

The Universal House of Justice

Department of the Secretariat

1 July 1996

[To an individual]

Dear Bahá'í Friend,

Your email message ... requesting clarification on various aspects of the subject of Bahá'í wills, was received at the Bahá'í World Centre, and we have been asked to reply as follows....

In your communication you pose five questions about Bahá'í wills. These will be addressed in the order set by you. The first question asks for confirmation of your understanding that the writing of a will is one of the laws in the Kitáb-i-Aqdas which is currently binding on the friends. In a letter dated 9 June 1974, written on behalf of the Universal House of Justice to a National Spiritual Assembly, those laws listed in the "Synopsis and Codification of the Kitáb-i-Aqdas" but which are not binding on the friends at this time were delineated, and as the entry at item IV.D.1.o "The writing of a testament" was not included in that letter, you are correct in your understanding. A copy of the letter is enclosed for your reference.

Furthermore, a memorandum dated 20 September 1994 from the Research Department of the House of Justice draws upon the Writings in regard to this subject and indicates the importance of every Bahá'í making a will (the attachment referred to is enclosed for your reference):

Bahá'u'lláh clearly establishes the making of a will as one of His laws. In the Kitáb-i-Aqdas, paragraph 109, He instructs: "Unto everyone hath been enjoined the writing of a will." The importance of this law is not to be underestimated, as can be seen from a careful study of the attached compilation of newly translated extracts from Tablets revealed by 'Abdu'l-Bahá. Not only is making a will a spiritual duty, "one of the binding laws of this mighty Dispensation," but it allows the individual full discretion to specify how his or her property, including the residence, is to be disposed of, and it is conducive to unity and agreement. Failure to draw up a will is considered by 'Abdu'l-Bahá as "disobedience" to the command of Bahá'u'lláh and as "non-fulfillment of the divine obligation," and it leads to the division of the individual's property according to provisions of the laws of inheritance.

It is worth noting that the Bahá'í laws of inheritance apply only when the individual dies without making a will. Indeed, one of 'Abdu'l-Bahá's Tablets seems to indicate that the very provisions of the Bahá'í law of intestacy are intended as an incentive to individuals not to neglect the duty of making a will early in life.

Your second question also focuses on the writing of a will being a requirement; we believe that the above-quoted text sufficiently addresses that issue.

Your third and fourth questions concern the "spiritual" portion of a Bahá'í will, that is, that portion of a believer's will which is a statement of faith, rather than a statement about the material or, to use your word, "ordinary" aspects of a will, such as distribution of one's possessions and provision for the upbringing of one's children. It would seem that your understanding that the individual believer should draft the "spiritual" portion of his or her will, rather than asking a lawyer to do so, is in keeping with the same paragraph of the Kitáb-i-Aqdas referred to earlier, paragraph 109, which provides guidance as to the "spiritual" content and, additionally, makes a specification regarding how the individual should head the document:

Unto everyone hath been enjoined the writing of a will. The testator should head this document with the adornment of the Most Great Name, bear witness therein unto the oneness of God in the Dayspring of His Revelation, and make mention, as he may wish, of

that which is praiseworthy, so that it may be a testimony for him in the kingdoms of Revelation and Creation and a treasure with his Lord, the Supreme Protector, the Faithful.

Note 137 in “The Kitáb-i-Aqdas” adds clarification of the reference in this passage to the Most Great Name:

As explained in note 33, the Greatest Name of God can take various forms, all based on the word “Bahá.” The Bahá’ís in the East have implemented this injunction of the Aqdas by heading their wills with such phrases as “O Thou Glory of the All-Glorious,” “In the name of God, the All-Glorious” or “He is the All-Glorious” and the like.

Aside from these prerequisites stated in the Kitáb-i-Aqdas, the friends are free to formulate the provisions of their wills as they please, and should compose their wills according to their own wishes.

