

Fatawa Inheritance 2004

Estate distribution according to Shari'ah

SUBJECT: A PROPERTY DISTRIBUTION IN INHERITANCE

From: Nahid

Sent: Tuesday, September 14, 2004 7:00 AM

As Salam Alai Kum - Wa Rahmathulla-hi Wa Barakatahu

Dr.Monzer Kahf

Re: REQUEST FOR YOUR VALUBLE OPINION FROM ISLAMIC PERSPECTIVE, FOR THE BELOW STATED:

We are a Sunni Muslim family (Current surviving members are - One widowed mother, Five married daughters & Two married sons) based in Hyderabad-India. Myself i am the eldest son (Married/4 children) living with family at Jeddah-Saudi Arabia due to job. Since my arrival abroad, i had greatly helped my parents financially & in fact my four sisters got married entirely on my financial assistance and also my late father's house (New portion) was built with my financial assistance only (70 to 75% share of the total) which is currently yielding a rent of around four thousand rupees total per month, which is being regularly received by my mother herself, for the routine daily life expenses.

My father died recently & he had left an immovable property of currently valued at around 70 to 80 lakhs rupees, one single old house based at Hyderabad-India (Half of which is under the name of my late father's name & the other half on my widowed mother's name) The said property was his own, which he had solely acquired by his hard efforts and money

Since my late father had not left any written will for the property, for unknown reasons, but prior to his death, he had verbally told us clearly (at my home in Jeddah) in front of my wife and mother that, his whole property will pass on to his two sons, after the passing away of both the parents, but he had specifically advised me to be sincere & collectively pay by cash the financial benefit to all the five sisters after considering the current market value of it (In accordance with the principles of the Shari'ah laws) and make a final settlement of inheritance matter and afterwards get their written certification for the Property Release/No-Objection Certificate in favour of two brothers, before finalizing the property transfer process in our names (Sons of the deceased)

So, kindly advise me with your legal opinion (According to the true Islamic Shari'ah laws), for the following queries:

QUERIES

01. What is the current Shari'ah position of the said property -----?
02. When and how to decide the final inheritance settlement of the said property ----
--?
03. Who should be the best person to take an initiative and finalize the inheritance settlement in an amicable way---?
04. What is the Shari'ah law value of my late father's verbal wish regarding his property (Which i believe is fully fair) which he clearly said for his two sons only & How to establish the same in a Shari'ah or Indian court of law -----?

05. Are myself & my younger brother the only two persons, who will be equally entitled in or all of us (Including my married sisters) will be entitled for some or equal share in our late father's property -----?
06. What is the best method for distribution of the said property -----? & on what basis without partly or fully selling -----?
07. Is it permissible by Shari'ah laws for my widowed mother to give some extra share of the said property to my married sisters by depriving our due shares and also without seeking our (Two brothers) written consent -----? (When the said property was solely acquired by my late father on his own, but he kept half of it under the name of my mother, just to make her happy and secured)
08. Is it fair and permissible by Shari'ah for myself to ask for a lion's share in my father's whole property, since i had already spent a lot of money (Estimated to a current value of over 15 to 18 lakhs rupees) previously on my father's own responsibilities like his daughter's marriages + building the new portion of the house for rental purposes and in return i had not received any benefit in so far -----?
09. If my mother on her own distributes the property in an unfair & unacceptable manner i.e., by giving more to her daughters (More than what they deserve) on the ground that they are financially not sound, compared to her two sons, Then how can we respond---? Is it permissible by Shari'ah for us, (Two sons) to fight against the said injustice of our mother -----?
10. Is it fair and acceptable for me to humbly request my married sisters to fully/partly relinquish their respective shares in my favour, because they got married only due to my financial assistance -----? (Which is a known fact, no one (Including my mother, younger brother and sisters) can dispute!

Awaiting for your valuable response,

Sender:

Nahed

N.B : KINDLY NOTE THAT, WE ALL THE FAMILY MEMBERS ARE NOT OVER-ANXIOUS OR DESPERATE TO TAKE UNDUE ADVANTAGE OVER THIS PROPERTY MATTER AND DIVIDE IT OUR AMONG OURSELVES, BY DEPRIVING THE OTHER'S DUES, EVEN WHEN MY WIDOWED MOTHER IS ALIVE. IN FACT, WE WANT TO HAVE AN AMICABLE SOLUTION WITH THE WRITTEN CONSENT OF EACH & EVERY MEMBER OF OUR FAMILY.

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. Nahed

Assalamu Alaykum wa Rahmatullahi wa Barakatuh

I certainly appreciate your concern to find out the Islamic solution for the issues you raised. May Allah reward you for it and increase always your good spirit to always revert to the Shari'ah solution.

Let me first mention that the Islamic inheritance system is mandatory on all Muslims. God sent it in the Qur'an, mostly in Surah No. 4 and He mentioned that "It is Faridah [obligation] from Allah". This means that any last will verbal or written that is not consistent with the system is not valid and must not be applied.

Accordingly, if we interpret your late father's verbal will as assigning his real estate properties to his sons it becomes invalid. Certainly your mother and sisters have full rights to their Shari'ah (In fact specifically in the Qur'an) assigned share of real estate as well as to other properties left by your father.

i tend to interpret his last will statement as a request or appeal to his heirs. Thus ONLY BY FREE WILL CONSENT OF YOUR SISTERS AND MOTHER, WITHOUT ANY PRESSURE that the real estate properties can be distributed to the two sons and other properties to the daughters and mother PROVIDED THAT THIS DISTRIBUTION IS DONE ON THE BASIS OF 1/8 TO YOUR MOTHER AND 1/9 OF THE REMAINDER AFTER THE SHARE OF THE MOTHER TO EACH DAUGHTER AND 2/9 TO EACH SON. This is: 9/72 to the mother, 7/72 to each of the five daughter and 14/72 to each of the two sons. any heir, by consensual agreement and with or without a price, may give her/his share partially or wholly to any other person heir or not. This is a kind of sale or gift.

A mother, like any other owner, has free hand over her property; she can give it to whoever she pleases, a daughter, son or any other. However, when a parent gives to children she/he must give equally to all children regardless of gender. Giving in life time is not like inheritance where a son gets twice as much as a daughter. If she gives without equality she will be sinful but the giving is valid from Shari'ah point of view, God will judge her for it.

Whatever you gave to your father to complete his building is a gift from you to him that is rewarded InShaAllah from God. Unless you gave him a loan or to buy part of the property and you have a proof acceptable to other heirs, you cannot claim such a giving in front of the heirs.

Ownership of estate shifts to the heir, according to their Shari'ah shares, immediately the moment the deceased passes away with no delay. Heirs are certainly now the owners and distribution must be done as soon as possible in order to enable each heir to enjoy her/his property.

Only by consensual agreement the heirs may assign a person from within or from without, to handle the distribution, otherwise you revert to court. In India you have a special Shari'ah court that does that and India has Islamic personal law for Muslims that deal with these issues.

You cannot have other than your share that equals your brother's and is twice the share of a sister. Being married or not does not affect; and your mother is free as mentioned earlier.

If i can be of any further help please write me again.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Are All Those Heirs Eligible for due Shares?

From: Islam on line

Sent: Thursday, September 23, 2004 3:09 AM

Name of Questioner Mustafa Gender Male Age 31-45

Education Post Graduate

Country of Origin Yemen country of Residence Netherlands

Question

Assalam Aleikum dear scholars. May Allah bless you all for your efforts to spread the true Islam. There was a man who was married with two women. This man 's father had also two wives. The first wife gave him three daughters and three sons and the second wife gave him one daughter and three sons. All of the children of the father have children. SO the man who died is from the second wife. The first wife gave him three female children and the second wife two female children. The second wife she has also other 6 daughters and one son from a previous marriage. After four months a daughter of the deceased died. This daughter is from the second wife. My questions are as follow: 1. About the deceased man. Do the mother of the deceased man right to inherit, if so how much is the percentage? 2. Do the paternal brothers and sisters have a right to inherit, if so how much? 3. Do the maternal brothers (now 2) and the maternal sister of their deceased brother right to inherit, if so how much? Now about the deceased daughter from the socnd wife (note: the second wife has other 6 daughters and one son from a previous marriage). 1. Do the mother of this deceased daughter inherit? If so, how much percentage? 2. Do the maternal AND paternal sister inherit from her deceased sister? If so how much in percentage? 3. Do the paternal three sisters RIGHT to inherit form their deceased sister? If so, how much? 4. Do the maternal sisters and the maternal brother (the second wife's other children of the previous marriage) right to inherit if so how much in percentage)from the 5. Does her grandmother (the paternal side) have right to inherit, if so how much? 6. Do the two paternal uncles and one paternal aunt of the deceased child right to inherit, if so how much in percentage? i am asking you these questions as this issue caused in my family a lot of misunderstandings, major conflicts and hatred. Please and please, give us your early response some clear-cut explanations in details basing on Qur'anic verses as well as prophetic Ahadith. JazakumALLAH Kheyran wassalam aleikum.
Jazakum Allahu Khairan for your constant help
Yours

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. Mustafa,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Let us first set the facts, we'll do that on 2 stages:

A: distribution of the estate of the deceased man:

a man died; survived by: mother, 2 wives, 5 daughters, 2 full brothers, 1 full sister and a number of parental brothers and sisters. You did not mention any thing about his father and i will assume he is dead.

This man's estate is distributed as follows (obviously after payments of any debts, expenses and last will to non heirs within the limit of one third): Mother $\frac{4}{25}$, each wife $\frac{1.5}{25}$, the five daughters will take $\frac{16}{25}$ to be divided equally between them; nothing to any/all others. All this is in application of the Qur'an, beginning of Surah 4 and the principle of Awl (redistribution percentage wise when the total shares exceed 100%).

B: a female died, who is survived by a mother, 1 full sister, 3 parental sister, 7 maternal siblings and a number of paternal uncles and aunts. Her estate (if we assume that all she owned was the amount she inherited from her father, this is

equal to 16/125 of her father's distribution) will be divided as follows: 1/6 to her mother (if we assume that all she owned was the amount she inherited from her father, this equals 8/375 of her father's net estate) 1/2 to her full sister (= 8/125 of her father's estate under same assumption), 1/3 (= 16/375 of her father's estate under same assumption) to the mother side 6 sisters and 1 brother equally between them (no distinction between males and females); nothing to all/any others. This is also according to Surah No. 4.

