

97842 - Their mother prevented them from taking their share of their father's estate, and issues concerning the fairness of giving (to one's children)

the question

A man died and left behind a wife and three sons (two of them are under 21 meaning underage), and two daughters, one of them was married before the father died. The other daughter and one of the sons have finished their education and are working now, while the other two sons are still having their education.

The mother was working with the father. And they used to save their salaries together, and she approved to this of course (she used to say to him: "what matters is that I take the bonus of retiring, and this is what already happened) while the husband takes what they both save and buy properties in his name.

The questions:

When the heirs divide the heritage, should they count the mother's salaries and discount it from the entire heritage, then divide what remains on all of them (mother, two daughters and three sons)? The mother says that the heritage will not be divided before every one finishes his education and gets married. Then the heritage will be divided according to the Islamic Sharia, boy's share is double the girl's one. Is this permissible? When should the heritage be divided according to Sharia?

The mother does not want anyone of the children to know how much the heritage exactly is so that no one says I should take more than my share when time of dividing comes. Is that permissible?

Before the father died he bought a car and wrote it in his oldest son's name according to his wife's wish. As this son's position allows him to easily return the licence if it was taken for

some reason. The father had the intention to buy a car for every one of his children for the same price, and to buy a car for half of that price for the unmarried daughter. He paid more than half the price of it already before he died. He had the intention to give the married daughter as much as he would give the unmarried one as well.

After the father died the mother said: “the car is for the eldest son, his father bought it for him because he is obedient, and the father is free to give whoever he wills of his children from his own money, as long as the son is obedient” and as for the car of the unmarried daughter, the mother reclaimed the money as she cannot continue paying the other half, because if she withdraws money from the bank, the whole heritage will be transferred to the “welfare trust”, which will keep the shares of the underage children aside. She will not then be able to do anything about the underage children’s shares except via the welfare trust. Is that permissible?

The mother’s reasons for not dividing the heritage are, as I said, the welfare trust. She says about the underage children: “is it fair that I spend on them until they grow up and after that they take their whole shares regardless what I spent on them of my own money?”

The mother asked her three older children to grant her power of attorney that allows her to have full control of the heritage. She will also ask the underage children to do the same when they reach the legal age for this. What is the ruling of every point of the above mentioned?

May Allah reward you and accept your deeds purely for His sake. Sorry for the long inquiry.

Detailed answer

Firstly:

The basic

principle concerning the wife’s wealth is that it belongs to her and it is

not permissible for her husband to take it or to take any part of it without her consent. Allaah has forbidden consuming people's wealth unlawfully, but He has given permission to the husband to take some of his wife's wealth if she gives it up willingly, with no force or compulsion.

Allaah says

(interpretation of the meaning):

“O you who

believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent”

[al-Nisa’

4:29]

“And give

to the women (whom you marry) their Mahr (obligatory bridal-money given by the husband to his wife at the time of marriage) with a good heart; but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allaah has made it lawful)”

[al-Nisa’

4:4]

Secondly:

If a wife

gives her salary to her husband willingly, then it is a donation from her which becomes his property when he takes possession of it. Based on this, no attention should be paid to the previous salaries of the mother which she gave to her husband, because they were not a loan which she can ask to be repaid from the estate.

Thirdly:

When a person dies, his wealth passes directly to his heirs straight after his death, and it is not permissible for anyone to conceal the estate from the heirs or for anyone to prevent division of the estate. If the heirs agree not to divide all or some of the inheritance, there is nothing wrong with that. If one of them wants his share, then he must be given his share of the inheritance, either by selling property and giving him his share, or by one or all of the heirs buying his share, so they give him the price of his share of the inheritance, without any wrongdoing or unfairness.

See also the answer to question no. [4089](#).

Fourthly:

What the father and mother must do is treat their children equally with regard to giving. It is not permissible for them to favour one of them over another, even if the one who is favoured is dutiful towards his parents. But they may show favour to one of the children if there is a legitimate shar'i reason for doing so, such as if he has a large family and cannot spend on them, or he is disabled.

This has been discussed in the answer to question no. [36872](#).

If one of the parents gave a gift to one of the children and not the others, then they must take it back and the child must return it and not accept it.

From this is it known that it is not permissible to accept the car which the father

bought for his son. The claim that the son needed the car could have been dealt with by the father buying a car for his son to drive but not own, so it would have belonged to the father, then when the father died it would become part of the estate.

So the son has no choice but to put the car that his father bought for him with the estate, or to work out its value and keep it, and deduct its value from his share of the estate, and if the other heirs agree to let him have it, it will become his.