Your fifth question centers on the provision for Ḥuqúqu’lláh in Bahá’í wills. Your understanding that the obligation to pay Ḥuqúqu’lláh arises during one’s lifetime and is normally to be carried out with lifetime giving is correct, although at the same time it is true that there may be cases where a believer dies without having made provision in his or her will for payment of the unpaid portion of Ḥuqúqu’lláh, if any. The event of death does not remove from a believer the obligation to pay Ḥuqúqu’lláh. Whatever portion is due to be paid is therefore a debt due from the believer’s estate at the time of his or her death. The cost of the funeral and burial, the payment of the debts of the deceased, and the payment of whatever portion of Ḥuqúqu’lláh remains due are prior charges on the estate which must be met before arriving at the amount of the property which has to be divided in accordance with the provisions of the law of inheritance. Thus, whether or not a person makes a will or, having made a will, whether he or she makes provision in it for the payment of Ḥuqúqu’lláh, the Ḥuqúqu’lláh should be paid, like all debts, before the rest of the estate is divided.

In light of this, it is certainly advisable for a believer to make the necessary arrangements for payment of Ḥuqúqu’lláh prior to his or her death, in order to avoid complications or confusions which could arise. It should be noted that the question of a legal wording to include provision in a will for the payment of Ḥuqúqu’lláh after a believer has died is dependent upon so many factors, that it would be preferable to seek legal advice so that wording which is appropriate and in accordance with the laws governing inheritance can be used. Obviously, unless the believer leaves a clear accounting of his or her property and payment of Ḥuqúqu’lláh to date, if any, it will not be possible for anyone to calculate accurately what remains to be paid at the time of death. While the application of the principles involved in payment of Ḥuqúqu’lláh may well require subsidiary legislation by the House of Justice in the future, at the present time it falls to the executor or administrator of an estate to apply them to the extent possible, using his or her best judgment and taking into account the information available. Finally, while the payment of Ḥuqúqu’lláh is each individual’s own responsibility, a believer may be referred to the nearest Representative of the Trustee of Ḥuqúqu’lláh, who could advise him or her in the light of any specific circumstances.

We hope that the foregoing will be of assistance to you in clarifying and strengthening your understanding of the relevant issues involved in the subject of Bahá’í wills. Your efforts to aid the friends in recognizing the importance of this document, and particularly in grasping its spiritual significance, are commended. Be assured of the prayers of the House of Justice in the Holy Shrines that your endeavors may attract bounteous confirmations from the Concourse on High.

With loving Bahá’í greetings,

Department of the Secretariat

Concerning the Question of Inheritance

[1]

O ye the relatives of that servant of God!

Give thanks unto God that ye have been successful in distributing the inheritance in the manner laid down by Him. This is the first time in this great Cycle that an inheritance hath been so distributed. God willing, all will follow your example in carrying this law into effect.

In this connection, it should be noted that the question of the will is of extreme importance: everyone should devote the most serious attention to drawing up a will, so that there should be no one who doth not have a will. This is one of the binding laws of this mighty Dispensation. We ask God to bestow a blessing upon your affairs so that they may prosper abundantly.

Upon you be greeting and praise.

[2]

As for the question of inheritance which is occasioning perplexity: in truth, one is entirely free during his lifetime to make provision in his will for the division and distribution of his property amongst his heirs in whatsoever manner he seeth fit, in order that his wishes may then be implemented after he hath passed away. The writing of a will is obligatory upon everyone; everyone, that is, must in his lifetime draw up a will that is firm, sound, and clear in its provisions; seal and hide it; and guard it in a very safe place. In drawing up his will the testator enjoyeth full discretion to dispose of his property as he seeth fit; his will is a binding instrument, having precedence over any other provision, and no one hath the power to either modify or change it. Under these conditions, should he bequeath his whole property to his children, he is but acting within his rights. In the event, however, of disobedience to this command, of failure to draw up a will, and of non-fulfillment of the divine obligation; likewise in the event of disappearance of the will itself, the testator's property will be divided up according to the designated shares.

