

FATAWA INHERITANCE 2008-2012

Subject: Mandatory nature of inheritance system overrides any will

From: Samy, Islam on line

Sent: Sunday, November 23, 2008

Question: Inheritance and Will

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I am Canadian citizen from Syrian origine living in Canada were Shariah is not applied. I have wife,3 daughters,3 married brothers,2 married sisters,no surviving parents. I have house (where I reside with my family) worth 150.000\$ and a business worth 230.000\$. 1.Ques. If I die without will and according to shariah- Irth Who takes what?(please specify names and percentage). 2.Ques. Is it legitimate to write down a notarized will in which I specify who takes what in the event of my death? And if so is it legitimate to give in my will my wife,my daughters all my wealth, or name any other person as my heir?.

Wa assalam alikom wa rahmat allah wa barakatuh.

Jazakum Allahu Khairan for your constant he lp

Yours, Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mahmoud,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1. Please notice that the Islamic inheritance system is mandatory and it is given mostly in the TEXT OF THE QUR'AN itself. Please read verses 10-14 of Chapter 4 (Surah al Nisaa)
2. According to these Verses, and if the structure of your family is as it is now When you die and keeping in mind that the house and business and all other properties according to laws in Canada are actually owned half/half by you and your wife (I assume here that like most of us you did not make a contract with your wife regarding any other division of ownership between yourselves), the Shari'ah distribution of your estate (that is one half of all the above) will be as follows: 1/8 to your wife, 2/3 to the three daughters equally between them and the remaining to your brothers and sisters on the basis of two shares to a brothers and one share to a sister. This means that after death (May Allah give you long life in his obedience), your wife will own 13.5/24 of all the properties, your daughters 8/24 and your 5 siblings 2.5/24. This is if you make a Last will according to Shari'ah.
3. It is forbidden to make any Last will in violation of Shari'ah. This is the answer of the second question.
4. If you do not make a last will that is accepted in court or any other document that is revoke-proof by any authority, the distribution will then be according to the Canadian Law that I don't know (but most likely, it is like American laws whereby all properties go to the spouse and upon

her death they are distributed to children), this is also forbidden to leave distribution to laws that violate Shari'ah if you have the choice to avoid it. You do have the choice to write appropriate documents such as last will or living trust.

5. It is forbidden to make a will that ends up preventing some legitimate heirs from getting their shares assigned by the Qur'an.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Yusuf

Sent: Friday, December 03, 2010

Location: Bangladesh

Question: Mathematics of the Islamic inheritance

Dear Dr. Kahf

Assalamu Alaikum wa Rahmatullah.

In my country, Bangladesh, some people are making up a controversy regarding the Islamic inheritance law. They say that the Inheritance Law, as described in Surah Nisaa, is mathematically flawed (if you divide as prescribed, it does not add up to one). They also say that it was Hazrat Ali (Radiallahu Anhu) who made corrections to the inheritance law and thus, they try to say, has made corrections to The Quran (Astaghfirullah). Can you please shed some light into this? I want to answer these guys but I am not knowledgeable enough. Please help me by giving a detailed answer or please give me some materials where I can find the answer myself. JazaakAllaah for your splendid works!

Ma 'assalam

Yusuf

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Yusuf

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

This is a long question that needs a full lecture; it is difficult to answer in a few words.

In brief, the Qur'an did not mention all possibilities in inheritance distribution. It only mentioned most common/frequent cases that cover more than 95% of actual real life cases. It also gave us the principles of combination for other cases. The issue that these people talk about is dealt through the principle of AWAL عَوْل because the verses of surah No 4:10-14 mention each case alone, implicitly assuming no other relative but when you put all statements together in these verses you discover that in order to combine cases (like husband, two daughters and father and mother) while you still apply all the statements at the same time you have to revert to changing the denominator in this example the denominator becomes 15 and you still maintain the same relationships between different survivors giving husband $3/15$, daughter 1 $4/15$, daughter 2 $4/15$, father $2/15$ and mother $2/15$. When you change the denominator, you keep proportions as mentioned in the verses and yet it does not add up to

more than 1. Like Awal there is also the Hajb حَجَب which means prevention. A person who is mentioned in one verse as an heir is prevented from inheritance by another closer heir such as brothers when there is a father and no children. Although a sentence in the verse says that siblings inherit but another statement in the same verse did not mention them and referred only to father and mother. The Islamic inheritance distribution is most perfect and cannot be affected by such ignorance.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Taher

Sent: Tuesday, December 21, 2010

Question: A will with equal shares to daughters and sons

Br. Monzer,

Assalamu alaikum,

I hope you are doing well. I was doing my Last Will and Testament using the form provided by ISNA and I noticed that you put together the Schedule A of the Will. I had a question that I hope you may answer for me. I understand that I am allowed to designate 1/3 of my estate to any party. Would it be allowed to give more to my 2 daughters from this amount so that they would receive an equal share as my son does?

I could not find anything that would help me answer this question.

Taher

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Taher

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The answer is DEFINITELY NO. Reasons: in the Verses 10 -14 of Surah 4 we notice that Allah made the division of shares obligatory: he uses a word that means 'order' as used in other verses that deal with believing in Oneness of Allah and avoidance of accepting partners with Him, stating that these are the TERMS Allah ordain and that following these terms is rewarded with Jannah while failing that leads to the Fire of Hell, also stating that what is in these Verses is Faridah from Allah. This is enforced by a Saying of the Prophet, pbuh that declares that Wassiyyah (the use of up to one third for other objectives of goodness) cannot be assigned to an heir. Of course that Rationale of this Hadith is because it changes the Terms Allah gave.

Gifts during life time should be given with equality; besides a girl will get her Mahr from her groom at marriage. This amount can in fact be very substantial, in the case of the Prophet Musa, it was the salaries of full eight years (about \$500,000). Why should she be equated with sons who are required to pay Mahr?

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Yusuf

Sent: Saturday, November 03, 2012

Question: Surpassing the Wassiyah (Last Will)

Assalamu alaikum dr monzer

I hope you are well InShaAllah. Could you please guide me with regards to the following matter? My father passed away and left an amount of 80000 and as Wassiyah he informed me and our family to distribute it amongst the mosques and students of religion however would it be allowed for us as his family to invest that money in an islamic financial house and let it grow and be able to assist those who needs assistance on a yearly basis if we distribute the money now it will only be a one off process shukran may Allah bless you

yusuf

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Yusuf

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The answer is definitely negative. You cannot surpass his will and you must distribute the amount as he prescribed the soonest possible manner without delay. You have no right to turn it into Waqf. You always can make Waqf from your own property, inherited from the Father or not, and make the reward for him, both of you get benefit in Jannah InShaAllah for that.

A Wassiyah must be executed as prescribed, this money is now the right of the recipients and you have no authority over it except for distributing it.

This is in the definition of the Wassiyah itself. Only its founder can change it and he is already dead! Who on the earth can change it? The Qur'an 2:181 in regard to Wassiyah says "If anyone changes the bequest after hearing it, the guilt shall be on those who make the change." That is the nature of Wassiyah itself.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Inheritance distribution

From: Samy, Islam on line

Sent: Tuesday, January 15, 2008

Question: Wife Repaying Husband's Debts

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

From sister Edith.

My husband died and left me in debts. He was a very bad provider. Is the wife acc. to Shari'ah obliged to repay the debts of her husband, especially her husband's debts to his family

members? None of them have a written promissory note from my husband. Shouldn't they instead make Tanazul' for the widow in case there is something to inherit?

Jazakum Allahu Khairan for your constant help

Yours, Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Edith

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

As a matter of principle: NO PERSON (INCLUDING SPOUSE, CHILD OR PARENT)

IS REQUIRED TO PAY THE DEBTS OF ANY OTHER PERSON AFTER THE DEATH OF THE DEBTOR.

The debts of a deceased person are paid only from the ESTATE that is left by the deceased. And no creditor is required to surrender or waver (make Tanazul) his or her debts. (Whenever there is no document to support a claim there are procedures courts, Islamic or conventional, undertake to prove or deny such claims, these include searing under oath, witnesses, etc.). If the estate is not sufficient, whatever is there is distributed proportionally between creditors and heirs, including spouses may end up having nothing. Any waver is pure voluntary, whether by a family member or by a stranger. THE APPLICATION of this principle depends on legal and other circumstances of dealing with property in different societies. If you and your late husband lived in any Western country, say the USA, most state laws have community properties and their own system of distribution of estate. Under such circumstance coupled with lack of any pre-nuptial agreement and lack of any Last Will, properties are treated, during life time as owned by both spouses together, also liabilities are owed by both together. Then when one spouse dies debts are payable from the shares properties and after debts one half of what is remained becomes subject to distribution to heirs, being the estate of the deceased. This is permissible in Shari'ah because we consider the lack of pre-nuptial agreement and the lack of a last will as implicit giving gifts between the spouses during their life time. Therefore, I cannot give you a complete answer about your specific case, whether you are responsible or not for these debts, assuming they are proven correct, unless I know the details of these circumstances regarding spouses property laws and whether there are spousal agreement and last will. Finally, if a widow is in financial needs, her children are responsible for her expenses, and if there are no children her own relatives but definitely not her former in-laws unless she is taking care of minor orphans.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Samy, Islam on line

Sent: Monday, January 28, 2008

Dear Dr. Monzer, as-salamu `Alaykum!

Regarding this question, it is a feedback question. The questioner is telling your eminence that she got another answer. Could you please give her your comment on the other answer?

Jazakaum Allahu khairan for your constant help! Sincerely,

Dear Dr. Kahf, Thank you for your answer. I posted the same question to another scholar and got a quite different answer, which is more compassionate to the widow, as it seems to me (Allah shall forgive my audacity!) that a widow is treated unfairly, when it is determined in the Koran that the widow receives only 1/8 of her dead husbands assets. Please read the answer I got from another, compassionate scholar? "Any debts will be discounted from his estate after your needs are met first and not you have to pay them. Of course, if they are not greedy, they waive everything?"

My husband was and I am Muslim and my husband was an American citizen. In this capacity he wrote a testament according to the American inheritance laws and bequeathed all of his assets to me, his wife of 41 years and our daughter only, in appreciation what I had contributed to this 41 year marriage, also financially, by giving him all my salaries and contributing to the household expenses for a very long time. A wife according to Shari'ah is not obliged to do this, the money she earns is hers. My husband wrote this testament, giving all to me and our daughter, knowing that he had not been a good provider and that our son died in a fatal car accident, age 24 years. Furthermore I was a very loving, helpful and giving sister-in-law to all my brothers-in-law (2) and sisters-in-law (3) and we love each other. The only relatives left from my side are our daughter and one sister only, who cannot help me. Creditors have to have a written promissory note from my husband that will be given to the judge for subtraction, before the widow and the children get their share. If there is no written proof, there is no deduction. One husband of one sister-in-law who alleges that my husband owes him money, but he does not have anything in written, even implied that he is going to charge interests' (this is a sin according to the Holy Koran) on the amount he pretends that my husband owes him. This 'debt' lies 25 years back! I am talking about inheritance: Legal heirs are not Required Or Obligated (I know this) to make Tanazul, but the Koran gives them the option and encourages to do Tanazul for an heir, who is much more in need than they are! I mean Tanazul regarding inheritance. My in-laws should make Tanazul, if I get only 1/8 of my husband's assets and they do not want to honor my husband's testament, which he wrote according to American inheritance laws, as he was an American citizen. One brother in law died before my husband died, so the only male relative left for me is my brother-in-law. The distribution of my husband's assets will be done like this, under the assumption that there will be no Tanazul from my in-laws and no honoring of my husband's Last Will: To me, the wife 1/8 to our daughter....4/8 to my 4 in-laws (1 brother and 3 sisters)... 3/8. Why do I, who contributed so much, also financially, and who lost our son and my husband, get only 1/8 of my husband's estate? I regard this as unfair. I could have put all my salaries into my pocket (Dubai, Dubai!) for bad times, like now! Why is my husband's Last Will (testified by two witnesses) not honored? I have to admit that your last sentence of your answer to me was shocking, I quote; Finally, if a widow is in financial needs, her children are responsible for her expenses, and if there are no children, her own relatives, but definitely not her former in-laws, unless she is taking care of minor orphans.

The fact that my husband died, does not put an end to my relationships with my in-laws! They are not my former in-laws, they will always be my present in-laws, unless I get married again, what I do not intend. I am a widow, not a divorced! And regarding my daughter, does she, now because her father died, have only Former Aunts and a former Uncle?

Jazakum Allahu Khairan for your constant help, Yours, Edith

My Answer

Dear Br. Sami

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

She need to know that a marriage contract, sacred as it is, is an exchange contract (not like the Catholic marriage) and definitely relatives of her deceased husband are former relatives to her. As for her daughter they are blood relatives not contract relatives! God gave her only one 1/8 not people and she does not deserve more than this even if her husband made the SIN of assigning all estate to her!

There is no Islamic law that can give her anything more than 1/8. Whatever salaries she gave to her husband cannot be considered but a donation and gifts. It is true she was not obliged to do that. And it is true that now 3/8 should be given to the brother and sisters of the deceased. It is also true that no debt can be recognized without appropriate documentation acceptable to a court of justice. A claim of any person remains a claim until it is accepted in court. Then it is a debt on the estate. If she lives in America, she (exactly as I mentioned in my response) owns already half of the properties they owned together and only the other half is subject to distribution as per our great and definitely fair and just Shari'ah. If she gave her husband and failed to protect her rights, this is also a claim from her that cannot be accepted in court.

If you want select of what I said and give her some answer. But apparently she has no opinion from any other scholar and of course no scholar can tell her she gets other than 1/8!

Best Regards,

Wassalam

Monzer Kahf

From: Muhammad

Sent: Wednesday, April 23, 2008

Question: Distribution of father's state

I have been entrusted by my family members for the disposal of the house proceeds & the bank deposit in my father's name. The total proceeds of the house & the bank deposit amount is PKR. 2290148.00 & the heirs of my father are as follows:

Wife (my mother), 2-sons (living), 4-daughters, 1-grandson (from a deceased son). In addition, he has 1-brother (married & living independently with his wife & children), 1-sister (widow & living independently with her children).

My question is 2-fold; First whether the brother & sister of my father will entitle anything from my father's inheritance, Secondly how will my father's inheritance of PKR. 2290148.00 will be distributed among the heirs? I seek guidance in the name of Allah Almighty & need to perform this responsibility of dividing my father's inheritance as per Islamic Law as soon as possible. Your early response will be highly appreciated.

B. Regards, MUHAMMAD

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Muhammad

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Your two-fold question is not that complicated:

1. Your uncle and aunt do not inherit. they are not entitled to any part of the estate of your father because he left children, males and females.
2. The wife of the deceased is entitled to 1/8 of the estate after payment of any expenses and debts if any. Assuming no debts or expenses on the estates her share is $2290148/8 = 286,268.5$
3. I suggest that we adopt the view points that is prevalent in most Arab countries especially Egypt, Jordan and Syria according to which the grandson from a deceased son takes a share which is equal to the share if his father if he were alive (with certain limitations that are already fulfilled in this case) on the principle of presumed obligatory Wasiyyah. This view is cherished by the greatest majority of Shari'ah Scholars in these lands especially the late Shaikh Mustafa Zarka and the late Shaikh ali Tantawi. Thus assuming that this grandson is the only child of any deceased sons and based on the info given in the question, we have to divide the remainder after deducting the share of the mother by 5 to get the share of each son or by 10 to get the share of each daughter because the Qur'an gives to a son twice as much as it gives to a daughter. Thus the share of the grandson will be similar to his uncle's share. It is equal to $2003879.5 / 5 = 400,775.9$.
4. The alternative is to adopt a classical view according to which this grandson does not take any thing. In this case you give him zero and divided the remainder into 8 parts 2 for each of the two sons and one for each of the 4 daughters. I personally do not subscribe to this view.
5. The share of each of the two sons of the deceased is 400,775.9 and the share of each of four daughters is 200,387.95.
6. Here the distribution of the PKR:

Wife 1/8	286,268.5
Sons 2 X 400775.9	801,551.8 (each takes 1/7 of remainder after deducting share of wife)
Grandson	400,775.9
Daughters 4 X 200387.95	801,551.8
Total	2290148.0

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Fikry

Sent: Sunday, May 11, 2008

Question: how my estate will be distributed according to Shari'ah?

Dear Sir

I would like to know how my estate will be distributed after my death. I have a wife and 2 daughters, no parents no brothers or sisters. I know that 1/8 goes to the wife , 2/3 to the 2 daughters . so where will the rest go to?

Thank you & Best regards, Fikry

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Fikry

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If there are no other relatives at all the remaining $5/24$ will be divided between your two daughters equally. But if you have parental uncles and aunts, male and female cousins, etc, this remainder goes to them on the basis of two shares for a male and one for a female.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Fikry

Sent: Sunday, May 11, 2008

Question

Dear Sir

I would like to know how my estate will be distributed after my death. I have a wife and 2 daughters, no parents no brothers or sisters. I know that $1/8$ goes to the wife , $2/3$ to the 2 daughters . so where will the rest go to?

Thank you & Best regards, Fikry

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Fikry

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If there are no other relatives at all the remaining $5/24$ will be divided between your two daughters equally. But if you have parental uncles and aunts, male and female cousins, etc, this remainder goes to them on the basis of two shares for a male and one for a female.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Fikry

Sent: Thursday, May 15, 2008

Thank you very much for your feedback.

Can I make a will to attribute the $5/24$ share to my 2 daughters?

Best regards, Fikry

Answer

Dear Br. Fikry

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If there are no other relatives at all the remaining 5/24 will be divided between your two daughters equally. But if you have parental uncles and aunts, male and female cousins, etc, this remainder goes to them on the basis of two shares for a male and one for a female.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Mushtaq

Sent: Sunday, August 17, 2008

Question: Division of Inherited estate

Assalamu alaikum Doctor

Hope you are fine.

One brother has four daughters. I hope I know inheritance of brother will be 2/3 to these girls and remaining to the brother's boy children. Am I right? But what is the inheritance of their mother? How it will be distributed. She has good worth of wealth

Thanks and regards

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mushtaq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

A man who dies leaving a wife, 4 daughters and nephews: the distribution of his estates (net after payment of all debts, expenses and any last will he may have left that is valid only to the extent of one third and to non-heirs) will be as follows: 1/8 to his wife, of the remaining 21/24, the four girls get 14/24 that will be divided between them equally, the nephews will have the remaining 7/24 divided equally between them. Of course, how wealthy or poor each of these heirs may have been does not affect this distribution.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Musthaq

Sent: Monday, August 18, 2008

Assalamualaikum

Thanks for quick response

My question is answered partially. 2nd question was what is inheritance distribution of their mother is died if she has 4 girl child and husband.? Nephews of which side will be considered for inheritance.

One more scenario if there is naphews what will be the inheritance distribution?

Thanks in advance

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mushtaq,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If the mother dies leaving her husband and four daughters and nephews (I.e., boys of brothers of the deceased), nephews of her husband are not considered at all (same thing applies to my previous answer it is boys of brothers of the deceased that inherit not of a souse, of course provided brothers and sisters of deceased do not exist): husband takes 1/4 and 2/3 to the four girls equally among them and the remaining 1/12 to the nephews equally between them.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: mahmoud

Sent: Thursday, August 21, 2008

Question: Inheritance distribution

Assalam Alaykoum Professor Monzer,

Hoping you and the family are very well. Sorry for disturbing you very often. This is one of the questions that came to us. Here it is:

After the death of my father my elder sister got the 1st floor built with her money on the ground floor of the inherited house to live therein in 1988. Now my 3 other sisters are demanding their share. Elder sister says before distribution she paid the current value of 1st floor. We say you got yourself compensated by not paying the rent for 20 years. She does not agree. Status quo is beneficial for me and her but 3 sisters are suffering. Pls advise Jazakallah Jazakum Allahu Khayran and we ask Allah to put all these things in your good records Insha Allah. Ameen.

Answer

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Please inform this questioner the following: If rest of the heirs of your deceased father (mother is she was alive, you and other three sisters) did not make any objection to the construction of the first floor by the elder sister in 1988 and did not demand rent from her, you cannot claim rent of past years now. an heir has a right to use undivided inherited property unless other heirs requires division or their appropriate rights at the time. Relations between heirs is underlined by cooperation and forgiveness unless demanded otherwise. Of course any minor heir can speak out through his/her guardian (guardian has no right to forsake any privilege of the minor) and can verbalize his/her demand upon maturity.

Another part of this story that seems absent from the question is whether the other three sisters, mother and you where house also in the ground floor or in the first floor or in the same inherited building too, this fact has also a bearing on any proposed solution!

To be more specific, the elder sister owns now the construction she made and the today's price her construction can be estimated by experts who can also estimate the price of the roof of the ground floor (that she used to build on). This kind of property exists in many real estates laws in many countries where a person owns only the use of a roof of a floor below and give back the use of the roof above to original owner. So that inherited property can be estimated separate from the property of the construction of the first floor. this inherited property is now subject to distribution. In other words, the elder sister has a right to present value of what she owns (construction only not including roof below or roof above) and other property is to be distributed to heirs, including this elder sister, according to the Shari'ah.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Samy, live fatwa

Sent: Thursday, October 09, 2008

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

Question: Division of Inheritance

Salam, Our family is in a crisis. My mother is hoarding all the inheritance that my late dad had left behind when he passed in Mar 2007. She claims all these belong to her, when clearly Surah Nisa mentions the rights of children. We have written a detailed paper outlining the situation. Her last statement to us was that we are entitled to our own interpretation of the QURAN and she expects us to accept that it is ok to disagree. I know there is no Syariah Court in the US, but I am seeking the help of Imams and Scholars to help resolve this crisis and thus remove the injustice. Kindly write us a letter/email, providing the Islamic stance on the division of Inheritance and the grave importance in adhering to it. Please include your Islamic credentials and Position. Here are the details : Widow/Mom, 1st Son: (myself), 2nd Son: brother,deceased brother and deceased. There exists no will and my dad left a house, savings in a bank and 2 brokerage accounts. I am hoping to get few responses so that we can present to her again and hopefully she will stop doing wrong to her own soul and stop transgressing our limits. I thank you in advance. Salam,

Jazakum Allahu Khairan for your constant help

Yours, Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Hane

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I suggest that you should first take it easy with your mother. She has many rights on you and your siblings, financial and otherwise, please don't be pushy!

Second I cannot write any opinion unless I am presented with all facts and documents including names on deed on the house and on all banks and brokers accounts and nature of these

accounts joint or not are they retirement or not Also what state do you live in because the state law has also a bearing. I also need to hear from your mother, what is her version of the story. With all necessary and relevant info I can only then write an opinion!

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Amjed

Sent: Friday, November 21, 2008

Question: Power of Attorney for Health and Real Estate

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh,

My lawyer drafted an "Illinois Power of Attorney for Health Care" document that I edited according to the instructions on your web site. The lawyer also provided me with an "Illinois Power of Attorney for Real Estate" document. I attached both of these.

Can you verify that the POE for health care I edited is according to your web site instructions. Can you also verify that both of the attachments are Shariah compliant?

After I complete these for my parents, InshaAllah I will send an email to the Chicago community members I know with this draft (or unedited Illinois standard forms if my lawyer disagrees) along with my recommendation to complete the important forms on your web site; Will, POA and etc.

JazakAllah Khair for all of your help.

Answer:

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Believe me I am very busy and it will be difficult to read these 17 pages carefully. Would you please compare them carefully with the similar form on my website and just highlight the paragraphs that are different so that I read only these.

Best Regards

Wassalam

Monzer Kahf

From: Amjed

Sent: Saturday, November 29, 2008

Question:

Walikum Assalam wa Rahmatu Allahi wa Barakatuh,

Jazaka Allah for making yourself available online. Before getting into the POA details, I have one question regarding the marriage contract documents you have online. Are the "(1)IslamicMarriageContract,"<http://monzer.kahf.com/marriage/MARRIAGE_CONTRACT_FEB_2008.pdf> "(2)Islamic Marriage Certificate" and "(3)Pre-Nuptial Agreement" all necessary? To my understanding, to get married, all you need in (2), (3) and then the couple has to register them with city hall.

Regarding the POA for Health Care.

1. For your step 1(Agent limitations) the lawyer added...I grant my agent the power to receive any personal property found on my person. *

2. For your step 2, since there is no section for Agent's Obligation in the IL form. I included some general text from the California form you provided and added the text in your step two under the the agents limitations instead.

To the extent my wishes are unknown; my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider the basic tenants and principles of Islam and the Islamic Law (Shari'ah)

Regarding the POA for real estate, because I assume all Real Estate powers are granted (InshaAllah I will confirm this), I only added what you highlighted in yellow on your form.

1. Under Agents limitations, I added what was highlighted in line 29, ""Commitment to the Shari'ah (Islamic Law)"" and the below...

Regarding my Power of Attorney's power to establishing a Revocable Trust, this should be for my sole benefit during my lifetime and for the benefit of my Shari'ah Assigned heirs after my death as are then provided for in the schedule (Mawarith) attached to my then most current Will or published by the Islamic Society of North American (ISNA)

Answer:

Dear Br. Amjed,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I apologize for the delay, I was overwhelmed with several commitments that I had to delay some of them.

I reviewed the points below. If all the differences between the forms that are on my website and the forms that are suggested by your lawyer and amended by you, are those mentioned in your email below, I then agree with these Illinois forms and find them fulfilling the objectives of Applying the Shari'ah requirement.

Best Regards,

Wassalam

Monzer Kahf

From: Amjed

Sent: Saturday, December 20, 2008

Question:

Walikum Assalam wa Rahmatu Allahi wa Barakatuh,

I edited the POE for health based on your instructions and sent a copy to my lawyer for final review and she responded with the below comments. Should I change the way my POE for health is written? I also attached it.

