

Questions on Waqf and Masjid

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The following is based upon a dispute that occurred over the management of a Masjid and School. Dr. Khalid Blankinship was asked to provide this clarification on the Waqf and Masjid.

1. We have a Masjid and School on the same property with Articles of Incorporation for both. Does our Masjid and School constitute an Islamic waqf together or collectively or not?

The bases (arkân) of the waqf are four things: the donor (wâqif), the text or gist (sîghah), the donated object (mawqûf), and the beneficiary (mawqûf ‘alayhi). Any Muslim institution possessing these four characteristics, if it fulfills their legal conditions, must be considered a waqf and falls under the rulings of waqf. The donor is defined as the person or group having legal ownership of the thing to be donated and the legal competency to donate it. The text does not have to be a specific one, although it could be. In the case of a masjid, it is enough that it is open for salât. That is, there does not have to be any declaration, “This is a waqf,” for a property to be so constituted. The object of the waqf must be real property, not usufruct. The beneficiary could be a specific person or persons, or it could be general, such as all of the Muslims, as is the case with a masjid. In such a case, the beneficiary does not have to accept for the waqf to be valid.¹

A waqf, and most especially a masjid, is considered deeded to Allâh, according to the verse, “The masjids belong to Allâh, so do not call on anyone except Allâh” (Qur’ân 72:18). Commenting on this verse, al-Qurtubî states that no Muslims have disagreed about masjids being Allâh’s property and about them being waqfs, as are bridges and cemeteries.² The hadîth authorizing waqfs in general is found in all of the Six Books as well as the Musnad of Ibn Hanbal. This hadîth, reported with a sahîh isnâd by ‘Abd Allâh ibn ‘Umar, includes the ideas of permanent charitable donation of the property and its inalienability, as well as a provision for its administration. The Prophet’s words are, “If you like you can make the land into a permanent endowment and give its fruits in charity.” ‘Umar’s own conditions were that it not be sold nor given to anybody as a gift nor inherited, but that its yield be given in charity to the poor, to relatives, for the freeing of captives or slaves, for Allâh’s cause, and to travellers and guests. He also specified that the manager of the endowment could take a reasonable stipend from the endowment for his work for himself and to feed others provided that he did not try to treat it as his own property.³ Note that in this hadîth, the Prophet (SAAS) implies that ‘Umar as donor retains control over the direction of the waqf, as is also shown by his own conditions

¹ ‘Alî ibn Ahmad al-Sa‘îdî **al-‘Adawî** (1112-1189/1700-1775), Hâshiyat al-‘Adawî ‘alâ Kifâyat al-tâlib al-rabbânî, Beirut: Dâr al-Fikr, Vol. II, pp. 264-265; Abû al-Hajjâj Yûsuf ibn Dûnâs **al-Fandalâwî** (d. 543/1148), Tahdhîb al-masâlik fî nusrat madhhab Mâlik, ed. by Ahmad ibn Muhammad al-Bûshaykhî, al-Ribât: Wizârat al-Awqâf wa-al-Shu’ûn al-Islâmiyyah, 1419/1998, Vol. V, p. 546.

² Abû ‘Abd Allâh Muhammad ibn Ahmad al-Ansarî **al-Qurtubî** (d. 671/1273), al-Jâmi‘ li-ahkâm al-Qur’ân, Beirut: Dâr al-Kutub al-‘Ilmiyyah, 1408/1988, Vol. X, Part 19, p. 15.

³ Muhammad ibn Ismâ‘îl **al-Bukhârî**, Sahîh al-Bukhârî, tr. by Muhammad Muhsin Khân, 2nd revised edition, Ankara: Hilal Yayinlari, 1976-1977, Vol. III, p. 576, hadîth 895, Vol. IV, pp. 22, 27, hadîths 26, 33-34; **Muslim** ibn al-Hajjâj, Sahîh Muslim, tr. by ‘Abdul Hamîd Siddîqî, Lahore: Sh. Muhammad Ashraf, 1971-1975, Vol. III, pp. 867-868, hadîths 4006-4008; **Abû Dâwûd** al-Sijistânî, Sunan Abu Dawud, tr. by Ahmad Hasan, Lahore: Sh. Muhammad Ashraf, 1984, Vol. II, pp. 810-811, hadîths 2872-2873; Muhammad ibn Yazîd **Ibn Mâjah** al-Qazwînî (209-273/824-887). Sunan Ibn Majah. Translated by Muhammad Tufail Ansari. Lahore: Kazi Publications, n. d., Vol. III, pp. 418-419, hadîths 2396-2397;

that he laid down, but that now the waqf has to be used for the stated charitable purposes in perpetuity.