These two cases are straight forward that there is no room for differences between all schools of Fiqh.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: How to Rectify the Situation of last will or inheritance

From: Islam on line

Sent: Monday, October 18, 2004 12:51 AM

Name of Questioner Talib Gender Male Age 46-60

Education Post Graduate

country of Origin Pakistan

Question

My father built a house and transferred the house in my mother's name during his life. He died over 18 years ago. Until recently my mother along with one of my sister, sister's husband, and sister's son were living in that house. Last year my sister's husband passed away. Just a few months ago my mother sold the house and bought another house in the name of my sister (with whom she has been living and whose husband died last year) to help her (sister) financially and moved to the new house with her (sister) and her son (sister's son). The new house was cheaper (difference in selling price of old and buying price of new house) than the old house; whatever money was left after buying the new house she (mother) kept some portion of it for herself and distributed the remaining equally amongst all other children (sons, daughters). To bring another point in to the perspective, after the death of my father we found a piece of paper in the drawer of his writing table written by him; which we consider as "will", it contained the following sentence (translated in English by myself to the best of my ability and sincerity) "Whatever i have saved has been with the help of (name of my mother) and she has the first right over it and after this children have right over it. My little assets and the house in the name of (my mother's name) should be distributed according to the Sunni law but before doing this the loan that i have taken should be paid off ... (followed by details about loan)" One of the sons believes that my mother has done wrong and has committed a major sin by giving a major share to the widowed sister and not distributing the money received from selling the old house according to Shari'ah (Islamic rule). i kindly request you to let us know if my mother has done wrong or not, incase she did what is the way to put it right. i may add here that my widowed sister has been living with my mother and all other children (sons, daughters) either are abroad or living in different cities. My widowed sister is not in a position to earn her living neither her son is old enough to get a job. Thank you and best regards

Jazakum Allahu Khairan for your constant help

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. Talib,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

1) The house that is put (by father) in the name of your mother is hers. No one has any claim on it and the paper written by the late father does not change this fact since she owned the house. When alive, he gave her this house and she can do any thing she likes with it.

2) the paper that you considered as a last will of your father may apply to the rest of the estate that is not in the names of any other persons (of course, if such persons agrees to give it up to the estate for distribution, it can then only with this consent be distributed as inheritance). If there are assets to cover the debt, it must be paid first and then only the leftover may be distributed. If nothing is left or there is shortage creditors can only take what is available and none of the heirs should be charged with these debts unless if there is a lien on the house that your mother owns, in this case the debt must be paid by the owner of the house.

3) What your mother did of favoring her needy daughter seems correct and not wrong. Also the distribution of money from your mother equally to her children is the right thing to do because distribution in the life time to children should be on equal basis without distinction between males and females as we are told by the Prophet, pbuh. Her giving to a needy child (your sister) is also justified by her need as you described.

Finally, it seems that every thing is fine and no need to make any change.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Basic Info on Calculating Inheritance

From: FARHEEN

Sent: Monday, November 01, 2004 1:33 PM

To: monzer@kahf.com

Assalaamu alaikum,

My name is Farheen Ali and i am a 3rd Year Law student at the University Of Florida College Of Law. My coursework in law school has focused on Estate and Tax Planning. This semester, i am participating in the Elder Law Seminar and i am presenting on how Islam treats the elderly and how Islam requires distribution of wealth on death. i was referred to your website and it contains great information, Alhamdulillah. What i need help with is how to describe, in relatively simple terms, how the Islamic Inheritance system works and how an Estate Planner can address the needs of Muslim clients (i.e. offer sophisticated estate planning vehicles while respecting the Shari'ah boundaries). i have read quite a bit on the inheritance scheme (i.e. who gets what) and it seems complicated, at least for a novice to

understand. InShaAllah, with this project, i hope to change that. Anyway, i don't know how to explain the inheritance scheme to my fellow students. Ideally, i would like to be able to explain to them some of the basic principles, and then have them work through some basic problems. To do this, i need to understand it myself. Insha 'Allah, any help from you would be much appreciated. Thank you for your time. i look forward to hearing from you soon!

Salaam-
Farheen

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. Farheen,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

i am really delighted to learn about your interest. In fact there is a tremendous need for Muslim lawyers in the area of real estate planning. At this moment i'm a little sinking in a few timed commitments. And it will probably take me till the spring. But i love to help you as much as i can. i don't know of English writings on what you asked, there are several books in Arabic. Please take a look at my ppt presentations on this issue on my website www.ka hf.net. You may be able to put together a few ideas. Here are some headlines:

The Inheritance System of Islam is tightly connected to family law and property law in Islam

It aims at distributing the estate in contrast to concentrating it

It favors the lineage, especially children, then parents over spousal relations (Notice marriage in Islam is an exchange contract not a life partnership)

It is mandatory, all of it, it leaves little room, max one third to personal choice thru Wasiyyah

Most of its details came in clear cut in the Qur'an itself, little is left to the Sunnah and much less to the Ijtihad.

It gives more to male children and siblings than female children and siblings (notice the family law almost impose zero financial responsibility on females)

Etc.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Distribution when the deceased is female

From: Islam on line

Sent: Tuesday, November 09, 2004 5:05 AM

SUBJECT: Question on Inheritance

Name of Questioner nasreen

Question

Assalamualaykom. i have a question regarding Islamic wills. i know Shari'ah defines how inheritance should be distributed after death. i have always read this from a

man's perspective i.e how a father should share property amongst his wife and children. Can you please tell me how a Muslimah should share her property? i would like my main beneficiaries to be my husband, father and brother. i would like my assets to be distributed as follows. Our house (which for legal reasons is in my name only) and 30% of my cash reserves to go to my husband. The remaining cash reserves to be distributed as follows: 30% to my father, 30% to my brother and 10% to charity, (with small cash gifts going to my sisters first). Is this distribution contrary to Shari'ah? i have no children. Jazak-Allah for your advice.
Jazakum Allahu Khairan for your constant help

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 Sr,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

In one shot: YES, it is contrary to Shari'ah!

The Islamic system of inheritance is mandatory as explained in the Qur'an, mostly in Surah 4. Got said at the end of the paragraph of main verses that deal with inheritance: "Those are the ordinances of God, and whoever obeys God and His Messenger, He (God) will make him/her enter Gardens beneath them rivers run, to dwell there forever and that is the Great Success * And whoever disobeys God and His Messenger and transgresses His ordinances, He (god) will make him/her enter a Fire to dwell there forever and for him/her there is a painful punishment." [4: 13-14]. It applies the same way, no difference what so ever to all deceased Muslims, males or females. The difference between males and females comes only in shares of different survivors.

In your case, i assume your mother is already dead. Should you die, your husband will get one half of the net estate and your father will get the other half, nothing to your brother and sisters. If your father is not then alive, the other half must be distributed to your brother and sisters on the basis of one share to the female and two shares to the male. (all these are actually mentioned in the verses that just precede the above quotation.

However, God, the Most Generous Gave us a last opportunity to make a final good deed through a Wasiyyah (it is different from a last will as you will notice) that allows us to decide on distributing a max of one third of the estate (net of expenses and debts) for good reasons and to persons who do not inherit. Accordingly, you can make a Wasiyyah to your brother and sisters in case you are survived by your father, and to charity with the maximum of all such giving as mentioned above.

Additionally, If you live in a country that does not have Islamic inheritance law, such as USA, you have to make a last will or a living trust that mentions that you want the distribution to be according to the (mandatory for any Muslim) schedule of Mawarith, within the Last will you can include a Wasiyyah (in the meaning explained above although the word itself means last will) to the effect of giving to brother and sisters (if father survives), charity, etc.

Furthermore, you said that the house is in your name for certain reasons but if the truth of ownership is different (such as it is owned half/half between you and your husband) you have to make that clear and documented in ways that are acceptable

to other heirs, otherwise they have the right to dispute your claim and such a claim is very difficult to stand in an Islamic (and American) court after you are gone.

Finally, you can advise your heir to assign this item to this person and that to that, but this is only an advice, they can do any other thing after you are gone, because it is their property and you have no right to force on them your will. Besides, why do you want to take that burden, you will have plenty of things to be questioned about there, do you need an extra question?

You can find a form of last will and living trust on my website or on ISNA's www.kahf.net or www.isna.net.

Please if you have any question write again,

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Surrogate mother and inheritance

From: Tayyaba

Sent: Friday, December 24, 2004 8:06 AM

To: monzer kahf

Assalamp-ailkum

Thanks a lot for your response and detailed answer. i may request some further discussion on the subject. First of All it is not sperm or egg -- it is another form i.e. Embryos (like child) - and in my opinion the surrogate mother just the women who breast feed nourish the kid - but here like blood nutrients and womb protection - and the relation could be the same as with the "Breast Feed mothers" nursing mothers. There will be no ambiguity of parenthood as both the eggs and sperm are from same parent..

My other question is that, OK if this is prohibited, is there any relaxation based on case to case basis - i am really really getting mental disturbance _ some time so much that i feel that my nervous break down may occur.

Definitely, i am trying my best to retry it again and again InShaAllah. Please keep me in your prayers. Once again thanks for your time - Allah will reward you.

Wassalam

Tayyaba

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 Sister Tayyaba

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

No matter how much i claim that i can understand your situation, i realize that it is a lot more than i can know about it. i know that motherhood is something beyond my imagination and feeling as a man. i certainly sympathize with you a lot. But please notice, the Qur'an says about mothers: "Their mothers that gave them birth" who gives the birth, the surrogate or the egg giver? How about inheritance relations, who inherits the child or from whom will she/he inherit, the surrogate or the egg giver? It

is not like breast feeding, it is a nine month growth inside her body! Besides, the essential question is who is the mother, the egg giver or the nine month feeder and carrier inside her body? A fetus is always considered as part of the body of its mother; in this case, is it a part of the surrogate or the egg giver?