"The health care POA section about life-sustaining treatment concerns me a bit. On the one hand it seems to want to give the doctors the leeway to withhold medical treatment if it artificially prolongs the dying process, but on the other it only gives authorization for them to do so when death is imminent, which is a very narrow contingency. I recommend giving the agent more power than that to determine what is right given the circumstances and the wishes of the person, and it would be possible to do so in a way that is still consistent with Islamic law.

But there is nothing wrong with the way you have written it as long as you understand the possible consequences."

Jazaka Allah Khair, Amjed

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I went through the text and the lawyer's concern very carefully, I DO STAND FOR THE TEXT AS IT IS and set aside her concern. The text is air-tied as defining death in Shari'ah: two scenarios: 1) death is imminent, artificial prolonging life and no recovery; 1) brain death and artificial prolonging. excluding the point of "imminent death" give room for helping a person to die be cause or no recovery, a point that we definitely want to avoid. We do not want to give a larger power for personal judgment knowing that most agents have average Shari'ah knowledge.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Samy, live fatwa

Sent: Sunday, November 23, 2008

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

Question: If I die, how my property will be distributed?

Assalam alikom I am Canadian citizen from Syrian origin living in Canada were Shariah is not applied. I have wife, 3 daughters, 3 married brothers, 2 married sisters, no surviving parents. I have house (where I reside with my family) worth 150.000\$ and a business worth 230.000\$. Ques. If I die without will and according to shariah- Irth Who takes what? (please specify names and percentage).

Wa assalam alikom wa rahmat allah wa barakatuh.

Jazakum Allahu Khairan for your constant he lp

Yours,Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mahmoud,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1. Please notice that the Islamic inheritance system is mandatory and it is given mostly in the TEXT OF THE QUR'AN itself. Please read verses 10-14 of Chapter 4 (Surah al Nisaa)

2. According to these Verses, and if the structure of your family is as it is now When you die and keeping in mind that the house and business and all other properties according to laws in Canada are actually owned half/half by you and your wife (I assume here that like most of us

you did not make a contract with your wife regarding any other division of ownership between yourselves), the Shari'ah distribution of your estate (that is one half of all the above) will be as follows: 1/8 to your wife, 2/3 to the three daughters equally between them and the remaining to your brothers and sisters on the basis of two shares to a brother and one share to a sister. This means that after death (May Allah give you long life in his obedience), your wife will own 13.5/24 of all the properties, your daughters 8/24 and your 5 siblings 2.5/24.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Samy, Islam on Line

Sent: Wednesday, September 03, 2008

Question: inheritance of Savings from Grandmother's Income Support

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

I am asking this question on behalf of my mother. My grandmother passed away very recently. All her children are grown up and middle aged. She had no other assets besides some jewelry and some savings from her income support. My mother was her career and responsible for her income and welfare. My mother wants to know if any money left over from grandmother's income support should be divided according to Islamic inheritance or if she is permitted from the Shar' to deal with it as she sees best, e.g. give some to charity or to needy family members. Jazakum Allah kheir for your time. Wasalam

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Yusuf

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Of course, the only way is to divide them according to inheritance rules unless all and every one of the heirs agrees otherwise. At the moment of death these properties became owned by the heirs as mentioned in the Qur'an

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Wael, Islam on Line

Sent: Tuesday, November 25, 2008

Question: Distribution of father's inheritance

Salams

Dr. Monzer pls. help replying this question we received from a sister:

Assalamu alaikum wa rahmatullahi wa barkatuhu, My father passed away leaving behind his wife, two sons and two daughters. When he retired from his job he got some money which he

invested in a flat. Today we intend to sell the flat and distribute the money with Islamic ethics. The house is worth Rs 1200000 (12 lakhs) today. Please let us know the share of each person. My father had 4 brothers of which 2 are alive now. Are they also eligible for the share Islamically.

Assalamu Alaikum. Sadia

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Sadia

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I understand from your statement that your father is survived by a wife, two sons and two daughters. Accordingly the distribution of all his estate, assuming he did not leave any Last Will (for charity and/or gifts to any person) and he had no debts that are due on the estate, is as follows: 6/48 (1/8th) to the wife, 7/48 to each daughter and 14/48 to each son (the rule is the remainder after the wife's share is divided on the basis of one share to a daughter and 2 shares to a son). Since there are sons, brothers of the deceased do not inherit.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Mushtaq

Sent: Wednesday, April 01, 2009

Question: Distribution of Heirs' Shares

Salam

Hope you are fine,

This is regarding the distribution of inheritance. One person died at age of 35, he has wife and two girl child, father, mother, 4 brothers and 2 sisters.

What is the calculation of inheritance?

Thanks in Advance

May Allah bless you for your great work

Musthaq

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mushtaq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

This you find on my website, schedule of Mawarith, under case 2 "survived by daughters". This case is called 'Awl where Shares are reduced proportionally: wife 3/27, daughter 1 8/27, daughter 2 8/27, father 4/27, and mother 4/27.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam
Prof. Dr. Monzer Kahf

From: adamu

Sent: Monday, October 26, 2009

Question: distribution to husband of deceased

Salaam,

Hope you are doing great. Please bear with my troubles.

I lost my elder sister some years back who was married without a child. During the cause of sharing her remaining properties, the husband refused to accept a single thing saying that he has forfeited everything for Allah's sake. This has been disturbing my aging mum seriously and coupled with other issues below, my mum has been seriously disturbed. Kindly help me with clarifications on issues below:

- 1) Since the Husband refused a bit of her belongings, who and who are now the likely heirs to her belongings considering that she left her Mum, the Husband (who refused to get a bit of the booty, three maternal brothers, two maternal sisters and 27 paternal brothers and sisters?
- 2) Our late Father's belongings are still being shared and since she is entitled to it knowing that our father died before her, what is the likely position of that?
- 3) My mother is of the opinion that since she (my Mum) is also not lacking, she will be contributing to Islamic growth as Sadaqah Jariah for the deceased. Is it allowed?
- 4) What are the best form of prayers and supplication that is allowed for a deceased relation and how is it performed or conducted?

Kindly please help me with guide regarding this issue as it will go a long way in assisting not only me but our entire family.

Thank you

Adamu

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Adamu

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1. Your father's belonging should be distributed between his heirs, surviving wife 1/8th (or wives 1/8th distributed equally between them) and remaining to all his all children (who were alive at the time of his death) at the rate of 2 shares to a male and one share to a female.
2. A person who does not want to take his/her share (including your brother in law from his wife' left belongings) has the right to choose to whom it should be given. This is his property and he can determine how and for what to use it. If he refuses to make such a choice, the deserved share should then be distributed to other heirs as if he did not exist (in other words, you re-calculate the shares of other heirs assuming that this refusing person does not exist; this is done after he refuses to choose its distribution).

3. The belonging of your deceased sister (including her share from the belongings of her father) should be distributed as follows: $\frac{1}{2}$ to her husband (applying what is mentioned in 2 above), $\frac{1}{6}$ to her mother and $\frac{1}{3}$ to her 5 maternal siblings to be distributed equally among them. Nothing is left to her paternal siblings. In case her husband does not make a choice about to whom his share should be given (he can assign it to any person including her mother and any sibling or strangers), the one half that belonged to him should be distributed to her paternal siblings, all of them, at the rate of 2 shares to a male and one to a female.
4. It is permitted for your mother, or any other heir, to give up her share to charity in the form of Waqf (Sadaqah Jariah) she may choose a good Muslim charitable organization and give it that amount with specific instruction to preserve the corpus and use its revenue for a charitable objective that she may decide. This is a charity by the mother but InShaAllah her deceased daughter will benefit from the good will and Duaa of her mother.
5. Any Duaa for the deceased is good, it should focus on asking Jannah and complete forgiveness for her.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Abbu

Sent: Tuesday, November 03, 2009

Location: India

Question: Distribution to heirs

Assalmoalaykum

thank you very much about answer my question

My maternal Grandfather has passed away, and now my maternal grandmother is confused about the distribution of the estate. In our case we have:

1 Mother

2 Son

3 Daughter

Someone has told my maternal grandmother that in Islamic, the whole estate is divided into 16 parts.

10 of which are for the 2 sons, and 2 for the 3 daughters; Is that possible?

That would mean:

25 % for mother

12.5% in 3 daughter

62.5 % in 2 son

Is this considered just on behalf of the daughters?

I hope you understand my question, please guide us to the right way of distributing the property.

Thank you very much.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Abbu

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Abbu

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If the deceased is survived by a wife in addition to these 5 children, the wife's share is 1/8 of his net estate (i.e., after payment of any debts, expenses of last illness, funeral, etc. taxes and the like), the remainder after paying the wife should be divided into 7 equal shares and you give 2 shares to each of the boys and one share to each of the girls. This means that each of the boys will get $1/4 (=2/7 \times 7/8)$ and each of the girls will get $1/8 (=1/8 \times 7/8)$ and the wife 1/8 too.

If the deceased is not survived by a wife the total net amount should be divided into 7 shares and each of the boys get 2/7 while each of the girls gets 1/7.

This is exactly according to Verses 11 and 12 of Surah 4 in the Holy Qur'an.

What you were told is incorrect and contradicts the Qur'an.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Samy

Sent: Sunday, November 08, 2009

Location: United States

Question: Distribution to heirs

Salam Alaikum,

Also if you could please tell me if I have a Wife, Son, Father, Mother, and 3 Brothers. Would my Brothers Inherit anything from me?

Jazakallah

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Samy, Islam on line

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The case as you described it, should you die, each of your parents takes one sixth, your wife one eights and the rest is to your son, your brothers do not inherit anything. Remember if you live in a country where the normal practice is to have properties in names of husband and wife together, we always consider half of such properties owned by each of the two. This means that for all such properties the above rule applies to one half only as the other half is owned by your wife.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam
Prof. Dr. Monzer Kahf

From: Syed

Sent: Saturday, October 30, 2010

Question: Inheritance distribution

Dear Dr. Kahf,

Al Salamu Alaykum Wa Rahmatullahi Wa Barakatuh. Only Allah can reward you for your work for the Muslim brothers and sisters, and we pray to Allah to reward you with Paradise and success in this world and the hereafter. I have gone through most of your answers on the website and the documents for the living trust and will, but I still need your help in making sure that I have understood things correctly.

- 1- Any property, bank account, investment account (non-retirement) held as joint owners (legal title) by husband and wife are equally owned by the couple i.e., 50:50, if the shares in the property are not defined. It does not matter if only one spouse has an income?
- 2- In above situations on the death of one spouse, rules of Mawarith will apply to his/her 1/2 of the share in the property. The other 1/2 belongs to the surviving spouse. ?
- 3- In situation #2 According to the rules of Mawarith the surviving spouse will inherit further from the spouse that has passed away. For e.g. a house jointly owned by husband and wife after the death of husband, wife owns 1/2 of the house (as her share of the property) and further inherits 1/8 as her share of inheritance from her husband?
- 4- During the life of a couple a husband can gift to the wife and if the asset is solely in her name than it again is her private property and on the death of her husband she retains possession? Same is true for gifts to children?
- 5- Children education accounts (529 plans in USA) children are stated as beneficiaries but the ownership is with the participant (for e.g. the father). On the death of the father how should these plans be dealt with, i.e., do they remain the property of the children or do they have to be distributed as per Mawarith rules.

And for 529 plans, can I declare them as being gifted to each child (I plan on putting up equal amounts among boys and girls). I am trying to find a solution in Shari'ah that will give me the option of funding the kids' education and the amounts not to decrease for the girls.

- 5a- Distributions per Mawarith to minor children can/should be held in children's trust until they reach age of 18?
- 5b-Also, for unmarried children are 18 years or older, can/should one hold off distribution of their share until a later time (until they get married, or get more mature to deal with the inheritance)? We want to understand and do as per Shari'ah.
- 6- Life Insurance policies placed in a trust will pass on to the beneficiary/ies outside of Mawarith ?(as I understood from your answers that even though they are in the name of a single person but it is not in possession in the lifetime of that person)
- 7- I am a part owner of a business which provides professional services but does not hold significant assets. The share of each partner is fixed but the value of the share is based on a formula that in large part takes into account the good will of the company and estimation of profitability. So I cannot know exactly what will be the payout (if any) at my

death (or retirement). It will be calculated at the time it becomes due. The share is in my name with my wife as the beneficiary. Should the payout of my share, be distributed per Mawarith? I plan on placing my share in the trust.

My share in the firm is held in my name as sole owner with my wife as the beneficiary. By application of community property, will go 50:50 between me and my wife upon my death and Mawarith will therefore apply to the 1/2 belonging to me? Also if my wife is to pass away before me for the above asset (partnership in the firm) since the value will not be known to me and even if we calculate the value I cannot get a payout until I retire or die how would we address it for her heirs.? And is it allowable to gift my share of partnership (or a portion of it) to my wife in my lifetime.

I want again thank you in advance may Allah give you the highest rewards for your efforts and time.

Wassalam,
Syed

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Syed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please see below:

- 1- Correct, it does not matter who paid for that item as long as you do not have an agreement between you to divide this item otherwise
- 2- Correct.
- 3- Yes, correct.
- 4- Correct. But you should also observe the law. In some states these gift between spouses are still community property unless there is a written agreement otherwise, check with a lawyer. If this is what is meant by the gift (to make it owned solely by the recipient even after death then it is better to be sure that the law uphold it, it is permissible Shari'ah wise) Gifts to children are required to be fair between them regardless of gender.
- 5- As long as one can change one's mind about such funds during life, they must be treated as Mawarith at the time of death.

You can declare them now as gifts to each child by name, with equal gifts to boys and girls, they become owner from the day of gift and these funds are theirs regardless of its use as this will be a matter between them and the tax authority if they use the funds for other purposes. They will be subject to Zakah by the owners, but you still can pay it on their behalf.

5a- Yes

5b- No, according to Shari'ah death incidence transfers ownership of the property and the deceased has no right to decide for the living. If anything is needed it must a decision of a judge at the time as in case when a person is not wise sufficiently to be responsible for managing the property.

6- This is correct, still fairness should be observed.

7- Yes of course, subject to Number 1 above.

But leaving the shares as is may make it a little ambiguous. I suggest that you better make clear now by a document between you and your wife: either make her the owner in full and you still work and get your share on income. Or make it clear that she is not a beneficiary but in fact half owner, or make it clear that she is not owner at all but beneficiary in a sense of being agent to make the procedures easier so that she can take quick action but it is only owned by you and this share in the corporation should be subject to the rules of Mawarith as your own estate solely. I understand that it is not an easy matter. But since it is in both names she owns that one half and if she dies before you her heirs including you, become the owners of it. You will need to estimate its value at that point. Suppose you quit and travel to another city, of course you will sell your share in this professional corp. Alternatively, you may buy her share now in this corp (that actually depends on your personal professional service/contribution) for another property that you both agree becomes all hers and get out of this potential inaccuracy. Another alternative, if you have children surrender your both shares to your children now as gift (remember then equal shares to boys and girls not like inheritance) and you still derive your income anyway from your work in this professional corp.

And yes it is allowed to gift my share of partnership (or a portion of it) to your wife

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Akhtar

Sent: Tuesday, February 22, 2011

Location: Pakistan

Question: Distribution when both parents die together

Respected Sir,

Hope you would in good health,

Suppose a person died along with his wife in a road accident and left US\$ 1000/ what would be the share to the following

One Daughter

Three Sons

A Mother

Regards

Akhtar

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Akhtar

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The estate question is straight forward as mentioned in the Qur'an in 10 and 11 of Surah 4: the mother takes one sixth (7/42 of the total) and the remainder will be divided in 7 share, one share to the daughter (5/42) and 2 share (10/42) to each of the three boys. Of course this is on

the following 3 assumptions: 1) the property is owned by the husband alone, otherwise we need to know how much was owned by each; 2) they husband and wife died at the same time and there is no evidence whatsoever to indicate that one he died before her, so that we exclude any inheritance one from the other; 3) there are no other relatives especially father or father of father.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Rina

Sent: Monday, November 28, 2011

Location: Bangladesh

Question: distribution of estate without a will

Dear Mr. Kahf:

Assalamualaikum Wa rahmatullah. You have helped me and my husband in the past making our living will according to Shari'ah, now I'm writing to you for some suggestion for my family. I hope you'll be kind enough to outline some suggestions and may Allah give you the best rewards for it. I'm sending the email as cc to my brothers and sisters as well for their participation and awareness.

My father passed away a few months ago in my home country Bangladesh which is a Muslim majority country, he left behind my mother, two sons and five daughters including me, my grandparents passed away long before. Unfortunately my father didn't leave a written living will, however it seems that he expressed some verbal wishes at some point to some of the family members. He has three properties which he verbally told to divide as follows:

1. One commercial property (a factory building which is rented to a business) to his two sons (my brothers).
2. Another commercial property, 10 units building (also currently rented to businesses), to be divided among the five daughters (one unit for each daughter = 5), wife/my mother (two units = 2), two sons (one unit each = 2) and one unit for charity.
3. Three residential apartments/flats which to be given to two sons/my brothers and his wife/my mother (one each).

The values of the properties are different.

We like to get your input whether this is compliant with Shari'ah, if not, is it permissible to keep it this way or we need to do it over again. In that case we request your suggestions to find a method that will make it Shari'ah compliant and my father would be free of any fault to Allah, InShaAllah. All of us want to do it the best possible way so my father will get the best reward from Allah and not become accountable.

May Allah grant you the best rewards and Baraka in your time.

Rina,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Rina and her siblings

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I start with prayers for your father for blessing and forgiveness.

Then I am sorry to say that this verbal will is in violation of Shari'ah; it is a great sin on his behalf and a greater sin on behalf of you if you implement it.

I call on you all to read verses 4:13 and 14 and notice how sinful is to make any change in the terms given in Verses 11 and 12 of the same Surah. You father will InShaAllah be forgiven on the ground of ignorance with good intention and I believe you can help him in making it right. Further it is Haram and a great sin for any heir, especially you, his children to take anything beyond the shares assigned to you by the Verses 4:11 and 12. Which are so clear that do not need explanation. Of course after each of you becomes owner of the share assigned in the Qur'an, you may give each other whatever you like as gifts.

Remember that according to the Islamic system of inheritance as mostly given in the above mentioned verses, property transfers to the heir the moment the deceased dies. In other words, it is transferred by Allah not by your action of division and distribution. Accordingly the new owners can do anything they desire provided they know that they now become owners and take decision freely. In other words with the agreement of every one of the heirs you can give each other any additional amount.

Also notice that property is divided by value only.

Before I make a suggestion I suppose that Bangladesh must have an Islamic inheritance law that does not allow any other distribution for Muslims except according to Shari'ah or with full consent of the new owners

My suggestion:

1. Have all the properties evaluated fairly by some of you or by an outsider as you all agree on.
2. Execute the father's will to give to charity; it seems it is well within the maximum permitted in Shari'ah which is one third.
3. Shares of heirs are as follows out of remainder after giving the willed charity flat. Clearly the heirs are only wife and children and these shares are given exactly in Verse 4:11-12: mother $1/8 = 9/72$, each of the 5 daughters will take $7/72$ (one ninth of the remainder after share of mother) and each of the sons $14/72$. Distribution is according to value.
4. The verbal will is disputable but I suggest that you all (siblings and mother) agree to avoid its disputing and implement it fairly between you so that you assign, with full consent of all, whatever property the father like it to be assigned, to the assignee and he/she pays/receives the difference cash to/from other heirs.
5. Any one of you may forsake to any other whatever she/he likes. This is considered gifts between you.
6. Your mother's living and happiness is the responsibility of all of you. Fulfilling this depends on your financial and physical ability. Remember that her pleasure with you is a path to Jannah.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Dying Intestate

From: Ayesha

Sent: Wednesday, July 09, 2008

Question: Husband dying intestate

This is Ayesha. I pray this reaches you and you're in the best of health and imaan.

As you recall, I have been patiently reminding my husband for the last year to review and complete the Islamic estate planning documents with a local estate attorney. Obviously, he is a chronic procrastinator. May Allah (swt) guide him, ameen. My question is if he dies intestate (without a will), what am I to do with his debts and assets? I found the following article for PA and I am checking with a local estate attorney.

<http://www.scribd.com/doc/240041/Dying-Without-a-Will-in-Pennsylvania>

I stay at home with our twin girls (13 months, mash'Allah), and I do not work, and have very little cash reserves built up. My husband has other children that are not living with us: Fatima @ 29 years; Mariam @ 27 years and married, Omar @ 5 years and Layla @ 3 years; Yahyah @ 21 years; Suhaib @ 20 years; Sumaiyah @ 18 years.

I am aware of U.S. Social Security benefits for survivors (wife and children < 18 years) which I could collect to supplement my low income salary bracket (high school education only with a few college courses completed (do not have the time because of the children's age, nor the financial resources to continue studying at this time) for myself and the twins. And he has property in MD via Guidance Residential with 10 years payments remaining, and is in the process of being rented out with. He also has a personal loan from a friend overseas that is invested in the same property. I contacted Guidance and asked them what do we do if he dies intestate, and they said that they would try to work with us, which was reassuring, provided we can afford to live in it.

I personally have very little cash saved and do not work at this time. My intentions are that once the girls are older and in school, I plan to work towards my Bachelors degree with www.aou.edu, as well as work part-time to save money for a rainy day, insha'Allah. However, death always comes suddenly and unexpectedly, so I want to understand what are the Islamic rights and duties, if he dies intestate?

And I believe that the other children would forego their inheritance claims on the Social Security benefits and the car, because they know that I am caring for the young twins and have not completed my university classes, and do not have family to rely on. What is the Islamic stance on a situation such as this, and what are your recommendations, please?

Ayesha

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Ayesha

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If a Muslim in Countries that don't have Islamic laws of inheritance dies intestate the close relatives, especially those who have any legal power on the estates must do their very best to distribute the estate in accordance with the Shari'ah. This is because the inheritance system is mandatory on both the deceased and the heirs.

Now, let us apply this to your case, of course after making Du'a to you all that you enjoy a long life with Taqwa, faith and good deed. Should your husband dies under the circumstances that you mentioned in your email, you are required by the Shari'ah to implement the Islamic inheritance law. It is as follows:

1. Social security and any similar benefit that was not a property owned by the deceased during his life time is not subject to inheritance because it is a right to the spouse and minor children (and you are their guardian) that arises only as a result of the incidence of death. This does not apply to an IRA, 401K and the like because these were owned by the deceased while alive.

2. Other properties including residence, net after settling debts (including guidance and the like), expenses and taxes should be distributed according to the schedule of Mawarith (your share is 1/8, and rest to his children on the ratio of 2 to 1 males/ females, it does not matter single or married, young or adult. Of course any property that is in both names, yours and his is assumed owned half/half. This means that only one half of such properties (including a family car, etc.) is subject to distribution. Any heir who forsakes his/her property will be dropped from distribution and her/his share can be given either to all others (i.e., simply do not consider this person in distribution) or to any other person assigned by the disclaimant (she/he has the right to give it to any one heir or not because deserved share is a personal right).

I hope I answered all the worries, but please come back if there is any further clarification.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Inheritance when there are undesired heirs

From: Leila

Sent: Monday, January 07, 2008

Question: Inheritance shared with a Safeeh brother

Asalam alaikum,

My name is Leila. I wrote you earlier because I needed your wisdom and advice on inheritance matters. My father passed away recently, Allah yerhamo, and I am having difficulty understanding the law of how his estate is to be distributed InShaAllah, and I'm hoping that if I explain my situation, you might be able to give me valued advice. We were all raised as Muslims, and always lived as humble people, and did not change our way of living, even when we became more financially secure. My family now consists of our Mother, brother, one sister and myself. Our concern at the present is my brother. (33 years of age, and Safeeh.)

1. Our father (God rest his soul) has no debts of any kind, and we have all agreed that a third of his wealth will be given to the poor, and charities to follow in his footsteps of what he was like when he was living.

2. That being said the rest of his estate is mainly tied up in family investments overseas. Before he passed away, Allah yerhamo, he told the individuals with whom he had invested his money with that if God forbid, something were to happen to him, (since his health was failing and he wanted to settle his affairs) That my sister and I would be given his estate to manage, since our brother isn't at all responsible to do so in his present state of mind. There was nothing in writing because my father trusted the members of his immediate family and told enough people. He believed that they would honor his wishes. He said that (my sister and I) would never have to worry about people following his wishes and his living will being honored. Since he had many witnesses (5 men and one woman, plus my sister and myself), to follow out what he wanted done. The reason for my concern about my brother's share is because he is not in the right state of mind to handle financial matters. My father knew this and also knew that he would not take care of us, which is why he intended for my sister and me to be secured with our inheritance and entrusted with the responsibility of holding his share until he showed improvement by going back towards Islam and following the right path. My brother is 33, my sister is 29 and I am 26. None of us are married. My brother unfortunately doesn't seem to have good moral judgment or behavior, which is where our problems lie in regards to him. Money has no value to him, or what is done with it, and is currently facing a debt of over \$25,000 in this last year alone by credit cards, because of his immoral addictions He had not spoken to my father in last 4 years. Since the last days of my father's life he did not give up on him and continued to try and help my brother by encouraging him to go back to school and make something of his life. The last time my father and brother spoke was when he was trying to encourage my brother to save money and told him that he would match whatever he saved and put in towards a down payment towards a house... My brother's reaction to this generous offer was telling my Dad that he couldn't tell him what to do and my brother left the house. That was the last time they spoke. I know these are minor details, and perhaps are not important to mention, but I want you to see where my father was coming from. My father always told us that he did not want my brother to be given any money UNLESS he returned to Islam. Although my father was well off, he lived a humble man and donated a lot of his savings to the needy. This is the main reason why I am having such difficulty thinking that the money my father worked so hard for and tried so hard to save is going to go to my brother who will spend it on a prostitute. This is what confuses me about the normal division of inheritance with the most going to the son. Isn't the son supposed to be given more than the girls so he can take care of the family? My father had been out of the country for the last 2 years, and in that time my brother has never helped in any matters when he was desperately needed. I just don't understand how things are to be divided where the son gets double what the daughter does due to the fact that he is a male but is not acting like a man. If I don't follow Islamic Law on the division of inheritance under these circumstances, will it be my father's soul to face the consequences of the grave or will it be mine? I want to make the right decision with the all factors taken into fair consideration. Please contact me at your earliest convenience. I would really like to resolve this matter as soon as possible, so that his soul can be at rest.