Although the Articles of Incorporation of the Masjid and the School do not use the term “waqf” nor an English equivalent such as “charitable endowment” or “charitable foundation,” such usage is not a necessary condition for a property to be constituted as a waqf. In fact, these documents could be described in Arabic as waqfiyyah documents, foundational documents of a waqf. It should also be recognized, by the way, that the American laws governing tax-exempt organizations, which prevent the real property of such organizations from being confiscated for non-payment of taxes, in effect constitute a recognition of Muslim waqfs by the state here, enabling the fulfillment of a most important condition for waqfs in Muslim law: that they be inalienable.

In view of the language of the Articles of Incorporation of both the masjid and the school, as well as the fact of this Masjid functioning as a public masjid for many years, the real property of the two, both movable and immovable, certainly constitutes a waqf, or rather two waqfs.

2. Can a waqf be replaced, changed, or exchanged wholly or in part?

This question falls into several divisions. First, it must be considered whether the waqf is a masjid or another type of property, for the rules for masjids differ and are more stringent.

Places where Muslims worship in jamâ‘ah consist of masjids and musallâs. A masjid constitutes a masjid waqf while a musallâ does not. For a property to become a masjid, it may be declared and dedicated as such by a donor. Once the donor takes this step, the property becomes a waqf belonging to Allâh in perpetuity, and the donation cannot be taken back or otherwise alienated after that. This is the general principle of masjid establishment.⁴

However, even if the donor makes no explicit statement dedicating or handing over the property as a masjid, it still becomes one if it has public access, the adhân is called from it once, and a single person makes salât behind the imâm once. Indeed, the same single person making adhân and then making salât once in the place with public access is sufficient to turn that property into a masjid. But if that person is the donor of the property, then it does not become a masjid until at least one other person makes salât there with the adhân. Upon this happening, the property becomes a masjid and a waqf which cannot ever be revoked or taken back by the donor.⁵

On the other hand, if a person makes a habit of holding salât al-jamâ‘ah in a room of his or her private residence but there is no public access, that room constitutes only a musallâ, remains the private property of the owner, does not become deeded to Allâh, and does not constitute a waqf. The difference between the two types of place of worship then is primarily a question of public access to them.⁶

In the Hanafi school, a masjid generally should not be constituted only from the upper or lower storey of a building, except where crowding makes this customary, as in the ancient cities of

Ahmad **ibn Hanbal**, al-Musnad, in CD ROM “Mawsû‘at al-Hadîth al-sharîf,” Version 2.1, Harf Co. of Egypt, hadîths 4379, 4932, 5677, 5805, 6171; **al-Qâdî ‘Abd al-Wahhâb** al-Baghdâdî (d. 422/1031), al-Ma‘ûnah ‘alâ madhhab ‘âlim al-Madînah al-imâm Mâlik ibn Anas, ed. by Hamîsh ‘Abd al-Haqq, Beirut: Dâr al-Fikr, 1415/1995, Vol. III, p. 1592; Fandalâwî, V, 544-545; Wahbah **al-Zuhaylî**, al-Fiqh al-islâmî wa-adillatuhu, 3rd ed., Damascus: Dâr al-Fikr, 1409/1989, Vol. VIII, p. 155.

⁴ Muhammad ibn ‘Abd Allâh **al-Zarkashî** (745-794/1344-1392), I‘lâm al-sâjjid bi-ahkâm al-masâjjid, 3rd ed., Cairo: al-Majlis al-‘ilâ li-al-Shu‘ûn al-Islâmiyyah, 1412/1992, p. 396; Syed **Ameer Ali** (1265-1347/1849-1928), Mahommedan Law, Compiled from Authorities in the Original Arabic, Vol. I, Containing the Law Relating to Gifts, Wakfs, Wills, Pre-emption and Bailment (With an Appendix on the Law of Wakf), 5th ed., ed. by Raja Said Akbar Khan, Lahore: Law Publishing Company, [1976], pp. 393-396.

