

114336 - Should they give a share to their brother who consumed their rights from their father's estate?

the question

I am the youngest of 4 siblings. My father passed away while I was studying abroad and left behind a lot of property, and some loans that needed to be paid off. I came back to my country and gave my eldest brother the power of attorney like my 2 sisters, so that he could sell off some of the property that we had inherited and clear the loan. My brother, took advantage of this and sold off everything we had, and didnt clear the loan either. He got into drinking and gambling, and left his mother, family, his wife and children for another woman, whom he married later. Now all our family is left with is ONE house, part of which is owned by my mother, and part by us siblings. Now my question is, when we divide our shares in that house, should we give our brother his share of the inheritance according to sharia, despite his having sold off our inheritance eventhough we had trusted him with it? And if not, is it allowed to give his share to his first wife and 3 children. Please note that his first wife is still in his nikah and he has not divorved her. He has no children from his second wife who he lives with.

Detailed answer

If this is the case, and this brother consumed your wealth unlawfully, then there is no sin on you if you take his share of this house and do not give it to him, if his share of the house is equivalent to your dues or less. But if it is more than what was rightfully yours, then take what you are entitled to and give him the rest.

The faqeeh Muhammad ibn

'Abd-Allaah al-Kharashi al-Maaliki (may Allaah have mercy on him) said:

This issue is known as opportunism. What is meant is that if what is a person's lawful right is being kept by someone else, and he gets the opportunity to take it or take what is equal to his right from the wealth of that other person, then it is permissible for him to take that from him, whether it is from the same type of wealth or something else, according to the well known view, and whether the other person is aware of that or not; and he does not have to refer the matter to the judge.

The permissibility of taking it depends upon two conditions:

1 - That his right should not be in the form of a punishment ('uqubah), otherwise it is essential to refer the matter to the judge. The same applies to hadd punishments. No one can impose them except the judge.

2 - That there should be no risk of fitnah (trouble, turmoil) because of him taking what is rightfully his, such as fighting or bloodshed, and that there should be no risk of being accused of crime as a result, such as robbery and the like. If there is no guarantee that that will not happen, then it is not permissible for him to take it. End quote.

Sharh Mukhtasar Khaleel
(7/235).

Al-'Izz ibn 'Abd al-Salaam
(may Allaah have mercy on him) said:

If a person is able to get something like that which is rightfully his from the wealth of one who has wronged him, then he may take it ... and if it is not the same type of wealth

as what was taken from him, it is permissible for him to take it and sell it, then regain what is rightfully his with the money. End quote.

Qawaa'id al-Ahkaam
(2/176).

Shaykh Ibn Jibreen (may Allaah preserve him) was asked: We have a servant, and my father does not pay this servant her salary. Can I take something from his wealth without his knowledge and give it to the servant, knowing that he can afford it?

He replied:

He may have done this for fear that she may run away and the like, or he wants to keep it for her so that he can pay it all to her in one go when she leaves, because she does not need it at the moment. You have to find out about the reason why he is withholding it. It is well known that it is haraam to delay paying a hired worker. It is narrated in the hadeeth: "Give the hired worker his wages before his sweat dries." There is also a stern warning concerning the three whom Allaah will punish, one of whom is "a man who hired a worker and he did the work, but he did not pay him his wages."

If you think that he is not going to pay her, and is withholding it from her, and he does not want what is best for her, then you have to give her her wages from his wealth, even if he does not know about that. End quote.

Sharh Akhsar
al-Mukhtarasaat 'ala al-Shaamilah by Shaykh Ibn
Jibreen

See also the answer to
question no. [27068](#).

Similarly, you do not have
to pay his share to his first wife and his children, because the wealth is
your brother's and you have a right to it. But if you give this money to
them, or some of it, that is an act of kindness and charity on your part towards them, and
Allaah will reward those who give charity.

And Allaah knows best.