Thank you so much for your time and for your wisdom may Allah reward you and your family.
Wasalam alaikum, Leila

My answer

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Leila

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Or should I call you daughter if you accept, you are the age of my fifth child! We need to know a few important points that are a little general before we come to this direct discussion of this situation:

1. The Islamic inheritance system is obligatory; it is a must for every Muslim. Please refer to the Qur'an: last sentence of 4:11, 4:13 and 4:14. It has of course objectives, but these objectives are general and may not exactly apply to each case, they apply in general. So that when, by our personal judgment, we may feel that one of these objectives is not coming through we still have to implement the system as it is given in the Qur'an regardless of our judgment. We cannot avoid but implementing it, otherwise we are violating the commands of Allah and exposing ourselves to 'Adhab Muhin in the Hell Fire for ever (4:14).
2. One of the important rules of ownership in Shari'ah is that a person is completely free and fully authorized to do whatever she/he likes with one's property as long as one is alive. This means that a person can give to anybody whatever she/he likes and no potential heir has any right to limit that authority of an owner.
3. But once one dies, the property of the deceased goes immediately, and by virtue of the incidence of death itself, to the due heirs as mentioned in Verses 11 and 12 of Surah 4.
4. Another important rule is that there is no inheritance between Muslims and non-Muslims. If a kin is not Muslim, he/she must not be let to inherit from a Muslim. In all Muslim countries this is done by the law, and here in the West we must do it by a Last Will. In a Last Will a Muslim, who lives in the West, must abide by the inheritance system and may not change it at all (because it is mandatory). But a last will gives the opportunity to distribute to non-heirs (such as a non-Muslim wife or charitable organizations, etc.) a max of one third. Even if a person made distributions to non-heirs in a last will of more than one third all such distributions are reduced proportionally to one third.
5. Another basic tenet of our religion is that: since we don't and can't know the inner of a person we must only make our stand on the basis of crude rules that deal only with what we can see. Here we go by the definition of a Muslim. a Muslim is a person who does not deny any thing that is known as, by definition, a part of this religion. Examples are the five pillars, any letter or word from the Qur'an, etc. Consequently, a person is considered Muslim, even with all kinds of sins, unless we know for sure that this person denies any part that is necessarily known as a component of our religion.

With these points in mind let us come to your specific situation:

1. Your dad, Rahmatu Allah, did not make any Last Will; therefore there is no distribution of the estate to other than heirs, unless the heirs voluntarily decide to undertake such distribution. Since this is voluntary, it cannot be forced on any one, this means it cannot be

taken by majority vote. You mentioned that the heirs, Masha Allah wanted to continue giving to charity some amounts, this is fine and rewarded by Allah Insha'Allah and your Dad will Insha'Allah get increased Hasanat from the actions and prayers of his righteous children and heirs in general.

2. The estate has to be distributed according to verses 11 and 12 of Surah 4, including your brother and as mentioned in these verses. That is: 1/8 to your mother, 5.25/24 to each of you and your sister and 10.5/24 to your brother. Whatever the present behavior of your brother does not disqualify him from inheritance; he is still a Muslim unless he denies any basic part of the Religion. A person who does not pray, out of denial is considered non-Muslim but if he does not pray out of negligence he is still a Muslim, even if he spends on prostitutes. These are sins and grave ones no doubt about that but they do not remove a person from being a Muslim.
3. Your letter mentioned that the entrusted persons overseas would be willing to hand you, with your sister, the property that is overseas. When you take this property, it becomes an Amanah in your hands subject to distribution. You mentioned that there are no debts on the estate, then after any expenses, taxes, etc., this Amanah in your hands, along with whatever other properties that are here in America must be distributed to their right owners. Remember they become owners, according to Shari'ah at the moment of death not at the moment of distribution. Therefore keeping the estate undistributed amount to holding unrightfully the property of other persons. YOU MUST NOT DELAY THE DISTRIBUTION because this is a sinful act.
4. If any of the three of you, the females of the family, Mother and two siblings, needs expenses for living (that is, if you do not work and earn your living or your income is much less than needed expenses and your share of the inheritance does not make you well enough to support yourself for the time being, say up to a year) your brother, from his work and/or from what he inherits, becomes financially responsible for supporting those among you who are in need. Under such circumstances you may withhold a part or all (as much as needed) of the share of your brother until you are satisfied that he will shoulder his financial responsibility, and use out of what you withhold to fairly cover such financial responsibility. BUT IF YOU DO NOT NEED SUPPORT, INCLUDING YOUR MOTHER, YOU MUST NOT WITHHOLD ANY THING. Financial responsibility for mother and sisters depends on their needs. Rich mother and sisters do not qualify for financial support from their son/brother.
5. If your brother is as you described him (Safih), can you perhaps try to convince him, may be with some family pressure, to have his share of the inheritance put in a trust under the trusteeship of some family elder, so that he keeps it for his old age and when he becomes more responsible. . .
6. Finally, it is certainly your sin if you don't follow the mandatory inheritance system. But if your father authorized you to have your hands on some of the estate, as it seems about property overseas, He has his share of this sin too.

Please do not hesitate to write me again if you feel I may be of any help.

Wa Allahu A'alam

Wa Al Hamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Sami

Sent: Thursday, January 22, 2009

Question: inheritance with bad-behaving brothers

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

Following is a financial question:

I'm writing my will and need your advice. I have 3 sisters and 2 brothers. One of the sisters is disabled and will need to live with another sister who is married with 2 children. My two brothers have not been good to their parents in obedience or in providing much care, attention, or financial support. They hardly do anything for their 2 sisters. One of the brothers is married with 4 children and he's financially doing very well. The other brother is 40 yrs. old, unmarried, and is not working although he lives in a room within my parents houses' walls. He wants it that way. Must I distribute my wealth to them according to Shari'ah, a brother receiving twice the sister, or because of one sister's additional responsibility to take care of the disabled sister and the fact that the two brothers have not been loyal and good to their parents I can spend the inheritance as needed giving the sisters more than the brothers or not giving the brothers at all? I need your help as soon as possible. My parents are still alive but ill and they have decided officially in paper written by Imam to forego their share from my wealth to my wife. All my brothers and sisters decided to sign the same paper.

Jazakum Allahu Khairan for your constant help

Yours,

Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sami

Please notice the following:

1. The Islamic inheritance system is mandatory. Allah Subhanahu Wat'ala described it in the Qur'an as an Obligation from Allah and set a punishment in the Hell Fire forever for one who transgresses the terms of inheritance. Please refer to Verses 4: 10-14. Inheritance means the distribution of one's estate after death. Any Last Will that is in violation of the terms given in the Islamic inheritance system (its essentials and most frequent cases are given in the Qur'an especially those verses that I mentioned and there are a few explanatory points and some more details given in the Ahadith) is not valid and must not be implemented. If you live in a Muslim country, the law itself invalidates such a last will.
2. Allah, as a mercy from him allows us to make a last will within a maximum of one third of the net estate (after debts, expenses and taxes if any) for charitable and similar causes provided that such a last will does not disturb the distribution given in the Qur'an. This means that through such a last will you cannot assign any amount to an heir (e. g., to your sister that needs special care or to the sister that helps her).

3. On the other hand, while alive one can do anything that pleases one with one's property. You can, now and at any time while alive give any amount or property to your needy sister or to anybody else. You can also create a Waqf (endowment) for the benefit of the needy sister or any other person provided you do all these while alive and capacitated.
4. One cannot surrender a property or a right that one does not own. They do not own any share in your property now, how come they sign such papers and how come the Imam accepts such a practice?! This means that whatever your parents and sibling signed or gave up now to your wife regarding your estate after you die is not valid. This does not stand in any Shari'ah or civil court even under Western civil or common laws! However this only represents a promise that they may honor or not after they own shares in your estate.
5. Finally what I suggest to you is: a) if you really care for helping your sister that needs a special care and one that helps her, give them a gift now or make a Waqf for them now. You can make a Waqf to their benefit that will be liquidated overtime so that they will benefit from the principal and income for say 20 or 30 years; b) if you live in a country that has Islamic inheritance law (all Muslim majority countries except, unfortunately, Turkey). India, Singapore, Kenya and may be some others have Islamic inheritance laws, leave it without a last will and the law takes care of the distribution of estate unless you like to give something for charity within a maximum of one third. If you do not live in a country that has a Muslim inheritance law, YOU MUST prepare a last will or any other suitable document that requires distribution in accordance with Shari'ah. You may consult my website www.kahf.net for some details of these documents. c) if you live in a country of community property your wife already owns one half of the properties you have together but if you live under laws that do not have this arrangement and you care about leaving a legacy to your wife, change records on some of your properties to the exclusive name of your wife now while alive. (from lack of mention of children I assume you do not have children, the share of your wife will be only one fourth of your estate, the rest goes to your parents, and siblings take nothing. But if your father dies before you then your brothers and sisters inherit the remainder after giving one fourth to your wife and one sixth to your mother)

Please check with a social specialist for other matters of disobedience to mother and interpersonal relations of the siblings, I am not qualified to give advice in this area.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Inherited property gifted to one Heir

From: Syed

Sent: Monday, January 14, 2008

Question: giving inherited property as a gift to one heir

Dear Sir,

I have a question regarding inheritance of parental property.

My father left behind a property without any Will. The father's house where we (myself, my 5 younger sisters & my mother) were staying, is happily & willingly gifted to me by all my sisters & my mother few years back without taking any share of it. This decision was taken collectively & whole heartedly by all of my sisters & mother (except me I.e. in my absence when I was abroad) and this happened few years after my father passed away. I (by the help of Allah) was the bread earner for my mother and then the 2 unmarried sisters staying with me. Also, by Allah's grace, I was able to perform my two sisters' marriages and still my mother stays under my responsibility. A year later of gifting the house to me, I sold the house on my wish to buy another good and large house by investing additional money out of my earnings. Until now there have been no issues about the inheritance of the house between us, siblings and our mother. All are happy and firm on their decision of gifting my father's house ONLY to me. But yet, is it obligatory on my part to share the value of house I got on selling it couple of years back between my sisters and mother? Or is it ok that the shares are not distributed between us as long as my sisters and mother have no objections & happily wanting me to keep the entire value of the property? Please advise me in light of Hadith & Shari'ah how it should be dealt?

Thanks and regards,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina

Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Iliays

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

One thing I must begin with is that Allah will InShaAllah reward you a lot in this life and in the life after for taking care of your mother and sisters and getting them married. All these excellent deeds will be multiplied to you By Allah. You must also remember to continue take good care of your mother both personally and financially. Once a person dies her/his property's ownership is transferred to the heirs by effect of the incidence of death. This means that you and your five sisters and mother became the owner of all properties, including the residential house you mentioned upon the death of you Father. Therefore their gift to you is valid as long as, the way you said it, it was not by personal or social pressure and it came out of their love to you. This gift is valid and you need not be worried about giving any part of the sale value to them. I want to add at this point that it is of course that you give gifts to your sisters, all of them, and mother in appreciation to what they gave you, not as a required reciprocity but as an expression of your love to them. Our beloved Prophet advised "give gifts to each other, so that love flourishes among you." Finally other properties (that were not given to you by the new owners) left by your father should be distributed according to the Islamic law of inheritance regardless of whether he left any will or not. This distribution is given in the Qur'an [4: 11&12]. That is 1/8 to your mother, 1/8 to each of the 5 sisters and 1/4 to you.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Property of deceased in name of another

From: Samy, live Fatwa

Sent: Thursday, October 09, 2008

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

Question: Deceased husband's property in name of his father

I was widowed after 4 years of marriage. I had a 2 years old daughter and a son 9 months, when my husband passed away. My husband was the only son of my father-in-law with 4 sisters. My husband bought a piece of land to make a house which he registered in my father-in-law's name as he thought that since he had no brother it will be ultimately his, but unfortunately my husband died in a road accident. I went to live with my parents along with my children but kept in touch with my in laws. Two of my sisters-in-law are married only one of them having 4 children whereas one of the unmarried recently died. Now I want to ask what proportion of each of us will inherit since the house is in my father in law's name. I never remarried.

Visitor Notes:

Please give me a detailed answer giving exact proportion of our share. Scholars in Pakistan now say that grandschildren do have a share in grand father's property by Ijma/Ijtihad.

Jazakum Allahu Khairan for your constant help

Yours, Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Saeeda

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

First let me give you the inheritance rules from the properties of your late husband: All the estate of your late husband, after paying any debts that may have been on him and any funeral expenses (and also if there is any Wasiyyah he may have made), should be divided as follows (assuming that his mother is also alive): 1/6 to his father. 1/6 to his mother, 1/8 to you and the remaining 13/24 in three parts, two part of them for your son and one part for your daughter. If your husband was not survived by his mother, just forget her share and the remaining 17/24 is for your two children in the same proportion. This rule apply to the lot purchased by your late husband provided that your father in law recognize it as his son's property or you can prove in court that your husband really owned it and it was merely recorded in the name of his father.

When your father in law dies his estate (after debts, Wasiyyah and any expenses) shall be distributed as follows: A) if he is then survived by his wife, his three daughters and your two children, the distribution will be as follows: 1/8 to his wife, 7/40 to each of the three daughters, 9 and 1/3 out of 40 to your son and 4 and 2/3 to your daughter, B) if he is not survived by his wife: 3/15 for each of the three daughters, 4/15 to your son and 2/15 to your daughter. you do not inherit any this from your father in law. Of this rule applies to the lot of land if your father in law does not recognize that it was really owned by your late husband or it is not proven so in a court of law. Please notice that this solution is in accordance with the prevailing opinion is most

Arab countries (that grand children from a deceased child inherit from their grand father within the concept of obligatory Wasiyyah. I am glad to hear that this is becoming also accepted in Pakistan.

You must notice that the fact that you remained unmarried (or if you get married) has no effect on the distribution and the financial guardian of your children can be your father in law (unless proven unfit for that in court) then next financial guardian is you. Also notice that the fact that any daughter is married or not does not affect her share, unless she dies in the life of her father and and is survived by her own children, like what happened to your late husband

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Muslim/non-Muslim inheritance

From: Haider

Sent: Monday, January 28, 2008

Question: Can a non-Muslim mother inherit?

Assalamu Alaikum

I am a New York licensed attorney helping to handle an inheritance matter and was hoping you could help me with a simple question. A decedent Muslim has left his estate to be divided according to the Shari'ah, along with a schedule. The schedule is a typical Mawarith schedule, but the real issue that arises is that the decedent's mother who would otherwise inherit under the schedule is not a Muslim. The Mawarith schedule itself says nothing about this issue, but some are contending within the family that the Shari'ah does not permit a non-Muslim to inherit under the Fiqh. Is this true? Is there any disagreement among the Ulama on this point? Any advice you have would be most appreciated.

Haider

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Mr. Haider

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

It is true that a non-Muslim may not inherit from a Muslim no matter what the relationship is. This is to the best of my knowledge is the ruling in all schools of Islamic Jurisprudence, including the four of the Sunni and the two of the Shi'i. On the other hand, according to Shari'ah, it is permissible for the testator to assign a maximum of one third to non-heirs. Such assignment may be to a charitable organization, a stranger, a relative non-heir (like children of a living child), a non-Muslim, relative or not. This testator giving must be in a last will and it is valid to a max of one third of distributable estate (after debts and expenses). If the testator assigns a total of more than one third, only one third should be distributed proportionally. The schedule of Mawarith is meant as an attachment to the form of Last Will or Living Trust that is suggested

on my website, this info is mentioned in these documents themselves. This is the reason why it did not appear in the Schedule of Mawarith.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Wael

Sent: Wednesday, August 26, 2009

Question: Inheriting from non-Muslim

Salams

Dr. Monzer, pls. help replying the following question:

Assalamualaikom, I am a Muslim woman married to a Dutch man for 8 years and has a daughter of 5 years. My husband was a Christian but converted before our marriage. Now he started saying that he really never converted for real and has been always a Christian. I am going for divorce and planning to go back to my country of origin InShaAllah, my questions are the following:

- 1- I need some financial help to buy a house for me and my daughter; can he take a loan from a bank dealing with Riba (he will take it to give it to me)?
- 2- He will pay for his daughter every moth a given amount of money, is it Halal money as he is non-Muslim?
- 3- Whenever he dies does Islam allow his Muslim daughter (InShaAllah she will be brought up as a Muslim) to inherit him as he is non-Muslim?

Jazakom Allahu khairan and don't forget me with DUAA hatta yuthabbetni Allah.

Wael

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

May Allah help you and give you the strength to hold on to His Straight Path.

- 1- If the father of the girl takes a loan on interest and give you the money, the Riba is his responsibility and you take the money free of Riba. It is Halal to take this money and use it to buy a house.
- 2- It is also Halal to take the money you need for the girl and for yourself from the father as long as you are the care taker of the girl until she grows out of your need and out of his need. This money is the father's responsibility even if he turn back from Islam.
- 3- If the non-Muslim father and his Muslim daughter were living under Islamic family law, she does not inherit from him. But if he lives under Dutch law and you and the girl live in a different country she can take whatever he assigns to her in his Last Will (by the way, you can also take anything he assigns to you too) or by law of his land because this is not considered inheritance. This is a last will and Shari'ah does not apply to him, he can assign anything to anyone. Also getting by virtue of the law of his land is not inheritance (from

Shari'ah point of view) because our inheritance system does not apply to non-Muslims in their land. In fact, it is not fair to apply our laws to them in their land.

I like to add that there is another face to this matter, in this special case where the father turned from Islam back to another religion. Is it permissible to do so? If it is not permissible, then we only recognize this change of religion in matters that do not affect the rights of others. In other words, his responsibility toward his daughter and her inheritance from him goes by the Shari'ah but his living with you goes by his turning back to other religions.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Almas

Sent: Sunday, April 25, 2010

Location: United States

Question: I have a Hindu family

Assalamu-alaikum wa Rahmatullah wa Barkathu

Dr. Kahf,

Jazak Allah khayran for all that you do for the Ummah. May Allah (swt) reward you in this life and hereafter.

I am a simple question on inheritance. I attended your seminars in Marriage and Will last year in Orange County. I know the turnout was disappointing, but Alhamdulillah, I learned a lot.

I have wanted to prepare my last will since then, but have a confusion about my heirs. I have gone to your website and tried to find the answer, but have not been able to.

I am a 33 year old single female convert from Hinduism. I have no children of my own. All of my blood relatives are alive, Alhamdulillah, but they are not Muslims. I am healthy by the grace of Allah (swt) and intend to marry, InShaAllah, whenever someone comes into my life. However, for now, I do not have anyone in my life that leads me to believe that I will marry soon, so I feel that I need to prepare a will for now, just in case.

I have both of my parents alive and I have one younger brother (30 years of age) who is married and has one daughter, age 3. Of course, then I have all the aunts and uncles and cousins on both side of the family. The question is if my parents are alive, can I leave everything to them? How does the limit of 1/3 to non-Muslim relatives apply to me if I don't have anyone else?

I have been told that basically I have no heirs, I would love to pass whatever little I may have to my family, including my brother and his wife since they are the ones who take care of my parents and do not take any money from me. I earn more than both of them put together and I live far away, so I don't even help physically. But they both make my parents live with them and do not take any money from them either. How can I include them in the will?

Jazak Allah khayran for your time in advance.

Sincerely,

Almas

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Almas

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I remember you very well and understand your dilemma and I have no answer other than the one third.

InShaAllah you will get married and will have children who will inherit you after a long life.

For now, you can give your parents any amount as gifts, same to your brother, his wife and his daughter.

You can also create a Waqf (trust), by actually transferring property or funds to it to the benefit of your parents and any other member of the family regardless of religion, but creating a Waqf means taking these properties from your ownership forever, and keeping it forever too to the benefit of the beneficiaries. This is why you shall need to assign a final beneficiary after all persons that you name expire. A final beneficiary can be an organization like CAIR or a local Islamic center.

Finally for the Last Will, you can only give a maximum of one third of the estate to all none-heirs (non-Muslims are non-heirs by the Saying of the Prophet pbuh) and you should assign the remainder to an Islamic organization such as CAIR, ISNA, local Islamic center, and the like. This is what applies on inheritance (property left at death) while creating a Waqf and giving gifts are forms of personal disposition and freedom as per Shari'ah.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Naming beneficiary of inheritance (in a last will) and giving gifts during life time

From: S E

Sent: Monday, February 04, 2008

Question: Beneficiaries of 401K and gifts to heirs

Salamu Alaykum,

I have some money in a 401K. I was asked to name beneficiary(s). My husband is still living. He does not work. I have a son and a daughter. My son is in greater need than my daughter. My son is a religious person. My daughter is not. I am afraid if I do the Shari'ah exactly I will create hardship between my son and my daughter when I die. But in the same time I don't want to do anything that is against Allah's rules.

Please advise if I can:

- 1- Put my husband as a sole beneficiary?
- 2- Add my son and my daughter with an equal share?

Or what do you think?

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina

Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. S E

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1. I want first to remind myself and you that the Islamic law of inheritance is mandatory. please refer to verses 11-14 of Surah 4, especially 13 that clearly points out to this Characteristic of Allah's system of inheritance.
2. The second point is: The Prophet, pbuh, specifically mentioned that this inheritance system does not apply for a non-Muslim relative. That is, since we live here in America where there is little Islamic social pressure some children, as you said, may not be religious. But if this lack of religiosity reaches a level of denying any of the specifically known tenets of Islam, they **MUST BE THEN TREATED AS NON-MUSLIMS IN REGARD TO INHERITANCE, MARRIAGE AND MANY OTHER THINGS.** I pray that what you described as non-religious does not reach such level.
3. In order to implement both points mentioned above, we Muslims in Americas need to prepare a document like a last will or a living trust in accordance with the Islamic law of inheritance. Otherwise, when we die our estate may not be distributed according to the mandatory requirement of Shari'ah. I therefore suggest that you please read these documents on my website www.kahf.net and decide what you want to do. If you decide to use any of the forms that are there I can send it to you on MS Word.
4. funds in 401K are owned by you now even with the tax related restriction on their withdrawal. As your property, you can do any thing you like now while you are alive. **BUT THE SHARI'AH DOES NOT ALLOW ANY PERSON TO TAKE ACTION OF DISTRIBUTION AFTER DEATH** because distribution after death is the inheritance system and it is obligatory and the Qur'an mentions. This is why the Prophet, pbuh, clarified that in a last will one **CANNOT MAKE ANY ASSIGNMENT TO AN HEIR.** This means that whoever you assign as beneficiary of your 401K you **MUST INSTRUCT HIM TO MAKE THE DISTRIBUTION ACCORDING TO VERSES 11 AND 12 OF SURAH 4** (in your case if you die (after long and happy years InShaAllah) and are survived by a husband and your two children, no parents. the shares will be 1/5 to husband, 1/2 to son and 1/4 to daughter (provided it is determined that she is Muslim, otherwise she gets zero and your son gets 3/4). This distribution is same for all your other properties.
5. Since you own your properties now and you are fully authorized, according to Shari'ah, to do what pleases you with your properties, you can give any gift you want to your son. It is true that we are required also to give in fairness to our children but fairness means that we give in accordance with their needs and with their actions that are pleasant to us and to Allah. In other words you may give more to the good child and less to a disobedient child, or to one who needs financial help and less to one who does need it. Please notice that this is giving while alive not suspending distribution until after death. I am sorry for the long letter but I felt it is necessary! If I can be of any help please do not hesitate to write me. I also hope that I helped you.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam
Prof. Dr. Monzer Kahf

From: S E

Sent: Monday, February 04, 2008

Asalamu Alaykom brother,

Alhamdulillah, Your words were like a balsam to my sole. My daughter is alhamdulillah a good Muslim. She and her converted husband pray every day. She upholds the Islamic values very high. However, I consider her less than her brother because he does much more than the basic pillars.

As you can imagine living her 25 years out of her 30 years makes the influence of this society sometimes off-sett the goodness of Islam. But I pray for Allah every day that he guide her to the truth and help her overcome all the bad things in this world.

Again I thank you very much for the advice.

Answer

Dear Sr.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

This, AlHamduLillah, means that you should consider making a last will or a living trust to distribute every thing according to the mandatory Islamic system of inheritance, including the 401K. and instruct, whoever beneficiary you may appoint to the 401K to make the distribution thesame way. This means the beneficiary's role is only to facilitate obtaining the money in the fund and make the distribution.

Best Regards,

Wassalam

From: Samy, Islam on line

Sent: Sunday, February 10, 2008

Question: Gifts for or spending on Son and Daughters

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

My questions are related to the property inheritance and gifts for my son and daughters. My questions are: a) Can my children demand division of my property during my life? b) Can my son object to my spending on my daughters or any of my relatives when these relatives are in need of help? c) He is capable of earning and his company provides him and his family tickets? Can he demand ticket for him from me to justify my giving tickets to my daughters? d) His demand that when my daughter earns good money why I am not asking her to share expenses of joint family? e) Is it my responsibility to provide my daughter all her needs until she gets married even though she is earning?

Visitor Notes:

I have one son and two daughters. My son is eldest, married and also has two sons. He is earning well and stays with me and pays me just monthly amount to cover house rent, schooling of his sons, as well other expenses. No doubt calculation shows that the amount is not equally shared and I have to spend more than he pays. I do not mind this as Allah has given me enough to take care. My youngest daughter is not married but highly educated and has a good job. She earns quite handsome salary, but not spending any money on anyone of the

family or shares any of her expenses. She has an opinion that unless she gets married this is my duty to spend on her and I have no right to ask her money. I have given the background to understand the situation of my questions.