⁵ Ameer Ali, I, 393-396.

⁶ Ameer Ali, I, 398-399.

Baghdād and al-Rayy, according to Abū Yūsuf and Muhammad ibn Hasan al-Shaybānī.⁷ But in Mālikī law, Mālik stated that it is only disliked to build anything above a masjid, not to have structures built under a masjid, which has no dislike in it.⁸ Since our population today is many times the population of those ancient cities, and since it is an established practice now in our country and in others to constitute a masjid on one floor of a building, such dedications must be considered lawful and also fall under the law of waqf.

A masjid should never be sold, even if it falls into utter ruin, because someone might still make salāt at the site.⁹ In fact, Mālikīs, Hanafīs and Shāfi'īs emphasize that even if the masjid has fallen into ruin so that no one makes salāt there, it still remains a masjid until the Day of Judgement and all sale of it is invalid, except to sell part of it to widen a road or to expand another masjid.¹⁰ According to the school of Mālik, as represented by al-Nafrāwī, a masjid can never become anything else, and the contrary view endorsed by the Hanbalīs is weak.¹¹ Hanafīs and the Mālikī al-Khurashī endorsed the idea of khulū, namely that someone could build a building that would be his own on an abandoned waqf property provided that he payed a rent to the beneficiaries of the original waqf, as the land remained waqf property in perpetuity and could not be alienated. This device was firmly denounced by al-Dardīr and other Mālikīs, however,¹² and in any case was not intended to apply to masjid waqfs. According to some of the Hanafīs, the materials from the ruined building may be retrieved and sold or transferred to another masjid provided the purpose is to benefit and facilitate the worship of the people of a place by building or enhancing another masjid. This operation cannot be undertaken without the approval of the qādī, however.¹³

The Hanbalīs are the only school which allows the sale of a masjid in certain cases, even though their basic ruling, as in the other schools, prohibits selling a masjid. However, for Hanbalīs, if the masjid is no longer of any use to its people, as might be the case if it were beyond repair or if the population had departed to another town, so that no one at all uses it, or if it is too small and cannot be enlarged, it may be sold, the proceeds going to contribute to the construction of a new masjid in another place.¹⁴

In general, once a waqf is constituted, it may not be taken back nor replaced nor substituted by anything else, including an equivalent or better property.¹⁵

A waqf which is not a masjid may be leased out for a limited period according to the Hanafī and Mālikī schools, and for an unlimited period according to the Shāfi'ī and Hanbalī schools. The Hanafīs limit this period, with some difference of opinion among them, to one year if it concerns a

⁷ Ameer Ali, I, 398.

⁸ **Sahnūn** ibn Sa'īd al-Tanūkhī (d. 240/854), al-Mudawwanah al-Kubrā, ed. by Ahmad 'Abd al-Salām, Beirut: Dār al-Kutub al-'Ilmiyyah, 1415/1994, Vol. I, p. 197.

⁹ Sahnūn, IV, 259; Zarkashī, 345; Shihāb al-Dīn Ahmad ibn Muhammad al-Makkī **Ibn Hajar al-Haytamī**, (909-974/1503-1567), Tuhfat al-muhtāj sharh al-Minhāj, Dār Ihyā' al-Turāth al-'Arabī, Vol. VI, p. 283; 'Adawī, II, 269; Ameer Ali, I, 403.

¹⁰ Shams al-A'imma Abū Bakr Muhammad ibn Ahmad **al-Sarakhsī** (d. 483/1090), al-Mabsūt, Dār al-Ma'rifah, Vol. XII, p. 42; Shams al-Dīn Muhammad ibn Ahmad al-Khatīb **al-Shirbīnī** (d. 977/1557), Mughnī al-muhtāj ilā ma'rifat al-fāz al-Minhāj, Beirut: Dār al-Kutub al-'Ilmiyyah, Vol. III, p. 551; Muhammad ibn Ahmad **'Ilaysh** (1217-1299/1802-1882), Fath al-'Alī al-Mālik fī al-fatwā 'alā madhhab al-imām Mālik, Cairo: Mustafā al-Bābī al-Halabī, 1378/1958, Vol. I, p. 147; Zuhaylī, VIII, 219-220, 223-224.