You know adoption is prohibited in Shari'ah by the text of the Qur'an. In contrast, taking a baby, raising her/him and treating her/him like own child is very much encouraged. The difference is the legality that affect Islamic cover when she/he grows (of course unless breast feeding is arranged), marriage (whom can he/she be married to) and inheritance (of course, the Wasiyyah is always available to the extent of one third).

i suggest that you should get a support group, there are many families that have no children, by choice or not) and keep trying and make Duaa, i know a mother in Indianapolis who lost all her three children after she became Muslimah and her ex husband refused to allow her to see them, but in a few years, she gained them all back. the same woman did not give birth from a her new husband after trying desperately for more than fifteen years, and when she got a baby, that was not wanted by her mother, and put it on her breast God gave her the milk and the girl became her breast-fed daughter. This lady is still alive in Indianapolis.

Please make all humanly possible effort but surrender the matter to God with your Duaa and He will not let you down!

My payers are with you, and please keep trust in God's work

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Distribution of Property recorded in father's name

From: Islam on line

Sent: Wednesday, August 25, 2004 1:31 AM

Name of Questioner hashim

country of Origin Tanzania country of Residence United Kingdom

Question

aslaamalaikum dear scholars in 1994 i happened to buy a land with my own funds built the building up to foundation stage with my own money, some money of my father also was used to complete the building. Every thing was in my fathers name, but during his presence he had given me in writing that I can transfer the property in my name if I wish to do so, but I never did it, now my father passed away in 2000, we are 4 of us 3 sisters and 1 brother, few months after the death of my father my elder sister also passed away. Now to be safe from Islamic laws I would like to know how the property should be divided among us. This property consists of building with machinery, my father's money was used in completing part of building and purchase of some machines. I would be grateful for your reply so that, I can act as the ilsmic law says. Jazakum Allahu Khairan for your constant help

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. Hashim

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

If your sisters recognize your contribution to the land and building that is in your father's name, the matter becomes simple; the father's share in the property, as valued on the day of distribution is his estate that is subject to distribution and your recognized share is yours solely. But if they deny your contribution, you should remember that it is recorded in your dad's name and all of it has to be considered his estate that is subject to distribution unless you prove in a court of competent jurisdiction that you actually own part of it. Of course, the estate of your father includes the above mentioned property plus any other properties he left behind. In either case, the estate of your late father must be distributed to his heirs (you did not mention whether he left behind any wife). First, any debts and funeral and burial expenses should be paid out (unless the payer, suppose it was you or any of the sisters, donated them voluntarily from his/her own) and any amounts your father ordered to be distributed for charity and/or non-heir persons within one third of the remainder after debts and expenses. The remainder should be distributed, if he is not survived by a wife, into five equal shares; each of the sisters takes one share and you take two shares.

The share that belongs to your deceased sister should be redistributed between her heirs according to Shari'ah. That depends on who survived her. If she is survived only by a husband and children, they will take all her properties, one fourth to her husband and the remainder to her children on the basis of two shares to a male and one share to a female. If she is also survived by a mother, the mother takes one sixth, husband one fourth and remainder to children. If when she died she had no husband, no mother and no children, you and the other two sisters inherit her estates on the basis of one half to you and one fourth to each sister. You need to remember always that the amount that is subject to distribution to the heirs is the remainder after payment of debts, expenses and willed distribution within one third of the remainder.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Inheritance distribution

From: Islam on line

Sent: Wednesday, July 21, 2004 11:40 PM

Name of questioner: Rahmah

Question:

My father passed away a month ago and left me, my brother and my stepmum a house and a financial inheritance. We cannot sell the house because my stepmum still wants to live in it. The problem is that me and my brother, as co-owners, will have to pay yearly taxes over the house even though we do not live in it and get no return. Now, the financial inheritance is quite high but we will need this to pay the yearly taxes (of around 300-500 euros). If my stepmum stays in the house for another thirty years even the inheritance will not be enough to pay the taxes, and obviously, living in Egypt, my income is not high enough to pay for them. My brother proposed to put our financial inheritance into a bank account that returns a lot of

interest. This would allow us to pay the yearly taxes from the yearly interest and to keep the actual inheritance to use for ourselves. If I don't do this I will lose practically the whole inheritance just paying taxes (and possibly getting into depth in the end). My question is whether it is Halal to use interest to pay taxes over a house. I will need to know within one and a half week because then I will need to sign papers confirming whether I will open such a bank account or not. Jazzak Allah khairan How much mail storage do you get for free? Rahma
Jazakum Allahu Khairan for your constant help

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 Sr. Rahma

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

First Let us pray to God to shower the soul of your deceased father with mercy and forgiveness.

I want to make a few points about inheritance clear before we discuss the interest and taxes. And I will assume that there are no other survivors, specifically you do not have parental grand parents. Of course all our discussion is from Shari'ah point of view:

- 1- If you are a female as it may appear from your name, and your stepmother is Muslimah and your father did not leave any last will, the distribution of all the assets, together, left by your father (net after = paying all debts including already due taxes) is: 3/24 to your step mother, 7/24 to you and 14/24 to your brother.
- 2- If you are a male, the same will be: 2/16 to your stepmother, 7/16 to each of you and your brother.
- 3- If your stepmother is not a Muslimah, she is not given any share from the inheritance and all goes to you and your brother either equally if two males or at 2 to 1 ration if you area female.
- 4- If your father left a last will that mentions distribution outside the three of you, such a distribution is valid only up to one third of the net estate as defined above. If the last will distribute to the three of you only in any manner that is different from what is mentioned above, it is not valid at all and only the above distribution is the one that is a must from Shari'ah point of view. Any one who is assigned more than what is mentioned above, even if the law of country where the property is located allows is, must give back to the one who got less in order to go back to the distribution as mentioned above. It is forbidden to take the extra.
- 5- If your step mother is not Muslimah and your father left a last will in which he assigned her some property or some portion, it is only valid up to one third of the net estate and the remainder must be distributed to you and your brother as mentioned above regardless of what is mentioned in the last will. Any thing differently is not valid from Shari'ah point of view and sinful for the taker (of more than the Shari'ah assigned share) and for the person who made the last will.

Now let us come to the taxes:

- a- Of course future taxes will be the liability of the persons who own the taxable property. It is not necessarily the responsibility of you and your brother alone and your share of this liability is proportional to your share in the property.

- b- If your stepmother is going to be an owner of part of the estate (whether by inheritance as a Muslimah or by a last will as a non-Muslimah) and she wants the house, the three of you can agree on the distribution so that her share will be in the house, all or part, this way she is going to be responsible for all or part of the property tax, If she is not going to be getting anything, you can assign a rent on her to pay the taxes and other expenses and may be get some income.
- c- Although technically you are not responsible for your stepmother, but morally and out of kindness to your deceased father you should take care of his surviving wife after his death if you can do it especially if she has no income and she doesn't have sufficient resources to pay for her needs including residence.
- d- Another issue is also at stake, whether she is Muslimah or not. That is the law of the land. Many European countries have laws to the effect that the spouse (in this case the wife) inherits the residence the couple lives in. If your stepmother invokes these laws she is going to win, though not permitted in Shari'ah. But if she wins she will take the house along with the tax liability so that you are not responsible for its taxes.

Putting money on interest to pay the taxes from the interest:

- I- It is forbidden to place money on interest regardless of the purpose, even if it were to give the interest to charity! From Shari'ah point of view the contract itself is not even valid.
- II- If an interest happens to accrue to you for certain reason, you can't use it to pay your liability, even to the bank that pays it to you. You cannot use it for anything that benefits you by giving you an advantage or relieving you from liability; simply because according to Shari'ah this money is not yours and the only thing to do with it is to return it to the payer but we do not do that because the payer (the bank) takes it as a business to earn for interest differential between lending and getting deposits, therefore we treat it as money that has no owner. It must be given to Muslim charity.
- III- In other words, placing funds on interest is sinful, and using the interest for taxes is another sin; both are prohibited.
- IV- There is another alternative; Europe today has several banks that have department abiding by the rules of Shari'ah. such as the newly established Islamic bank of Britain and the Islamic division of the HSBC in UK and may be some other European countries. You can deposit funds in these banks and get Halal return instead of the Riba-based banks.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Fatwa on Inheritance and Will

From: Islam on line

Sent: Wednesday, June 09, 2004 11:19 PM

Name of Questioner Shaikh

Question

Assalamu- Wa - Alaikum My question is regarding the inheritance...My uncle was married and they had two daughters. He died leaving two daughters and a land of 3

acres to her widow. He did not write any will for his property. The daughters were of ages 6 and 2. The mother brought up these two kids by doing the farming of the land he left. Now the eldest daughter is married to a wealthy person. Now the daughter's husband is asking for the daughters' inherited property because he says in Islam the orphans property should be kept as trust and that her property should be delivered to her. I want to know what is right in the Islamic perspective. My aunt used to spend money on them and also on her personal uses. Also does the inheritance vary if the daughter says "she did not take good care of me". Because she claims she did not take her to the hospital and she is facing problems now because of that.. Please illustrate with the aayas of the Quran about the inheritance and other aspects of this question. And in the sura An-Nisaa where Allah says about the property of the orphans; does an orphan mean a child who has no father or who has no father and mother Jazakallah o Khair brother
Jazakum Allahu Khairan for your constant help

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. Shaikh

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

To begin from the end, an orphan is a child who is below the age of 18 (according to Hanafi School) and has no father, even if she/he has a mother.

A claim by a grown up that when she/he was a minor her guardian did not take good care of her is not acceptable against a mother or grand father, if the guardian is some other person, like an uncle, cousin or a stranger, such a claim has to be proved in court of law. "Did not take me to hospital" does not stand as a claim so we all know that mothers do usually sacrifice every thing including their lives for the health and well being of their minor children.

Upon the death of your uncle, the property he owned goes to his heirs. At the time, I assume that he was not survived by his parents; his wife deserves $\frac{3}{24}$ ($\frac{1}{8}$) and each of the two daughters deserves $\frac{8}{24}$ ($\frac{1}{3}$) the remaining $\frac{5}{24}$ belongs to other kin relatives of your uncle. Was he survived by brothers and sisters (other uncles and aunts of yours), uncles and aunts (bothers and sisters of your parental grand father) etc? I cannot give the exact distribution of this $\frac{5}{24}$ unless you tell me exactly: who were his survivors at the time of his death? If there were no other survivals at all, the remaining $\frac{5}{24}$ should be distributed equally between his two daughters.