1. I spent least on my son's education due to two reasons. He was not interested in higher qualifications. Second reason I was also not earning to afford more at that time.
2. My second daughter got her higher education on her own by her own struggle I did support her as per my conditions at that time.
3. I spent a lot more money for education of my last daughter as I had money during her education. The money spent on her education is much more than her brother and her sister.
4. I built a big house in my native city and spend a lot money on it, however it is to be noted that during building this house my son was working and he considers that he has more right on this property than his sisters as he used to share home expenses.
5. The daughter who is married wanted to sell her share in my house to my son and I objected I considered that until my death they do not have rights on my property. I said after my death only you divide property according to Shari'ah. She used to visit me from India to Jeddah until she had a second child; I used to give her ticket money to visit us. As written earlier she wanted to sell her share of the house to buy a property which I stopped. She very nicely told me that money you spend on me and my children's ticket is to be given to her to buy the property. I agreed and gave her money of her two trips as she has not visited since last three years. One trip money is due on me.
6. My son always grumbles and starts arguments, with following comments. a) I am doing injustice as I am giving more to my daughters and depriving his rights. b) He considers that I have spent much more money on my last daughter's education. She is unmarried and earns very good salary and she is not giving any money in house. Why I am not taking money from her and only ask son to share his expenses with me. This amounts to injustice when I am capable of spending? c) Why I gave ticket money to my daughter to buy a property. This he considers as injustice to him. Why no tickets are given to him and every trip my daughters are being paid by me?

Jazakum Allahu Khairan for your constant help

Yours, Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Ahmed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Let us establish the principles first:

1. As long as you are alive you are the only one who has sole and full authority over your properties. NO ONE ELSE HAS ANY SAY OVER YOUR PROPERTIES. your children have nothing to interfere with your properties or what you do with them even though they are potential heirs.

2. Heirs become owners only after the death of a person. In your lifetime none can sell any properties of your or her/his potential share of it after you die. This sale is invalid and also HARAM. It is a sale of what one does not own.
3. Distribution of estate after the death of a person must be in accordance with Shari'ah as mentioned in the Qur'an, read especially verses 4:11-14.
4. Giving to children must keep the principle of justice and fairness. This means general giving must be equal to all children regardless of their gender. WHILE ALIVE ONE MUST GIVE EQUALLY TO ONE'S CHILDREN. But giving for reasons, depends on the reason. Examples: a sick child will be given medicine, but you don't give the same medicine to other children! a needy child will be given support and help to satisfy his/her needs, a rich child need not be given equal help and support, etc.
5. Kindness and general obedience to parents, father and mother is a MUST FOR ALL CHILDREN regardless of gender. Part of kindness to father is to help financially in household expenses when there is no need. BUT IF THERE IS NEED AND A CHILD, MALE OR FEMALE, CAN HELP, HELPING BECOME OBLIGATION ON THE CHILDREN EACH IN ACCORDANCE WITH HER/HIS FINANCIAL ABILITY.
6. Spending on children and their education depends on ability of father at the time. a father is not required to spend on a an adult child if the adult child is able to spend on her/him self, regardless of gender. Obligatory spending on a child is not until marriage but until adulthood. Of course it is better to continue until marriage for boys and girls alike.
7. It is a myth that women are not required to spend on their own living. Only a wife's living expenses is an obligation on her husband. (Of course, minors' living expenses are also obligated on father even if they happen to be rich. The same is obligatory on grand father, adult brothers, financially able mother, financially able sister, etc. only if the minors do not have sufficient wealth/income that is sufficient for their own expenses). All other women (adult sister, mother and adult daughter) are required to spend on themselves if they can. But if they have no means, their expenses is charged to others as in case of minors.
8. In answering you questions:a) your children must not ask for dividing your property between themselves, it is always kind that you give them, equally, if you have especially if they are kind to you and to help them buy their own residences/properties if you can.b)Your son has no right to object to whatever you give to your daughters even if you were unjust in distributing givings among the three children because that is your own discretion and fairness is between you and God. You should be fair in giving them and you should give the boy and girls equally regardless of gender in matters of general givings, price of tickets seem to me a general giving because it is not like "we haven't seen our daughter for a long time and we send her tickets to come." This is money you are giving to help her buy a property!c)He should not ask you for ticket. But you are not giving for tickets.It seems to me that you should give other girl and boy equal amounts to what you gave for price of ticket unless that married daughter needs help for buying her property and others are really well to do and can buytheir properties without help.d) What you spend on your grand children is a good faith on your part and if you can financially afford it, why not? If you can afford it do not ask for any contribution from your son. If you cannot afford spending on all the enlarged household (including your son's family if it lives with you or his children if they are with you) ask him to contribute fairly as much as needed. It is not

appropriate on his part to ask that your working daughter contributes to the household expenses. This is not of his business. e) You are not required to spend on your working daughter until marriage. If she earns or has a wealth that gives her income, she is required to spend on herself. But of course it is the courtesy of the father, who is able, to spend on his daughter until marriage, and even after marriage if you can. If you need financial help in household expenses it is your right to ask her to contribute and she then must contribute in accordance with her financial ability.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Syed

Sent: Friday, May 02, 2008

Question: Transferring property to one heir

Dear Brother

Assalamu alaikum wa rahmatullahi wa barakatahu,

I am very much in a confusion as to what to do regarding this inheritance, My mother is in the last stage of her life as she has been diagnosed with cancer, Let Us pray for her early recovery InshaAllah... Dear Brother, My mother has 6 children(5 daughters and 1 son(its Me)), She has 2 plots in Bangalore, one with higher dimension and another with a smaller dimension, She wants to give away all her property to me, the reason she gives is that, I am basically a Physically Handicapped child (affected with a polio in a leg) has difficulting in walking long distance and cannot do field work, in other words hard work where it require travelling, I am basically an Electrical Engineer, right now my age is 30 years, I am employed in a company where they don't see my handicapness, but I don't know if I reach to some 40's, my strenght would collapse in leg, because day by day I have started to feel some pain in my leg and would loose the job, as I have family with a child too.

This is the main reason my mother wants to give away her assets to me, Moreover the property which she has is the bigger plot she was given in mahar by my father some 38 years ago, and the smaller plot again by my father to be used in emergencies,

Now that she is moving towards her end life, there has been developed some conflicts between my sisters and me, Every one needs there share in her Assets, after all the argument, I agreed with my mother that her smaller plot will be divided among the sisters and the bigger plot will be given to me. some of the sisters also has objection to it, they say they need to put the value for whole assests and want there share according to islamic shariah law, My mother is refusing, she is telling all that I had got the bigger plot in my mahar and I am inclined to do what ever I want... Can you please hightlight some solutions using Quran and hadith to this... I dont want my mother to be in a position that, she will be blamed for injustice in front of Allah(SWT)... and answerable to the Almighty lord Allah(SWT).

Please Clarify, waiting for the early response.

Regards,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Syed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I really think that the answer to your question is straightforward. You and your mother must look for the life after much more than this worldly life. Allah knows best and He made the inheritance system mandatory that any one who violates it will be punished by dwelling in the Hell fire for ever with a humiliating punishment [Surah 4 verses 13 and 14].

In fact any action by your mother at her death bed after being diagnosed for cancer is invalid both from Shari'ah point of view, besides being extremely sinful, as well as from legal point of view.

What I suggest is to follow the Shari'ah as exactly mentioned in Verses 11 and 12 of surah 4 that is so clear that in your case all the estate of your mother, including the two lots of land and her jewelry and other personal belongings, MUST be distributed after her death into seven shares one share for each of the five sisters and two shares to you. You are now MaShaAllah an engineer and you can save and improve your financial lot on your own without depending on any bequeath from your mother may Allah give her long life and full cure from this illness. Brother, what is a handicap in a leg? it is just nothing, the real handicap is in the spirit and in the failure of aiming always at higher achievement and higher level of performance. With these comes the pleasure of Allah through following his ordinances as given in the Qur'an and the Sunnah.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: mahmoud

Sent: Monday, August 04, 2008

Question: distribution of estate in life time

Assalmu Alaykum Dr. Monzer,

It is my pleasure to write an email to a great scholar like you. My name is Mahmoud. I got my PhD from UK and I am working as a lecturer in Al-Azhar University.

We would be very thankful if you could give us an answer to the following question:

Q:

Dear honorable Scholars Can I divide my wealth equally among my brothers and sisters after I die or is there a Shariah law on how to divide it. I have brothers and sisters although they agreed with my parents to give up their inheritance to my wife, but my wife and I agreed to divide our wealth equally to give to our brothers and sisters.

Jazakoum Allahu Khayran. Mahmoud

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mahmoud,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please notice the following basic principles:

1. Whatever you distribute in life time is considered a gift not inheritance, therefore it is better to make equal distribution to the equals, I.e., you better distribute (if for no other reason like one of them is poor or needs expensive medical help) to brothers and sisters equally;
2. One cannot forsake a right before one owns it. therefore your parents cannot surrender their shares of inheritance should you die before them to your wife now, as long as you are alive. InShaAllah you live as long as good for you both materially and spiritually, but only after your death any heir may surrender her/his share to another or to an outsider.
3. For you and your wife to agree that whatever you own both of you is divided equally between you is OK from Shari'ah point of view, if your assets and properties are paid for by one of you or one paid more than the other, this action amounts to giving gifts to each other of the difference. It is also OK for either one of you to divide to own siblings any gifts, that is perfectly permissible.
4. Remember that after the death of any Muslim, her/his estate must be distributed in accordance with the Islamic system of inheritance, this is mandatory and if you live in a country that has no Islamic inheritance system you must then prepare an appropriate document that assure this distribution.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Zubeida

Sent: Tuesday, December 23, 2008

Question: Giving portion of inheritance in life time

Asalaamu alaiykum,

The question I would like to submit regards inheritance.

I have a sister who is married with two kids and she lives in a compound situation where all her husband's relatives live. She's been living in this situation for the past 16 years, and she has stated to him in the past 2 years that she would like to move into her own home. My sister has a career and runs the family home. The problem they have is that the husband does not want to move away from his family home, where there is no real privacy where everyone just comes into the house when they want to, my sister feels she needs space and privacy of her own. She has been looking to buy a house, and her husband has been giving her mixed signals all the time. At one time he will say she must go ahead and look for a house, and at another time he will be totally opposed to this idea. Anyway, my mother wants to give my sisters portion of inheritance to her before she dies, can she do this? and my sister wants to use this money to use as part payment on purchasing a house. Please advise and elaborate on this kind of scenario.

Jazaka Allah

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Zubeida

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Giving during life time to children or other potential heirs is of course permissible but it is governed by the rules of gifts not the rule of inheritance. In other words, whatever is given cannot be inheritance and can only be gifts. While alive a person can do whatever she likes with her properties.

This means that it is permissible for your mother to distribute any or all her properties to her children including this sister who feel some discomfort in her present living arrangements. Giving to children should be done with equality/fairness because the Prophet, pbuh, did not like giving to one child with no equal giving to other children and He described such an act as unjust . fairness means giving in accordance to needs and when an adult child is in need it may become a legal (of course from Shari'ah point of view) responsibility on her/his parents to help in accordance with their financial abilities.

It seems that this giving of your mother to her children should abide by the rule of equality by giving equal amounts to all her children regardless of their gender. (The case of your sister does not seem to me a case of serious need, it is the kind of normal family issues that happens very often and apparently she was married to these living conditions). Therefore, unless there is more to the case of this sister I find no reason for any deviation from equal distribution.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Reda

Sent: Thursday, March 12, 2009

Location: Algeria

Question: Gifts in life time to manipulate inheritance

Dear Prof Monzer,

I would like to thank you for the wonderful fatwas you give to our brothers and sisters to help them fulfill their din. I have an issue which after few weeks of searching on the net, I found some contradictory answers. I decided to send you an email in the hope to give me your valuable opinion on the matter. Please let me explain the problem to you, I am sorry about this lengthy email, I could not compress it any further.

A father has (legally) gifted a building containing 6 very big flats and garages with a large portion of land to his wife in order to disinherit two of his sons from a previous marriage (he divorced his first wife and had two children with her), and because this wife is afraid that in the case her husband dies she might have problems with the second wife and her two sons. He claims that these two sons are unbelievers (kufars) and should be disinherited (which may be true but no one knows for certain, he never asked them the question). In this process, he actually disinherited a further 3 sons and a daughter from his second marriage only one son is religious and none of the rest care about their religion. In this huge building only the daughter with her husband and their two children live in one of the flats, the remaining are being rented

One of the sons from his first marriage with his wife and his mother (first wife of the father) lived in one of the flats but they have been thrown away after the husband (the father) divorced her (for the reason of being ungrateful to him, again not really sure the reason of such extreme reaction, although some doubts about the second wife involvement). Two other sons from the second marriage live for more than 20 years in the UK, and a third one joined them recently (I would like to stress that the father and the mother are very difficult to live with). Has he the right to disinherit the whole family and donate (gift) the entire wealth to his second wife. The father claims to be very religious, do you have any hadith, Quran for him to see if he got it wrong?

The second wife has since taken care of him after long illness. They both decided to donate (gift) to the daughter 1/4 of the whole wealth (in addition she will inherit from the remaining 3/4 in the case this wife dies), the reason of such decision is because they feel the boys do inherent double of the girl and it is not fair as she helped taking care of the mother and that she deserves in this case to have a full share like a male. This division is based on equal shares between the 3 sons and the daughter of the second wife. The boys agreed with the father for a part of their inheritance is to be given as a gift to their sister but the mother deemed a legal donation (gift) would ascertain this to happen as she does not trust they will do it.

The father who is still alive told his wife that the whole building and land is her wealth and she can do what she wishes with it anyway. Therefore she is planning to sell the whole property and the land, keeping the whole wealth to herself. This decision is made after her husband asked her to divide the whole wealth between her kids while he is still alive, and asked the kids to give a wage to their mother which they were prepared to do. The mother has refused to divide between her children and refuses to return the wealth to her husband so that Allah's inheritance law can be applied to everyone including his two sons from the previous marriage, she is in the process of giving a legal gift (donation) to the daughter (a full male share), and she has asked the males to wait for her death to get something.

I spoke directly to all parties to follow Allah's way but unfortunately each one is following his/her own agenda.

What is your view in all this according to your opinion? Most importantly, the religious son is refusing to get involved with all this and has refused to take his share in the future unless the whole property is returned to Allah and the wife will take 1/8, 7/44 for each of the 5 sons and 7/88 for the daughter as no grandparents are still alive. He thinks that the whole property is now haram for him to take a share because people are being denied their lawful share. Is he right? Or should he take his share and remove the parts that should belong to his half-brothers, keeping in mind none of the others are willing to do the same. I would like to stress that this second wife is very stubborn to deal with but we are praying Allah to open up her heart. The religious son is very upset with his parents as he tried to convince them that they are wrong but has been accused of all sorts. He has decided to stay away.

What should I say to him in order to help bring all parties to Allah's way.

Jazakoum Allah and may Allah bless you in his Jana for the services you offer the Ummah of Muhammad (saws)

Reda

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Reda,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please let me mention a few things on Shari'ah legal grounds (قضاء) and on Shari'ah religious ground (ديانة):

1. Giving a gift to any person is permissible, regardless of the amount of gift, even all one's properties as long as a person is sane and adult. Therefore giving properties to his wife and changing the real estate records accordingly is valid Shari'ah legally because a person can do whatever one likes with one's property and potential heirs (sons and others in this case) have no right to object. This giving cannot be suspended until after death and then it is limited only to one third and to non-heirs because the distribution that is given in the Qur'an in mandatory. However in real estates, unless the official record of ownership are changed the property remains with the owner whose name is on the record.
2. From a religious point of view, if such a giving is intended to inflict a change on the inheritance system it is sinful. But this is left to Allah only on the Day of Judgment not to us. Of course if we recognize such an intention we may only advise but cannot enforce any change unless in case of insanity, coercion, and illness that ends with death within a relatively short period, escaping from creditors, etc.
3. In principle, gifts to children while the giving parent is alive must observe equity between children regardless of gender as the Prophet, pbuh, used the term "unjust" in describing giving some but not others. Of course this must be taken in the context of treating the equal equally. But when you have a good behaving child and another that is very unhelpful and displeasing to the parent, the natural thing is to give more to the good child in terms in gifts. It is not justice to treat the bad and the good the same, is it? In matters of gift a parent may rightly give some children more than others. Such giving is valid in Shari'ah legality but if it is not justified by real difference, it is not valid religiously and this is also left to Allah.
4. In other words, a person in full capacity, sane, adult, not under coercion may give gifts to any person, his wife and leave nothing to be inherited by other potential heirs because this is a basic part of essential human rights in Shari'ah "Persons are fully authorized over their properties they can do what they please with it".
5. Claiming a potential heir as a non-believer cannot be accepted without clear and evidence beyond any doubt. Therefore in a Muslim country we leave it to Shari'ah court to decide. In non-Muslim countries Muslims should put in their last wills clear and strict conditions. This means that in a Muslim country like Algeria one cannot prevent some children from inheritance on ground on being apostate.
6. For the religious son, the property he gets from mother after death is Halal for him and he is not required to give it up even if he feels that what was done by his father was wrong and what was done by his mother was also wrong. This is his right to inheritance from his mother and she got her property as a gift from her husband (the latter is going to be questioned by Allah on what he does and giving up any property by the son does not change anything in that). If you believe that your father did and is doing wrong, advise him gently and make Du'a for him and give Sadaqah and other good deeds may be he gets some reward for raising you that way. There is no added religiosity by refusing taking his share of inheritance.

7. Finally, I may give to my wife a property as a gift and no one has any right to prevent me from that. So if you believe that what this man is doing is really wrong you may only advise him but remember that Allah gives us full rights over our properties. Of course we should not use it to inflict injury on others or in a wrong way, also please remember that giving one's wife a gift is not at all wrong, is it? Yet anything can be used for wrong objectives.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Irshad

Sent: Tuesday, August 11, 2009

Question: gift to favored child

dear sir

assalamu alaikum

In anticipation of death, my father is planning to

1. Transfer bulk of his many million dollars of properties (in a Muslim country) to his other son who lives with him (as my father said it is because he has been taking care of the father). He plans to do it while he is alive so that "none can challenge it". These properties are in the form of shares in wholly-owned private companies that own land and shares in public companies and land in his own name.
2. And he also said that he would disinherit the sister (or at least give her much less than she deserves according to the Shari'ah) because if she dies then her husband would.
3. Another question is that if my father can transfer 1/3 of his property to that brother's son to give more share to my brother?

Can he do it Islamically? Can he transfer most of the property in anticipation of death? Specially that I'm in a vulnerable position, I have been disabled from a car accident that caused a bad brain injury. I have not been able to hold a job due to cognitive fatigue and other neurological problems. I live in USA on Social security disability and other government programs and also funds from my family overseas. in contrast, my brother can work. all these time he had been saying that he would leave properties so that that could support me as I can't work due my brain injury.

One reason may be that my father is very sick, he has mental problems as well. But he may still push through his plan

My father is Islamically educated, he knows about the civil laws of our country that forbids such unfair transfers but he will find ways to manipulate the system.

I'm getting so irritated that I am considering that I would refuse any inheritance as my father is clearly violating both the letter and intent of the Shari'ah and clear dictum of the Koran.

Irshad

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Irshad

Assalamu Alaykum wa Rahmatu Allahi wa

As a matter of fact, the action of your father in giving all his wealth to whom he pleases during his life time is valid in law and Shari'ah unless it can be proven that he did that during his terminal illness that he knew about and within one year prior to his death or it can be proven that he did while under mental illness that jeopardizes his judgment. From a religious point of view (what is said as Dyanatan but not Qada'an) he commits a sin if he gives in his life time to one child in a way that makes it unjust to other children. But this sin is only accountable with Allah Ta'ala on the Day of Judgment. The action is valid from Shari'ah point of view (this is what is meant that it is valid Qada'an). A parent has full right to do whatever pleases him/her with owned property during life time and potential heirs have no right to restrict this power by any and all means. If a parents makes injustice between his/her own children Allah takes charge of holding him accountable not a court.

On the other hand anything that is owned by a person at the moment of death must be distributed in accordance with the system of inheritance as stated in the Qur'an. This system is mandatory and cannot be changed through a will. This is also the law in all Muslim countries to the best of my knowledge including Pakistan and Bangladesh. It is also the law for Muslims in India, Singapore and Kenya.

In other words, if you father does not give you properties that are equal to what he gives your brother with no valid reason, he is committing a sin but his action is valid. The same regarding your sister because giving in life time does not differentiate between males and female (because it is not inheritance). That sin is left to Allah to judge for. Shares in inheritance cannot be changed by a last will.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Inheritance of family house built by father and son

From: Tariq

Sent: Wednesday, May 21, 2008

Question: House build by father and son, how to distribute?

Dear Scholar, please guide me in this respect, may Allah give you huge reward for this.

My father owned a plot of land which he gave me as gift "hebba" during his lifetime to build the house. I took possession of the plot and took some loan from bank to construct the house. We build the house with this loan, earning of my father and my earnings. But just as we moved in the house he died (May Allah have compassion on him). Now I paid back the loan either through some of his left over money and also by my earning. I have two sisters who are now married and happily living with their husbands and my mother is living with me.

My question is, should we divide this house for inheritance as I owned that even in the life of my father he gave me this as gift. If we have to make a division how would we do it?

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Tariq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Gifts in life time are of course permissible because a person is fully authorized to do whatever she/he likes with owned properties.

However, parents are required to treat their children, in matter of gifts, equally regardless of their gender. Giving you a plot of land may have violate this justice (the Prophet, pbuh, called such an act injustice) if your father did not give equal things to each of the other two children. If he already gave each one of them equal gifts that makes him fair and does not tan his record with Allah of giving one child a gift he did not give other children gifts that are equal to it. On the other hand. If your father recorded the land in your name the gift is valid legally although it is unjust from a religious point of view. This means that you can legally claim the land as yours, but that is not the Taqwa of Allah if he did not give equally to each of your two sisters. If you take that route, your father's property in the construction (this is the percentage of construction value, on the day of his death and if not known today when distribution is to be done, that is equal to the percentage of his contribution to both construction cost and loan payment) plus other assets properties and funds he left must be distributed to the heirs of your father.

If he was not survived by any parent and only by the three of you and his wife (your mother) the distribution must be as follows: 4/32 to your mother, 7/32 to each of your sisters and 14/32 to you.

The same applies if your father has given each fairly equal gifts to each of the two sisters

On the other hand, If your father has not given fair gifts to each of the two sister you may like to consider distributing what is mentioned above plus the value of the land itself although legally you may not be obligated to do that, this seems a better expression of Taqwa on your part. Please remember that the facts that your sisters are married, rich and happy and that your mother lives with you do not affect this ruling that is centered of distribution of estate (Mirath) which is obligatory in Shari'ah.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: mahmoud

Sent: Monday, August 04, 2008

Question: distribution of estate in life time

Assalmu Alaykoum Dr. Monzer,

It is my pleasure to write an email to a great scholar like you. My name is Mahmoud. I got my PhD from UK and I am working as a lecturer in Al-Azhar University.

We would be very thankful if you could give us an answer to the following question:

Q:

Dear honorable Scholars Can I divide my wealth equally among my brothers and sisters after I die or is there a Shariah law on how to divide it. I have brothers and sisters although they

agreed with my parents to give up their inheritance to my wife, but my wife and I agreed to divide our wealth equally to give to our brothers and sisters.

Jazakoum Allahu Khayran. Mahmoud

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mahmoud,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please notice the following basic principles:

1. Whatever you distribute in life time is considered a gift not inheritance, therefore it is better to make equal distribution to the equals, i.e., you better distribute (if for no other reason like one of them is poor or needs expensive medical help) to brothers and sisters equally;
2. One cannot forsake a right before one owns it. therefore your parents cannot surrender their shares of inheritance should you die before them to your wife now, as long as you are alive. InShaAllah you live as long as good for you both materially and spiritually, but only after your death any heir may surrender her/his share to another or to an outsider.
3. For you and your wife to agree that whatever you own both of you is divided equally between you is OK from Shari'ah point of view, if your assets and properties are paid for by one of you or one paid more than the other, this action amounts to giving gifts to each other of the difference. It is also OK for either one of you to divide to own siblings any gifts, that is perfectly permissible.
4. Remember that after the death of any Muslim, her/his estate must be distributed in accordance with the Islamic system of inheritance, this is mandatory and if you live in a country that has no Islamic inheritance system you must then prepare an appropriate document that assure this distribution.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Shares of males and females in inheritance

From: MAHMOUD

Sent: Thursday, September 04, 2008

Question: Making last will to equal males' and females' shares

Assalamu Alaykum Professor Monzer,

Happy Ramadan to you and to all your family. Forgive us for troubling you with our question.

Jazaka Allahu Khayran.

Here is the question:

AlSalaam Alikum Wa Ramadan Kareem Scholars, is it fine when I die to divide my inheritance as I think is needed between my five siblings (3 sisters, 3 brothers) or must it be equal between them? jazakum Allah Khairan and thank you

Answer

Dr. Mahmoud,

Kull 'Am wa Antum bi Khayr Wa Al Salamu Alaikum

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br./Sr.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

No, it is not permissible, period. Rather it is a big sin because it is in direct contradiction with the Qur'an.

Allah divides in the Qur'an, mainly in Surah number 4 the estate of a person when she/he dies and made this division mandatory. Please read the Verses 10-14 of this Surah. Therefore, if you neither have children nor parents, when you die all your property should be divided between your brothers and sisters, two shares to a brother and one share to a sister. The Islamic belief is based on a basic principle that We all belong to Allah, the Creator and Master of the Worlds, so when we die the property that He gave us while alive goes back to HIS OWNERSHIP and He divides it the Way He prescribed in the Qur'an.