¹¹ Abū al-'Abbās Ahmad ibn Ghunaym **al-Nafrāwī**, (d. 1125/1713), al-Fawākih al-dawānī 'alā Risālat Ibn Abī Zayd al-Qayrawānī, Dār al-Fikr, Vol. II, pp. 165.

¹² Zuhaylī, VIII, 223-224.

¹³ Zuhaylī, VIII, 220-221; Ameer Ali, I, 402-403.

¹⁴ Muwaffaq al-Dīn 'Abd Allāh ibn Ahmad **Ibn Qudāmah** al-Maqdisī (d. 620/1223), al-Mughnī, Dār Ihyā' al-Turāth al-'Arabī, Vol. VII, p. 368; Taqī al-Dīn Ahmad ibn 'Abd al-Halīm **Ibn Taymiyyah**, al-Fatāwā al-kubrā, Beirut: Dār al-Kutub al-'Ilmiyyah, Vol. IV, p. 359; Mansūr ibn Yūnus **al-Buhūtī** (d. 1051/1640), Kashshāf al-qanā' 'an matn al-Iqnā', Beirut: Dār al-Kutub al-'Ilmiyyah, Vol. IV, p. 297; Zuhaylī, VIII, 226-227.

¹⁵ al-Nafrāwī, II, 160-161.

building and three years if agricultural land. Contracts for longer periods are void because of fear that the person leasing the property might come to see himself or be seen as the owner, such that the waqf might be illegitimately lost. The price of the lease also must be according to going market value, and not artificially cheaper.¹⁶ The Mâlikîs allow a lease of land for up to four years at market value (if the beneficiaries are not specific persons, two years only if they are), and if the waqf is a totally ruined property, longer, if it will benefit its reconstruction. But in the case of a building, they allow only one year of lease if the beneficiaries are unspecified, as is the case with a waqf supporting a masjid, and less than that if they are specific persons. Some Mâlikîs have allowed these limits to be bent in the case of necessity, however, as when a waqf has empty land that no one wants which produces no income and someone comes along who offers to build a commercial building on the property provided it is leased to him for a long time and/or at a nominal price.¹⁷ The Shâfi'is only require that the property be leased at the going rate, and the Hanbalîs do not even require that.¹⁸

Masjids were often built with attached shops which were leased or rented to help support the masjid. Such shops were not part of the masjid building. However, there is another area which is outside of the masjid sanctuary but still part of the masjid called rahbat al-masjid, the masjid's courtyard or yard. Ibn Hajar al-Asqalânî specifies that this area is part of the masjid, can be used for overflow worshippers, but also can be an area where one can conduct mundane conversations or make announcements about lost animals.¹⁹ According to al-Muwatta', the rahbah is a place where people can go to talk loosely, recite poetry, or raise their voices.²⁰

Thus, a masjid which is still in use and to which any community appertains at all, even if very small, cannot be changed, transformed, leased, or sold at all according to all the authorities. It must remain a masjid, and the qâdî should intervene to change its administration if the administrator is not able to maintain it. However, part of a property on which a masjid is located could be leased out, especially if that would help to maintain the masjid. If buildings, such leases should, in general, be limited to one year at a time, although special circumstances might be taken into consideration to allow a longer period. The only area which should not be altered or changed is the masjid itself, that is, the sanctuary part where the salât is performed.

3. Can a waqf change from being a waqf temporarily and then go back to being one permanently?

According to the Hanafî, Shâfi'î, and Hanbalî schools, a waqf can only exist in perpetuity. The Mâlikî school allows temporary waqfs, but the period of time must be fixed and declared at the time of the waqf's establishment.²¹ If a waqf document states that the waqf is perpetual, then all schools agree that that position cannot be changed or modified.

4. Is it acceptable in Islam to have a masjid or a Muslim community governed by a board of directors or trustees instead of having an imam or a masjid amîr as the sole and final authority making the decisions of the masjid or community?

¹⁶ Zuhaylî, VIII, 233-234.

¹⁷ Muhammad ibn 'Abd Allâh al-Khurashî (d. 1101/1690), Sharh Mukhtasar Khalîl, Beirut: Dâr al-Fikr, n. d., Vol. VII, p. 99-100; 'Adawî, II, 269; 'Ilaysh, II, 239-241; Zuhaylî, VIII, 235.

