

FATAWA INHERITANCE 2006

Estate Distribution

Subject: question on inheritance

From: ammar

Sent: Friday, March 10, 2006 9:58 AM

Question

salaams, Baba

I don't know if u got this from me last week, but there was an error in the computer, i am not sure if it was sent or not, let me know if i am mistaken in any issue mentioned bellow?

Just a few questions:

1- Does leaving behind two daughters, one wife, both parents, block brothers of a deceased from getting portion of inheritance? My readings tell me that both sons or daughters block the brothers or sisters from inheriting, is that correct?

2- Do you know if Tunisia has an Islamic inheritance law?

3- Here is a case, Tunisian brother that died from our community, I suggested to his brothers here that they should write down what he owned at the time of death and document his assets here and in Tunisia and write down who are the heirs according to Islamic Shari'ah. The deceased brother left like four cars and construction equipment here and has a furnished home in Tunisia that he recently built and furnished by shipping containers from the US. his brothers now use his cars and his construction equipment, and so i told them they should before using it, estimate the cost of the equipments and the 3 cars at the time of death and document because people tend to forget, and the two brothers here in the US, are the only living soles that know about his financial assets.

I told them that even if they don't wish to make official documents in Tunisia regarding inheritance, that minimum, they should as a family agree and document all the details.

Anyways, correct me if i am wrong, the deceased left behind: one wife, two daughters, mother, and father, five brothers (who do not inherit in this case)

wife gets 3/27

mother 4/27

father 4/27

2 daughters 16/27

I got these from your schedule, would this be correct?

Sincerely,

ammam

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 Son ammar,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I did not receive it before now.

1. The presence of a father blocks brothers/sisters from taking anything, not the wife, mother or daughters.
2. To the best of my memory, the changes that were made in Tunisia about 3 years ago or less violate the Islamic inheritance.
3. The distribution you made in this case is correct, but if he left one daughter only his father gets 5/24, mother 4, wife 3 and daughter 12.
3. Your suggestion is correct, brothers do not get any thing and they should estimate the value of what he left. Besides if he had a business (not only equipments) and brothers are continuing this business, the business has a price that usually exceeds the value of equipments and brothers should take it for that price, so that the orphaned daughters and other heirs get their fair shares.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Distribution of estate afer first generation

From: Ali through Islam on line

Sent: Sunday, February 19, 2006 12:32 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

A property belongs to two brothers and a sister, all of whom are now deceased. The elder brother has three sons (his wife is deceased). The younger brother was unmarried with no children. The sister has two sons and a husband, who is alive. The parents of the property owners are also deceased. The younger brother died first, then the sister and then the elder brother. How is the inheritance of the younger brother distributed according to Shari'ah? Is it distributed between his siblings? How? Furthermore, how are the respective inheritances of the elder brother and sister distributed among their descendents according to Shari'ah? If someone wants to give a part of his inheritance to his brother or cousin, then what are the Shari'ah rules? Please help me. I would appreciate it if you provide quranic and hadith references along with your explanation. May Allah bless us all and help us to lead righteous lives. 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. Ali,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I will make two assumptions: 1) both parents of the three siblings died before the death of the younger brother; and 2) the wife of the elder brother died before him (the first seems logical because the three of them inherited from their parents and the second is made to simplify the answer) the answer in sequential steps:

1. The property is assumed owned by the three siblings as: $2/5$ to each brother and $1/5$ to the sister.
2. The elder brother and the sister inherit their younger brother on the basis of 2 to 1; meaning the shares in the property become: $2/5 + 2/3 \times 2/5 = 10/15 = 2/3$ and $1/5 + 1/3 \times 2/5 = 5/15 = 1/3$.
3. The part of the property that is now owned by the elder brother is divided between his three sons upon his death, each son takes $1/3 \times 2/3 = 2/9$ of the property as all the three of them own together $6/9$. the part owned by the sister is divided to her husband and two sons so as: for husband $1/4 \times 1/3 = 1/12$ of the property; and each of the two sons gets $1/2(1/3 - 1/12) = 1/8$.
4. The total property becomes owned by: each son of the elder brother $2/9$ ($2/9 \times 3 = 6/9$), husband of sister $2/24$ and each of her two sons $3/24$ total of these is $8/24 = 1/3$.

Source of all the above Verses: 4:11 for distribution to children; 4:12 for distribution to husband; and, 4:176 for distribution to siblings. For the second question, each owner can give any part of what he/she owns to whoever she/he please.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Property, Joint Property, Disposition, in Relation to Inheritance

Subject: Property, Joint Property, Disposition, in Relation to Inheritance

From: Siddiqi through Islam online

Sent: Wednesday, October 11, 2006 5:00 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I am married with three beautiful daughters. I am the youngest of 4 children and the only son.

