knowledgeable and calm family member or friend to assume the responsibility of contacting the authorities and arranging burial services.
3. Contact the GP as soon as possible, or the local hospital, to issue a medical certificate giving the cause of death
4. Thereafter the death should be formally registered at the register office. It is a criminal offence to fail to register the death .
5. You may inform family members, relatives and close friends of the demise
6. Contact the local mosque for bathing, shrouding and burial arrangements
7. Contact the local burial service for funeral arrangements
8. Engage yourselves in the remembrance of Allah and supplicate for the deceased

MOURNING IN ISLAM & EXTENDING REWARD TO THE DECEASED

It is desirable for men folk and women, when there is no fear of fitnah, to make ta` ziyat (offering coldolences to the family of the deceased). Ta` ziyat should not be done more than once. The method of ta` ziyat is to, whether before after burial, proceed to the family of the deceased and offer his condolences, bring comfort to them, advice them about patience and supplicate for them and the deceased . If a person is unable to physically visit the family members, he may write to them, call them or send a message expressing sympathy and kind regards . However, the priod of mourning and ta` ziyah is only three days after which it will be makrūh (disliked) .

It is not permissible to supplicate for or extend reward to a deceased who died on disbelief . However, one may express condolences to his or her family in the following words:

Translation: May Allah May God compensate you with better (a believer) and Enrich you (with Islam) . It is makrūh (reprehensible) to assemble at the home of the deceased for ta`ziya. In fact, the family of the deceased and the people should disperse once the burial has taken place and occupy themselves in their occupations .

The family of the deceased should not entertain the guests by feeding them. In fact, it is mustahab (desirable) for close relatives and neighbours to prepare meal for the family of the deceased since they will be in the state of sorrow and grief and occupied in arranging the funeral of the deceased. However, this state should not persist after three days subsequent to the death .

It is permissible, and moreover recommended, to extend reward to the deceased by feeding food to the poor , observing voluntary salāh, donating Qur`an, Islamic literature and other equipment to Islamic institutions, masjids and people, digging a well, constructing a travellers lodge, spending in charity and by reciting the Qur`an without stipulating a date, day, place or position .

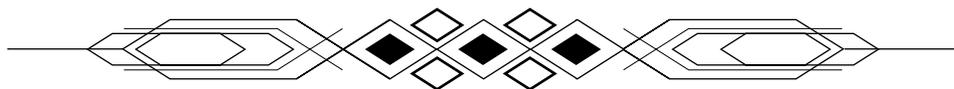
By the virtue of extending the reward to the deceased, sorrow lessens and happiness increases, the punishment is lessened and level in paradise is elevated . The performer of any good deed should intend to extend the reward of the act to all the believers and consequently all the deceased, as well as he himself, will reap benefit from it .

It is permissible to supplicate for the deceased at his grave whether the hands are raised or not. However, one who has his hands raised should face the qiblah to remove any doubt in the mind of other since he may appear to them as asking from the deceased buried in the grave .

It is permissible to recite the Qur`an by the grave and to extend the reward to the deceased. Similarly, it is permissible for the family members and close associates to gather in a place and collectively complete the recitation of the Qur`an and thereafter extend the reward to deceased .

However, where the Qur`an is recited loudly, or a portion of the Qur`an is specified, or it is enforced upon someone, or it is practised with punctuality and assumed to be necessary, or other actions are innovated therein, then it is cautious not to recite the Qur`an by the grave or complete the Qur`an in a collective manner but at home or at the masjid and then the reward should be extended . Furthermore, it is not permissible to hire an individual to recite the Qur`an in order to extend reward to the deceased in return of wages .

It is permissible for an organisation to arrange a gathering in the remembrance of a high profile person who is now deceased in order to express their love, compassion and relationship and a means of contentment for the deceased`s close family members .