However, Our beloved Prophet told us that Allah permits us to assign a maximum of only one third of our property (net of all debts and expenses) for distribution to charity and the like provided we do not assign any portion to an heir since such an assignment disturbs the distribution given in the Qur'an. In fact if you live in a country that has a Shari'ah based inheritance law (e.g., all Arab countries and all Muslim majority countries except Turkey, India, Singapore and several other Muslim majority countries that have Muslim family law for Muslims), such a Last Will (as you mentioned in the question) is legally invalid and will be trashed away by law at the time of death.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Samy, live Fatwa

Sent: Thursday, September 25, 2008

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

Question: Can Woman's Inheritance Be Equal to Man's?

Salam. Marhaba, dear Islamonline. Can woman inheritance be equal to one man if she pays the expenses of the home? Could be modified the shares of inheritance?? What is the paper of the will? Can a person make a will with the shares he wants?

Jazakum Allahu Khairan for your constant help

Yours, Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Rose

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The details of the inheritance system in Islam are given mostly in the Qur'an itself, especially Sura number 4. This system is obligatory as Allah said in the Qur'an [4: 11-14], shares of distribution are given there in the Qur'an itself and they are not made in any causality relation to spending on the home. These shares are in many cases to a male twice as much as to a female as in cases of children of deceased, his/her siblings and between husband and wife. but there are cases of equality as mother and father when there are children of the deceased. shares as given in the Qur'an CANNOT be changed.

On the other hand, the husband is required to spend on his wife and children and on his parents if they need. the Wife is not required to spend not even on her own personal things. But if she actually spend on the household, she may do that voluntarily and on a gift/donation basis; in this she will deserve to be rewarded by God and thanked by her husband. Further she has the full right to abstain from spending on the household unless her husband accept what she spends as a loan on him payable out of his wealth alive or estate dead. In this case, she will take the amount of this debt before any distribution of the estate and she will also take her share of inheritance.

For will, a will is not valid in more than one third of the estate and also it is not valid in relation to influencing the shares of distribution as given in the Qur'an. The reason is that these shares are mandatory as God said in the Qur'an and any change in them is a violation of this command. The Prophet, pbuh, emphasized this point by saying that a last will cannot be to any person who may inherit according to the qur'anic distribution. A will in the Islamic religion is only for charity and/or person who may not inherit otherwise.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Haq

Sent: Tuesday, December 23, 2008

Question: Inheritance of Women

Salaam Shaykh, I read the reply you gave to my Sister on Islamonline, (she is very happy btw) and I had a few questions if you dont mind.

1) I understand the difference between the Illah of a Hukm and the Hikmah. However, this is a distinction of the Ahnaaf and Shawafii. The Malikis and a group of the Hanabilah (if not majority) do not make this distinction and hence they allow basing hukms on attributes that would be considered illegitimate by the Ahnaf and Shafi'ees. Based upon this understanding, that both hikmah and illah have the same legal weight, can we not argue that in specific situations (case by case judgements) we can allow females the same share of inheritance? This would be a kind of Istihsan similar to how Umar (R) suspended the cutting of the hand during famine, even though the illah was there, the hikmah would not have been actualised and thus he cutting the hands in this time would run counter to the objective and be unfair, and thus he suspended it.

I am not advocating that we give out general fatawa saying women can have same inheritance as men in the west, but rather in special circumstances especially converts.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Haq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I don't agree with your proposition because of the following:

1. Inheritance is a binding system with clear cut ruling that came in the Qur'an, it cannot be personalized by all means. No case by case approach can apply to it.
2. The Qur'an does not give any justification of the inheritance, who said that its Hikmah is what is proposed by some people? There are several other interpretations to it, one of them is that a man is required to give Mahr (a Qur'anic ordinance) to the wife at marriage, another is a man consumes more food than a woman because of body bulk! take it over a life time it makes a large sum! another is because the Islamic design for a man's role is to be more outgoing and the Islamic design for a woman is to be more within a narrow circle (this is evident from the differentiation is Hijab, preference in where to pray, preference of not to go out much, etc.), outgoing needs more expenses, and many other Hikam one may think of.
3. The action of 'Umar in stopping hand cutting is not based on Hikmah rather it is based on applying the other text of Hudud, that requires withholding a Hadd in case of any cloud of doubt. We do not have any texts that allow any reservation on the distribution texts regarding children and siblings "for a male the equal of two female share".
4. Finally please notice that this double share matter does not apply on parents and in certain other cases as you know.

Please if you showed your sister your comments, also show her my reply. I appreciate having this discussion with you.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Zaman

Sent: Tuesday, August 18, 2009

Question: male female shares

Dear Dr. Kahf,

Al Salaamu Alaikum,

I would like to pose a hypothetical question to you. A father owns four real estate properties and would like to give one property to each of his children. He has two sons and two daughters. However he would like to hold on to the properties for as long as he can because he is receiving rental income from them.

The family is seeking a solution where the father can devise the properties to his children as he wishes, while still complying with the Islamic distribution system of inheritance. The father has been wondering how he can devise the property to his family in an Islamically equitable

manner. The practical problem as you well know is that it is impossible to predict what the value of real estate properties will be in the future and therefore it is impossible to predict whether the devise of the real estate properties will fall in line with the Qur'anic distribution scheme. Currently the family is under the impression that Islam requires all of the assets in the decedent's estate to be sold and then the proceeds from the sales to be distributed according to the Qur'anic shares. I do not know how they came upon this opinion but it seems a bit rigid to me (may Allah forgive me if this is what is required). Can you shed some light on this issue for me please?

Would it be possible for the father to leave the real-estate assets to a trust leaving instructions for the trustee to distribute the properties according to the father's desires or does this violate the intent of the Islamic inheritance laws? I am not asking for legal or estate planning advice per se, just the Islamic verdict in this regard. If you can provide references/sources/dalil (secondary in the form of fatwa) or (primary in the form of Nusus) that will be much appreciated.

May Allah bless you for your hard work.

ma'as salaama

Zaman

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Zaman

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

What you need to realize is: THE ISLAMIC INHERITANCE SYSTEM IS MANDATORY AND ANY ATTEMPT TO FOOL AROUND IT IS PROHIBITED AND SINFUL.

For this reason Imam Abu Hanifa argued that Waqf is not permissible. He said it may be used to change inheritance. Other scholars including his disciples answered him that Waqf is a transaction based on economic freedom; one can do what one likes with one's property. Inheritance is after death, at that time one is no more the owner.

The trust idea that is mentioned in your question is an inheritance trust. It is a trust that keeps the property under my use while alive and after death distributes it to my children. This kind of trust MUST ABIDE BY THE RULES OF INHERITANCE; it is prohibited in this kind of trust to make any clause that may disturb the inheritance distribution.

Establishing a trust is itself permissible provided is it done as either of two kinds (in order to make it consistent with texts and spirit of Shari'ah) Waqf trust or inheritance trust. If it is a Waqf trust, there must be some sort of clear cut either permanency or benevolence as a major objective that assures it is not fooling around inheritance. Examples: keep the property for family use or for charity use for 100 years then distribute to children and their children. Or give it all to charity or to family use permanently. Another feature of Waqf trust is that it transfers ownership in reality immediately while in a revocable living trust the transfer is not "really" real (e.g., it does not affect creditors or taxes) and it is reversible.

The moment we have distribution to heirs upon death or shortly after it the trust cannot then be other than inheritance trust. It must then abide by rules of inheritance including male, female shares, shares to parents and to spouse, immediate handing over to children, etc.

Wa Allahu A'alam
Wa Alhamdu Lillahi Rab al Alamin
Wassalam
Prof. Dr. Monzer Kahf

Subject: Insurance and inheritance

From: Asad
Sent: Monday, February 18, 2008

Question: Inheritance from life insurance

Assalamu Alaikum wa Rahmatullah wa Barakatuhu.

Is it permissible for a brother to buy a life insurance policy naming his wife as the sole beneficiary of this policy?

The brother wishes to argue that the monthly premiums he pays for the life insurance are a gift from the brother to his wife. Therefore, if he passes away, the entire life insurance payout belongs solely to his wife, without it becoming part of his estate and therefore does not need to be divided according to the Mawarith schedule.

Please help, I do not want to give people answers based on the Hawa.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Asad

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The answer is YES. The argument is: The pay off of the insurance policy after death is a money that was not owned by the diseased. This money is generated after the death and does not belong to the deceased. Of course the other view is to consider this amount of policy as a part of the estate, this view exists too. This is why there are two opinions on this matter among Shari'ah experts.

The argument of this brother is also valid. Let us put it this way: if his wife buys the insurance on his life and each premium is a gift from him to her and she uses it to pay the insurance company. He has nothing to do with the insurance company, does he?

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Meftah
Sent: Thursday, February 28, 2008

Question: Rental Car Insurance payment

Dear Dr. Kahf,

Assalamu alaykum...Jazaka Allah Khairan for all the fatwas. I read the PDF file with fatwas on insurance, but I did not get an answer to my specific question. My cousin rented a car and had

insurance coverage. He was involved in an accident while driving the car. He passed away. The insurance company is paying his widow money. Is that money halal?

Jazak Allah khayran, Meftah

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Meftah

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The death benefit is apparently a part of the insurance contract. It is permissible to enter into a car insurance contract and consequently the benefit given to the widow of the deceased is also permissible.

Wa Allahu A'alam

Wa Al Hamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Amjed

Sent: Sunday, November 02, 2008

Question: Inheritance distribution of life insurance \$ and joint properties

Asalamualikum,

Is life insurance proceeds to be divided according to the Islamic inheritance rules?

Also note the below statement from my lawyer; last will and testament documents do not apply to life insurance proceeds.

"if you own life insurance, retirement benefits with a beneficiary or joint assets (e.g. if you have a bank account with two names on it), keep in mind that those assets do not pass through probate and are therefore not governed by your will. So if you are listed as the beneficiary of your father's life insurance, the proceeds will pass directly to you and not to your father's estate."

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

These two issues are of extreme importance in Islamic inheritance.

1. For joint and community properties, including bank accounts and any real or personal property that is owned by more than one person, very often husband and wife (in view of official records such as two names on a bank account or a real estate property or a car, or investment account, etc.) we always assume that the property is owned half/half unless there is evidence otherwise (such as an agreement between the two persons) for the purpose of estate distribution even though the law gives the surviving person full ownership of that property (this is against the Islamic law because any thing owned while alive becomes estate subject to inheritance upon death, in other words, except for a last will in the max of one third and not to

include heirs, all distribution must go as inheritance). This means that from Shari'ah point of view, we look at the joint and community property/account only as convenience not real ownership. This means that according to Shari'ah passing the ownership of the half of the property that was owned by the deceased to the surviving person IS NOT VALID. (BTW, although joint accounts/properties exist in most or may be all Muslim countries, this common ownership is frozen once the death of one of them becomes known until inheritance is settled). If the last will that you have does not include such a clause to deal with joint property, please take this text from the living trust form that is on my website and add it to your last will of course after consulting your legal advisor.

2. Benefit paid for a life insurance to a beneficiary upon death of the insured was not owned by the deceased in her/his life time as it is deserved only as a result of the incidence of death and deserved by the beneficiary not the estate of the deceased (what is deserved by the estate is any thing that was owned by a person in her/his life time). Therefore, this benefit is not part of what is subject to inheritance unless specifically added in a last will or a living trust or determined to be distributed the same way as inheritance by the owner of the insurance policy. In other words, the owner of the insurance policy has the choice to assign a beneficiary and let him/her get the amount of the benefit, or ask him/her to distribute the same to all heirs according to the inheritance rules or assign a trustee as a beneficiary and instruct him/her to make the distribution as given in the inheritance system. I personally prefer the latter (Trustee and inheritance distribution) unless there is a charitable or important cause/reason to make it otherwise.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Mushtaq

Sent: Thursday, April 02, 2009

Question: Distributions of inheritance

Salam

Hope you are fine and pray for you,

This regarding the distribution of inheritance. One person died at age of 35, he has wife and two girl child, father, mother, 4 brothers and 2 sisters.

What is the calculation of inheritance?

Thanks in Advance

May Allah bless you for your great work

Musthaq

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mushtaq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

This you find on my website, schedule of Mawarith, under case 2 “survived by daughters”. This case is called ‘Awl where Shares are reduced proportionally: wife 3/27, daughter 1 8/27, daughter 2 8/27, father 4/27, and mother 4/27.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Muzammil

Sent: Friday, January 07, 2011

Location: United States

Question: Life Insurance Inheritance

Dear brother Monzer,

Assalam 'alaikum wa rahmatullah

I hope you are keeping in good health and spirits.

Kindly tell me your opinion on the following issue. Are 401K and life insurance benefits part of one's estate and distributed according to the rules of inheritance after the person's death or they are to be given to the beneficiaries only?

In the name of ALLAH the most merciful the most compassionate,

Assalamu Alaikum brother Dr. Siddiqi,

My name is Fatin. I am a widow and a mother of 5 Boys(ages14, 14, 13, 13, & 5 years) My husband passed away in 2007. He left a Will stating that " his Pension and his Life Insurance should be divided according to the Islamic Law and Shari'ah", but after his death I found out that there was a beneficiary form on his Retirement & his Life Insurance Policy stating that his 3 older children from two previous marriages to be the beneficiaries. He believed that the Will should change the beneficiaries on the record. I tried to solve the problem as a family by talking to the older daughters ages (30 & 27 years) , but no luck. Anyway I was trying to do so for about 4 months, none of them responded to me. I asked them to divide according to the Islamic Law and Shari'ah. They told me that we will get it according to the American law. I never gave up from Allah (SWT) mercy. I was able to represent myself & my children in the Court. I suggested that the Policy should be divided among the 8 biological children in an equal share. The judge asked me what about you? I said I waive my right & I don't want my share because I truly care about all the children, after all they are all brothers & sisters share the same father. The problem now that the two daughters from the first marriage are telling the Judge that Islamically they are entitled of all the money because the Retirement and Life Insurance is not considered as part of the Inheritance. Please doctor I want your response as soon as possible because I have a deadline set by the court and I should respond in a timely manner. It is important that I stay on the right path and make sure I am doing the right deed. Jazak Allah kair for helping this widow & her 5 kids. All I need is a letter stating that the Retirement and the Life Insurance is considered as part of the inheritance Islamically.

Thank you very much. I appreciate your help. Please feel free to contact me for further information.

May Allah bless you.

Muzammil

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Dr. Muzammil

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1. From the point of view of inheritance we need to distinguish between what is owned by the deceased person and what is not owned by her/him (same applies to Zakah too).
2. 401K balances are fully owned by the person in life time (taxes and penalty in case of withdrawal do not change ownership) except for the non-vested part of the contribution of employer (as it becomes owned once vested). This is subject to the rules of inheritance and should be distributed as such. It is the same for IRA, Keogh and education saving account and all the likes
3. The same does not apply to social security pension. This one receives every month and when a person dies the system (law) determines who receives what, there is no balance with the social security that one owns from which one is paid. This is a benefit that comes upon an incidence of retirement, death, incapacitation, etc. even though it is calculated on the basis of prior contributions. Social security benefits are due to the deserving persons (spouse, minor children, etc.), they are not part of the estate of the deceased.
4. Insurance policies need more details: some life insurance policies are like term life, have no owned balance during the life of the insured. The amount of benefit paid is deserved (earned) upon the incidence of death. Some have owned balance like regular, variable equity and universal life insurances. The balance owned by the deceased at the time of death is inheritance and the rest in not.
5. In this regards, for the balance that was not owned by the deceased we have a view that takes the analogy to the Diyyah of killing by mistake, the Prophet, pbuh, distributed it as inheritance. Some others apply the principle of properties not owned by the deceased. It then goes to beneficiaries.
6. I personally do not find any of these view stronger than the other but I have a reservation that came from a question I once was asked. Beneficiaries are entitled to the funds earned from insurance policy that were not owned by deceased provided the assignment of beneficiaries in insurance must not be intended to change or distort the shares of inheritance. (the question was from a person who wants to assign benefit in a way that gives additional shares to daughters to make them equal the shares of their brothers. I believe that this is Haram)

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Laws and Islamic inheritance ditrebuton

From: tariq

Question: Distribution of inheritance and the State laws

Assalamualaikum,

We are in the process of making a Living Trust with the help on an attorney. Since both of us worked, our primary residence is in joint ownership with each have 50% share. In case of one person's death, the other spouse will have 50% share and the other 50% to be distributed Islamically among the heiress. We have 4 adult children, 2 boys and 2 girls. Three of them are married while the older daughter has learning disability and living with us. According to the Michigan law, if one party passes away the other spouse is in charge of the property. Distribution of the inheritance can only take place after both parties' passes away. Any distribution prior to that would be considered as gift and would be liable to income tax. After both parties pass away, then the distribution of inheritance can take place and there would not be any tax implications.

Could you please advise how we should proceed with this within the Islamic laws and also considering the state laws? Your legal help is appreciated. I will appreciate if you could answer by email. Jazakallah khair Wassalam

Tariq

My answer

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Tariq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

This is a typical and important point of reconciliation between the laws in America and the Islamic system of inheritance. The solution lies in giving the heir the choice of either effect the distribution and bear the possible taxes or accept to transfer the property of the deceased into a B trust and delay distribution. For an exact suggested text I advise you to read the Living Trust on my website: www.kahf.net.

BTW, I am sure you know that, through such a Trust (that is essentially for inheritance purpose because it distributes shares, i.e., transfers ownership only after death and in Shari'ah any transfer after death must be according to Inheritance system) you cannot assign any extra share to the daughter that has learning impairment. If you care to provide her with such financial support, you can create a special trust for her. The basic difference is the transfer of ownership at the time of creating the trust to the new trust although you and/or the mother can still be the trustee for life. This is in contrast with the living trust that transfer ownership to heirs only after death. you may like to opt making this trust non-revocable.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Inheritance and gift from persons dealing with Riba

From: Anne

Sent: Sunday, September 14, 2008

Question: parents earn interest

Br. Monzer, as salaamu 'alaikum,

I had a question if you don't mind:

My parents do not pay Zakah on their property even though they are muslims (I've told them many times that they should, but they don't) plus they've put their money on interest bearing accounts and earn interest that they keep.

Is it halal money for me, if my father gives me, let's say \$100K as a gift, knowing that Zakah wasn't paid on any of his wealth and it is mixed with interest? Can I accept it as it is? How about the money I were to inherit from him, should he pass away?

Jazakum Allah. Ramadan Kareem, Wassalaam,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Anne

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Gifts that are given by your parents, the way they are doing their affairs as described in your question, to you are permissible to accept, it is the sin of the earner of interest but the privilege of the gift recipient! The rationale behind this ruling is that by accepting a gift from a person whose income is mixed, you are not doing any prohibited thing; specifically in relation to interest, you are not a taker, giver, writer or witness to interest contract. I also suggest that you should not get bore from continuously advising them about Zakah and interest, keep doing it nicely and politely until they start giving the Zakah and avoiding interest.

For inheritance, it is the same, it is permissible to accept your share of inheritance should a parent die even though a part of the estate may have come from interest and the like. Of course the moment you become owner (that it the moment of death not the time of distribution and assignment) it becomes your responsibility to avoid interest and the new property that becomes yours should be added to your other Zakatable assets in regard to the Zakah year and Zakatable assets.

You should also remember that when we say it is not Haram to accept it as gift or as inheritance, we do not mean that you are not on the very edge of the Haram because for sure a part of this money is from interest, but you did not earn it, the earner is another person. I therefore recommend that you try to purify your money by giving charity.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Anne

Sent: Monday, September 15, 2008

Question:

Dear Br. Monzer, wa 'alaikum as salaam wa rahmatullahi wa barakatuh -
Jazaka Allah. You are always so generous with your time.

Would the case be any different if I were to ask for money from my parents because I need it? My parents are generous and have given large sums of money to my other siblings (to help out with buying a house, etc...) but I have been hesitant and did not ask. If I asked, they'd give to me, too. Knowing that the money is the way I described, is it better if I did not ask for it though we do need it to help us buy a home (i.e. does passively receiving it make it different from actively asking for it)?

Jazaka Allah. Wassalaamu 'alaikum.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Anne

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

If your parents are responsible for your expenses (i.e., you are single and not working or earning sufficient income from your own resources) it is your right to ask for father's financial support to satisfy all your needs.

But if you are financially independent from them by being married or having own resources, it is morally wrong to ask for help while you know that a part of their income is from Haram, unless you can specify that they give you out of principal or other Halal resources. But from the legality of Shari'ah, it is still permissible to take it even if you ask for it unless you ask them to give you specifically from this Haram earning because you do not deserve it, it is deserved by the poor and needy and wanting money to buy a house does not mean you are in this category. I wouldn't suggest asking them anyway!

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Samy, live Fatwa

Sent: Sunday, November 16, 2008

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

Question: Father Putting His Money in the Bank

Assalamu Alaykum, My father has not been working for many years, about fifteen, even though he only reached retirement age just two or three years ago. He has put his money in the bank, and lived off the interest generated by this money. If one day I were to inherit from this money, how can I determine which part of the money I can take, and which I can't? Thank you for your time.

Jazakum Allahu Khairan for your constant help

Yours, Sami.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. / Sr.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Your worry should focus on him making this Haram investment much more than on inheriting from him, it is unfortunate that we have turned our priorities upside down in our world of today! You should keep, gently and very politely advise him to shift to an Islamic bank if there is one where you live, Islamic banks are giving profits at about the same rates as interest rates in their countries (for many reasons the least of them is that central banks do not allow them to do any differently), continuously keep advise him to do so and if you don't have Islamic banks in your country there are the possibilities of depositing overseas in Islamic banks, and finally there are Islamic investment banks and other permissible investment project everywhere in the world.

The question of inheritance: please ask it after your father dies! If I am there I may answer it or it can be then answered by any Shari'ah expert!

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Ali

Sent: Tuesday, February 12, 2013

Location: United States

Question: Inheritance with interest

AL Salaam Alaykum Dr. Kahf

Alhamdulillah that Allah (swt) blessed you with such vital knowledge and guided you to help Muslims everywhere.

Dr. Kahf, I'd like to ask you two questions if I may.

1. My Father passed away 5 months ago, may Allah have mercy on him. After he died the family found a note saying that he left 3 million riyals in a bank account for this purpose: one million each for the marriage of one brother and one sister and the third million to be spent on the home according to the children, although my mother told me he told her it is for her.

In few years that money earned interest in the bank and grew to 5.3 million.

a) The children said that the interest is NOT RIBA so they went ahead and divided the money.

b) A long time ago I had written a formal letter witnessed and signed by two of my uncles giving up my inheritance share to my mother and my blind sister.

c) So the brother and sister each took their one million (Dad said for marriage) and the 3.3 million left they divided it as such each of the two brothers received 600,000 each (one of them who got the million also ended up with 1.6 million riyals) each of the 3 sisters got 300,000, with one sister who gets the million ending up with 1.3 million; the blind sister got 600,000 because she got half of my 600,000 share, and one sister got 300,000. My mother got 300,000 plus the 300,000 of half my share.

Dr. Kahf, is this considered a proper division given that 3.3 million is to my mind RIBA, but they say no, and can they divide my share although my surrendering of my inheritance to my

understanding should be implemented after my death, and is my mother entitled to the share of 300,000 they gave her.

Ali

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Ali

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I noticed some inconsistency in your email. If your father died 5 month ago how come the 3 million he left become 5.3 million? And how come you say in a few year. That amount does not accumulate interest in such a huge in 5 month or in 5 years?

Interest is Haram and should be given to Muslim charity; one who gets it from a bank does not earn it according to Shari'ah.

A Last will is not valid to an heir. This means that whatever your father left for distribution to the marriage of his son and daughter is not applicable according to Shari'ah because it is in fact their property once the father died. The amount he left should be distributed to the heirs according to what the Qur'an stipulated, I.e., if you are 2 male and 3 females and a mother one eighth to the mother ($3m \times 1/8 = 375000$) and remaining 7/8 at the rate of one share to the female and two shares to the male (that is 375000 to each female and 750000 to each male). However after the death, the heirs have the right to give each other or outsiders whatever they like. This means that if the children and mother agree to give these two millions to whoever is mentioned in the will they can by their own wills and decisions not by the effect of what the deceased father said. Same applies to your gift to the blind sister and the mother; it is not binding before you become owner and it can be implemented by your own will after you become owner of a part of the estate.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Islamic Last Will and Testament

From: Sumera

Sent: Friday, January 09, 2009

Location:

Question: Preparing Last will

Assalamualaikum,

I had some concerns about the preparation of the last will. I read some part of the last will (on your website) which states the following about its preparation:

Disadvantages: a) loss of privacy; b) challenge by any person; c) probate fees, cost of litigation; and, 4) lengthy procedures. If one owns real estates, investment through brokerage houses,

bank accounts, etc. one would be better off with other arrangements of estate planning such as living trusts, family corporations, family partnership, etc.

I had wanted to go ahead and consult my legal advisors about this last will (of course I would be using the one on your website as the basis and I live in the USA). But, I am confused after reading the disadvantages, since I do have brokerage accounts, pension, 401k, home, etc. My question to you is this: if I prepare a last will, just by taking your document and adding to it, and notarize it, will that be sufficient? I do not wish that my family members have to face any problems because of the will in case of my death. Or will it be ok only if I go with a lawyer for doing this? Which would be better for me? I do not know enough about living trusts, and I prefer making a will since I know that has been mentioned in the Quran.

I would like to write a will so that my family members do the right thing and through which I could let them know about some things which need to be done (like donating a specific amount from 401k to charity since some of the money it was earlier distributed in non-islamic funds, though now it has been converted to an IRA investing in Shari'ah compliant funds). Please advise. Could you also advise me regarding the following?