My mother died in 1999 and my father mashallah is still with us at age 75. My questions are as follows:- 1. My father's only asset is his marital home (my mother was legally a joint owner), my father has told me he has gifted this to one of my sisters as she is divorced. Is he permitted to do this or does he not have to follow the inheritance rules? 2. Did our mother have any share in the home and does any inheritance rule apply on that since our father was and still is alive? 3. Any of my mothers belongings other than the house, was it right for my father to just hand me a pouch without involving me in the discussion and distribution? 4. I live in another country and away from my parents home country. However, I have paid for monthly household expenses for my parents since I commenced working 20 years ago. I have also built up some assets of my own in that time. My sisters tell me that according to a hadith, my father has a right to all my assets and that I cannot ask him what he does with the house that he has gifted? Is this correct? if not please explain why. I would be grateful for a full response to these questions that includes references to quran and hadith. thank you very much. 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. Siddiqi,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

1. Joint property is treated in civil laws in a way that can be reconciled with Shari'ah, but very often it does not. I don't know how it is treated in the country (that you did not name) where the property exists. For instance In most Muslim countries all joint property are frozen if one party dies until inheritance of the estate of the deceased is settled and any action by the other is considered fraudulent and illegal. Here in the Muslim community in the USA we are keen to put in our last wills (you may read it on www.isnaner or www.kahf.net) a clause that deals with it according to Shari'ah: considering the action of the surviving only procedural not affecting any change in ownership and considering any joint property as owned on half/half basis unless there is clear indications otherwise.
2. Properties of husband and wife are independent from each other. When one of them dies, her/his estate must be distributed according to Shari'ah, any delay by virtue of the laws of joint or marital properties is only procedural and the executor of the Last Will must discard it unless all other heirs agree to it.
3. Specifically, when your mother died, her part of the joint properties, presumably one half, and all her other properties, personal and otherwise, should have been distributed as follows: 1/4 to your father; 6/20 to you; 3/20 to each of the three sisters of yours. Your father should have done this distribution on the ground that these properties were under his hand. This distribution is mandatory (it is also mandatory by all Muslims inheritance and family laws in most Muslim countries including Pakistan). The Qur'an gives this distribution in 4:11 and 12 followed by declaration of its mandatory character in 4:13 and 14. Please refer to them. It is sinful and against the laws in most Muslim countries to tamper with this distribution unless other heir agrees because their consent means they are giving from their own property. The rule is that once a person dies, ownership of all her estate goes to the heirs as nominated in the Qur'an.
4. Any person is free to do whatever he/she likes with his/her property with no interference from children, parents, potential heirs, creditors or any other except in very few cases of ill intention such as giving away at the death bed, or the debtor hiding his property under gifts to other to declare bankruptcy and waste the rights of creditors. This means your father can give to any person his property in the marital house (notice it is now 3/4). However, giving to one child in a way that makes injustice in giving to different children is forbidden from a religious point of view although it is permissible by the Islamic law (the Shari'ah). The prophet, pbuh, called such giving unjust but did not annul it. It is valid but sinful. But if there are good reasons, it is not sinful because a father is responsible for his children even when they are adult, if they are in need. Result: giving his share in the house to the divorced daughter is valid and may not be sinful if she is in need. Justice (as required religiously by the Prophet, pbuh) does not mean equality, it rather means objectively. for instance, if a child falls sick you give her medicine but you don't give the same to the other children who are not ill. Giving to a needy child for her need is not unjust, it is rather required. Of course your father can't give the part he does not own of the marital house.
5. For distribution of personal properties of a deceased person, the principle is that the executor would be required to be transparent if any doubt arises in the mind of any heir, otherwise you don't question every move he makes. If there is doubt, it should be clarified to you.

6. What you gave of financial support to your parent over the past 20 years is excellent and will be greatly rewarded by God, InShaAllah. It is also your obligation if they were in need and you were able (apparently you've been able). You can't claim any part of it now. Don't waste any part of your reward by being unpleasant with your father at his old age! It is your responsibility even to support your sisters if they don't have resources of their own, especially the divorced one with her young children if they are with her. Support to your sisters may be counted out of your due Zakah but not support to your parents.
7. You are still required to support your father if he is in need, and to give him gifts and other giving to make him happy and pleased with you. Legally, he has no right to undertake any action on your own property and should not do that unless within the normal and customary, in the community he/you live in, consumption and Sadaqah giving. The Hadith "you and your property belongs to your father" is figurative not legal. Because you are not owned by your father, you are a free man not a slave. Actually your father does not own you and does not own your properties. You are the only owner of your properties. But the Hadith emphasizes kindness to your father.

I hope I answered all your questions, if not Please ask again,

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Properties in names of other than owners

From: Zulqarnain through Islam online

Sent: Sunday, February 26, 2006 6:01 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh, We would like to thank you for the wonderful work that you do, and would like to ask you the following: Our question is about inheritance. Over the years we have owned (or rather mortgaged) a home in England. This home has been mortgaged and re-mortgaged in different names i.e., father's, mother's, brother's and sister's name for financial reasons. Our dear father who has sadly departed from this Dhuniyah was unfortunately, constantly in debt, hence the re-mortgaging over and over again in order to save the house. As it turns out over the years our mother saved the day i.e. 80% of the time she paid the mortgage and most of the bills not because she wanted to but because she had to in over to keep the house. Eventually, we had to rent the house out and that rent covered the mortgaged. This scenario went on for 25 years or so. My mother worked hard in factories to keep us afloat. My father, who was a lovely and generous man, was not financially astute or responsible. (We mean no disrespect to him ? we are just telling it as it is). I guess because my mother could cope with the financial side of things my father then did less financially. We have recently sold the house which for the last 20 years has been in our brothers name, but rented for the last 15 years, and the question we have is how should the proceeds of the house be divided? Should it be divided as if it were my father's house or my mother's house? My mother wishes it to be divided equally between us brothers and sisters as if it belonged more to my mother than my father. My mother says that my father sold his share to pay debts. We understand that if we need to divide it as if it belonged to our fathers than it should be divided in the Islamic way. We

are very confused as to who the house really belonged to. Jazakallah khair Awaiting your early reply