Their mother is their guardian and she must have spent on them. During that period she is authorized, according to Shari'ah to take any necessary action regarding the piece of land that is owned by her two daughters, including selling it if its price was needed for the family expenses including her own (the mother's). If the land was not sold, distribution has to be done, even now so that each heir gets her share in the estate of the deceased.

If the mother now needs any financial help for her living her two daughters, if they have means of their own including this piece of land, are required to spend on their mother even if they have to sell the land and/or any other property they may own. If the mother is rich enough to live on her own resources the daughters are relieved from such financial responsibility. And if the mother remarries, her expenses become the responsibility of her husband.

If you have any more questions, please give all the details and do not hesitate to ask again.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Property Inheritance Distribution

From:Yusuf

Sent: Wednesday, May 26, 2004 8:28 PM

Assalamu-Alaikum Br. Monzer Kahf

It was a short but valuable meeting at IMO, Toronto last year with you.

My father in law has passed away leaving some real estate, car and Life Insurance.

He had 3 children out of his first marriage (2 daughters married and 1 son 25 yrs unmarried), one son (11 yrs) out of a second marriage and a step mother. He has left some debt with banks as well? There was 30K Ruppees cost of his last medical bills and funeral.

How should the distribution take place according to Islamic law?

I would appreciate if you may be able to give me some direction in this matter.

Wassalam,

My Answer,

Bismi Allahi al Rahmani al Rahim,

Al Hamdu li Allahi Rabbi al 'Alamin, wa al Salatu wa al Salamu 'Ala Sayyidina

Muhammad wa 'Ala 'Alihi wa Sahbihi 'Ajma'in,

Dear Br. Yusuf

Assalamu Alaikum wa Rahmatu Allahi wa Barakatuh

You stated that the deceased left 2 sons and 2 daughters. He also left a step mother. He owed some debts to a bank and accumulated medical and funeral bills along with some properties (real estates, car and life insurance). THERE ARE NO WIVES OR OTHER RELATIVES.

The step mother has no share in the estate of the deceased. But before any distribution, debts to the bank and unpaid bills must be settled either by payment or waiver, even if some real estates have to be sold for that purpose. The balance, left after debts and bills, should be distributed as follows: 1/6 for each daughter and 1/3 for each son. Age does not influence the distribution.

The life insurance may be treated differently if the deceased had determined the beneficiaries. If he did, the assigned beneficiaries may take their assigned shares as per the life insurance contract. This different treatment is caused by the fact that proceeds of the policy were not owned by the deceased and they rather are due to the assigned beneficiaries from the insurance company only after his death. If there is no assignment the proceeds must be then added to the estate.

Wa Allahu A'lam,

Wa al Hamdu li Allahi Rabbi al 'Alamin,

Wa Assalam,

Sincerely,

Dr. Monzer Kahf

SUBJECT: RE: Division of Inheritance

From: Islam on line

Sent: Thursday, April 29, 2004 2:01 AM

Question

Regarding the assumptions you made on point 5 (please look at the notes), they are correct except for few things: My uncle supervised the businesses which were ran by our partners and my mother only spent the profits on us. My problem (question) is that my mother spent on me more than my brother and sisters for reasons mentioned in the previous question. So I am afraid that since our inheritance was mixed, I took from my siblings share. What I am supposed to do? I can estimate some of the expenses paid to me but not most.

Notes

Ref #13VP2Q 5- For division of the estate of your late father: There is a need for more information that you did not provide, but I will make certain assumptions and give the answer accordingly, if these assumptions were incorrect please ask again with full info. I will assume that your mother ran, or supervised all the businesses of your deceased father upon his death and these businesses continued to provide income to sustain your living expenses including your education in the US and the education of your siblings. I will also assume that no determination/calculation was done upon the death of your father as to the value of his estate. I will also assume that the assets he left behind did not decline because of expenses spent on your education in America. I will also assume that you are not able today to know what was the value of the estate at the time of his death. Yet another assumption: I will assume that your father was not survived by any of his parents. Under these assumptions, I would make a determination of the present value of all the estate as of today. Then distribute the shares as follows: 1/8 to your mother and each of the three sisters, and 2/8 to each of you and your brother. Minors' shares will remain under the guardianship of their mother and it is permissible to transfer it to you if your mother wishes so. 6 - If you guys are well to do, it will be nice (from Islamic moral view point) that you preserve the wealth of your minor siblings and keep it growing within the business and charge all family expenses to the adults' shares even pay for their higher education anywhere that is suitable for them. It is permissible though, but not so nice, to charge them for their shares of the family expenses.

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.

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Your mother is acting as the head of her household that includes all her children and her discretion is the determinant of spending on her children out of what is left by your father. There is no Shari'ah problem with it. When the younger children need education as they grow up she will also provide them with it like what she is doing with you. There is no change in my earlier Fatwa: you need not to worry about your mother's spending on you and your siblings and when each of them needs higher education do your best to provided them with it even if your mother is no more there at that time. This is a good deed by your mother to you that should be responded to

by similar good deed from you to your brother and sisters. Meanwhile since you and your mother are the adult, try to preserve the shares of the minors, as much as you can, for them when they are grown up.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Distribution of Estate

From: Islam on line

Sent: Sunday, February 15, 2004 12:25 AM

Name of questioner hura Gender Female Age Above 60

Education Illiterate

country of Origin India country of Residence India

Question

Note: I am not a literate women; this letter is written by some other person .some one guide me to take help from you. Respected mufti saheb Asalam alaikum Sub: I need fatwa of distribution of properties. I am a 70 years old Muslim widow. My husband expired. I was second wife of my husband. When He was alive he purchased two properties one property is on his own name & other property is on my name. Because between my age & my husbands age is too difference that's why he feel responsible for my future life. Before our marriage he had two sons & one daughter with his first wife .His first wife had already expired at the time of our marriage. One most important thing is that after our marriage my father expired & as a nominee my brothers offered for share in the father's property but my husband refused to accept that property. He replied to my brother I already did the arrangement for her future life with the purchase of property. (May be on humanitarian ground he refused) I got three sons & one daughter all are settled with there families Now I stay at home which is purchased by my husband, all the properties purchase before approx. 25 years of his expiry. All the five sons & two daughters are settled with there families. Now my questions are as below Q1) In which house where I stay is also distribute to 5 sons & 2 daughters? If yes then what is alternative for me to stay. If we soled & distribute the money to all Nominees then I can't purchase the small house with that sharing money .so what I have to do? Q2) In which property is also to be distribute which is purchase on my name before 25 years of my Husbands death(when he retired from work) which is on rented basis ? My husbands interest for purchase on my name was security of my life because my husband was too elder then me when we married (too much age difference). If it is also to be distributed to all 5 sons & 2 daughters then how can I survive? Even my husband refusal for the property of father long back & that property is distributed in our brothers by Indian panel court. & now my brothers also not giving me that property what will be source of my income which is also not much (less then RS. 1000/-per month) if we sell this property & distributing to all nominees then I can't do any business with this money because I am not a literate & my age is now 65 years plus. So I can't do any thing now to earn. Q3) I can distribute the second property which is on my husband's name & how to distribute it? Pls. Help me on this matter with Islamic law. I will be very obliged and thankful to you. Yours faithfully Hura

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 Sr. Hura

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

- 1- Allah, Himself in the Qur'an, made the distribution of the estate of a deceased Muslim and did not leave this matter to any person including the deceased. When your husband died the property he owned becomes owned by the heirs as given in the Qur'an. His property, whether the house you currently live in or any other property including cash and other real estate, should be distributed as follows: 1/8 to you and the remainder is to be divided to his five sons and two daughters, for each son twice as much as for each daughter (the Qur'an Surah 4 Verses 11 and 12). This means: your share is 6/48, the 2 daughters get 7/ 48 divided equally between them and each son gets 7/48.
- 2- The rented property that your husband registered in your name is purely yours. It was a gift given to you by your husband during his life and no one has any claim on it. Your children and your step children do not have any share in it and you enjoy its rent alone, you can do any thing you like with it and with its rent.
- 3- Your husband, may Allah bless his soul, had no right to refuse, unless if you then authorized him, your share from your father's estate. That was a decision you should have taken on your own without interference from your husband. But it seems to me that you also agreed on that because you said it was distributed to your brothers by a court order and the court would not accept to exclude you without your consent, you must have given such a consent to the court, I suppose!
- 4- If you need any support for your living expenses including a place to live in and your own income is not sufficient, whether from that rented property or from any other sources you may have such as any pension fund your late husband left behind, then your four children are required to help you, each one within the limits of his/her own abilities. They are required to provide you with a residence and with living expenses to your standards or to the standards of their own families depending on their financial abilities. This is obligatory on your children, in addition to being an expression of gratitude to their mother. A man who was carrying his mother on his back in Tawaf asked the Prophet, pbuh, whether he would have given her due gratitude; the Prophet, pbuh, said: not even for one single breath at the time of labor.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: REQUEST FOR A OPINION FROM ISLAMIC PERSPECTIVE, FOR A PROPERTY INHERITANCE MATTER FROM DR.MONZER KAHF

From: Nahid

Sent: Tuesday, September 14, 2004 7:00 AM

Question

As Salam Alai Kum - Wa Rahmathulla-hi Wa Barakatahu, Dr.Monzer Kahf
We are a sunni-muslim family (Current surviving members are - One widowed mother, Five married daughters & Two married sons) based in Hyderabad-India
Myself I am the eldest son (Married/4 children) living with family at Jeddah-Saudi Arabia due to job. Since my arrival abroad, I had greatly helped my parents financially & in fact my four sisters got married entirely on my financial assistance and also my late father's house (New portion) was built with my financial assistance only (70 to 75% share of the total) which is currently yielding a rent of around four thousand rupees total per month, which is being regularly received by my mother herself, for the routine daily life expenses.