1. I had a 401k account which was invested in the funds offered by my company, say just for example, I had invested \$4000 (including the company's match) and gained a profit of \$6000. I have no way of determining how much of this profit is halal. I had asked my Masjid's imam about this and he had said to donate the non-halal profit to charity. Since I had no means of determining how much of the profit was halal, I decided to donate all the profit. But I had no access to this money and had to divert all the funds (including the profit) to an IRA. So, I decided that I would donate the profit amount (say the \$6000) after I start getting the money at retirement. Is this the right way to proceed? The amounts stated are only an example, the actual amount is more. I don't see it wrong, although I prefer that you give this amount as soon as possible from other resources so that your 401K remains all yours.

2. For another of my 401k account, it invests in Shari'ah compliant mutual funds. But these funds do invest a small percentage (maybe 2-3%) in the financial sector. My question is, would I need to donate to charity, 2% of the money I get from 401k always?

Your help is greatly appreciated.

Jazakallahu khairan.

Sumera.

My Answer:

Dear Sr. Sumera

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

First, Yes, of course a last will has the mentioned drawbacks in the American system, but this is a matter a legal advisor in the state of your residence is better equipped to answer than me.

Here is where your legal advisor would be better to ask. Taking these matters into account I myself took the choice of living trust. The form of living trust that is on my website is prepared to serve AS AN INSTRUMENT FOR DISTRIBUTION OF THE ESTATE IN ACCORDANCE WITH ISLAMIC INHERITANCE SYSTEM. Hence it is in fact the same last will that is mentioned in the

Qur'an and Hadith, it does not have to be called last will to be a Wassiyyah, does it? I suggest that you should read the living trust form that is on my website.

You can mention the 401K in the document, whether last will or living trust.

By the way, remember that 401K is subject to Zakah at 2.5% every lunar year (I.e., every 354 days) for the day you became subject to Zakah (that is when you had as total wealth not including residence and means of transportation and a few other exempted things, about USD1000.)

You can deduct the part of the employer contribution that is not yet vested at the time of calculating Zakah

The fact is that all investment in stocks in America, not only the financial sector, require calculation of purification percentage while all investment in the financial sector is subject to the same. This means that most likely a 2% is a little low, I think the percentage must be considerably higher and remember it applies only on dividends and capital gains not on the principal contributions (yours and employer's)

Best Regards,
Wassalam
Monzer Kahf

From: Mohamed

Sent: Wednesday, April 01, 2009

Question: difference between trust and last will

AL Salaam Alaykum Dr. Kahf

I'm sorry I'm late in contacting you but it's due to my health issues.

Again, my deepest gratitude for your generosity in helping me sort out the issue of a will.

I looked at the issue of a trust or last will and forgive me but I'm not sure what the difference between the two is? I'd appreciate your explanation.to review my situation:

I'm married to a Muslim wife who gave her personal Shahadah in front of me and does believe in all of Islam's teachings except that she's not yet begun to pray although she does say she wants to pray.

We have no children.

Both my parents are alive. I have 3 sisters and 2 brothers.

We live in Virginia which is an "equitable distribution" state, the marital property shall be divided in an equitable fashion. (Source Virginia divorce laws)

Thus our property is deemed to be shared in half for purposes of inheritance.

From my reading on your site my parents are to inherit my half with the distribution of 5/6 for my father and 1/6 for my mother. I had written and signed a document given to my father than upon my death my share is to go to my mother, if alive, and to my disabled sister. I don't know the appropriateness of that document according to Shari'ah since I wrote it years ago without any knowledge of Shari'ah.

Thus I understand my half would be distributed to my five siblings upon the death of my parents. Would it be possible to know the distribution of that money to two boys and 3

sisters? Does the double amount to a son as to a daughter apply here? Does the fact that two siblings, one brother and one sister, have children impact this?

Dr. Kahf: MY TRUE MAJOR CONCERN HAS TO DO WITH MY WIFE'S HALF OF THE WEALTH. She'll also in addition to our property will receive my life insurance money through my work and a portion of my social security check that I receive now due to my disability (I am legally blind with other major health problems).

My wife is a Palestinian whose parents are dead and she has 4 sisters and 2 brothers. She is the youngest. Her family are poor (lived as refugees in Lebanon) and need financial help which she is providing now.

Her wish and mine is that she leaves her money to them (they are Christians and thus as you said can't inherit from her) to help them and their children. You've said she can leave up to a third for them but obviously she'd like to leave all of the monies or the greatest majority of it to them.

THIS MY DEAR Brother is the most help we need. Obviously, after I die and she's alive she can sell the property we have (house, furniture, car) and give them as much as she wants from her share as long as she's alive.

But the issue is: Is there some Shari'ah approved way she can give them the money after she dies beyond the one third? Can she set up a trust fund for her monies to be given to them on a monthly or annual schedule for education etc.?

Dr. Kahf, I haven't told her about the fact she can't leave her monies to her family because she would be devastated for that's all she truly cares about is taking care of them as she's doing now from her monthly salary.

As I told you my parents did transfer their inheritance from me to her upon her death. I don't know how this may help resolve the issue as she's still limited to one third.

This is the main problem we're facing is how to help her family.

DO FORGIVE ME for the lengthy note but this issue is truly affecting me.

May Allah (swt) reward you for your patience and help to me and to all who seek your advice and guidance. You were generous to offer to help me without payment but if there's any way I can pay you for your help please do let me know.

Jazak Allah Khairan

Mohamed

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mohamed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1. I suggest that you make a living trust for you and your wife together. Its advantage over a last will is that it is implementable without a probate court decision (that includes fees, time and lawyers).

2. The consent of your parents is invalid from Shari'ah point of view because it is given before the property becomes theirs by inheritance. If they give such consent after the property becomes theirs it is only, then valid.

3. For your siblings, you can assign anything to them within the one third. This assignment will only be valid if your father survives you (because then your siblings are not heirs), but if he does not survive you your siblings become heirs and they cannot take any share by Wassiyah (i.e., the max of one third) because Qur'an assigned shares must not be disturbed by Wassiyah.

4. What your wife can do is to create a Waqf out of her share of the property, if she survives you she may add later her inheritance from you that is only one fourth of your net estate, if other heirs of yours decided to give up their shares to her she may also add the same to her Waqf, she may also add a clause that makes her a beneficiary of the Waqf revenue/use for all her life. The Waqf objective must be to benefit her family (if this is her desire) so that they can use the revenue only for any benefits that she may specify such as education, living expenses, etc. This Waqf must be created now in a form of a trust and must be for a long term (the Waqf is essentially permanent till the Day of Judgment but maybe laws do not allow permanency in family Waqf, so if she wants to keep it only for family help it must end by 120 years of her death). She may like to keep it say for a generation or two and then distribute the principal to family members then or charity in America or in Palestine or any other land.

5. Surrendering the rights to an inheritance by your parents to your wife while you are alive is not valid. One can only surrender a property after one owns it. This is considered only a promise that may or may not be fulfilled.

I am sending you a word copy of the living trust documents (whole set) please read them carefully, check with a local legal adviser and fill them out. Also you can download from my website some forms of Waqf for family (trusts) for use by your wife.

Please remember to transfer property to the trust once you do it, it takes a short form that you get from the real estate recorder in your county.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Mamoon

Sent: Thursday, April 23, 2009

Location: United States

Question: Preparing Last Will Document

Assalam Alaikum

Dear Br. Dr. Kahf:

I already asked you for a copy of the last will and testament that you wrote in Jun 2005. Kindly you sent me a copy and I filled it at that time, and my wife did the same. Currently, I'm planning on filing a new last will and testament, as many things has changed in my family, including the blessings of Allah of having a new baby, and relocating from Ohio to Virginia with potential new contact information and list of people to execute our last will.

I'm sending you this email with the following inquiries:

- If you can kindly send me a, word doc format, copy of the newest version of last will and testament

- Your advice as to how to file the new last will? Do we need to withdraw the one we filled in 2005? As I was a student at that time and a copy of my last will and my wife's were deposited in the office of legal services at the university where I was studying in Ohio. Or just ignore that 2005 one and worry about the new one?

- When filing the last will testament, do we need to deposit a copy of our last will and where? and how we can make sure that the authorities will be able to find out last will when needed?

Jazak Allah Khairan for your efforts. May Allah shower you and your family with his mercy and blessings, Ameen

Assalam Alaikum

Mamoon

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mamoon

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1. Please receive a copy of the last will.

2. I can't advise on any place to deposit or record a last will and I don't think that America has such a thing. You just fill it in keep original in a safe place and copies with confidants and executors and let them know where the original exists.

3. If there is no text around the end of the last will which revokes all previous such documents you must add it and it is always better to destroy all old revoked last wills

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Mohammed

Sent: Tuesday, May 12, 2009

Location: United States

Question: Property outside USA and Last Will

Dear Dr. Kahf

While preparing the Last Will, should I enlist any property outside the USA? I have one house co-owned by my brother and a flat in Bangladesh. Please, let me know.

Sincerely

Mohammed

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Bhuiyan

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Properties that are in Muslim countries are subject to the Shari'ah inheritance and you may consider having a separate last will for them only for the purpose of giving to charity and the like up to one third nor for the Shari'ah distribution of estate. In America we need a last will or a similar document for the distribution according to Shari'ah. If you have properties in countries that do not have Shari'ah inheritance laws, then you better include them in the American Last Will.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Hafeez

Sent: Tuesday, May 12, 2009

Location: United States

Question: Distribution of Property in the Last will

Aslam-o-Alykum!

I have a property dispute and want to have an expert's guide.

the scenario is that my Grandfather has died and he left a land (house) let say of worth 1,000,000 rupees.

my Grandfather has one wife and 6 children (all alive)

Grandfather left his one wife (alive), 3 sons (one son has also died leaving his wife and children, further all sons are married), 3 daughters (all married and alive)

Now, some of Grandfather's sons and daughters made my father very puzzled about his share. so I'm asking on his behalf the exact share and division ratio of each Child and wife I.e. 1 wife + 2 son + 1 dead son's wife & children + 3 daughters

many thanks

respect and regards

Hafeez

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Hafeez

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

It varies depending on whether your deceased uncle died before or after his father and how many children survived him. Here are the details:

1. Scenario one: uncle died after his father: The distribution is from line (1.b) of the schedule of Mawarith (it is on my website www.kahf.net): wife $9/72$ (= $1/8$), each of the sons $14/72$ and each of the daughters $7/72$. When you make the distribution (e.g., now) the share of the deceased uncle should be distributed according to the same rule as in line (1.b).

2. Scenario two: uncle died before his father and left at least one son, daughters only 2 or more, or at least one son and any number of daughters (zero or more: distribution is as in number 1 above. The children of the deceased take the share of their father. (This is distributed according to the rule of 2 share to male and 1 share to female, if one son only he takes all the share of his father, if daughters only 2 or more the share is divided equally to them). Nothing will be given to wife of deceased uncle. The rule that applies here is the Wassiyyah Wajibah (obligatory last will).

3. Scenario three: uncle died before his father leaving only one daughter: she takes only 7/72 (an amount equal to her aunt's share) the remaining 7/72 is distributed back to the 5 sons and daughters of the grandfather as per the rule of 2 shares to male and 1 share to female. This is because the share from Wassiyyah Wajibah must not exceed the share of same gender from normal inheritance.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Hafeez

Sent: Tuesday, May 12, 2009

Location: United States

Question: Witness and Notary of last will

Dear Dr. Kahf

Assalamualaikum.

Thanks for your reply to my previous question. I have couple more problem understanding the Witness and Notary part of your last will which I am describing below. I would appreciate your help in this regard. Below is the excerpt from your will and the questions are in red.

TESTATOR'S SIGNATURE AND WITNESSES	
In witness whereof, I have hereunto set my hand and seal this <u> 10th </u> day of <u> May </u> of the Year 2009.	
Signature _____	
(Legal Name)	

(Muslim Name, if different)	
WITNESSES	
We hereby certify that the foregoing instrument was on the date thereof, signed, published, and declared by the Testator Mohammed Taj Uddin Bhuiyan, as and for his/her Last Will and Testament, in our presence, who at his/her request and in his/her presence, and in the presence of each other, have hereunto subscribed our names as witnesses thereto, believing said Testator at the time of the signing to be of sound mind and memory.	
1. _____ of _____	Address _____
2. _____ of _____	Address _____

NOTARIZATION

(This part is none of your business to add anything. The notary public knows what to do)

STATE OF -----

COUNTY OF -----

On the _____ day of _____, 20__ before me,_(Name of the notary official)_____ personally appeared _____Whose name here and _____ and _____ (I assume these blanks are to be filled out by the names of the testator, and the 2 witnesses, right? If so, that means the testators will also have to appear before the notary, right? If this is right then is it possible to rewrite these two sections so that the witnesses do not have to appear before the notary? personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signatures on the instrument the persons executed the instrument.

WITNESS my hand and official seal.

Signature of the notary official?

There is only one place for my signature in the witness and notary section. If I sign before the witnesses, then where will I sign before the notary? Or, is it that the witnesses will have to be along with me before the notary so that when I sign everyone (witnesses and notary) witnesses it.

I am sorry to take your valuable time but I am confused here.

Thanks in advance for your valuable time. Allah Hafez.

Sincerely

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Hafeez

You have to be all together at the public notary. This is the way it is always in all countries and under all laws!

Wassalam

Monzer

From: Layla

Sent: Tuesday, November 03, 2009

Location: United States

Question: Changes in the forms of last will

Assalaamu Alaikum,

I am writing regarding the Last Will and Testament that you recently sent to the Muslim Community of Knoxville (may Allah reward you for that). One brother who is helping with the document modifications had the following questions:

- 1) May we replace 'ISNA' with 'MCK' throughout the document as the final authority if the executor is not available or mentioned?
- 2) All charitable contributions -- can they be made to MCK instead of ISNA?
- 3) May we change seperability from ISNA to MCK?
- 4) May we remove case 9 and the comments regarding a second wife? Or is this necessary to cover all our bases as an 'Islamic' will?

If you could give us your feedback on these matters, we would greatly appreciate it. May Allah reward you for your time and effort.

Wassalaamu Alaikum wa Rahmatullah,
Layla

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Layla

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The answer to the first three question is YES, provided of course you make appropriate provision for the possibility that MCK may not exist (include its successor or any Muslim association that serve the local Muslim community in the area, etc.)

For the last question of more than one wife, I believe it should not be removed from the form. This is a case that exists among Muslim in America although it is illegal and we do not like it. It exists among average American married men in a much worse form of mistress that has no rights guaranteed at all. Our form should be able to accommodate this rare incidence. But any individual Muslim man who has no such problem may remove this case from his own last will. We always advise Muslim men to avoid falling in such circumstances but still it is a case that has real presence and the right to the estate of the second wife should be preserved because to us Muslim she is not a mistress but a wife.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Jamal

Sent: Friday, May 07, 2010

Location: Canada

Question: Copy rights of the template of last will

Dear Dr. Kahf:

ASAK, I hope this finds you in good health. I have a question to you about how to refer my clients to your will documents for their (and their attorneys') while respecting your copyrights. When a retirement planning client of mine requests an Islamic will, I refer them to your site. I have in the past printed a copy for them and given it to them (and just now considered that this may be a violation, but it has only been a few times at most). Now, if a client wants to execute this will, practically speaking, they will use your document as a template, BUT they will find

their own attorney, who will then use your document for the schedule of Mawarith and a few other things (added to his own will template of course) and charge the client for it.

Do you consider this a violation of your copyright? Please let me know how you would like me (as a retirement planner) and my clients' attorneys (as their estate planners) to make valid use of your documents. Thank you.

Wasalaam

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Jamal,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I know there a lot of violation of the copy rights because we did not tighten it. The last will and the living trust forms are given free for personal use. But apparently some lawyers have taken the same and used them as template to charge their customers on them. This is illegal; honesty requires them to pay to the ISNA Development Foundation 20% of the charged fees for royalty. I do not charge anything myself because I made them Sadaqah Jariah to ISNA and Muslims in North America.

If you want to do it the right way. You should advise your clients to pay to ISNA D F the same.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Baraa

Sent: Monday, October 1, 2012

Location: Canada

Question: validation of the schedule of Mawarith

Assalamu Alaikum wa Rahamatullah wa Barakatuh

Dear Dr. Monzer,

Salam,

Do you have any response to the following ISNA critic?

“Has anyone attempted to validate the Schedule of Mawarith that is in various versions of ISNA's will document? I'm not a T&E lawyer, but I find the schedule to be infinitely confusing and riddled with typos that causes me to question the internal cross-references. Has anyone tried to clean it up and/or validated the schedule?”

Thank you very much,

Baraa

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Son Baraa

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

When it was done for the first time in 1976 it was reviewed and validated by several scholars, about 12-14 then, in America. Since then it has been revised several times.

I don't agree with the gentleman that it has many typing mistakes although it may have very few only. From Shari'ah point of view, it has been refined intensively and it is definitely correct in all its detailed now. Its approach/methodology is still much more superior to all other attempts that I've seen because of several merits: it does not allow room for judgment by the implementing court, it covers all potential cases, it gives direct answer without reference to the procedures of Awl and Hajb العول والحجب, it accommodates al Wassiyyah al Wajibah الوصية الواجبة for children of deceased child, etc.

If this brother, who said that, is willing to be useful, have him point out these "riddled with typos" and the "infinitely confusing areas" or I can send him the word copy and ask him to point out the typing and other mistakes that he finds for correction or for further explanation

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Co-ownership and Community Ownership Inheritance

From: Faidy

Sent: Sunday, September 09, 2012

Location: Singapore

Question: Community ownership

Dear Sir

Assalamu Alaykum

I would like to ask about inheritance. I come from Singapore and over here I co-own a house with my husband. He pays the larger portion via what we call the Central Provident fund. The house has been fully paid.

The CPF works whereby about 20% of our monthly salary will be taken and put into this account. This account is then divided into 3 separate account which is our ordinary account, special account and Medisave account. This is mandatory for all local income earners. The ordinary account is mainly used for buying house.

My concern is should any 1 of us pass away, leaving behind brother, sisters, children, etc., in Singapore law, the house will automatically be inherited by the co-owner of the flat which in our case will be either myself or my husband.

My question is as follows,

1) Should we sell the house in order to follow the Muslim inheritance laws and give the heirs their rightful share of the deceased?

Selling of the house is also another complication. I'll give you an example as follows

My husband pays S\$100,000 via CPF. I pay S\$50,000 via CPF. Our cash component is another S\$50,000. Once we sell the house the CPF component will be returned back to our respective CPF account. And if we make a profit we will get back the cash component.

If a spouse is deceased and the surviving spouse decides to sell will have all of the CPF component to his/her account. The disbursement of these CPF monies is not in our control. However, when we hit a certain age, we are able to withdraw some money stipulated by the board (not all) for the purpose of our old age. At this point it will be confusing if we are to make the calculations on how to distribute the money we could withdraw to the remaining heir?

2) What if we wish for the surviving spouse to be the sole-owner of the house?

3) And also for CPF, we are given the option to nominate our spouse to receive all the savings in the account. Can we do that?

4) If we want to give house/CPF savings as a gift to the surviving spouse, is this 'gift' considered valid since the 'gift' only takes effect upon the death of the giver?

5) If the remaining heirs are willing not to take their share and have things remaining as it is, is it ok?

Another issue is that my husband and I are planning to open a joint savings account. We will both put in the same amount every month. We take it as we fully own every cent in the account together.

6) Upon death of 1 spouse do we need to give any amount in this account in accordance to Islamic inheritance law?

7) How about other non-monetary items such as cars, furniture, etc., that we own together (although these items might have been bought by individual spouse but we take it that these items are 'ours'). Should we be selling them to be distributed to the heirs? What if we are unable to sell these 2nd hand goods?

We did not want to be involved in Riba and thus we had bought a smaller house and paid in full with what we have. Should a surviving spouse have to sell the house to give the remaining heirs their due share, it means that the surviving spouse will need to buy another house and the finances would most probably not be sufficient as we only manage to buy this house jointly especially for my case as I pay a lower share.

We are in the midst of financial planning and we want to be prepared and do not want to keep things that are not supposed to be ours in case one of us departs before the other.

Please advise.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Faidy

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Your questions are very intelligent and deserve commandment.

I suggest first that you should read both the last will and the living trust on my website www.kahf.net

Then keep in mind that the Islamic inheritance system is 100% mandatory as indicated by verses 4: 11, 12, 13 and 14. Please read them carefully especially the phrases at the end of the verses.

Try to settle some or all the issues below through a living trust. I personally live in America and the law allows us to use the living trust. In fact the form living trust on the website is what I personally used to cover almost all the points you raised, does it apply in the context of Singaporean laws?

Then look at the following:

1) The principle we apply on community property of husband and wife is: if they do not clearly and specifically and preferably in writing agree on any distribution of what they own together, we consider it 50/50 regardless of who pays more for buying it. whoever paid more than the other we consider as a gift in lifetime since they did not mention any clear evidence other than owning it half/half. Should any of you die the other will become owner of one half plus the share of inheritance from the other. Other heirs own the rest. These heirs in most of cases are required to take care of providing for the expenses of the surviving spouse including housing which means the surviving in most of the cases remains in the house until she/he passes away, then it goes to old heirs and new heirs.

2) What if we wish for the surviving spouse to be the sole-owner of the house?

There is no way in Shari'ah to do that except gift during life. Then God know who is the survivor! But being a majority owner the survivor can impose her/his equation, fairly, on the minority owners who are other heirs. If they are children the matter is usually much easier. But you should remember that parents inherit in all circumstances and sibling if they are no children.

3) I need more info for the CPF three accounts. Please give it especially the special account and the medisave. It seems to with the info you provide that the first account is privately owned and then is subject to inheritance rules regardless of who is the nominated beneficiary. We take nomination of beneficiary simply to make things easier. The beneficiary is required to distribute what she/he gets according to inheritance. Other accounts are subject to more details; this one also if what I got is incomplete. For instance Social Security system in America is not like this first account. It is a tax and you get benefits on insurance basis according to the law: disability, death payment, minors, spouse, and old age benefits. But it is not your money and you cannot use what is there in the fund. It has no beneficiary system either. Insurance policies may have two parts, the cash value and the face value of the policy. The cash value goes as inheritance if it exists, but the policy face value may go to the nominated beneficiary not to heirs.

4) Gifts can't be suspended to after death what is suspended to after death is Wassiyah and it can't be given to an heir as it is clear from Verse 4:13.

5) There is a rule in Shari'ah which is very important and it does not exist in many man made laws: surrendering a right before you earn it is not binding and one should be given to choice to revise this surrender after earning the right. For instance a wife may give up the right to personal and living expenses after she marries but not as a condition in the contract itself and if it is done she has the right to revise this decision after marriage and it becomes binding on the husband if she changes her mind. If other heir gives a written surrender statement they have the right in Shari'ah to revise it after death of the spouse. Very often they may not like to do so in consideration of their relation with the surviving spouse but this is the law of fairness because they may surrender the right under any kind of pressure.

Regarding the joint savings account, apply the rule mentioned above.

6) Yes of course, there should be no doubt about it at all

7) Keeping in mind the rule of 50/50 if there is no evidence otherwise, these should be distributed in kind or in money to the heir. Of course, in families other heirs usually give it to the surviving spouse. This is a general practice but the Islamic law is distribution to heirs unless they give it to the surviving.

The surviving spouse most likely will have right of housing and other expenses on other heirs and can keep the house and others needed properties until they fulfill this right. This is written in living trust form which is on my website.

Consider the forms on the website. And May Allah be with You both.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Faidy

Sent: Monday, September 17, 2012

Location: Singapore

Dear Sir

Assalamu Alaykum

Thank you very much for your reply.

I have read through the last will and living trust from your site. I believe it more or less also applies in the context of Singapore law.

There is a Shari'ah Law system in place in Singapore and they will take charge of the distribution of the deceased's assets if no will has been made (Except for housing and ownership to co-owner/surviving spouse in automatic). The balance funds in the CPF of the deceased can also be left in the charge of our Shari'ah system to distribute accordingly unless a nomination have been done for someone specific to receive the CPF funds of the owner's death. After your reply, we have decided not to nominate each other as sole recipients of our respective CPF funds. (FYI all 3 accounts are privately owned. Only its uses differ. E.g. Ordinary Account is mainly used for housing, Medisave is used for the individual healthcare needs, special account can be used to pay for housing if funds in ordinary account are insufficient, etc. When you age, they will create a retirement account for you where you have to have a minimum amount in the account where you can withdraw a portion of it when you hit a certain age they will disburse the amount in small portions to you monthly over a period of time.)

We have also decided not to open a joint account to decrease confusion.

Going back to Question number 1 - If there are documented evidence on how much each spouse contribute for the payment of the co-owned house, must we follow the stated document or can we take the co-ownership as 50/50?

Thank you.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Faidy

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

It is good to know that all CPF accounts are owned actually by the person and if no beneficiary is assigned they go by Shari'ah at time of death.

For the house, when it is registered as owned jointly, it is in fact the choice at purchase or registration per agreement of the husband and wife. If they agree to consider it 50/50 it is ok

and considered as gift for any difference in payment between them. If they do not set any percentage, it is then considered as 50/50. By same token, they can select any other percentage because the point is that the difference is treated as gift. In other words, you don't need document if you use a living trust and set the percentage of ownership as you like.