¹⁸ Zuhaylî, VIII, 236.

¹⁹ **Ibn Hajar al-Asqalânî**, Fath al-Bârî sharh Sahîh al-Bukhârî, K. al-ahkâm, b. man qadâ wa-lâ'ana fî al-masjid, hadîth 6632 according to CD ROM "Mawsû'at al-hadîth al-sharîf," Version 2.1, Harf Co. of Egypt.

²⁰ **Mâlik** ibn Anas, al-Muwatta', tr. by 'A'isha 'Abdarahman at-Tarjumana [Bewley] and Ya'qub Johnson, Norwich, UK: Diwan Press, 1982, p. 75, no. 96= Muwatta' Imâm Mâlik, tr. by Muhammad Rahîmuddîn (d. before 1400/1980), Lahore: Shaikh Muhammad Ashraf, 1980, p. 83, no. 418; Abû al-Walîd Sulaymân ibn Khalaf al-Bâjî (d. 484/1091), al-Muntaqâ sharh Muwatta' Mâlik, ed. Muhammad 'Abd al-Qâdir Ahmad 'Atâ, Beirut: Dâr al-Kutub al-'Ilmiyyah, 1420/1999, Vol. II, pp. 344-345.

²¹ Khurashî, VII, 11.

Generally, the imâm of a masjid is not an independent sovereign like a ruler. Rather, the masjid should be under the general authority of the Muslim ruler. In Muslim countries, this remains the case with state-owned masjids, which are the minority in a country like Egypt.

Most masjids, however, even in Muslim-majority countries are privately-endowed waqfs that do not come under state administration, but rather are administered under the provisions established by the donor in the document establishing the waqf. With respect to a waqf, the powers of the ruler or his judicial representative, the qâdî, are somewhat limited by the rights of the donor to appoint and to remove the manager (mutawallî or nâzir) of the waqf, according to all the schools except the Hanbalîs, who give rule over the masjids to the ruler directly.²² According to the Hanbalîs, the specific beneficiaries of a waqf have the right to appoint the waqf manager, not the donor, because the donor loses his ownership at the time of the donation and has no further say in it.²³ That is why, for Hanbalîs, masjids, which have no specific beneficiaries but rather all Muslims generally, are subsequently to be administered by the ruler.

The waqf manager, if appointed by the wâqif or donor, cannot be removed by the ruler or the qâdî, except on a charge of malfeasance or maladministration. Indeed, according to Ibn Taymiyyah, the ruler must apply to the qâdî to make such charges and can take no action against a waqf administrator himself.²⁴ According to all the schools, the waqf manager could be the donor himself.²⁵ The manager himself may only appoint a successor if he has been explicitly granted this power by the donor.²⁶ Otherwise, the power to appoint the manager reverts to the qâdî. The administrator keeps his office for life, unless he or she is removed by the qâdî for failing to uphold his or her responsibilities or else resigns. If the donor does not appoint an administrator, then the qâdî appoints that official. When the qâdî appoints the nâzir, he may remove him or her at any time without giving a reason.²⁷ Normally, the donor will establish principles of succession of the managers or administrators in the waqfiyyah document founding the waqf. In the Hanafî school, the donor always has the right to appoint or remove the administrator, and that right automatically falls to the executor (wasî) of the donor's estate on the donor's decease. For later Hanafîs, the congregation of the masjid eventually came to appoint the masjid administrator instead of the qâdî, because of the venality of the judges in the latter days.²⁸ This accords with the idea that, although a masjid is deeded to Allâh and is for all the Muslims, those who use it are more likely to take better care of it than a more distant authority.

Also, the law explicitly states that a waqf administration may be collective, that is, it may be vested in a board.²⁹ According to Ibn Hajar al-Haytamî, if a waqf exists in a country with no Muslim government, when the waqf manager or administrator dies, the local religious scholars ('ulamâ) and

²² Zuhaylî, VIII, 231, 237-239. However, Ibn Muflih al-Hanbalî suggests that the ruler's charge of the masjids is somewhat indirect and limited to state masjids, and that the manager of the masjid waqf also cannot be removed without malfeasance or maladministration. See Shams al-Dîn Abû 'Abd Allâh Muhammad **Ibn Muflih** al-Maqdisî (d. 763/1362), al-Furû', 'Âlam al-Kutub, Vol. IV, pp. 592-597.