My father died recently & he had left an immovable property of currently valued at around 70 to 80 lakhs rupees, one single old house based at Hyderabad-India (Half of which is under the name of my late father's name & the other half on my widowed mother's name) The said property was his own, which he had solely acquired by his hard efforts and money.

Since my late father had not left any written will for the property, for unknown reasons, but prior to his death, he had verbally told us clearly (at my home in Jeddah) in front of my wife and mother that, his whole property will pass on to his two sons, after the passing away of both the parents, but he had specifically advised me to be sincere & collectively pay by cash the financial benefit to all the five sisters after considering the current market value of it (In accordance with the principles of the shariah laws) and make a final settlement of inheritance matter and afterwards get their written certification for the Property Release/No-Objection Certificate in favour of two brothers, before analyzing the property transfer process in our names (Sons of the deceased)

So, kindly advise me with your legal opinion (According to the true islamic Shariah laws), for the following queries:

QUERIES

01. What is the current shariah position of the said property -----?
02. When and how to decide the final inheritance settlement of the said property ---- --?
03. Who should be the best person to take an initiative and finalize the inheritance settlement in an amicable way---?
04. What is the shariah law value of my late father's verbal wish, regarding his property (Which I believe is fully fair) which he clearly said for his two sons only & How to establish the same in a shariah or indian court of law ----?
05. Are myself & my younger brother the only two persons, who will be equally entitled in or all of us (Including my married sisters) will be entitled for some or equal share in our late father's property -----?
06. What is the best method for distribution of the said property -----? & on what basis-----? Without partly or fully selling -----?
07. Is it permissible by shariah laws for my widowed mother to give some extra share of the said property to my married sisters by depriving our due shares and also without seeking our (Two brothers) written consent -----? (When the said property was solely acquired by my late father on his own, but he kept half of it under the name of my mother, just to make her happy and secured)
08. Is it fair and permissible by shariah for myself to ask for a lion's share in my father's whole property, since I had already spent a lot of money (Estimated to a current value of over 15 to 18 lakhs rupees) previously on my father's

own responsibilities like his daughter's marriages + building the new portion of the house for rental purposes---? And in return I had not received any benefit in so far -----?

09. If my mother on her own distributes the property in an unfair & unacceptable manner i.e., by giving more to her daughters (More than what they deserve) on the ground that they are financially not sound, compared to her two sons, Then how can we respond---? Is it permissible by shariah for us, (Two sons) to fight against the said injustice of our mother ----?
10. Is it fair and acceptable for me to humbly request my married sisters to fully/partly relinquish their respective shares in my favour, because they got married only due to my financial assistance -----? (Which is a known fact, no one (Including my mother, younger brother and sisters) can dispute !

Awaiting for your valuable response,

Sender:

Mr. Nahed

N.B: KINDLY NOTE THAT, WE ALL THE FAMILY MEMBERS ARE NOT OVER-ANXIOUS OR DESPERATE TO TAKE UNDUE ADVANTAGE OVER THIS PROPERTY MATTER AND DIVIDE IT OUR AMONG OURSELVES, BY DEPRIVING THE OTHER'S DUES, EVEN WHEN MY WIDOWED MOTHER IS ALIVE. IN FACT, WE WANT TO HAVE AN AMICABLE SOLUTION WITH THE WRITTEN CONSENT OF EACH & EVERY MEMBER OF OUR FAMILY.

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. Nahed

Assalamu Alaykum wa Rahmatullah wa Barakatuh

I certainly appreciate your concern to find out the Islamic solution for the issues you raised. May Allah reward you for it and increase always your good spirit to always revert to the Shari'ah solution.

Let me first mention that the Islamic inheritance system is mandatory on all Muslims. God sent it in the Qur'an, mostly in Surah No. 4 and He mentioned that "It is Faridah [obligation] from Allah". This means that any last will verbal or written that is not consistent with the system is not valid and must not be applied.

Accordingly, if we interpret your late father's verbal will as assigning his real estate properties to his sons it becomes invalid. Certainly your mother and sisters have full rights to their Shari'ah (In fact specifically in the Qur'an) assigned share of real estate as well as to other properties left by your father.

I tend to interpret his last will statement as a request or appeal to his heirs. Thus ONLY BY FREE WILL CONSENT OF YOUR SISTERS AND MOTHER, WITHOUT ANY PRESSURE that the real estate properties can be distributed to the two sons and other properties to the daughters and mother PROVIDED THAT THIS DISTRIBUTION IS DONE ON THE BASIS OF 1/8 TO YOUR MOTHER AND 1/9 OF THE REMAINDER AFTER THE SHARE OF THE MOTHER TO EACH DAUGHTER AND 2/9 TO EACH SON. This is: 9/72 to the mother, 7/72 to each of the five daughter and 14/72 to each of the two sons.

Any heir, by consensual agreement and with or without a price, may give her/his share partially or wholly to any other person heir or not. This is kind of sale or gift.

a mother, like any other owner, has free hand over her property; she can give it to whoever she pleases, a daughter, son or any other. However, when a parent give to children she/he must give equally to all children regardless of gender. giving in life time is not like inheritance where a son get twice as much as a daughter. If she gives without equality she will be sinful but the giving is valid from Shari'ah point of view, God will judge her for it.

Whatever you gave to your father to complete his building is a gift from you to him that is rewarded InShaAllah from God. Unless you gave him a loan or to buy part of the property and you have evidence acceptable to other heirs, you cannot claim such a giving in front of the heirs.

Ownership of estate shifts to the heir, according to their Shari'ah shares, immediately the moment the deceased passes away with no delay. Heirs are certainly now the owners and distribution must be done as soon as possible in order to enable each heir to enjoy her/his property.

Only by consensual agreement the heirs may assign a person from within or from without, to handle the distribution, otherwise you revert to court. In India you have a special Shari'ah court that does that and India has Islamic personal law for Muslims that deal with these issues.

You cannot have other than your share that equals your brother's and is twice the share of a sister. Being married or not does not affect; and your mother is free as mentioned earlier.

If I can be of any further help please write me again.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Can non-Relatives Inherit?

SUBJECT: Money matter in inheritance

From: Adnan

Sent: Sunday, September 12, 2004 11:14 AM

Asslamo Alykum Brother Dearest Dr. Monzer Kahf

i have found this email from someone who happened to be a lawyer and got my last name form the Internet which is accidentally like the last name of his client who died in 2001 as he said.

This lawyer asked me that he will present my name as the next of kin to his client who died in 2001. His client has about 1 million dollars in total in his account in the bank and the bank asked him for the next of kin to give out the money. This lawyer is the one who will present the next of kin to the bank and that is why he contacted me to present my name to the bank and after that upon an agreement between him and i, he will take 60% and i will take 40% of the total.

He also said that the client has no relatives in that country. The lawyer is a Muslim by birth and his client is a Christian as he told me. He also said that if he does not present the next of kin the money will be confiscated by the bank and the government.

The question now is: can i go for this deal which comes out of no where, and i did not look for it nor expected it at all? i am also very needy man.

Please be informed that i am a truly Muslim and i am waiting for your reply today before tomorrow to find if there is a way to go for this money from Islam point of view.

Should you require any more details please contact me.

Your fast reply is greatly appreciated and Jazakum ALLAH Kair.

Your brother

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.

Assalamu Alaykum

I am sorry that my answer is coming to you late. I am on a trip overseas and I have interruptions in my emails.

If you are not a relative to the deceased you cannot go along with the lawyer. And if you are a true relative of the deceased you are entitled to the whole amount.

In both cases YOU MUST REPORT THIS LAWYER TO THE NEAREST POLICE TO INVESTIGATE HIM.

His proposal is a fraud and if a lawyer makes you such a proposal he is committing a felony of fraud. This is a crime under all legal systems, Muslim and non Muslims. Gould it be that he is pulling your legs to incriminate you?

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Partnership and estate distribution

SUBJECT: Distributing the Business Partnership after Father's Death

From: Islam on line

Sent: Sunday, November 21, 2004 12:41 AM

Name of Questioner Muhammad Gender Male Age 15-20

Education High School and Below

country of Residence

Singapore

Question

Assalamualaikum Wr Wb Dear Respected Scholars, For instance, i have a business partnership with my father. He has invested 60% of the capital and i have invested 40% of the capital. When he leaves the world, what happens to the amount he has invested? Do i have to share among my siblings or can i just buy that 60% of the capital and the whole share belongs to me. If i am going to share, i believe the girl has one share and the boys have two. Please confirm. And when i share, do i have to include myself? Please shed some light from the Quran and the Sunnah. Awaiting your earliest response, Thanking You With Regards, Muhd

Jazakum Allahu Khairan for your constant help
Yours

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. Muhammad,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

First i suggest that the distribution of the business between the two of you should be confirmed in writing and let it be known to other potential heirs such as mother, siblings and father of father. You don't know who will leave this world before the other!

The rules are as follows:

When a Muslim dies, her/his estate includes all properties she/he owned when alive. Share in a partnership is obviously one of such items.

1. Of course, debts and funeral expenses must be paid first, then if the deceased left any Last Will to non heirs(including charity) it must be implemented to the extend of one third of the net amount after debts and expenses.
2. The net estate of a deceased (after point 2) must be distributed to her/his heirs (close relatives who survived the deceased). Heirs are divided into two categories: 1) those who have a definite percentage and 2) those who take the remainder. suppose survivors are only a father, a mother, a wife and one son and one daughter: the father's share is 1/6, the mother's is 1/6, the wife's is 1/8 the remainder (including you in this case) is divided so that the share of the son will be twice as much as the share of the daughter.
3. Certainly there are more details than the above but i only gave an example. This means that when a death happens we have to consult a Shari'ah expert and give him all necessary info.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Custody and Guardianship of Minors

SUBJECT: Taking Custody of Inheritance on Behalf of a Minor

From: Islam on line

Sent: Sunday, August 22, 2004 7:19 AM

Name of Questioner Misbaudeen Gender Male Age 31-45

Education Post Graduate

country of Origin Nigeria country of Residence Nigeria

Question

Salaamu Alaikum W.W. Pls enlighten me on the flg questions: 1) What is the age limit for a 'minor' when considering sharing of inheritance. 2) Who is allowed to take

custody of inheritance on behalf of a minor – the mother or the elder ones. Any other qualified people in order of priority.
Jazakum Allahu Khairan for your constant help

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. Misbaudeen

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

A minor shares inheritance from the time of being in the womb of her/his mother.