In your case I suggest that you agree on a percentage for the joint house and put it in a joint living trust. Living trust normally does not require probate court for implementation. Then Shari'ah compliant distribution of the house or its value will be left to the trustee whom should be selected as Shari'ah abiding person, be it the surviving spouse or other person.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Estate Planning

From: Wael

Sent: Thursday, November 20, 2008

Question: last will and inheritance

Salams

Pls. dr. Monzer help replying the following question:

Dear Scholars, Assalaamu-alaiykum, In 1996 before proceeding for Hajj, my father wrote an Inheritance Will (without any Witnesses? signatures) and also without Civil Court Stamp Paper and Registration requirements. In the Will he divided the House according to property rate during that year (1996) mentioning that after his death the 2 sons will get the amount and Elder son will keep the House. During that time I and younger brother had our own House and Elder Brother didn't have his own House and was staying with my Father. Also, Father had 1 more House which he sold during his life time and gave equal share to my 2 Sisters after the consent of his sons. Recently, my father returned to Allah and as per his last wish we heirs gathered to read his Will (since 1996 the Written Will was in the custody of his best friend and a copy with my elder sister). However, just before the opening of written Will, one of our relatives informed us that 2 days prior to father's death, the last instruction was to now divide this house equally among three sons, because presently the economic conditions of all my 3 sons are equally good and now all have their own houses?. However, our Elder brother has pressured us to consider the written Will because it favors him monetarily. Today, the House is worth more and he gave us amount as per 1996 House Rate. House was still in the name of my father till his death. Actually, we 2 brothers are in dilemma as to which Will (written or oral) we should adhere. Also advice if 2 sisters' share has to be acknowledged in the present House. Please guide us accordingly. Shukran.

Salams

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Wael,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1. Technically speaking any last will can be challenged in court. Unless it is either proven beyond doubt or accepted by all heirs, it cannot be upheld. The same applies to my Fatwa too.
2. Further, also technically any giving in life time to any child is considered a gift and it is valid and final in both cash, personal property and real estate provided there was actual handing out of the gift. A gift that is not actually handed to the recipient is only a promise and remains in the ownership of the person. for cash handing over is obvious but for real estates handing over requires registration. But if there is no registration and other heirs accept it it becomes also valid. (since the house remained in the name of the father until he died, there is no handing over to the elder son).
3. According to 1 and 2 above the house and any other property is now subject to distribution among all heirs. If the survivors are only three sons and two daughters, no wife, the distribution must be $2/8$ to each of the sons and $1/8$ to each of the daughters.
4. But in this case, the argument that what the father gave as cash to the two younger sons each is no more equal to the value of the house today is incorrect because it was when distribution was done and should the other two sons invest their money this money may have become also equal today! My personal suggestion is different from the Inheritance distribution as mentioned in 3 above because it seems that the father's intention was to be fair among all his children. I suggest that you should be kind to each other and do not make any dispute and let the house be taken by the son to whom it was assigned, other sons and daughters got already appropriate shares at the time. I would say that this kindness and forgiveness would please your father and also please Allah. If you do not accept to do this, what I said in number 3, i.e., all property in the name of father should be distributed as inheritance on the day of his death.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Sumera

Sent: Monday, December 22, 2008

Question: Account for a child and loans on properties

Assalamualaikum,

I am in the process of making a will and have a few questions. I am a female and live in the USA. Here are my questions:

1. My husband and I both own a home jointly. If either he or I were to die before the loan for the home (obtained through an islamic institution) is paid in full, how is this supposed to be distributed? I know that only half of it is to be distributed, but for that, is the home supposed to be sold? Or can the living spouse transfer it to their name and if so, how much do you distribute? How much does this depend on the amount of loan already repaid?
2. I had opened a UTMA account for my child who is a minor. According to the rules of the account, in case of my death before the child becomes 18, the money transfers to the estate unless specified otherwise in a will. I now know that according to the rules of shariah, I cannot specify that in case of my death, all this money should go only to my child, since I have other

inheritors, nor can I take out money from this account. How am I supposed to deal with this situation when writing a will? I do know that I could give this money as a gift in my lifetime to my child.

3. In case of my death, I would like to find out whether all my savings (and jewelry) would go towards the debt of my home (which is jointly owned by me and my husband) or would they be able to distribute the savings among the legal heirs. If all the savings go towards the debt of my home, would it be possible to distribute the home among the heirs (since I would own half of it), or what is the ruling supposed to be in this situation? Should the home be sold to my husband and I be released from the debt? We have a 30 year loan.

Thanks for your help in this regard. Jazakallahu khairan.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sir. Sumer

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Please see the answers below:

1. The property goes to heirs with its debt. It is up to them to carry the debt as it is or liquidate and pay it. In other words, each one of you owns one half of this house and owes one half of its debt. of course upon death of one the other inherits a share and becomes a majority owner. In the will of each one of you it is better to mention this point very specific and clear in order to avoid the point that the house become a property of the spouse as it is in almost all States in the US. But also mention clearly that the debt is to be distributed proportionately otherwise the surviving spouse, as a cosigner on the debt becomes liable for all the debt. In other words what is inherited is only the net estate of a person after payment of all debts and expenses (including taxes).

Distribution MUST always be in accordance with the Islamic inheritance law that is expressed in the Schedule of Mawarith (which is on my website). Of depending on who are the surviving heirs of the deceased spouse at the time. Of course, once the value of very thing is estimated heirs can agree on any distribution that pleases them (e.g., they may agree on leaving the house to the spouse especially if she/he is the guardian of minors and other heirs take other properties, etc.).

2. What you cannot assign it to the child in a last will if it is owned by you in life time. But if you give it as a gift in life time, you clarify this fact in the last will. This is not a tempering with the inheritance system (a will to ah heir with is prohibited).

If you intend to give the amounts deposited in this account to your child when deposited or now, I. e., in life time, of course it is permissible, but if you have other children in equal needs you should give them similarly. These gifts are better mentioned in the last will in order to remove any ambiguity. In this case, I suggest: Please mention this account and its balance at the time of making the Last Will and your intention to add to it in the future and that it is a gift to the child, owned literally by her/him from the time you deposited it and that you only act as its guardian at present. This is only in the last will, needs not be listed on the account documents.

3. What the heirs are going to do with their property is a matter you should leave to them, why worry about it, it is none of your business! any debt on any kind of property is charged to

that property especially in the matter of real estates that are mortgaged. Heirs may decide to assign the house to the spouse, along with its debt considering the net value at the time while assigning other properties, savings, cars, jewelry, etc. to other heirs. This is very logical especially that it is the residence and surviving spouse is usually the guardian of any minors, so that the minors' shares plus spouses' share makes most of the house anyway (e.g., if the husband survives and you have only one son and two parents, husband's share in the estate is 1/4th, parents 1/3 and son 5/12) this is in addition to the husband already owning half of the house. I do not suggest to make any assignment of properties to any heirs (I mean do not distribute any property in the last will) and let them worry about it themselves according to their own desires at the time. Besides, any such distribution is not binding from Shari'ah point of view because the property becomes theirs upon death and you have then NO SAY ON IT because Allah distributes it as mentioned in the Qur'an.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Sumera

Sent: Tuesday, December 23, 2008

Assalamualaikum.

In the response to my third question below, could you clarify the following:

Some people have said that all property or savings (like 401k) other than the residence would go towards the loan for the residence and other legal heirs such as the parents would get nothing (they live separately). Is this correct? The reason for asking this is one of my relatives have been through this situation and they also would like to know if they need to provide anything to the deceased's parents from his savings or can they apply these savings towards the loan of their home? They will not distribute the home since they are living in it.

Thanks for your reply.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Sumera

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

It seems that there is some misunderstanding somewhere!. When a person dies, all his/her estates including residence house, savings, IRA, 401K, car and personal things, make one group of asset let us call it ESTATE. Out of this ESTATE we pay all debts that is on the deceased for the house or for any other reason or on any other property (car, etc.), we also pay expenses, such as funeral expenses, medical bills and the like. The net balance after all these settlements MUST BE DISTRIBUTED to all heirs according to the schedule of Mawarith.

Laws in America, in all states, give all the net ESTATE to the spouse, or may not allow distribution of residence house or balances in IRA or in 401K, these laws are not consistent with Shari'ah. It is sinful for any heir to take more than the share that Shari'ah assigns to her/him and it is also SINFUL FOR ANY MUSLIM WHO LIVES UNDER SUCH LAWS NOT TO PREPARE A LAST

WILL OR ANY SIMILAR DOCUMENT THAT DISTRIBUTES THE NET ESTATE ACCORDING TO SHARI'AH.

This means that, in the case you mentioned, the house is subject to distribution to parents and other heirs according to the schedule of Mawarith (of course any heir, after the death of a person but not before, may give up her/his share to the benefit of other heirs to any one of them or any outsider). Parents of a deceased always have shares in the net ESTATE. So unless they give up their share, they must be given out of the net ESTATE be it the house after other items were used to pay debts even if the law gives the house to the children only, It is Haram to exclude parents from inheritance.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Amjed

Sent: Saturday, January 31, 2009

Location: United States

Question: Creating trusts

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh,

My father is purchasing a home and we are thinking to either record the home in either his name or in a trust but would like to choose something better and easier in regards to the Islamic inheritance rules.

Is it better to put it in a trust and if so, how should we fill in the contingent beneficiary section so that it complies to the Islamic inheritance rules and the 6% my father willed to give to three non-heir groups? Our family is my father, mother, 3 boys and 3 girls. Also, does the 6% need to be treated as debt, or should it be calculated along with the 1/8 wife and the rest of the children's shares? Below is what I am thinking to write down, but I don't know if they will accept it. Also, we might not want to sell the home or if we do, we might have one inheritor purchase it.

2% to MCC, 2% to ICCI, 2% to the needy individuals other than beneficiary surviving children. Out of the remaining 94% if the wife of primary beneficiary survives, 12.5% to wife (equivalent to 11.75% of the total), and 87.5% (82,25 of the total) to the surviving children of the primary beneficiary whereby the ratio of share of each son to share of each daughter is 2 to 1. If the wife of primary beneficiary does not survive, 2% to MCC, 2% to ICCI, 2% to the needy individuals other than beneficiary surviving children and 94% to the surviving children of the primary beneficiary whereby the ratio of share of each son to share of each daughter is 2 to 1. In both cases If any of the children of the primary beneficiary dies before him, the children (if there are any) of this deceased child shall be given the share of their parent should she/he be then alive. Distribution to such grandchildren shall follow the same ratio of two shares to a male and one share to a female. Under all circumstances no step, foster, adopted or out of wedlock children shall be considered for any distribution.

I and my parents filled out the attached Will a couple of years ago, and then just recently, because I started becoming worried that the wills might not be valid in Illinois, I had a Muslim attorney review them and she said that they are valid. Throughout all of this, I came across your

website, learned more about estate planning and noticed the living trust documents you have. My previous question was because I thought doing a land trust through a bank is convenient and a shortcut. We did however do the POA for health and real estate and I plan to use other forms from your web site.

Considering it took I and my family some effort to fill these out and have the attorney review them just recently, is it necessary to redo and Will and living trust using the blank documents on your web site?

Below is a note from my lawyer...

"Probate is a court process whereby your executor has to follow certain administrative steps before making distributions to legatees according to your will. It's a bit of a cumbersome process, but if there are no disputes about your property then your executor would probably use "independent administration," which makes it less complicated and involves less court supervision. Unless you anticipate that the total value of your property after your death will be more than \$2 million it's probably easiest to use the will that you already have."

Also, are there different opinions about whether grandchildren receive inheritance from their grandfather if the parent dies before the grandfather? If a parent dies before the grandfather, according to <http://www.islamicsoftware.org/irth/irth.html>, children of daughters do not receive inheritance from their grandfather in all cases, and children of sons receive only if their grandfather leaves no sons. Also, do you take into consideration giving inheritance shares to parents? In this case, my paternal grandparents are deceased. If there are opinions, I do not have enough knowledge to choose. What I am sometimes inclined to do is to follow what is recognized as the majority opinion.

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Amjed

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Whatever is given to non-heir should be deducted at the beginning, then share of spouse should be taken out and the remainder after these two deductions should be distributed to children, otherwise the proportions between spouse and children will be disturbed.

It may be easier to record the property in the name of the trust, it is usually easier for succession. But you really should check with a lawyer in your state

I really do not recommend that you put a bank (you are talking about an American bank not an Islamic bank) as a trustee, why not one of the children of the founder, whether you make it as a revocable or irrevocable it can be entrusted to one of the children or make it a friend and add an enforcer as "the two oldest children" or anything like that.

The Share of children of deceased child is now accepted by the very great majority of Islamic scholars in almost all Muslim countries and is a part of the law in almost all Muslim countries though it is not in the four Sunni Schools. As an obligatory part of the inheritance system it goes under "obligatory Wassiyyah. As such it is limited to the one third so that if a person is survived by one son and children of a deceased other son, the latter do take only one third (not one half that is the share of their father).

On the other hand, all schools of Fiqh recommend it for a grandfather/grandmother who makes his/her own will as in your case now.

Being a Wassiyah within the limit of one third there is no reason to differentiate between children of a deceased son or daughter because shares in a Wassiyah are determined by the founder of the Wassiyah. I find this differentiation between children of deceased daughter and deceased son kind of discriminatory without any Shari'ah base.

Finally, it is true grandchildren do not have any share in inheritance (outside the Wassiyah that is Wajibah by law according to many contemporary and some ancient Shari'ah scholars, or recommended as in this case) if there are still sons alive.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Jamal

Sent: Friday, December 18, 2009

Location: United States

Question: using last will

Dear Br. Monzer Kahf,

I hope this email finds you in good health. You were kind enough to answer a few questions for me a few years ago. I am a financial planner and frequently encounter questions regarding estate planning. My question to you is this:

1) The traditional Mawarith favors male heirs over female heirs of course. But there is also a reservation clause that allows the deceased to direct 1/3 of his inheritance in whatever way he wishes. Can he use that to rectify perceived imbalances between male and female heirs (or other classes that they might consider to be slighted like adopted relatives, non-Muslims, etc.)?

2) Do you (or any other scholars you know of) have a position on how to reconcile the Mawarith with the US laws concerning the unlimited marital deduction? For particularly wealthy families, one can leave funds to whomever he wishes up to the unified credit, but after that, it makes sense to leave the remainder to the spouse to postpone taxation. Do you consider this to be enough of a benefit that the Mawarith should be overridden, or should we ignore the tax benefits and distribute accordingly? Or is there a way you know of (using trusts, etc.) that both goals can be accomplished?

Thank you for your reply.

Wasalaam,

Jamal

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Mahmoud

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1) The Mawarith system is one of the most direct and straight forward set of rulings in Shari'ah. They have no rule for Ijtihad or any circumstantial consideration. If you read the verse

11-14 in Chapter 4 you notice that they use words that translate as “God obligated you” “it is obligation from God” those are the terms from God” “Disobeying His terms ends in humiliating punishment in the Fire of Hell” Transgressing His Terms” etc. Those are the verses that, when distributing to children or husband and wife or parents without children or siblings, give two shares to males and one to females. NO CHANGE OR INTENTION OF CHANGE IS PERMISSIBLE IN MAWARITH. It is one of the most serious sins. Further your word “Imbalance” is very incorrect please do not say such a word in this regard as the ordinances of God are the most balance and absolute just. Human acting can only distort it not rectify it! Males in the Islamic system have more financial responsibility than men. It is absolutely prohibited to make any distortion in these terms through a last will. If such a distortion is done it is invalid according to Shari’ah (of course Western laws allow it but this makes it most sinful. The prophet, pbuh, stated (explain that any transgression on these Terms is forbidden) that “No shares to heirs should be assigned in a last will.” Not even to a handicapped child or poor one or the like. Adopted relatives are not heirs according to Shari’ah and when we make Last Wills in America we must explicitly exclude them from being heirs. Accordingly they can be assigned from within the maximum one third that one can give away to non-heirs and/or benevolent causes.

2) Marital deductions: the way I tried to help it is by leaving it to the consent of heirs. The rule is: whence one becomes an owner one then can take any decision one likes. We wrote in such a way that the living trust suggests, with heirs’ approval, using the marital benefit and transfer to A and B trust can be done.

I suggest that you check my website www.kahf.net and see both the last will and the living trust forms. I also request you to give me any suggestion for improving on these forms.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Jamal

Sent: Thursday, December 31, 2009

Location: United States

Question: understanding a last will

Do I misinterpret your will then?

It says under Article IV, section B

I direct and ordain my executor to pay the following contributions and transfers, provided that the total distribution of Article IV does not exceed one third of the remainder of my estate after making provision for payments of my obligations mentioned in Article III, to the hereby named persons and organizations: And then it has blanks. Could one not name females or adopted children for extra shares, or is that not the intention of this section?

Jamal

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Jamal

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

You should read the instruction and introduction that mention that an heir cannot be named within the Wassiyah. This part you mentioned in the Wassiyah part and no heir can be given any thing in it because that amounts to distortion of the distribution given in Verses 10-14 of Surah 4.

An adopted or foster child can be named in this article because it is not an heir. However adopting a child under Western laws is not permissible in Islam. Adopting a child in Shari'ah is merely taking care of him similar to a member of the family but definitely not making him a member of the family (for instance marriage is permissible between him/her and other family members).

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Nazif

Sent: Friday, October 29, 2010

Location: United States

Question: Legality of Wills

Assalamu Alaykum

Hope you are doing well.

Would you have a sample of how this would be completed for a Joint Will? Also, can this document be used as an official Will or do we still need to obtain legal services and have them extract the information from your document to be placed in the will with respect to distribution, guardianship, etc.? Please let me know.

JK,

Nazif

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Nazif

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

All legal question should be addressed to legal specialists. I am not.

You asked questions that I practiced myself. I can tell you what I did:

This document need to be made in two copies one for you and one for your wife. Each should either be fully typed or fully handwritten.

Any paper you leave as a will is legal if its authenticity is proven. This is document is therefore a legal document. Do it complete, print yours and your wife, take it, with 2 witnesses to a notary public, sign in her presence and then keep it in a safe place, inform the person you appoint as executor about it and where it is.

This is what I did, although I used living trust documents.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam
Prof. Dr. Monzer Kahf

From: Esam
Sent: Monday, April 18, 2011

Question: Does a will override the Islamic rules of inheritance?

Dearest Dr. Monzer,
As-salamu `alaykum,

My question is regarding inheritance:

a) Does a will override the Islamic rules of inheritance even if the will itself is not based on the Shari'ah?

b) Does the answer to (a) apply to all the 4 Madhabs of Sunni Islam? Thank you for your help

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Esam,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Before talking about the Will I like to mention to you that the term Sunni Islam is not appropriate. There is only one Islam not two. Besides the differences in Fiqh are very small and the whole Ummah has tolerated them throughout our history. In regard to what follows on will, there is no difference between the five schools of Fiqh: Hanafi, Shafi'i, Maliki, Hanbali and Jaafari.

A will does not override the inheritance distribution as given in Shari'ah (which is mostly given in details in the Qur'an itself).

The meaning of the above is given in verses 13 and 14 of Surah 4. These verses and the Hadith of last will, put together, indicate that a will is permissible but valid only to a maximum of one third of the net estate (i.e., after expenses, taxes and debt. payment) provided that it does not change the terms given in the preceding 2 verses. In other words provided the will (within the one third as it is) does not assign any distribution to any heirs in a manner they may affect the terms given in the verses 11 and 12.

But we MUST NOTICE that wherever Shari'ah inheritance system is not the law of the land such as USA or UK, a will is upheld above the law. In other words, the underlying principle is that an owner can do anything he/she like with the estate after death (in Shari'ah the property goes back to God and He already told us how to distribute it).

Consequently, a Muslim living in these countries is required by Shari'ah to make a will in which she/he determines a distribution of estate after death in accordance with Shari'ah, in such a will the testator may assign a maximum of one third to non-heirs especially charitable and other benevolent objectives. But if a Muslim in those countries made a will that violates Shari'ah it will be upheld in the American and UK courts.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Esam

Sent: Monday, April 18, 2011

Dearest Dr. Monzer,

As-salamu `alaykum,

My question is regarding inheritance:

a) Does a will override the Islamic rules of inheritance even if the will itself is not based on the Shari'ah?

b) Does the answer to (a) apply to all the 4 Madhabs of Sunni Islam? Thank you for your help

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Esam,

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

Before talking about the Will I like to mention to you that the term Sunni Islam is not appropriate. There is only one Islam not two. Besides the differences in Fiqh are very small and the whole Ummah has tolerated them throughout our history. In regard to what follows on will, there is no difference between the five schools of Fiqh: Hanafi, Shafi'i, Maliki, Hanbali and Jaafari.

A will does not override the inheritance distribution as given in Shari'ah (which is mostly given in details in the Qur'an itself).

The meaning of the above is given in verses 13 and 14 of Surah 4. These verses and the Hadith of last will, put together, indicate that a will is permissible but valid only to a maximum of one third of the net estate (i.e., after expenses, taxes and debt. payment) provided that it does not change the terms given in the preceding 2 verses. In other words provided the will (within the one third as it is) does not assign any distribution to any heirs in a manner they may affect the terms given in the verses 11 and 12.

But we MUST NOTICE that wherever Shari'ah inheritance system is not the law of the land such as USA or UK, a will is upheld above the law. In other words, the underlying principle is that an owner can do anything he/she like with the estate after death (in Shari'ah the property goes back to God and He already told us how to distribute it).

Consequently, a Muslim living in these countries is required by Shari'ah to make a will in which she/he determines a distribution of estate after death in accordance with Shari'ah, in such a will the testator may assign a maximum of one third to non-heirs especially charitable and other benevolent objectives. But if a Muslim in those countries made a will that violates Shari'ah it will be upheld in the American and UK courts.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Habib

Sent: Tuesday, April 26, 2011

Location: United Kingdom

Question: Trusts and Mawarith

Dear Br. Dr. Monzer,

Assalamu alaikum

I wanted to ask you a question about trusts and faraid. When a Muslim creates a trust (not on his deathbed) with his assets/properties, he is basically giving away his assets to the trust and does not legally own any assets that his heirs can inherit. If the trust is created in a way that does not fulfill the principles of faraid, is this legitimate? How does this contradict/comply with the fact that a Muslim can give away his property as gifts during his lifetime? I will appreciate if you can kindly give your views on these two issues.

Thanking you again and best regards,

Habib

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Dr. Habib

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The concept of transferring ownership to a trustee does not exist in Shari'ah. Therefore we need to look closely to see the exact meaning of this transfer as it varies from one case to another. A few points need to be kept in mind.

The Islamic inheritance system is obligatory not optional, verses 13 and 14 of Chapter 4 indicate that it is a matter of Hell Fire or Paradise.

Any attempt to avoid the terms of inheritance is an aggression against the Word of Allah. This is why for instance Abu Hanifa refuses the idea of Waqf. It is his fear that it makes an avoidance of the terms of inheritance. He was wrong because Waqf is based on the principle of freedom of disposition on succession principle.

Using any means that intends to distort the terms of verses 11 and 12 is Haram while one is still free to do whatever one likes with one's property.

This requires us to distinguish between transfer of ownership to trustee for distribution to family or transfer for charity including long term care of descendants (as family waqf). The former should be treated strictly as inheritance and the latter as Waqf. This we can tell from the structure of the Trust, names of beneficiaries, structure of benefits, termination, and final distribution and its timing, etc.

Western laws especially English common law have the form of permanent trust (or endowment) that is exactly similar to Waqf.

The transfer to a trustee for spending on children then ultimately distributing to them (even with a generation skip) seems to me as should abide by the inheritance laws. For instance, handing shares to an heir after any age other than 18 is allowing the dead to control the alive and decide for him/her. Also distribution must abide by the gender distribution 2/1, skipping a generation is not permissible, etc.

I have a form of Trust that is Waqf type distributing benefit to charity and descendants for 5 generations then it turns all into charity only. I believe it is consistent with Common law.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin
Wassalam
Prof. Dr. Monzer Kahf

From: Sami

Sent: Saturday, August 06, 2011

Question: general questions on last will

Asalaamu Alaikum Sheikh Monzer,

Ramadan Mubarak, Taqaballa Allahu minna wa minkum saalih al a'amal.

I had a few general questions on wills:

- 1) Do petty assets (such as clothes, furniture, accessories) count in assets (I.e. should they be included in the list of assets)? If not, what is to be done with them after death?
- 2) For the first third that you can give for charity, etc., can you give to family members who are not eligible at the time of death for inheritance? I.e. I have two parents and a pregnant wife, can I give to my brother who is not currently eligible?
- 3) Is it permissible to write a very general will giving all money to executor to take care of in Islamic way? I would imagine this is not advisable.

JazakaAllahu khayran,

Sami

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Sami

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

- 1) Some of these may be of high value, they are definitely part of the estate and subject to same rules of distribution. It is a common practice between heirs that they distribute trivial things between themselves and give some of them to charity. But the rule remains that they are a part of the estate.
- 2) Yes, as long as they are mentioned in the Wasiyyah and at the time of death they are not eligible, of course the max third is determined after debts, taxes and other expenses.
- 3) Yes, if you live in a country which has Islamic inheritance laws such as Jordan, Syria, Malaysia, and most Muslim countries (exception is only Turkey and may be Indonesia). No if you live in a country which does not have such laws like the USA or Canada. The reason is double: 1) the executor may not know exactly the rules. And 2) BUT MOST IMPORTANT, the will must be approved by a probate court and this vagueness may be a reason for challenging it. This is why we made the detailed schedule of Mawarith.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Shai

Sent: Monday, November 21, 2011

Location: United States

Question: Last Will and a Living Trust

Assalam alaikum Dr. Monzer

Here is a description of the problem. I am not sure how much background information you need, but I have tried to give you a picture of the situation. If you could please advise me on how to proceed, I would appreciate it so much.

My mother died in 1997 of cancer, may Allah have mercy on her. She left a living trust, which my father did not administer. I was 21 at that time, my sister was 18 and my brother was 14. We did not know about the trust. At that time my father paid off our family home and completed the major renovations that were currently ongoing.

In 2000 he married my step-mother.

In 2005 my father passed away of cancer, may Allah have mercy on him. Right before he passed away he wrote a will to override the trust which had never been administered. My sister and I asked him to write his will according to Islamic law, which he did. But he also changed the deed to our family home to include four names: our step mother, myself, my brother and my sister. The house is located in California.