In truth, the wisdom of this perspicuous and most mighty ordinance is that no one should draw breath without a will. Observe how, in the absence of a will, the inheritance in its entirety is divided up, distributed and dispersed contrary to the wishes of the deceased; what difficulties and disagreements are thus engendered! The will, however, is the settler of every dispute, and the cause of ease for all, for in it the testator disposeth of his property in whatsoever manner he desireth. How agreeable it is for the estate in its entirety to be disposed of in accordance with the testator's will and pleasure! Observe ye how many people during their lifetime are fearful about what will happen when they pass away. Now, with this divine commandment—the obligation and religious duty of drawing up a will before one's passing—all these difficulties are resolved.

[3]

As regards the holy verse, the intention of the reference to 'male, not female,' is the firstborn son, for in all the Divine Dispensations the firstborn son hath enjoyed a special distinction. Refer ye to the Torah and the Gospel, and likewise to the traditions related from aforetime. Read ye the story of Esau, Jacob and the sons of Isaac in the Torah, that it may become apparent that in all the divine Dispensations the eldest son hath been given extraordinary distinctions. Even the station of prophethood hath been his birthright, let alone the vanities of this world. Even the just laws current amongst civilized states and peoples have also accorded to the firstborn son a special distinction.

Today the English state claimeth to be the most enlightened in the world. Among the characteristics of the English people is that they restrict the property in its entirety to the firstborn son. Their reasoning in this is that when an accumulation of wealth is divided up it is dispersed and lost. A certain individual, for instance, amasseth with untold pains a considerable fortune; then, upon his death, his fortune is divided up, and this division causeth it to be dispersed and scattered to the winds. If, however, it be restricted to the firstborn son, it is preserved intact,

and he careth for others. For this reason there are at present among the English people many households in which, for four or five centuries, the family fortune hath remained intact without having been distributed and dispersed.

Our intention in this is not at all that it is commendable and praiseworthy to restrict the inheritance to the firstborn son. Our intention is rather to show that in the laws of civilized countries the firstborn son hath likewise been accorded a special distinction. By 'firstborn son' is intended the eldest of the surviving male children. The aim of assigning the residence exclusively to him is that at least the home of the deceased may be preserved intact, so that whoever among his family should either reside or visit there may be put in mind of him, and seek God's pardon and forgiveness for him.

All these matters, however, are of secondary importance. That which is of primary and fundamental importance, and constituteth, by the express pronouncement of the holy text, a divinely established obligation, is the making of a will. Everyone must in his lifetime draw up a will, and dispose of his property in whatsoever manner he deemeth fit, while having due regard for the need to observe justice and equity. Under these conditions, there will be no one who hath not made a will, and inheritance will thus be dealt with according to the will of the deceased. The said provisions are applicable only when someone dies without having made a will. The testator, then, is free to bequeath the residence to whomsoever he wisheth; or, if he desireth, he may devise it to all his heirs jointly. No room hath now been left for misunderstanding, and 'Abdu'l-Bahá hath elucidated the intention of the divine law. Let whomsoever wisheth turn towards it; whosoever wisheth not will turn away from it. In any case, Our function is to elucidate the law of God, and to explain the meaning of the compendious verses.

[4]

The residence is under all conditions the property of the firstborn son, irrespective of whether or not the deceased should have left behind him other property as well. The firstborn son receiveth, moreover, his share of the remainder of the estate. This is that which God hath prescribed. The testator is, however, at liberty while still alive to dispose of his property in whatsoever manner he seeth fit. Likewise, the firstborn son must himself, for the sake of God, take into consideration the other heirs, and be just and fair to them. In truth, it is obligatory for everyone, by the express requirement of the divine text, to draw up a will, so that it may be implemented after he hath passed away. This, verily, is the perspicuous truth. If, God forbid, he disobeyeth the divine command—faileth, that is, to draw up a will—then his estate must be divided up in the stipulated manner.