There is more than one Hadith about that and it is the unanimous opinion of the four schools of Fiqh. The Guardian for the money/property of a minor is first the minor's father, whether the minor becomes an owner from gifts or inheritance from other persons; then his father's father. A guardian may also be the appointee of the father in the latter's last will. A property guardian can be the minor's mother or any other female or male. All guardians on property/money are subject to limitations in the use of the minor's properties to the minor's benefit, if the guardian is in need she/he may take a wage of the equivalent for the service she/he provides to the minor, otherwise a guardian is not permitted to make any donation (or enter in any contract that does not benefit the minor) on behalf of the minor, even the payment of Zakah is controversial on the ground that financially it is a pure giving. Guardians of minor's properties are subject to control and check by courts and can be removed and charged compensation for mishandling by court procedures. Of course, financial guardianship is different from care provision. Care provision of a minor must be giving to the minor's mother as a first priority, then to the closest female relative on her side, e.g., her mother then to the closest female relative on the father's side, e.g., father's mother, and so on.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Fatwa on Inheritance and Will

From: Islam on line

Sent: Wednesday, June 09, 2004 11:19 PM

Name of Questioner shaik

Question

Assalamu- Wa - Alaikum My question is regarding the inheritance...My uncle was married and they had two daughters. He died leaving two daughters and a land of 3 acres to her widow. He did not write any will for his property. The daughters were of ages 6 and 2. The mother brought up these two kids by doing the farming of the land he left. Now the eldest daughter is married to a wealthy person. Now the daughter's husband is asking for the daughters' inherited property because he says in Islam the orphans property should be kept as trust and that her property should be delivered to her. I want to know what is right in the Islamic perspective. My aunt used to spend money on them and also on her personal uses. Also does the inheritance vary if the

daughter says "she did not take good care of me". Because she claims she did not take her to the hospital and she is facing problems now because of that.. Please illustrate with the aayas of the Quran about the inheritance and other aspects of this question. And in the sura An-Nisaa where Allah says about the property of the orphans; does an orphan mean a child who has no father or who has no father and mother Jazakallah o Khair brother

Jazakum Allahu Khairan for your constant help

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. Shaikh

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

To begin from the end, an orphan is a child who is below the age of 18 (according to Hanafi School) and has no father, even if she/he has a mother.

A claim by a grown up that when she/he was a minor her guardian did not take good care of her is not acceptable against a mother or grand father, if the guardian is some other person, like an uncle, cousin or a stranger, such a claim has to be proved in court of law. "Did not take me to hospital" does not stand as a claim so we all know that mothers do usually sacrifice every thing including their lives for the health and well being of their minor children.

Upon the death of your uncle, the property he owned goes to his heirs. At the time, I assume that he was not survived by his parents; his wife deserves $\frac{3}{24}$ ($\frac{1}{8}$) and each of the two daughters deserves $\frac{8}{24}$ ($\frac{1}{3}$) the remaining $\frac{5}{24}$ belongs to other kin relatives of your uncle. Was he survived by brothers and sisters (other uncles and aunts of yours), uncles and aunts (bothers and sisters of your parental grand father) etc? I cannot give the exact distribution of this $\frac{5}{24}$ unless you tell me exactly: who were his survivors at the time of his death? If there were no other survivals at all, the remaining $\frac{5}{24}$ should be distributed equally between his two daughters.

Their mother is their guardian and she must have spent on them. During that period she is authorized, according to Shari'ah to take any necessary action regarding the piece of land that is owned by her two daughters, including selling it if its price was needed for the family expenses including her own (the mother's). If the land was not sold, distribution has to be done, even now so that each heir gets her share in the estate of the deceased.

If the mother now needs any financial help for her living her two daughters, if they have means of their own including this piece of land, are required to spend on their mother even if they have to sell the land and/or any other property they may own. If the mother is rich enough to live on her own resources the daughters are relieved from such financial responsibility. And if the mother remarries, her expenses become the responsibility of her husband.

If you have any more questions, please give all the details and do not hesitate to ask again.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Favoring or Excluding an Heir from Inheritance

SUBJECT: Dis-inheriting Son Because of his Disobedience

From: Islam on line

Sent: Wednesday, September 01, 2004 12:54 AM

Name of Questioner samim Gender Male Age 46-60

Education Graduate

Country of Origin India country of Residence Pakistan

Question

i have accumulated wealth over years of hard work, my son is very disobedient and said many bad words and some times he was ready to hit me i think. Question is in my will i want to give him only 1% and the rest distribute between my wife,3 daughters and two widowed sisters i will highly appreciate if you can guide me Jazakum Allahu Khairan for your constant help

Yours

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. Samim

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

First, are you sure you can do that under the laws of Pakistan. To my knowledge, Pakistan has an Islamic personal and family laws that do not permit the execution of a last will unless within the limit of one third.

You should know that the Islamic inheritance law, as detailed basically in the Qur'an itself, is binding and compulsory on all Muslims regardless of where and under what land law do they live.

According to the Qur'an God distributes the estate of a person upon a person's death. In your case, this distribution gives your wife 1/8 of the net estate (after funeral and burial expenses, taxes, debts, inheritance and last will distribution as will be defined later). The remainder after the share of the wife is divided into fives equal shares, two of them go to your son and one to each of the three daughters.

You have no right to prevent your disobedient son from deserving his share and you have no right to give to your widow sisters (unless through a last will as will be mentioned later) because you are not permitted to make any change in the inheritance distribution as God said that ""it is an obligation from God [Qur'an 4: 11].

The only thing that prevents him from any share in your inheritance is if he declares himself as non-Muslim at the time of your death because the Prophet, pbuh, said that there is no inheritance between Muslims and non-Muslims. Disobedience to you is a great sin on his part but does not carry him to the arena of becoming non-Muslim. Of course, you can mention in your Last Will that he should be prevented from any share in your estate if at the time of your death he happens to be non-Muslim and you can give some details of the statement such as if he does not pray out of an explicit (verbalized) or implicit denial of the obligation of prayers, or argues

against any other tenets of Islam including the obedience to parents or any other religious obligation.

Last will, according to our religion, is a grant from God for a person so that while she/he enjoys all her/his estate during life time, he/she can give to charity and benevolent goals some of his/her estate after death. It has two binding restrictions:
1) It must only be to non-heirs (in your case, your sisters); and
2) It applies to a maximum of one third of the net estate. Accordingly, since with the presence of a son, your sisters do not inherit, it is permissible to include them in the last will distribution and if they are the only persons/purposes that you want to will to, you can assign them a maximum of one third.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

SUBJECT: Writing a Will for an Heir or Giving Him More than His Right

From: Islam on line

Sent: Tuesday, May 18, 2004 12:21 AM

Name of Questioner Abdul Bari Gender Male Age 31-45

Education Graduate

country of Origin India country of Residence India

Question

Assalaam alay kume dearest scholars. May Allah bless you all for your kind efforts towards pouring Islamic knowledge to the poor Muslims. My Question is as follows:-
A Muslim Individual has some property for which he has drawn up certain option to deal with. This individual has three sons and a daughter, the eldest son is very caring and takes good care of him, the other children are not that much attached to him. He wants to know what does Shari'ah say about the various options he has. The various options are as follows: Q. 1: To transfer the whole property to his eldest son during his life time, leaving aside all the other children? Q. 2: To keep the whole property in his possession till his life time and after death let it be distributed amongst the heir, as per the Qur'anic proposed ratio. Q. 3: To donate the whole property to a Madrasa during his life time. Q. 4: To write a will to pass on the whole property to the Eldest son after his death. Q. 5: To write a will to pass on the whole property to one of his closest friend after his death. Q. 6: To write a will to pass on 1/3 of the property to a Madrasa after his death. And the balance be distributed as per Qur'anic proposed ratio. Q. 7: To write a will to pass on 1/3 of the property to his eldest son and the balance be distributed as per Qur'anic proposed ratio. Please elaborate on the rights of this Muslim individual as per Shari'ah separately and the moral code of conduct separately.

Notes

Please give me the answer at the earliest, since I am in big jeopardy. Jazak Allah Khayran

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. Abdul Bari

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

Please allow me first to make two notes:

- 1) You mentioned the phrase "Qur'anic proposed ratio" more than once in your question. This is wrong! It is rather the "Qur'anic mandatory ratio" as it is clear from the last part of 4: 11 that reads: "Faridatan mina Allah [an ordinance from God]" and from the two subsequent Verses that promise Gardens for obeying these ordinances and Hell for ever for the violators.
- 2) The Islamic definition of ownership is limited to the life time of a person. A person ceases to become an owner the moment she/he dies. Humans are vicegerent of God on earth and they are given properties by God until they die; once a person dies the property she/he owned goes back to its true Owner Who has already decided its distribution. Abu Bakr al Siddiq, may Allah be pleased with him, is reported to express this meaning in a good way: "God had given a charity to you, one third of your estate that you can dispose of in order to gain more reward."

Now let us come to your question!

- 1- All options that violate the Qur'anic distribution, give more than one third of the estate, or give, by a will, to an heir any amount that end up disturbing the Qur'anic distribution are not permissible and sinful.
- 2- A person is completely free to dispose of a person's own property, while alive and with full legal competence, any way a person likes including giving it to a school, a child or any other person or noble cause. This is giving, gifts, grants and charity and no potential heir has any right to limit the authority of a person of person's properties. Of course when a person gives to own children, one must be fair among them as the Prophet, pbuh, prohibited giving some and not giving others equivalent amounts as this is in violation of the principle of justice. It is apparent that financially rewarding a kind and good doer child is permissible and just (for other children, we tell them; be equally kind and good doers and the parent will equally reward you). Giving to children (because they are potential heirs) is an act in the life time, i.e., it cannot be through a last will. Being a gift, giving to children must also equate the females with male, i.e., the rule of Verse 4: 11 does not apply to giving during the life time of a parent/giver.
- 3- A person, by means of a last will, may give up to a maximum of one third of the net estate, i.e., after debts and expenses, to any person or any cause provided potential heirs are not included in such giving.
- 4- A person may create a Waqf to the benefit of a noble cause such as an Islamic school, the poor and needy or to the benefit of one or more of her/his children (say, the good doers) and their descendents. A Waqf may also be established by virtue of a last will within the limit of one third.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Last Will, Living Trust and Planning for Estate Distribution according to Shari'ah

SUBJECT: Last Will and Testament

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. Hassan,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Please see the answers in *Italic blue* under your questions. And if I can be of any further help please do not hesitate to write me again.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

From: Hassan

Sent: Tuesday, November 02, 2004 8:35 AM

Dear Br. Kahf

Assalaamualaikum;

i was given your name and email address by the Last Will and Testament extension at ISNA. May Allah (swt) reward you for your work.