Because of the very confusing situation arising from the will and living trust both existing, and because of the complexity of my father's estate, the administration of his estate took some time, and a lot of money spent on a lot of lawyers and accountants. My sister, who lived in the family home at the time and was in her medical residency, did the vast majority of the work, which was very time-consuming. I think she did everything in a manner that was honest and fair, to the best of her ability. Neither my brother nor stepmother helped out at all. I helped a lot, but clearly my sister did most of the work. I am the official trustee of his estate.

The estate is now settled, with the exception of the family home. My name, my sister's name, my brother's name and the stepmother all remain on the title. I don't know what the value of the home is, it's probably somewhere between \$1.2 and \$2.5 million. My sister lives there with her husband and baby. Stepmother has purchased her own home, with cash, a few miles away. My brother is in medical school, and returns home from time to time. I live with my husband and children in the city.

My sister treats the house as if it is hers. She has done a number of small construction jobs around the house without consulting any of us. At the same time, she maintains it, pays the bills, etc. Since the house is paid off, there are no mortgage payments. My sister intends to live there indefinitely.

My sister recently told me that she would like to buy me out, in other words pay me my share, and do the same with my brother, over a ten-year period, but not stepmother. She believes she does not have a share in the home, as she claims that this house was paid for with my mother's income. My mother, when she was alive, was a physician with a private practice who earned substantially more than my father, an architect. It is possible that she made most of the payments, but I have never seen actual numbers. My father did tell us a few times that it was my mother's money that had bought the house. However, he did this in the context of trying to push each of us into medicine, so those statements should be taken with a grain of salt.

In any case, sister says that since the house was paid for with our mother's money, she does not feel any obligation to pay stepmother her share. I didn't think this was fair, as her name is on the title, and I told sister as much. Sister told me to talk to Reedy and say whatever I wanted.

So I spoke with her. I should tell you that stepmother is a very kind woman who has made tremendous sacrifices for our family. She is not the type to look for an argument. But when I discussed the issue of the house with her, she became very upset, and told me that she had a feeling that my sister did not want to pay her share, as my sister had asked her to remove her name from the title.

Sister does not want to pay stepmother anything, period. The latter has told me that she will become upset with me if I don't do something about this, and she does want her share. I spoke to my brother. He agrees with sister, that stepmother does not have a right to any part of the house. Stepmother claims that when my father was in his last days, he wanted to put the house completely in her name, but she told him not to. I do not know whether this is true.

When I went back home to visit for Eid al-Adha, it was very tense. I wanted to bring the subject up, but I was afraid it would just start a fight. Stepmother gave me a copy of her will, which states that in the case of her death, her share of the house will go to her brothers and sisters (seven people). This is a terrible situation, as many of her brothers and sisters are, well, I'm not sure how to put this. Basically, several of them cheated her out of a substantial sum of money, as well as her mother and mentally incompetent sister. It is very sad. I hope this does not count as backbiting. But her point in showing me her will was to make clear that if we don't give her share, then we will have to deal with her family in the case of her death, and that is a nightmare situation.

To be honest with you, I didn't really think about the house in the beginning, I was so grateful to my sister for administering the estate, and I told her to just stay there and keep my share. But seeing how she has treated stepmother has made me very sad. Plus I am afraid that having lived in such a large, luxurious home at her age (she is 32) is not good for her, and has changed her attitude significantly, but that is another story. At the same time, she is the only sister I have, and I'd like to resolve this whole situation in a way that preserves our close relationship as much as possible.

My suggestion to her, when she offered to buy me out earlier this year, was for her to live in the house, save her money for a year or two, and use that as a down payment on another home. Then when the market improves, she can sell the family home, and each of us can take our 25% share, but she can have my share of the increased value. If she writes up an agreement to this effect, I know Reedy would accept that, and that would also protect us from her siblings. Also it would avoid selling the house in the near future, as we'd rather avoid that, mostly because we don't know what my brother did with his share of his inheritance, which was twice my share and my sister's share, and it's all gone. He's attending medical school on loans, while his share was more than enough to cover all his costs. We are hoping he gets married and settles down before the house is sold, so he doesn't waste this part of his inheritance.

Stepmother has told me she has no intention to sue anyone. She has said she will not hire a lawyer. But she told me that after she dies, we will have to deal with her family. I have not yet told my siblings of the contents of her will.

This whole situation has made me very sad. I wish the house didn't exist. These relationships are worth so much more. To give you an idea of how close we were to one another, I can tell you about my sister's wedding. My father had already passed away when my sister was engaged. And just a few days before the wedding, my stepmother's mother died. Sister's wedding was on Saturday, and stepmother's mother's was on Sunday. She put on makeup to

cover her sad face and came to the wedding and acted like a mother for both of us, and the day after the wedding we all went to her mother's. I have never heard of a step-mother as nice as she was, or a step-daughter as nice as my sister, until the problem of the house.

So this is the problem. I sincerely pray that I have given you the right and relevant information, and I hope it's not too confusing. If you have any questions, or need for me to clarify anything, please let me know. I know this email was long but I really wanted to give you the background information, I apologize for taking your time.

Shaista

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Shaista

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

There are areas in your query which need appropriate counseling. One of them is how to approach this matter with each one: your brother, sister and step mother. I am not qualified to counsel on this

There are also areas about which I will make assumptions.

Here are my assumptions: your father was religious, he made his last will according to Shari'ah and when he made the house in the four names he meant to give it to the four of you equally as a kind of protection to each one. Mother was also religious and all the four of you really care about abiding by the Shari'ah in this matter. The trust of your mother and the will of your father were according to Shari'ah. You mentioned that you were trustee, I suppose you mean executor of your father's will because you said your father left a will not a trust.

With the above in mind there are 2 scenarios:

Scenario one: the house was actually and Islamically owned by your father: each one of the four owns one fourth of it and you have to convince your sister that she has no way but to pay one fourth of its price to the step mother.

Scenario two: when the house was bought, it was put in the two names of mother and father. It really doesn't matter who of the two spouses pays more for the house we consider it owned half/half unless they had agreement otherwise. This is based on the principle that husband and wife give gifts to each other and unless what is give is clearly specified as not a gift it is considered a gift. Accordingly if your mother paid more in the house but did not make it clear in any document, it is considered that she gave the amount that is above the one half as a gift to her husband. This means that if the house was at the time of her death in both names, upon her death her one half is distributed according to inheritance rule: one fourth to husband and remainder to son and two daughters as 1 to 2 (female male). Then upon mother's death the house was owned: 10/16 to father, 3/16 to brother and 1.5/16 to each of the 2 sisters. Father then used the California law, a violation of Shari'ah on his part, which he owns the house in full and he turned it to his name. Then he later put it in the four name. If the house at the time of her death was in both names he definitely (unless there is evidence otherwise) made that mistake which should be corrected for mercy to him and for following the Shari'ah for the four of you. We then have to correct this mistake. His action of putting the house in the four names (an attempt on his part to protect all the four) applies only to his share of 10/16 of the house

not the shares of children. Accordingly shares become now: 2.5/16 to step mother, 2.5+3=5.5/16 to brother, 1.5+2.5=4/16 to each of the girls.

You must convince your sister to give the right of the stepmother according to which of these two scenarios is the correct one. And if the second you must convince your step mother to accept it.

Last point of convincing sister to live in a more moderate house for her personal spiritual and social growth needs appropriate counseling from a specialist not from me.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Shakeel

Sent: Friday, July 13, 2012

Location: United States

Question: Setting a living trust

Assalamu Alykum Dr. Kahf,

At your advice, I am in a process of forming a living trust. However, my legal advisor is suggesting the following:

“As we discussed, you stated that under Islamic law, your Wife would not inherit everything under your Will; rather, some would go to your Wife and some would go to your children. Of course, we can do that under NY law, but then I mentioned to you that since the house is your largest asset, which would mean that, you would be giving part of the house to your children, while I think that you would want to allow your Wife to live there for the rest of her life. You said that your Wife and your children would have to come to some agreement that they would allow her to live there, and I suggested that perhaps it would be better to have the house go into a trust whereby your Wife would be given the right to live there for the rest of her lifetime, and then upon her death, it would go equally to your three children. This way your children would not be giving anything back to your Wife after your death; rather, your Wife would have the right to live in the house for the rest of her life, and your children would be getting a gift under your Will too, but it would be a gift that would take effect at some later date (upon your Wife's death).”

Please reply.

Jazak Allah Khair

Shakeel

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

No, Brother,

This is what you cannot do at all. You can give her now all that you own or anything, but you cannot assign her to deprive other heirs from their rights. Once a person dies the property

becomes owned by the heirs in proportion as stated in the Quran. Creating a Qualified Terminable Interest Property (QTIP) amount will deprive them from their rights as long as she lives.

The trust template that I sent you has a clause to protect her right on them to provide her with her needs that she can withhold distribution if they do not provide her with sufficient evidence that they will take care of her.

From: Shakeel

Sent: Saturday, July 14, 2012

Location: United States

Assalamu Alykum Dr. Kahf,

Thank you for your helpful answer. My attorney told me that, after my death, legally all my assets will automatically become my wife's property, since she is non-Muslim, she does not understand the Islamic law. Do I need an attorney to make a trust? Also, I cannot find that clause, for holding the distribution, in your template. Where exactly is it?

Jazak Allah Khair

Shakeel

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Shakeel

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I think you need more than an attorney. You need to consult an attorney for proper wording of the living trust so that estate will pass to proper heirs according to Shari'ah rather than go to spouse. There is definitely a way for that and there is a suggestion at the end of the living trust. The law in this regard is not mandatory and a post nuptial agreement can override it.

What you must realize that according to Shari'ah marriage is simply a civil contract. The responsibility of husband after his death toward his wife is only a courtesy because each one is independent from the other and marriage comes to an end by death or divorce. The American law carries a Catholic remnant in assigning the property to the spouse.

Further, out of love and gratefulness we all give our dear wives whatever makes her comfortable in case the man dies before her. I do that by assigning her as a gift one half of all my property in my life. But after death whatever estate I leave is no more my property and cannot tamper with the properties of the heirs.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Inheritance and Debts

From: Aysha

Sent: Sunday, November 20, 2011

Location: United States

Question: Debts on husband

as salaam 'alaikum wa rahmatu Allahi wa barakatuh,
Dr. Kahf,

I pray this reaches you and yours in the best of health and iman.

As I am organizing our family finances and records, it came to my attention from my husband's eldest daughter, that she "loaned" him money for various expenses, over several years; yet when I asked him to list all of the outstanding debts, he has not mentioned these. Later I asked him again if there are any other debtors I need to be aware of in the event of his passing, and he said "no."

When discussing it with his daughter, she obviously feels that she loaned him money, and believes that he agreed to the idea of paying it back, but has not seen any of it, and feels jaded. And according to her, he seems to believe that it is a family donation/obligation; so there is a disagreement over what is actually owed to whom.

To my distress, he has put all of his money into a condo in the state of Maryland as an "investment", against my advice that one should first have in place an emergency fund of 6 - 12 months' worth of liquid savings, then max out retirement contributions, then our young children's education funds; but he has very little in savings; and the rest is going towards paying off the condo mortgage with Guidance Financial, which he has borrowed money from two individuals towards that, along with using multiple 0% APR credit card offers, and is on track to pay it off in the near future, Insha'Allah. And I hope at that time, is when he will begin paying back the other individual's their money.

In the meantime, I suggested that the eldest daughter trade the amount she feels he owes her (\$10K by her calculations) for a corresponding percentage of ownership in the Condo (that he actually built for her safety and comfort first, and then as a family investment secondly, that is titled in his name and he included her name on the title for loan approval only, that agreed to, along with (at that time) she would live in it in order to "manage" the property, without any additional ownership claims Islamically or secularly, only what is calculated according to the Mawarith schedule. She moved out several years ago to be closer to work, and it is now rented out to another tenant.)

So, my question is, if he were to pass, what I am supposed to do Islamically with this disputed amount by his daughter? I have not mentioned to him that I am aware of this issue between him and his daughter, and have encouraged her to discuss it with him directly at the correct time and place, which she says she has done so on many occasions in the past, and he "agrees" in principle, but not in reality because he believes that it is a family favor of sorts, according to her.

I will at some point in the future, at the correct time and place, bring this topic up when she visits to settle it, Insha'Allah. But in the meantime, I need to have an idea of what I am supposed to do in the event that an agreement is not reached between them. My instinct says to give her a corresponding percentage for the amount owned, that would be above and beyond the Islamic percentage according to the Mawarith schedule, because there are no liquid assets to speak of at this time, but quite a bit of debt. I am also pushing/demanding that we actually get our Islamic wills reviewed by an estate attorney in our area because if he passes

intestate, with debt to secular creditors, then I believe that the courts will force a sell of the property and it will not be divided properly according to Islam. I feel that the Muslim individuals that loaned him money will be willing to work with the family, and not as demanding as secular creditors, Insha'Allah.

Also, why is that Islamically, children get a larger percentage of the estate than the surviving spouse, especially if the spouse has to care for minor children without any additional Muslim family to help with finances, and what to do if my husband dies intestate?

Thank you for your patience with me as I am thinking all of this through and trying to figure it out. One thing is for certain, I will have to begin working part-time and save money, in addition to beginning/resuming my college courses again, Insha'Allah; because given the current financial situation, I am grossly unprepared to have to care for my children (4 1/2 years twins, Masha 'Allah), should anything happen to my husband, may Allah (swt) forbid.

I look forward to hearing from you at your earliest convenience.

JAK

Ayesha

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Sr. Ayesha

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

I think you already solved the tangled matters:

1. Try to settle the understanding on the debt between them, if not it seems that he recognizes receiving it, it is apparently a debt on him. Treat it this way in settlement
2. Review the wills and get them notarized, preferably make an Islamic living trust, see my website because it is better than will for execution.
3. Of course debts to outsiders should be settled before debts to heirs, then debts to heirs then distribute according to Mawarith.
4. Apparently then you will need to sell the investment property.

I am not going to look at the state laws in this regard because as a Muslim what should apply is the Islamic law, being obligatory on all Muslims regardless of any other law or customs.

If a person dies intestate his/her close relatives must distribute the estate according to Shari'ah. Please look at the schedule of Mawarith for that.

If properties are recorded in both names we assume that they own them on the basis of half/half unless there is evidence otherwise. Also if the state law is a community law for properties we assume that any property, even in the name of the deceased alone, is also half/half unless there is evidence otherwise. This is because through appropriate nuptial agreement spouses have the right to own properties other than half/half. If they agree to it. By not agreeing they accept this law's distribution. This is a matter of life time gift not an inheritance and it is based on the freedom to give gifts one to the other.

If the property is as above, the surviving spouse already owns one half and then inherit her/his share from the estate of the other.

Besides, as a Muslim spouse, you are also the guardian of the shares of your minor children.

The share of a child may or may not be larger than the share of their parent (mother of father) depending on the number of children. Spouse inherits a share and children inherit the remainder according to the rule of 1 to 2 female/male. Why it is this way frankly is THE WORDS OF ALLAH IN THE QUR'AN 4:11-14. The moral justification is that children are always responsible for parent's living expenses, so really the surviving parent needs no money at all because the children are responsible for her/his expenses and they are required to make him/her live like their own self.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Pension, Retirement Rights and Inheritance

From: Khalid

Sent: Tuesday, July 20, 2010

Location: United States

Question: what are the rules of pension inheritance?

Dear Respected Dr. Monzer Kahf:

Assalamo Alaikum wa Rahmatullah:

I pray and hope that you are in excellent health. I have known you for many years and have benefitted tremendously from your talks at ISNA conventions in Canada and the U.S. I have a couple of questions regarding the Wills, I hope you can help me with.

1. I am a retired person and have a defined benefit company pension. After my death, my wife is entitled to 66 2/3 percent of my pension. Would this monthly pension for my wife be divided among the children or it would be considered her income, but not an asset. My understanding is that Wills apply to only Assets not current income.

2. Can the portion of my wealth after my death (25-33%) that I am entitled to allocate in my Will be invested and the income from that investment be spent so that the distribution of money continues for ever rather than spent only once? Thank you in anticipation.

Khalid

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Khalid

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

For the first Question: If this pension is based on contribution from you and your employer and has its system of disbursement (as most common), this pension is hers only as it is not an inheritance, it is rather an entitlement to spouse directly from the pension fund, although it is caused by your previous employment. If the pension is converted from a lump sum entitlement that you changed into annuity there is an argument that it is in fact inheritance, this is like an IRA account in America.

For the second, yes, it can be willed as a permanent endowment whose revenue only is distributable to the charitable causes. This is called in Shari'ah as Waqf through Wassiyah, it is permissible and may be even wiser and more rewarding InShaAllah

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Cheema

Sent: Thursday, March 24, 2011

Location: United States

Question: distribution of 401K and IRA

AsSalaamu Alaykum wa Rehmatullah

Dear Brother Dr. Monzer Kahf:

InShaAllah, you and your family are safe during these times of turmoil.

A few brothers (in their 30s & 40s) who attend a Qur'anic tafseer program in the area of Islamic Foundation, Villa Park (suburb of Chicago) had hosted a couple of presentations on WILL & Testament. Several questions were left unanswered. I was asked to get a scholarly opinion, for which may I turn to you!

1. Providing for wife who has not/and will not have any employment or personal wealth: One presenter advised that during the spouses' life-time', each execute a deed assigning their respective share of the home to the other. The intent would be that the surviving spouse will then be able to record it to own 100% of the house at the death of the other. Is this Shari'ah-compliant? If not, what other strategies can one opt to provide for relatively young wife?
2. Brothers have 401K, or IRAs for which each has named wife as 100% beneficiary. One presenter opined that this is a gift during "life-time", and thus not subject to the one-third cap in the WILL. Since the retirement account will vest only on death, can it still be outside the one-third maximum? What is the alternative?
3. USA & Overseas Assets: Can separate WILLS be written for different countries? If so, is it okay for the each not to refer to the other one?

JazakaAllahu Khairan,

Cheema

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br.

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1. We must understand, and adjust our culture and thinking to live with, the principles of marriage in Islam. It is a civil contract between a man and a woman. It is not a bond created by God and never breakable like a Catholic marriage. This means that I am not responsible for her after I die. It is her children, brothers and the society at large. This also means that each wife must prepare for this situation after she is separated from her husband by death or divorce.

One way of doing this is the Mahr and its investment, another is seeking benefits from her husband such as a gift of a house.

But we must notice that any action that is intended to avoid the distribution which is decreed in the verses 11-14 of Surah 4 is prohibited. As verses 13 and 14 clearly indicate. Please read them once more. A man and a woman are fully authorized over their properties during their life time but not after death. While alive you can give whatever you want to your wife but you cannot make this action suspended until after death. Any suspension until after death is a violation of the rules of inheritance. Personally I share, literally, with my wife all that I own. When one of us dies the other inherit a share of the deceased estate in addition to her/his one half.

2. This is a misunderstanding and misrepresentation of both Shari'ah and these saving programs. These saving programs are owned by the persons listed on them as owners, beneficiary after death is another, is not an owner. After the death of the owner, these funds are subject to inheritance distribution being owned properties. The beneficiary must give these funds for distribution. This is not the case of social security. Social security, like it is death benefit in insurance, is earned by the incidence of death, it was not owned by the deceased. These matters may not be subject to inheritance distribution although my personal preference is to distribute the death benefit of insurance as inheritance, but giving it to a named beneficiary is permissible.

3. It is permissible provided the total of them abide by the rules of inheritance.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Minor Child's Guardianship

From: Laiq

Sent: Monday, February 09, 2009

Question: Child guardianship when mother gets married

Dear brother Monzer,

I was wondering if could share the MS word copy of Last will (attached is the PDF version). I hereby acknowledge that it would be used for my personal will, and my wife's personal will only.

Also, could you please give me the reference of what is written about the mother giving up the rights of guardianship, in case she chooses to marry somebody else?

Wassalam

Laiq

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Laiq

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

To the best of my knowledge it is based on the basic human rights of the child, the law defends the child's rights who must not be put under a family sponsorship of a man who is not given a legal authority over the child, according to Shari'ah. A mother's husband is a kind of stranger to the child. Otherwise if the child has no available relatives (e.g., if all the child relatives are non-Muslim) and the husband accepts the responsibility of raising and sustaining the minor, it is then permissible for the mother to have the child be in her husband's household, please remember the man is the head of the family according to Shari'ah.

And it is only when there are no Muslim relatives of the child that can be and it is an exception. It cannot be by a will and a last will cannot be valid in this regard because guardianship is the right of the minor child not the adult.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

Subject: Should grandsons have their Parents Share in Grandfathers' estate?

From: Samy, Islam on line

Sent: Thursday, September 25, 2008

Question: Inheritance of grandchildren

Dear Dr. Monzer,

Assalamu Alaykum wa Rahmatullahi wa Barakatuh,

My father died before his father. And my mother died before her father, so I lost my parents very early. My question is: May I entitle for the property of my grandfathers that is supposed to come to parents first then to me but unfortunately they died first. If yes, give the references from Shari'ah or what the Quran says.

Jazakum Allahu Khairan for your constant help

Yours,

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Muhammad

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

The Qur'an is silent on this issue so is the Hadith.

Shari'ah scholars took this matter through Ijtihad and as usual there are two views: one that does not give anything to you in this case unless you have no uncles (bothers of father) at all then sisters of father, if they exist, inherit along with children of sons (like you).

The other view is adopted by family laws in many Arab countries like Syria, Egypt, Lebanon, Jordan, etc. These laws are all derived strictly from Shari'ah and they were drafted by great Shari'ah scholars of our times. These adopt what is known as Obligatory last will. It is a form of

Last will imposed by law on the grandfather, according to it the children of a deceased son are given the share of their father, had he been alive then, within the limit of a few conditions that total given the such fatherless children does not exceed one third and that no grand child may take a share that exceeds the share of a similar gender uncle/aunt. I adopt the second view, you may take a look at my website www.kahf.net the schedule of Mawarith.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf

From: Wael

Sent: Wednesday, November 19, 2008

Question: Inheritance of grand children in INdia

Salams

Pls. Dr. help replying the following question:

As-salamu `alaykum I have 2 questions :

1. My grandfather has 3 wives not at the same time but one after the other's death. 1st wife has no child dies very early year not known, 2nd wife had 1 son (I.e. my father) and 1 daughter , 3rd wife had 3 son (I.e. my uncles) and 3 daughters. My 3rd grandmother (I.e. step grandmother) dies on 1996 which has 1 property in her name and rest all in grandfather's name . My father dies on 1997 (prior to grandfather) and grandfather dies in 2002. My grandfather has gifted 1/4th property to me which is written on plane paper no legal value as I hope excluding that property which is in my grandmother's name as he told me that this property should be distributed among his 4 daughters . How much share should I and my 3 sisters get from my grandfather's property and what does Islamic Inheritance Law of India said about the grandchildren share whose father dies before his grandfather?

2. My mother dies in 1986 and her father (I.e. maternal grandfather) after amonth of my mother's death leaving 1 wife (I.e. my maternal grandmother) and 2 daughters (I.e. my aunts) My grandmother orally said that I will give you 1/3rd property ? but unfortunately not able to write and dies on 1998. Question is how much share we get from maternal side condition that my mother dies (1986) before maternal grandfather and father in 1997 after my maternal grandfather (I.e. in 1986). Sorry for asking such a long question. Jazakum Allahu Khayran

Thanks, Wael

My Answer:

Bismillah al Rahman al Rahim

Alhamdu Lillahi Rab al Alamin, wa al Salatu wa al Salamu ala Sayyidina Muhammad, wa ala Aalihi wa Sahbihi Ajma'in

Dear Br. Wael

Assalamu Alaykum wa Rahmatu Allahi wa Barakatuh

1. I cannot answer what does the Islamic inheritance law of India give to grandchildren whose father dies before the grand father. I know how it is in most Arab countries and recently in Pakistan, generally speaking the share of their father with some restrictions.

2. The verbal and non-formally witnessed paper for a last will does not held both in Shari'ah and in court unless all other heirs accept it.

3. Property owned by your step grandmother should be distributed to her children and husband (your grandfather) as follows: 1/4 to husband, 2/12 to each of her sons and 1/12 to each of her daughters.

4. Now we come to the first question: your grand father who died in 2002 is survived by 7 children (3 males and 4 females) and by grandchildren from deceased child of his (here you did not mention other than yourself, is it that you are the only child of your father?, I assume it this way: only one grandson, you, from deceased child of his). The property of your grandfather (including what he inherited from his third wife) should be distributed as follows: A) Scenario one if the Indian law goes like many Arab countries: 2/12 to each of your 3 uncles, 1/12 to each of your 4 aunts and 2/12 to you and your siblings on the ratio of 2 to one male female. B) scenario two if the Indian Muslim inheritance law goes by the traditional rule of the Hanafi school: 2/10 to each of your 3 uncles and 1/10 to each of your aunts, nothing to grandchildren (you and your siblings).

5. The Islamic law of inheritance is binding and you have no right whatsoever to make any distribution otherwise on the pretence that your grandfather told you to distribute

6. The second question: When your maternal grandfather died he was survived by his wife and two daughters. If there is no other male at all (like his brother, uncle child of brother, cousins, etc.) the wife takes 1/8 of his estate and each of the two daughters 7/16. If there are males even distant (also must be connected to him through males) each of the two daughters takes one third and the remaining 5/24 goes to that male survivor (or survivors if they are of equal ranks). According to all inheritance laws in Arab countries, and I am sure must also be in India, you do not inherit from your maternal grandfather or grandmother.

7. When your maternal grandmother died, being survived by her two daughters, they inherit one third each and the remainder goes to the closest male (connected through males only) to her.

8. In all cases of mother side question, if there are no other surviving males at all, the remainder, i.e., the remaining one third goes back to the two daughters equally between them, you still do not inherit from your maternal grandmother.

Wa Allahu A'alam

Wa Alhamdu Lillahi Rab al Alamin

Wassalam

Prof. Dr. Monzer Kahf