ESTATES AND WILLS

THE EXPENSES OF THE ESTATE

The inheritance and estate of the deceased should be allocated and executed after his or her death in the following sequence :

1. Funeral expenses;

The trustees are duty-bound to ensure that the expenses of funeral are moderate. However, if they are excessive in the burial expenditures, they will be required to compensate the estate for the surplus. Similarly, voluntary additional contributions such as feeding the deceased's family should not be paid out of the funeral expenses.

2. Clearance of debts

3. Execution of bequests.

It is mustahab (desirable) for a person to bequeath some of his wealth in the cause of Allāh. The bequest from the deceased will be approved with the following conditions:

I. *The bequest must not exceed one third of the wealth remaining after clearing the debts . The person should ask the heirs to compensate from his inheritance any religious liability or obligation on him, i.e which is the price of half a sā` (1.592136 kilograms) of wheat for each salāh and each fast missed. However, the bequest for more than one third is suspended upon the approval of the mature heirs .*

II. *The bequest cannot be approved for one who is already entitled to receive inheritance unless the other heirs agree to it*

III. *The bequest must not for a non-Islamic cause*

4. Paying the inheritors and heirs

WHAT IS INCLUDED IN THE ESTATE?

All that which the deceased owned and possessed during his or her lifetime will form part of estate. This includes, personal clothing, watches, glasses, rings, properties, businesses, vehicles etc. However, the wealth which is not recognised in Sharia and was acquired wrongfully, such as interest money, collateral, insurances and endowment policies will not form part of the estate.

IMPORTANCE OF DRAWING UP A WILL IN WRITING

- If the person dies without a will, the secular law will now dictate who gets what.
- A will allows the individual to decide what happens to his or her money, property and possessions after death.
- If a person writes an official will he or she can also ensure they do not pay more Inheritance Tax than needed.
- In the absence of such a will, the Sharia does not bind the heirs to discharge the liability of the person who dies prior to discharging his liability. However, in the case of writing up a will, the heirs will be duty-bound by Sharia to pay fidyah (compensation money) from up to one third of the complete Estate .

WHAT DO I PUT IN MY WILL

The person should include in his will:

- The names of the individuals who he or she wants to benefit from his estate
- The name of the individual who he or she wants to take care of any children under eighteen
- The name of the executor of his or her will and estate
- What should happen if the individual who he or she wants to benefit die before the person

The individuals may write a will themselves, but they should seek legal advice from a professionals, for example from Citizens Advice (See: http://www.adviceguide.org.uk/england/relationships_e/relationships_death_and_wills_e.htm), and an Islamic scholar to ensure the will is interpreted as you would like and in accordance to the Islamic law as well as the country law.

He or she should inform the executor of the will, close friend, family member or relative where the will is stored. It is better to keep the will in a reliable and secular places such as with other important documents or with a solicitor.

LEGAL REQUIREMENTS

However, for the will to be legally valid, the will must be formally witnessed and signed. According to the U.K law, the will should be written by a person 18 or over; made voluntarily; made by a person of sound mind; in writing; signed by the person making the will in the presence of 2 witnesses; and signed by the 2 witnesses, in the presence of the person making the will .

Furthermore, the person is required to sign and witness his or her will formally to make it legal. He or she must sign the will in the presence of 2 witnesses; get 2 witnesses to sign the will in his or her presence, after he or she has signed it; make sure the witnesses are aged 18 or over; and if he or she needs to make any changes to the will then the same signing and witnessing process should be followed. However you must ensure the witnesses are not from amongst those whom and their married partners you want to benefit from your will .

The person should update and review the Will as and when the need arises, such as when there is a change in marital status, birth in family, change in residence, or if the executor named in the Will dies.

As for making amendments to your will, one cannot make any changes in the will after it has been signed and witnessed. However, one may make an official alteration called a codicil. The person must then sign a codicil and get it witnessed in the same way as witnessing a will.

However, if individuals want to update and amend their will, they are required to make an official alteration (called a codicil) or make a new will. The person must then sign the codicil or the new will and get it witnessed in the same way as witnessing the previous will. Also, one should destroy the old will and explain in the new will that it officially revokes all previous wills and codicils .



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