Br. Kahf, if you can please assist me in this matter of compiling a Last will and testament. i apologize for such a lengthy email and do hope that you will excuse my imposition.

i've been trying to put together a Shari'ah compliant Will and i'm having some problems. The ISNA website has been very helpful. They provided an example Will along with the Mawarith (The Islamic Distribution).

i fully understand the Mawarith. The difficulty i'm having is in implementing it.

Perhaps an example would better describe the issue.

The Family:

The husband of a family dies. He is survived by his wife, his daughter, his father, his mother and his sister.

The Estate:

His estate comprises of a house (in which they live, owned jointly by him and his wife) worth \$200K, a car worth \$5K (his wife has her own car), \$20K in a bank account (his money) and residual Social Security income of \$1000/month to his wife and \$1000/month to his daughter.

Question: How does he figure out what portion of the house (in which they live) is part of his estate. As you know, no one keeps track literally of every dollar spent on their homes. Does he assume that half of the house is his?

To continue...

Husband's Total Estate:

Cash in hand:

\$5K (after selling car)

\$20K (account)

=====

\$25K (total cash)

Property:

\$100K (Equity - assuming half of the house is his)

In addition, as stated above, Social Security will pay \$1000/month to his wife and \$1000/month to his daughter residual income.

According to my understanding of the schedule of Mawarith (see <http://www.isna.net/Forms/TheScheduleOfMawarith-May222003.pdf> <<http://www.isna.net/Forms/TheScheduleOfMawarith-May222003.pdf>>), The above situation comes under (2.i) [Case no.2 section (i)].

This means that the distribution should be as follows:

1/8 to wife, 1/6 to mother, 5/24 to father, and 1/2 to daughter.

My understanding is that in this situation, the sister is not an inheritor since the father is alive.

This is a correct distribution

Questions:

- Now, how does the executor of the will implement the above division? The \$25K cash in hand may be easily distributed (since it's cash). By the way, does the wife open a separate account for the daughter and deposit the daughter's portion of the cash money there?

Does she (the wife) keep it in her possession on behalf of the daughter?

- 1) *We have to settle the matter of the bank account. If it is in both husband and wife names, joint or community it is assumed that it belongs to both on a 50/50% basis. The same applies to his car and her car if they are in both names. ANYTHING THAT IS IN BOTH NAMES IS ASSUMED 50/50 UNLESS THE SURVIVING PARTY SAYS THAT HER (HIS) SHARE IS LESS THAN HALF AND THE DECEASED'S SHARE IS MORE.*
- 2) *We do not need to divide each item, we can add them together and have the heirs agree on any distribution.*
- 3) *If this example is in a country that has community laws for properties of married persons the house they lived in may cause a problem unless there is a written marriage agreement that deals with dividing properties or the surviving spouse is cooperative because according to laws of these countries (like USA) the surviving spouse has a right to own the house they lived in.*
- 4) *Mother is not required, in Shari'ah, to maintain a separate account for minors under her custody she can use their money to spend on them and herself (unless she has money of her own). Virtually she can do as she pleases as long as she can prove (if questioned by a judge, father of deceased father, or the child when she/he becomes adult) that she did not abuse the child money.
- Regarding the property: How is this resolved? They can't very well sell the house to realize the money because they live in it. Do the daughter and the husband's parents all become co-owners? What if the parents do not want to become co-owners but want to go their separate ways? Does the wife maintain ownership of the house on behalf of the daughter?*
- 5) *Inheritance is a typical case for creating what is called "compulsory partnership in owning" where the heirs become partner without their choice or desire. They have to live with this partnership, agree on a settlement between themselves or go to court that will order liquidation. Obviously in this example, the wife controls*

13/16 of the house (her property 8/16 + inheritance from husband 1/16 + her minor daughter's inheritance 4/16), she is the stronger partner. She also needs the house to raise a minor, living expenses of the minor and her care taker (mother) are the responsibility of the child's parental grandfather who is required to provide residence and sustenance, of course unless the child has wealth of her own. This means that unless the grandmother is not cooperating and if the wife accepts to live in her own property (as she has the right to ask the parental grandfather to provide her with a suitable residence for her and the minor even if she owns one) the house will remain in the hands of the wife until the minor reaches maturity (18 years) or gets married.

- 6) *It is normal that the mother becomes a guardian and care taker of a minor child unless she gets remarried. But the Last Will of the father may appoint another person as guardian of the property of the minor, she still can't be removed for being a care taker unless she remarries or is proven unfit (please refer to the Marriage agreement on my website www.kahf.net a parental grandfather has the right to be a property guardian of a minor, this right comes before the minor's mother (unless the mother is appointed as a guardian in the Last Will of the father). This means that unless a Last Will determines a Guardian, parental grandfather is the default guardian but normally he relinquishes this role to the child mother, in all cases she is the care taker.*

- What about the SS monthly income? How is this resolved?

Social security payment to wife and daughter is a right that only exists after death, it is assigned to a widow and minor children. This is not inheritance. On the other hand, IRA, 401K and the like are inheritance and subject to the rules of Mawarith because they were owned by the deceased.

The above are general questions, but it gives the general idea of the problems I'm having which is simply how to implement the division.

Dear brother, you may reply to this email or you may call me at the below number whichever is more convenient for you.

I thank you and may Allah (swt) reward you with better.

Hassan

SUBJECT: will and living trust

From: Ferial

Sent: Thursday, April 22, 2004 6:58 AM

Assalaamu alaikum wa rahmatullah Br. Kahf

I pray that this email finds you and your family in the best of health and eemaan, aameen.

My name is Ferial . . . and I spoke with you a couple months ago, when I called to inquire about your publication for ISNA, entitled Last will and testament.

During our phone conversation you started to give me some information about an alternative document, a living trust, and you advised me to email you and ask you to send me word formats of the two documents. I do sincerely apologize for taking this long to send this follow up email, life with a toddler is sometimes hectic, but it is no excuse. I would be very grateful if you could supply me with those documents so that my husband and I can follow through on preparation of one of them InShaAllah. Our main reason for wanting to write a will or living trust at this time, especially, is due to

the fact that we are not citizens of this country, (we are from Trinidad, in the Caribbean), however our son is a US citizen and all of our immediate family resides in Trinidad. Our concern is that should anything happen to both of us, we do not want our son's fate to rest in the hands of the state. With this in mind, could you please advise us as to what is the best and fastest means of ensuring that our desires for his guardianship and upbringing are met.

Many Jazack Allahu Khairs to you. May Allah bless you and your family and grant you good in this

life and the next, aameen.

Wa alaikum assalaam.

Sr. Ferial

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 Sr. Ferial

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

I really cannot advise you on the guardianship because your son is a US citizen, you may need to consult a lawyer or you assign a citizen guardian, doesn't have to be a relative and advise her/him to take the boy to your family should anything happens. I pray to Allah to guard you and give you, and your husband, long lives to raise your children the Islamic way under your own eyes and guidance.

If you do not own a real estate property or substantial investment (some 50,000 and more) you do not need a living trust, a last will (expanded on the matter of guardianship, the living trust has some good language that you may benefit from) should be sufficient.

Kindly receive both documents and notice that the living trust has several documents, some of them I only have them for the state of California and they differ slightly from one state to another, that need to be signed all if you choose it.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Last will during final illness

From: lubna

Sent: Thursday, August 19, 2004

Dear br Monzer,

Assalam u alaykum warahmatullahi wabarakatuhu

I pray this email finds you well.

We are now coming to the final stages of design/ development for the Islamic Wills website which is set to be launched in September insha'Allah.

Your helpful advice and input has been invaluable - and I am to take advantage of your good nature to put to forward a few further requests which I hope you can help with insha'Allah:

The first is to ask permission to have a link up to your site (kahf.net)- and most especially the catalogue of your FAQ's. I am working on putting together much simpler FAQ's but it will be an extremely useful resource for people to be able to access your website also.

The second is to ask whether you would give some feedback to the overall content of the site just before we launch. I would hope to email it to you in the next few weeks insha'Allah.

Finally a question on inheritance which I hope you can answer:

If a Muslim is in death sickness - is he permitted to make bequests out of the 1/3 of his estate to non-heirs? - Or does the rule that he cannot make gifts in death sickness apply to the entire estate?

Jazakallah Khair once again for all your help. Wassalam

Lubna

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 Sr. Lubna

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

All your points are well taken: you may make the link, I will review whatever you want me to review and I will took into the content of the web pages when you want me to.

The only thing, please do not press me with time; give me as much time as you can.

For the question on the will within the one third, wasn't the Hadith about Sa'd during what he thought was going to be his final illness? The Hadith itself mentions it!. A

last will within the one third can be undertaken during last illness. Confessing to a burden of a debt is a different matter because it gives a right to others on the estate without giving any reward to the deceased. A last will is a one party action while confessing to a debt is an implementation of a two party transaction.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Debts on the Deceased

SUBJECT: Debts on the estate after distribution

From: Islam on line

Sent: Wednesday, May 12, 2004 12:31 AM

Name of Questioner Ahmed

Question

Assalam Alaikum Sheikh, A daughter borrowed from her father a certain amount of money (with no written agreement, etc.), but in his lifetime, the daughter was unable to pay back the loan. After the father's death, the mother insists that the daughter pay the mother the money the daughter had borrowed from her father. The daughter has, in small instalments, paid some of the amount to the mother (because the

mother curses the daughter if she does not pay), but it has become too much of a burden now (since the daughter has a family of her own) and thus she cannot continue with the instalments. The mother insists that she will cut the remaining amount from the daughter's inheritance from her father. 1) In this situation, is the daughter liable to pay back the amount to the mother borrowed from the father? 2) Is the mother allowed to 'cut' the remaining amount of the loan from the daughter's inheritance share from the father's wealth? 3) Is the mother's curses and 'bad dua'as' for the daughter and her family (because the daughter cannot pay the mother) heard by Allah and thus applied to the daughter?