Shaykh

Muhammad ibn Saalih al-'Uthaymeen (may Allaah have mercy on him) said concerning a similar case:

With regard to what the brother who asked the question said about the father giving his son some land ... it is not permissible for him to give land to him and not to his brothers. If we assume that he gave it to him, then he must during his lifetime give the others something similar to what he gave him, or else take the land back so that it will be among the property that is inherited after he dies. If he dies before that, if the children agree to this gift, then it is valid, just as if they agree to it whilst he is still alive. But if they do not agree to it, then it should be put back with the estate and inherited along with the rest of his wealth.

Liqaa'at

al-Baab il-Maftooh

(39.question no. 1).

And he (may

Allaah have mercy on him) said concerning a case where one of a person's

sons needed a car:

He may buy a car for the son to use, but it should remain the property of the father, because the son only needs to use it.

See also

Liqaa'aat al-Baab il-Maftooh (73/question no. 27)

Fifthly:

The parents must also be fair with regard to the kind of spending that is done for a reason, if that reason arises again with other children. So if he arranges a marriage for one of his sons, he must also arrange marriages for his other children if they need to get married and the parents can afford to get them married. It is not essential that they spend the same amount on the weddings. The marriage of one of them may not cost the same as the marriage of another. So it is not permissible for the parents who have arranged a marriage for one of their children to give a similar amount of money to the rest of their children, and after the father dies it is not permissible to take this money from the estate and give it to the children who did not get married whilst their father was still alive, unless the other heirs agree to that.

What we have said about marriage applies also to medical treatment, education and so on.

Shaykh

Muhammad ibn Saalih al-'Uthaymeen (may Allaah have mercy on him) said:

The basic principle is that it is not permissible for the father to give anything to

any of his sons or daughters unless he gives something similar to the others, because Basheer ibn Sa'd al-Ansaari (may Allaah be pleased with him) gave his son al-Nu'maan ibn Basheer a gift, and he came to the Prophet (peace and blessings of Allaah be upon him) to ask him to bear witness to the gift that he gave to his son. He said to him: "Do you have other sons?" He said: Yes. He said: "Have you given them a similar gift?" He said: No. The Prophet (peace and blessings of Allaah be upon him) said: Fear Allaah and treat your children fairly." And he also said: "Let someone else bear witness to this, for I will not bear witness to injustice." So it is not permissible for the father to single out one of his children, whether sons or daughters, for something unless he gives something similar to the others, or if they agree to that willingly and by their own choice, and they are mature and of sound mind. In that case there is nothing wrong with it. Otherwise, if the gift is to meet some need of maintenance or a need for marriage, such as if one of them is independent of means and does not need his father to spend on him, but another is poor and needs his father to spend on him, and he spends on this poor one as much as is needed, then that is permissible, even if he does not give anything to the other one who is independent of means. Similarly, if one of his sons needs to get married and he arranges his marriage, then he does not have to give the others the same as he gives to this son for his marriage, but when the others reach the age of marriage and want to get married, he has to arrange their marriages as he did for the first one.

I would like

to take this opportunity to speak of something that some people do, which is when a man has children who have reached the age of marriage, he arranges their marriages, and he has other children who are still small and have not yet reached the age of marriage. So he leaves a will leaving them after his death the same amount as he gave to their brothers. This bequest is haraam

and is invalid, because the reason for arranging the marriages of the older ones was to meet a need, and the younger ones had not yet reached an age where they needed to get married. If he leaves a will giving them something like that which he spent to marry off the others, that is haraam and is invalid, and the will should not be executed.

Liqaa'aat

al-Baab il-MahtooH

(39/question no. 1)

And he said

(may Allaah have mercy on him):

If a man

arranges marriages for his adult sons it is not permissible for him to bequeath the mahr to his younger sons, but when one of his sons reaches the age of marriage he must arrange his marriage as he did for the first one. But if he bequeaths it to him after he dies, this is haraam. The evidence for that is the words of the Prophet (peace and blessings of Allaah be upon him): "Allaah has given each person his rights and no will can be made in favour of an heir."

Majmoo'

Fataawa al-Shaykh al-'Uthaymeen

(18/question no. 296).

Based on this,

what the mother says about delaying the division of the estate until the rest of her children are married and have finished their studies is wrong and it is not permissible for her to do it or for her children to accept it.

Sixthly:

The children

do not have to make their mother their agent in the disposal of the estate because she owns nothing but her own share. If they want to appoint her in charge of their shares, then they may do that. We have stated that it is not permissible for the mother to take control of the estate or her children's shares, rather she must allow it to be divided in accordance with sharee'ah if the children ask for that.

As for

spending on the children, the mother is not obliged to spend on them unless they do not have any wealth and she is able to spend on them. But if they possess wealth then their maintenance should come from their own wealth.

And Allaah

knows best.