²³ Mustafâ al-Suyûtî **al-Ruhaybânî** (d. 1243/1828), Matâlib ulâ al-nuhâ fî sharh Ghâyat al-muntahâ, Al-Maktab al-Islâmî, Vol. IV, p. 324.

²⁴ Ibn Taymiyyah, IV, 259; Zuhaylî, VIII, 231, 237.

²⁵ Abû 'Abd Allâh Muhammad ibn Abî Bakr **Ibn Qayyim** al-Jawziyyah (d. 751/1350), I'lâm al-muwaqqi'în 'an Rabb al-'âlamîn, Beirut: Dâr al-Kutub al-'Ilmiyyah, Vol. III, pp. 288-289. Note that Ibn al-Qayyim here appears also to moderate the other Hanbalî view mentioned above that the donor loses all say in the waqf.

²⁶ Abû 'Abd Allâh Muhammad ibn Muhammad **al-Hattâb** (902-954/1497-1547), Mawâhib al-Jalîl sharh Mukhtasar Khalîl, Beirut: Dâr al-Fîkr, n. d., Vol. VI, p. 38.

²⁷ Zuhaylî, VIII, 231, 237.

²⁸ Muhammad Amîn **Ibn 'Âbidîn**, Hâshiyat radd al-muhtâr 'alâ al-Durr al-mukhtâr sharh Tanwîr al-absâr, 3rd ed., Cairo: Mustafâ al-Bâbî al-Halabî, 1404/1984, Vol. IV, p. 451; Ameer Ali, I, 460-461.

²⁹ Zuhaylî, VIII, 232.

righteous Muslims (sulahâ?) succeed to the supervision of the trust.³⁰ This text definitely endorses a collective approach in the absence of a Muslim ruler.

Thus, in the United States at this time, in the absence of a Muslim ruler or government, each masjid should be governed independently according to the rules of waqf. This means that the original donor, donors, founder, or founders should set up the administration of the masjid in the foundational document according to what is correct in the Qur'ân and the Sunnah. Unless that document somehow violates the rules given above, it remains valid. If a particular community has established, even by custom, that its imâm or amîr is its supreme authority even over the waqf of its masjid, his authority is valid within the rules of waqf. Thus, the imâm may have the power over the khutbahs and the policy of the masjid but not to sell the property. In general, the administration of a waqf set up by the donor or donors cannot be changed except for malfeasance or maladministration as determined by the Muslim qâdî.

All this shows that it is essential at this time to document exactly how a masjid is to be administered and exactly with whom the executive power resides.

5. Is there only one form of masjid and/or community governance that is based on the Qur'ân and Sunnah? If so, what is it? And where does it exist today? Is it wrong or harâm to have another form if only one form is based on the Qur'ân and the Sunnah, or are other forms permitted?

This is not the place to discuss the entire question of government and rule in Islam, which would take a book. But something can be said about the status of masjids.

The governance of a public masjid, which is a kind of waqf, differs from the government of a community. A waqf, being real property and not persons, is only a part of a community and not the community itself. Therefore, the hadîth which states that if three Muslims are on a journey, they should appoint one of them as their amîr or commander,³¹ does not apply to the organization of the waqf, while it may apply to a community at large. Rather, the administration of a waqf is governed by its constitutional document expressing the wishes of the founder of the waqf. Its powers are limited by the usual limitations of waqf administration to preserve the waqf, and, in the case of a masjid, also by the rules governing masjids.

Because of the lack of a Muslim government or recognized judicial apparatus here, it is important that each public masjid establishing a waqf write a foundational document specifying how it is to be administered, and how its administrators' successors are to be appointed.

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³⁰ Shihâb al-Dîn Ahmad ibn Muhammad al-Makkî **Ibn Hajar al-Haytamî**, (909-974/1503-1567), al-Fatâwâ al-fiqhiyyah al-kubrâ, al-Maktabah al-Islâmiyyah, Vol. III, p. 261.

³¹ Abû Dâwûd, II, 721, hadîths 2602, 2603. This is a hasan hadîth that is only transmitted by Abû Dâwûd among the Six Books.