Jazakum Allahu Khairan for your constant help

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. Ahmed

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

The loan given to a daughter is part of the properties of the estate of her deceased father. This means it is payable to the executor of the estate, or the representative of the heirs in making the distribution. This loan is due on the daughter even after the death of her father and she has to pay it. If the mother is the one who undertakes the matter of distribution, it is then payable to her.

Whatever was paid after the father's death must be included in the distribution and the balance must also be included. (If the mother is in need and she used these payments for her consumption and the distribution is only to her children, i.e., no other heirs such as parents or siblings of the deceased, and the children are all about equal in poverty/richness those consumed payments may be deducted from the estate, i.e., not considered as a debt on the mother). The balance due on the daughter may therefore be deducted from her share in the inheritance.

Kindness to a parent is a must in our Shari'ah regardless of wealth and financial ability. And kindness goes all the way to making all effort to please a parent, especially a mother. When mothers make bad Du'a on any of their children they normally do not mean it, Allah knows that and we all know it too! God does not accept bad Du'a from mothers or any body else unless there is a real hurt/harm done to them because God is the Most Just and Most Knower.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Inheritance between Muslims and non-Muslims

Subject: Payment of due Zakah from the estate of a deceased

From: lubna

Sent: Tuesday, July 27, 2004 3:09 AM

Dear brother Monzer,

Assalam-u-alaikum

My name is Lubna and I work as legacy officer for a UK based charity - Islamic Relief.

We have very recently initiated an Islamic Wills project - a campaign to raise greater public awareness on the importance of Islamic Will making amongst Muslims living in the UK, as well as to increase the number of charitable bequests left to the charity. Insha'Allah later this year we will be launching an Islamic Wills website with information on various aspects of making an Islamic Will in the UK.

Having browsed the web for information on Islamic inheritance laws- I came across details of the workshop you presented on 'Islamic Wills and Planned charitable giving' at the ISNA convention in 2002 and 2003. I wonder if you can advise whether you will be running a similar workshop at this years convention - for I think it will be of great benefit for me or a representative of Islamic Relief to attend if you are planning on doing so.

I hope also you can answer the three following questions:

1. There appears to be some debate as to whether religious obligations such as unpaid Zakah, unperformed hajj etc form part of the debts of the deceased or whether these 'religious' obligations form part of the 1/3 of the deceased's estate to which he can dispose as he so wishes.

I find myself in agreement with the guidelines that you have put forward - in that they form part of the debts of a deceased and do not impinge on the 1/3 of the estate, but some scholars do not appear to agree with this line of reasoning.

Can you advise me whether there are any differences between the schools on how they approach the problem of religious debts, as I have not had much success in finding details in the literature I have to hand.

2. I have had a number of queries from Muslim reverts who have mainly non-Muslim relatives. I understand that is fairly straightforward to explain that they may only bequeath to their non-Muslim relatives out of the 1/3 of their estate after the payment of debts, funeral expenses etc, but is there a difference of opinion amongst the scholars on inheriting from non-Muslims.

I have a close personal friend who is a revert to Islam. As an only daughter, her parents have recently written their wills, bequeathing much of their estate to her. I am sure that there are a growing number of reverts who will find themselves in a similar situation. Are there any circumstances under which they may be permitted to inherit from their non-Muslim parents?

3. My initial research has shown that many Muslims make their Wills shortly before going on Hajj. Are there any Hadith to support the idea of making a Will before undertaking this pilgrimage? If so I would be grateful if you provide me with details.

I would be indebted to you if you could help answer any of the above questions look forward to your response insha'Allah.

Jazakallah Khair Wassalam

Your sister in Islam

Lubna

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 Sr. Lubna

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

I will not be attending the ISNA Convention this year. I have other commitments and I requested to be relieved from being there. However, the lectures there were meant only for public awareness not as seminars.

If your organization is serious about taking up the issue of disseminating info about last will, and may be living trusts that exist in America as an Anglo Saxon legal heritage, I will be glad to offer (certainly free of any fees) a series of seminars in UK during an agreed upon period within the coming few month.

To answer your questions:

1) I know the differences of opinion on due/unpaid

Zakah and I usually take a different approach to such differences, that is to remove the doubt or hesitation by what is agreed upon. It is agreed upon that if one considers it a debt and wills its payment as a debt, it is then a debt not from the one third. The dispute is about whether the estate administrator can or must pay it without being willed by the deceased. As for the Hajj debt, I need to make fresh research on the issue because Hajj is not a specific financial obligation, though it includes a financial sacrifice. I kind of tend to also accept it as a debt, not from the one third, if the deceased willed it with a specific amount. It needs more research and I don't make a statement about it at this moment.

2) Keeping in mind that there is a very small opinion that there is a one way inheritance between Muslims and non-Muslims and that al Qaradawi and Mawlawi expressed favoring such an opinion, I differ with them both on the idea and on the strategy although the final result that they want to achieved is also achieved according to my opinion, and I will show you the only one case where it is not achieved. I think it is very hard to refute the argument that there is no inheritance, both ways because this is the view of the four schools of Fiqh and it is supported by more than one Hadith. Additionally, strategically, this is a discriminatory position that no Muslim can defend it, especially we who live in the West and who promote Muslim approach to Last Wills and living trusts. I take the majority's view that inheritance is not permitted both ways. Inheritance is defined in our Shari'ah as the default that applies by law. You do not need a last will to implement the Islamic inheritance system. A last will is an exception, As Abu Bakr clearly understood it, and it only applies to a maximum of one third according to the Islamic law with the condition that no heir is given any thing a last will.

Muslims in the West implement the Islamic inheritance system through a last will because the law does not do that (contrast this with Muslim-majority countries and with countries like India where there is a Muslim inheritance law). A Muslim is required to implement the Islamic inheritance system because it is obligatory, like prayers. Hence, when we make our last Will we must be specific that no non-Muslim relative may inherit, by virtue of implementing the inheritance system. But we are permitted to give by a last will (the last will, as defined in the Islamic law, part of our last wills) to any person or cause including non-Muslims, relatives or not. What does this mean? Not inheritance between Muslims and non-Muslims but giving through a last will is ok.

Come to the Non-Muslims, as in your question. If they give to Muslims as a result of a last will, it is permissible to a bequeathed Muslim to take whatever is given to her/him perfectly Halal even if it is the whole estate because our limitation of one

third or of not giving to heirs does not apply to them. Also if the giving is done by the law of the land (no last will), it is then an assignment of a property by law regardless of whoever happened to be its previous owner and regardless of the names this giving may be called. It is Halal for a Muslim, citizen resident or neither, to take whatever the law of the land gives her/him and enjoy it! Any one can dispute that it is permissible to take what the law of the land gives, rights, properties, etc.?

Where a Muslim may not inherit from non-Muslim except by a last will (defined as in our religion)? In a country that applies the Islamic law of inheritance. For instance in Egypt, a Muslim revert may not inherit from her parents because this is the law (which is actually derived from Shari'ah. 3) I did not come across a any Saying about making a last will before going to Hajj. But I understand it! Going for Hajj in the past used to be very hazardous to the extent that the common sayings are such that ""consider a goer as dead and consider a returner as a new born."" Many people still carry in their sub-conscience this kind of feeling which is recently reinforced by the mass victims accidents in Hajj almost every year.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Debts Due to the Estate

Subject: debts due to the estate

From: Ahmed through Islam on Line

Sent: Wednesday, May 12, 2004 12:31 AM

Question

Dear Dr. Monzer, as-Salamu `alaykum

A daughter borrowed from her father a certain amount of money (with no written agreement, etc.), but in his lifetime, the daughter was unable to pay back the loan. After the father's death, the mother insists that the daughter pay the mother the money the daughter had borrowed from her father. The daughter has, in small instalments, paid some of the amount to the mother (because the mother curses the daughter if she does not pay), but it has become too much of a burden now (since the daughter has a family of her own) and thus she cannot continue with the instalments. The mother insists that she will cut the remaining amount from the daughter's inheritance from her father. 1)In this situation, is the daughter liable to pay back the amount to the mother borrowed from the father? 2)Is the mother allowed to 'cut' the remaining amount of the loan from the daughter's inheritance share from the father's wealth? 3)Is the mother's curses and 'bad dua'as' for the daughter and her family(because the daughter cannot pay the mother) heard by Allah and thus applied to the daughter?

Jazakum Allahu Khairan for your constant help

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. Ahmed

Assalamu Alaykum wa Rahmatullahi wa Barakatuh.

The loan given to a daughter is part of the properties of the estate of her deceased father. This means it is payable to the executor of the estate, or the representative of the heirs in making the distribution. This loan is due on the daughter even after the death of her father and she has to pay it. If the mother is the one who undertakes the matter of distribution, it is then payable to her.

Whatever was paid after the father's death must be included in the distribution and the balance must also be included. (If the mother is in need and she used these payments for her consumption and the distribution is only to her children, i.e., no other heirs such as parents or siblings of the deceased, and the children are all about equal in poverty/richness those consumed payments may be deducted from the estate, i.e., not considered as a debt on the mother). The balance due on the daughter may therefore be deducted from her share in the inheritance.

Kindness to a parent is a must in our Shari'ah regardless of wealth and financial ability. And kindness goes all the way to making all effort to please a parent, especially a mother. When mothers make bad Du'a on any of their children they normally do not mean it, Allah knows that and we all know it too! God does not accept bad Du'a from mothers or any body else unless there is a real hurt/harm done to them because God is the Most Just and Most Knower.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabbi al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf