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. / Sr. Zulqarnain

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I assume that your mother is alive and she tells her wish to you, her children, boys and girls. If when the father passed away the house was not in his name (you said it was in names of some of the brothers) and your mother knows that she actually paid for it, then it is hers, not the deceased father's. Now that the house was sold and money received, it is her desire that determines what to do with the money under the mentioned assumptions. If she decide to give the money to her children, the Shari'ah strongly urges her to make equal distribution regardless of gender because this is not an inheritance (Mirath) but a gift and if gifts, children should be treated equally as we are told by the Great Prophet, Muhammad, may the peace and blessing of God be on him. Under the above mentioned assumption your mother can, from Shari'ah point of view distribute her money to her children as gifts and when she does that she should give equal shares to boys and girls regardless of their gender.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Wife disposition of her Inherited property

From: Susan through Islam online

Sent: Sunday, February 12, 2006 3:25 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I would like to ask about inheritance. In 1997 someone died and I received five thousand dollar inheritance. I was out of the country at the time visiting my husband's family. My husband was here in the states and he put it into savings account. Only his name is now on this account and I do not have access to this money. I have asked for it from time to time over the years. He says he will give it to me, but he does not and he does not like me to ask for it. Recently he opened IRA (individual retirement accounts) for both of us to save money on taxes.

There is equal amount in each account for each of us. The last time I asked about having my inheritance money he said ""Well I gave you IRA so that is your inheritance"". But if he has IRA too with equal amount how can this be fair? And how is it up to him what to do with this \$5,000? Please advise me in this matter. It is always in the back of my mind. I have no one to speak with him on my behalf. No one in my family is muslim. Jazak Allah Khairun.

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. Susan

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

You know very well that in the relations between wife and husband, many matters are settled by mutual agreements and consent, under the circumstances regardless of the Principles of what is just, right and fair. There is an advice in the Islamic tradition, I think it is attributed to al Hussain, the grand child of the Prophet, pbuh, that says "give your daughter in marriage to a righteous man, if he likes her he will always favor her but if he does not love her he will always be fair to her."

I don't want to fill you against your husband, but the fact is: ACCORDING TO SHARI'AH, A HUSBAND HAS NO RIGHT WHATSOEVER TO INTERFERE, OR EVEN TO BE INFORMED, OF WHAT SHE DOES WITH HER OWN PROPERTIES, WHETHER THEY CAME FROM BEFORE MARRIAGE OR EARNED DURING MARRIAGE OR CAME FROM INHERITANCE OR GIFTS, EVEN WHEN THE GIFTS ARE FROM HIM.

Now, literally, the IRA opened in your name from his income is not included in his obligatory financial responsibility to spend on you because IRA is not part of living expenses; it is pure savings (that is by the way subject to Zakah on yearly basis). he may say that here I give you your inherited money in this form and it is up to you to accept or not, i.e., to tell him that I want my money cash as you got it cash and I don't accept IRA fund as a payment (obviously IRA has restrictions). Legally, from Shari'ah point of view he has no right to keep this money from day one or to force you to accept any given form of payment other than the way he got his hand on it the first time. Who is going to talk to him on this, you need to find someone who can influence him and if it is only because he does not know the Shari'ah ruling on this issue show him this writing or have him write me.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Is a Last Will Necessary?

Subject: Inheritance and Will

From: R. M. through Islam online

Sent: Thursday, October 12, 2006 1:00 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

My question is regarding the inheritance of my father. My father is about to write his will and he would like to know how much money should go to each of his heirs. He has one wife, 2 daughters, one son (me), 3 brothers, 2 sisters, one father and one mother who are all alive. Could you please elaborate as to the reason you have decided that the share of the wealth should be split in this way please. If you have time could you please answer for my own knowledge the question

of how much inheritance a man would leave behind if he had more than one wife? Thankyou for your consideration, and Jazaa'akumullahu khayran. Wa salamu alykum wa rahmatullahi wa barakatahu.

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. R. M.

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

If your father lives in Iraq and his properties are there too, he does not need to worry about the distribution of the estate after his death because the law there is derived from the Shari'ah.

If he lives in a country that has no Islamic law of inheritance such as the UK or USA he **MUST PREPARE APPROPRIATE DOCUMENTS** such as a last will. The reason is that the Islamic law of inheritance is **MANDATORY** on every Muslim and the laws of the land in the West allow you to do what you want with the estate by virtue of a last will. then **YOU CAN IMPLEMENT THE ISLAMIC LAW BY YOUR OWN CHOICE**. For a detailed last will that fulfills this Islamic requirement please take a look at www.isna.net or www.kahf.net. For why it is mandatory, God says so in the Qur'an, please read the two verses 4:13 and 14 that follow the main part of the Islamic law of inheritance as given in Verses 4: 11 and 12. By the way these two verses are the reference of the distribution I will give you below.

The distribution you asked for: should your father die and be survived by the persons you mentioned, his estate must be distributed as follows:

1. First: pay all debts due on him and funeral and burial expenses and any taxes on the estate; let us call what is left remainder 1
2. Then, pay any last will charity he desired in his last will. Last will charity is assigning a maximum of of one third of remainder 1 to any one or more than one of the following: charitable organizations; as a permanent asset for a charitable organization, i.e., Waqf; any person(s) who is not an heir as mentioned later (because assigning to an heir changes the distribution ratios given in verses 4: 11 and 12). It doesn't matter whether the assignee is a Muslim or not, Assignment must be expressed clearly in the last will preferably in writing with witnesses and public notarization. Let us call what is left after paying by last will as given in this section: remainder 2.
3. Then, Remainder 2 is distributed as follows: 1/6 to his father, 1/6 to his mother and 1/8 to his wife, nothing to brothers and sisters (Notice this they are not heirs in this case he can assign to them under assignment by last will). Source: Verse 4: 11 for parent's distribution and 4: 12 for wife's. Call what is left after this distribution remainder 3.
4. Remainder 3 is distributed to children as the ration of 1/4 to each of the two females and 1/2 to the male. Source: Verse 4: 11.
5. Applying 3 and 4 above takes up to this distribution of remainder 2: father 4/24, mother 4/24, wife 3/24, son 6/24, daughter 1 3/24 and daughter 2 3/24.
6. Finally if a man is survived by more than one wife, they share the wife's share equally.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Sadaqah and gifts from shares in inheritance

Subject: Sadaqah and gifts from shares in inheritance

From: zarine

Sent: Saturday, August 26, 2006 2:21 AM

Question

Dear brother Monzer Kahf, Assalaam Alaikum wa Rahmatullahi wa barakaatahu.

Thanks for your earlier reply. Please bear with my very lengthy letters, as no matter how much I may try, I just can't ask questions in brief. Besides giving you as many details as possible, I believe helps you decide in our case.

- 1) After my father's death a few days ago. May Allah forgive his sins and grant him jannah...his second wife, two brothers and my sister as well I (his only children, he had no children from his 2nd marriage), have said to my mother that we do not want any share from his assets. And that she is free to use all the money as she would will. Someone told her that we have to give this in writing to her, just verbal communication is not sufficient. Is this true, that we need to give this to her in writing....? As such really would that really need legal papers? Really none of us have the intention to turn around later and start claiming our share. Besides his second wife had hidden the marriage from her children of her first husband and also I believe from most of her relatives. This of course has no relevance to the fact that she has said in specific terms to my mother that she doesn't want any of his money, as even during his life time she had willingly foregone everything.
- 2) My father as such had only one flat in his name (which my mother says her money was also used in buying it, but for the purpose of division she says she wants to presume that it was his). This flat is being used as an office for his small scale business of pest control, which had since the last 2-3 years been managed mostly by his four workers who are very poor. My parents in the last few years had been mostly in USA /Canada taking care of my sister's kids while she was studying and helping my brothers in settling down. My parents were not working there. But his business was being managed in India by his workers, whom he had entrusted it in his absence. The workers used his office, got contracts, bought the equipment (pumps, stationary etc, as well the chemicals) from the business money and paid their own salary from the earnings and so on. So in effect the business that was set up from a scratch and run by my father for 15 years was in the last 2-3 years being run mostly by his workers. My father was a very generous and soft hearted man. He had told my mother that should anything happen to him, he would not like the business to close down, rather it should keep running for as long as possible, bcos he said four families were feeding on it (i.e., his poor workers, who u can say had a hand to mouth existence, my fathers business was very small scale, did not fetch great amounts that he could give a very good salary to them ,but it was reasonable enough).

Now my mother would like to carry out his wish so that he would keep receiving the rewards for letting the workers run the business and getting money from it. As it is we are not interested in our share, nor can we ever go there to manage anything. Will this action be OK? That is letting the only flat in my father's name be used by his workers as an office for the business as well as the earnings from it be rolled over by his workers and be used by them?

- 3) The nature of the business was such that he used to get time based contracts from his clients, varying from a single time service to a one year or five year contract. Sometimes the clients used to pay him in advance for the entire one year contract or the entire five year contract. All the payments used to form his capital, from which they would later buy the required material such as the pesticides and insecticides, the pumps, gloves etc. He had a separate bank account for this purpose I presume. Now the cash that is lying in that account is actually the capital for which contracts have yet to be completed. How do we deal this money? Can the workers continue using this money as the capital?
- 4) Now apart from all this...is my main question that I would like to ask. When my brother was migrating to Canada, my parents had withdrawn some money from my account as a loan to my brother. They had my permission to use my account in India as and when required, as they were managing my properties in India then. They later informed me about this and said that they would return this money to me later (they musn't have had enough cash with them at that time so the need to borrow from my account). At that time I had intended in my heart not to take the money back from them. No other purpose...just out of love for them. In effect I believe it is my brother who owes me this money. Till two years ago my brother and his family were staying in a rental house in Canada and he was doing two jobs to make the ends meet. Later i.e., just two days before my father's death he had shifted into a house of his own which he bought on a mortgage, and he is still carrying two jobs to make ends meet, to support his wife and three kids. He is not holding a very reputable job, nor he is a qualified professional. Agreeing to my parents opinion he had bought a big house, with the intention of giving a part of the house on rent so that there would be some income and would help out in paying the mortgage. They could have settled for a smaller house perhaps, but since I intended to migrate to Canada later, they had hoped that I could stay with them, so better to buy a bigger house. Meanwhile they could get rent out of the property to ease out their expenses which are not luxurious by any means.

As seen from above I believe he comes in the category of people who can be helped by me as charity.

My parents and my brother have always been saying that they will return the money when they will be in a position to do so, but I had said to them on several occasions that I don't want it back. Yet they insisted with their intention of paying back. Now if at this present time after the death of my father, I intend again to not take the money back from my brother, and instead that money be attributed to my father as a payment for his wrongfully gotten money or as charity on his behalf, will this money be accepted by Allah on behalf of my father.

Or will my previous intention of not taking the money back from my brother in any case be valid only for that particular intention and not attributed to my father now?

I am asking this bcos, when I asked my mother ,as against my expectation she didn't really remember how many people he had helped in making the false certificates (though she says it may have been 4-5),nor does she remember the amount he had taken from them. So I have reason to believe that the total money may have been too muchmaybe even 6-8 lakhs in all. I am not sure. But I would like to pay all that money myself though in bits and parts, as all my siblings are already having loans of great amounts, and the flat that my father left behind we want to give to my mother which she intends to use only for charity for his workers.

Besides if I tell my mother and my brothers, the truth about the nature of his earnings from the certificates, i.e., it was wrong...they will be shattered. As it is they are having a very difficult time coping with his death. I don't want to add to their burden by giving them knowledge about

something they are better off without knowing. Besides it would mean selling away his flat which anyways my mother is going to give in charity. And my brothers have no money lying around to give away.

Of course I am very worried for my father's fate after his death and confused too. There are many things going on in my mind at this time, as you can see from my letter. But your answers have always helped me sort out some misery of my life. And your reply this time too will help me out more. Only Allah can give you the jaza-e-khair for all the noble work that you are doing by guiding people like us. Only Allah can give you rewards enough....I can't even thank you enough. May Allah accept all your good deeds.

Zarine.

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. Zarine

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Here are the answers to your questions:

1. From a Shari'ah point of view, there is no need to give the surrender of shares of all other heirs of the estate of your late father in writing. You need to know that the estate covers all his personal and real estate properties. However, laws of land in all countries requires, this to be confirmed in writing, witnessed and notarized, for any transfer of property record of real estate, cars and similar things. You may have to do this because of this legal requirement.
2. Keeping the business to feed its employees is permissible and InShaAllah will give him the reward of a continuous charity (Sadaqah). I also prefer that this should be made legal, so that as time goes on, beneficiaries will remain getting the benefit they are assigned, may be by creating a Waqf (trust) or recording the business in the name of the workers as a gift to them, etc. This may continue while the property itself may remain either as a property of your mother or as a property of the Trust that is created.
3. Yes, they can continue using the money in bank account. But it is important to make matters legally clear. For instance, if the account is in your father's name and he had given a power of attorney (agency assignment) to one or more of his workers, any such power of attorney becomes invalid after his death. You need arrangement to transfer the account to the name of the heirs, surrender of rights in it to your mother and new power of attorney to the worker(s) by the person(s) who own the account now. You can't continue things as they were before his death. These arrangements require, by law not from Shari'ah point of view, written documentation.
4. Good doing to your brother and good intention to give Sadaqah on behalf of your late father are rewarded to you InShaAllah and these actions on your part also benefit them. You should not inform any one about what was done by the deceased about things we believe were bad. Keep this confidential to you and make Sadaqah as much as you can and pray for his forgiveness, He will InShaAllah be forgiven especially that whatever he did was done under a wrong impression that it was permissible in Shari'ah. Helping family members, such as your brother(s) is undoubtedly a good deed and rewarded by God, it is considered Sadaqah and it is more rewarded, if they are in need, than helping other persons. Whatever

help you want to give to your brother (including forsaking this old debt) is a good action on your part.

5. Buying the bigger house is InShaAllah also permissible with the intention of either having other members stay in for temporary period or helping pay the mortgage installment. these are intentions that do not contradict the spirit of Shari'ah.

Please do not hesitate in writing me any time you may feel I may be of any benefit.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Payment of Debts on the Deceased

Subject: Debts on the deceased and Inheritance

From: Daleel

Sent: Monday, July 24, 2006 2:31 AM

Question

Assalaam mualaykum.

According to South African law, the children of the deceased do not inherit the debts. How does this apply to muslims, especially in the case where business is done with non-muslims.

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. Daleel,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

According to Shari'ah, debts are not inherited by the heirs of the deceased. If the deceased left any property debts are then charged to the estate but if he/she did not leave any property debts can't be charged to any heir, be it a child or others. You may remember the Saying in which the Prophet, pbuh, refused to make the Janazah (funeral prayers) on the body because the deceased had debts and He said: "pray on your friend" then when a man volunteered to pay the debt He accepted to make the prayers Himself. Notice he did not charge the debts to the children or any heir and he did not prevent making the Funeral prayers by others, rather He asked them to do it. Now, here is another area where the Shari'ah and common sense law coincide together because Shari'ah is in fact the absolute and finest common sense as human may sometimes deviate from common sense for one reason or another and intentionally or not.

Debts, in Shari'ah are charged to the estate and there is none or it is insufficient, debts go unpaid and unclaimable, in this life, unless someone volunteers to pay them, be it an heir or an outsider. Children of a deceased are not responsible for the deceased's debts.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Nature of Islamic Inheritance and its Rationale

Subject: Earning through Lottery and Earning through Inheritance

From: Umer through Islam online

Sent: Monday, July 03, 2006 1:16 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

As lottery is haram for one of the reason that people are required to work hard and employ their thoughts for something good to earn, than how good is it if someone is not making any effort and waiting for parents' inheritance to be granted to him/her?

Visitor Notes: For the reason that inherited money is allowed in islam, does not it make people lazy for making any effort on their own to earn money which is quite similar to the lottery. In lottery you put your money in and wait till you hit the jackpot which obviously doesn't involve much of their efforts and time. 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. Umer

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

The comparison between gambling and inheritance is awfully unacceptable and unbelievable.

Gambling (unlike what you thought) is prohibited because it redistributes property from one person to another for no reason. It is not a reason for someone to loose and someone to gain that we hit a roller or throw a dice! Property changes hands when you either pay for it, one way or the other, or when it is given to you out of the good will of the giver as in a gift. This is why all forms of transfer of ownership from one person to another are prohibited including: theft, confiscation, taking property by coercion, cheating in price or commodity, etc.

On the other hand, heirs are in a way an extension of the person. What do you do with the property of a deceased: you have a choice of either destroy it (burn it, or burry it with the body), take it by the government or tribal chief, give it to close relatives or give to others by a choice of some authority. Definitely the choice must be give it to close relatives and any other choice, including the poor and needy would be unfair because in normal circumstances heirs have shared these properties with the deceased when she/he was alive, they may have contributed to its creation and accumulation, they relate to it and the deceased used to use her/his property to spend on them and support them. Among all potential use of such properties, giving it to close relatives is the logical and most appropriate course of action. That doesn't make them lazy in their life time because they don't know when it is going to come and they may have worked hard, with the owner during her/his life, to produce it, and she/he was the loved one for them, as they normally also were for her/him. If you eliminate inheritance to close relatives people would continuously attempt to evade the law by distribution during life time, and such distribution would normally be to these same heirs that the Islamic law nominates!

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin
Wassalam
Sincerely,
Dr. Monzer Kahf

Subject: Islamic Inheritance Distribution is mandatory

From: A person through Islam online
Sent: Monday, February 13, 2006 5:11 AM
Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,
I really don't understand the concept of inheritance. I see in Qur'an the division of sons, daughters... But other verses say that you can do your will. So, in my will can I write the things I want even if I give more to a daughter than a son? Jazakallahu 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./Sr.

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

The Islamic distribution of the estate (that is given in the Qur'an, especially verses 10 and 11 of Chapter 4) is mandatory and a last Will has no legal power, according to Shari'ah, to change, alter or modify it. Verses 12 and 13 of the same mention that ""those"" (meaning what is given above) are the Ordinances of God and promise 'he who obeys"" the Gardens of Heaven and ""he who transgress His Ordinances"" a humiliating punishment in the Fire of Hell. The definition of a Last Will in Shari'ah is restricted to disposition of one third only. Further, in application of Verses 12 and 13 of Chapter 4, the Prophet, pbuh, mentioned that ""A last Will can't give an heir."" so that the shares as prescribed in the Verses 10 and 11 and other verses too are not changed.

There is a unanimous, undisputed agreement among all Muslim scholars on this point. We in America and all other countries that have no Islamic inheritance system are required, from Shari'ah point of view, to write our last wills as a vehicle to implement the Islamic Inheritance system because a last will in all the 50 states' laws is defined as a tool for distributing all the assets whereas the Shari'ah definition is only for distributing only a maximum of one third. Consequently, it is gravely sinful for any Muslim who lives under inheritance laws that violate the Shari'ah to make a last will distribution that is different from the Shari'ah's.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin
Wassalam
Sincerely,
Dr. Monzer Kahf

Subject: Preventing Son-in-Law From Inheritance

From: Mrs Muhammad through Islam online

Sent: Monday, January 30, 2006 3:19 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,
We are a French Muslim family and have 2 daughters (27Y, 17Y) and a son 25Y. Our elder daughter is married to a Jordanian national and has a daughter. A year ago my son in law blackmailed my younger daughter and sexually molested her several time. Within a month she told me. After confronting him he did admit and left to his country. My eldest daughter left with him (everybody deserves a second chance!!!). Within a few months we discovered he did similar things to other women. Now my husband and myself do not want him to benefit in anyway from us through inheritance or otherwise. What can we do? Thank you.
Mrs. Mohd

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. Mrs. Mohamed

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

According to the Shari'ah, if your older daughter is Muslimah, you cannot prevent her from inheriting from your estate. That means after the death of any one of her parents, she must be given her share. Certainly that will be her property and her husband has no share in inheritance and has no say, according to Shari'ah, on what she does with her property whether it is inherited from you or acquired from other sources (that obviously does not rule out benefiting from such inheritance with the consent of your daughter or by means of pressure on her).

If you are mad at him and at your daughter, you can dispose of your property while alive and leave either nothing or minimum to be inherited. This is permissible on the basis of the freedom each of us have in disposing of one's property the way one likes. We are required to make justice in the meaning of equality between our children in giving gifts regardless of their gender but this equality relates also to their behavior. a helpful child is not like a disobedient or hurtful one and we certainly can discriminate between them on this ground. You can turn your property into a Waqf that will benefit your children and even their descendents for a generation or two and the benefit goes after that period to a Mosques or any charitable Islamic organization.

There are such arrangements that can be worked out within the limit of Shari'ah and in compatibility with Western laws (I don't know about the French legalities in this regards but these are easy to find out). But remember, any thing left behind is subject to inheritance system that is mandatory for all Muslims. By the way, since you live in France you need to draw a last will or similar documents to assure that your estate and your husband's is distributed according to Shari'ah after death.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Distribution of balances in retirement plans

Subject: Distribution of balances in retirement plans

From: Daniel for Shams

Sent: Friday, May 12, 2006 4:55 AM

To: shams khan

One thing you may want to ask the gentleman who is looking over your trusts is whether or not beneficiary designations on retirement plans, IRA's, etc... need to be drafted in the same fashion as the disposition scheme within your trusts. For example, your current beneficiary designations pass all of the assets to the surviving spouse and then to the trust upon their death (or if they disclaim the assets).

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. Shams,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Any retirement plan you own in your life such as IRA, KEOGH, 401K should be distributed as Mawarith. But any periodical benefit you receive in your life and a spouse or any other receives, after one's death, by virtue of laws such as spousal social security benefits don't need to necessarily be distributed as inheritance. Also any lump sum that becomes due only after death such as death benefits of a life insurance may or may not be distributed as inheritance, i.e., one may assign a beneficiary and a successive beneficiary but need not to make it according to the Mawarith schedule.

In your case, retirement accounts, as mentioned above, are owned in life time (tax-related restriction don't matter) and must be distributed according to Mawarith.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Distribution of Property before Going for Hajj

Subject: Settling Inheritance Issue Before Hajj

From: Kutty through Islam online

Sent: Wednesday, March 29, 2006 12:54 AM

Question

Dear Dr. Monzer, Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I have 2 sisters, a problem on partition of parents property exists. I tried at the best level to clear it but I can't solve it. I am getting aged day by day. Wish to do hajj-.Pls advise me what to do. If I approve all their demands, they brings new demand. I am ready to pay any thing as I have to give in actual but still problems arise. Should I do hajj without settling the problem.....?

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. Kutty

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Going for Hajj is required as soon as you can financially and physically. If you cannot solve the inheritance dispute with your sisters, go for Hajj provided it is not you who is exploiting them.

Can't you give them their shares peacefully? And if they refuse deposit it in court and have them take it from the court. or make the division or distribution of real estates properties by a court order?

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Subject: Inheritance distribution

From: Nasir

Sent: Sunday, March 05, 2006 4:45 AM

Question

As Salam AlaiKum - Wa Rahmathulla-hi Wa Barakatahu

Our is a sunni family, with seven surviving members (Five married daughters & Two married sons),

My both parents died, around 3 & 5 years ago, and they left us, an old house at a city in India (Current value is around total eight lakhs Rupees). The said property is completely one entity only, which my late father had solely purchased by his own earned money.

So pls. advise me, how to make the final inheritance settlement among all the siblings for this case, in accordance with the Shari'ah laws. Awaiting for your valuable response,

Nasir, Australia

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. Nasir

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

I have two point to make clear: 1) I will assume that these even members are siblings, i.e., children of the deceased father; and 2) I assume that there are no children of deceased siblings, i.e., you don't have any deceased brothers who left children and these children survived their grandfather (who is your father). If there are such grand children they also have a right under the ""Compulsory Wasiyyah"" concept that is incorporated in the laws of many Muslim countries.

Before I show you the distribution I like to mention that India has A MUSLIM INHERITANCE LAW that applies to Muslims in India and you are required to make the distribution according to the law that itself is derived from Shari'ah.

The distribution in your case is given in the first sentence of the Verse 4:11. the net estate (after payment of any debts, expenses, taxes and any amount given as a Wasiyyah by the deceased if he did that) should be distributed as follows: 1/9 to each daughter and 2/9 to each son. In fact if this is the only property owned by your father, it does not matter whether your mother died before or after him because the same ratio applies in both cases unless she has any parent of her own and she survived her husband.

You need to remember that the fact that the property is an indivisible unit according to the law of real estates in the area does not disallow owning it by several individual. It can be owned by several persons on sharing basis but it cannot be divided between them. The legal procedure usually requires certain documents about death, lineage and ownership, then transferring the property to names of heirs, then selling it to distribute shares.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

Distribution when there is a Will, or by a Law, that violates Shari'ah

Subject: Father made a Will with equal shares to boys and girls

From: Anne

Sent: Monday, January 16, 2006 2:03 PM

Question

Brother, as salaamu 'alaikum, Insha'Allah you are well.

I came across the Islamic Inheritance document that you prepared with ISNA on ISNA's website. May Allah swt reward you for th eeffort. I owuld like to use the document for my own personal use, but I have a question about whether something I have in mind is allowed according to the law. Would you mind if I asked you a specific question about inheritance? Thank you.

Wassalaam,

Anne

Dear Sr. Anne

Assalamu Alaikum wa Rahmatullahi wa Barakatuh

It is ok to ask and If a don't know the answer I will say so,

Wassalam,

Monzer Kahf

From: Anne

Sent: Monday, January 23, 2006 4:08 PM

Question

Dear Brother Monzer, Jazaki Allah. Here are my questions:

1. My husband and I are trying to write our will. We understand all the different distributions under different scenarios in the ISNA schedule. But here is the questions: we have some joint property that is wholly owned by both (not 50%). According to the property deed, if I were to pass away, the property would be fully owned by my husband and vice versa (otherwise, we'd have to pay inheritance taxes, this is a good way of joint ownership). However, according to Islamic law, my wealth (and his, of course), would be distributed in a way that he would get much less than all my ""share"" in the house. Now, we prefer it this way, but does this go against the spirit of the islamic law? We do not wish to go against the law of Allah.
2. How about beneficiary from life insurance, retirement or 401K plans? My husband has designated me, ofcourse as the beneficiary in case something were to happen to him in all these accounts that he has through his work. But does this go against Islamic law?

I can only appreciate how nice it would be of you to spare the time to write back to me. May Allah swt pay you back with better. Jazaki Allah. Wassalaam,
Anne

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. Anne

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

Your two questions (in fact three as you will notice) are very intelligent and presently I am in a discussion with a lawyer on the first one.

1. Joint property is permissible in life time of both parties but once one of them dies the issue of distribution arises. We can maintain the benefit of the law by passing it, as a one whole, to the surviving party but this party must realize that it is her/his duty, from Shari'ah point of view, to make complete distribution of the share of the deceased party according to the schedule of Mawarith. The rationale: a joint property is either earned by one, both equally or both unequally. The Shari'ah accepts it as a procedural matter but does not approve of it as a means of disturbing the inheritance system (that is by virtue of the verses 4:13 and 14 mandatory). The fact that they did not specify any given share of distributing it make us assume that whoever paid more than the other intends to give as a gift to the other the difference between the 50/50 real ownership and the contribution of the other party. This means the following: while we maintain the procedural and tax benefits of the law of the land, we must add to the last will a statement/waiver to the effect that the surviving party pledges to distribute one half of this joint property to the heirs of the deceased party in accordance to the schedule of Mawarith and that this surviving party waives his/her right to the full ownership of the same.
2. Funds that are not owned in the life time do not have to be included in the estate and consequently don't have to be distributed according to the inheritance System. These funds go to designated beneficiary. It is permissible however for the concerned person to make the beneficiary exactly as they are in the Mawarith. The best example of these funds is a life policy payment. This payment becomes due on the insurance company by the incidence of death and was never owned by the deceased in his/her life time, although she/he may have paid all the premiums. Similarly any death benefit from social security or any retirement plan.

3. Funds that were owned by the deceased during life time, even if such ownership is restricted because of tax purposes must be distributed as inheritance. This applies to any IRA, 401K and similar funds. Providence funds in some countries give a death benefit or pensions to beneficiaries after the death of the retiree, such death benefits/ pensions are not, necessarily, subject to Mawarith distribution. The balances of IRA, 401k and similar funds in other countries are definitely subject to Mawarith distribution because they were owned by the deceased at the moment of death.

Wa Allahu A'lam

Wa Alhamdu li Allah Rabb al 'Alamin

Wassalam

Sincerely,

Dr. Monzer Kahf

From: Anne

Sent: Tuesday, January 24, 2006 6:45 AM

Question

Dear brother, As salaamu 'alaikum wa rahmatullah wa barakatuhu,

Jazaki Allah Khayran for your prompt reply. It is very clear and systematic and alhamdulillah I understand what you said. I very much appreciate it.

If you don't mind, one more question, this time from another end. My parents are muslim, but the law of the land they live in is not Islamic. I have a brother and a sister. If any from my family, say my parents, were to pass away, all three children would get equal shares in the inheritance, though I know according to Islam, my brother has to get more than us. My parents would not be willing to write an Islamic will, they would rather let the shares be equal, I am pretty sure. Also, my sister would not give up some of her share for my brother either, as they are not really practicing. What should I do in such a case? Should I take whatever is left to me because the parents themselves are not really practicing and they go with the law of the land instead, or should I, out of my own will give to my brother (or other heirs, if applicable) what should have been their due share? I hope you don't mind me asking, if you do please let me know. Keep me and my family in your prayers insha'Allah. Wassalaamu 'alaikum,
Anne

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. Anne

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh

if one of your parents die and the only surviving family members are the three of you (the deceased has no parents), you should give your brother the difference between what is your due share and what is allocated to you by the law of the land and pray that God will forgive the deceased for not making an appropriate will to guarantee that the distribution is carried out according to Shari'ah. In this case the amount you should relinquish to your brother is $1/3 - 1/4 = 1/12$ of the total estate after debts, expenses and taxes. You should also suggest to your sister to do the same. While they are alive you should keep advising them to make a proper Islamic will to guarantee the rightful distribution in accordance with the Islamic law.

Wa Allahu A'lam
Wa Alhamdu li Allah Rabb al 'Alamin
Wassalam
Sincerely,
Dr. Monzer Kahf
