

An intricate case of inheritance

Q: A husband and wife died within six months of each other, with the husband dying first. Neither was survived by any of their parents and they were childless. No settlement of their estates has been made so far. When the husband died, he was survived by his wife, one brother and one sister. He had another brother and sister who died before him, but they have children of their own.

When the wife died, six months later, she was survived by three brothers and two sisters. One of her brothers had the same parents as her, while the others were born to her father by a mother other than hers. In addition, she had one full brother and one full sister who died before her, but their children are still living. The couple had two servants who were with them for many years. Who is responsible for their outstanding salaries?

A: There are certain rules in the Islamic system of inheritance which are relevant to this case. The first is the importance of dividing the property of a deceased person among his heirs, shortly after his death. The Prophet has emphasized the importance of such division by instructing us to divide the property, even though it may be no more than a small stick taken from the ark tree. Which is used as toothbrush. When such a stick is divided every part of it can be used in the same way. Therefore, the benefit of what is left by the deceased goes to his heirs.

The importance of such a speedy division is the fact that death can overtake any of us, young or old. When an heir dies without his share of the inheritance of another person has been assigned to him, his own heirs find themselves in a difficult position with regard to the inheritance of the first person to die. They cannot make a forceful claim to any part of it, because the other heirs have not yet sorted it out among them. The new heirs run the risk of losing what they are entitled to receive from the inheritance of the first person. If we apply this rule to the present case, we find that the heirs of the wife have their shares affected by the fact that the wife had not received her portion of the inheritance of her husband. This case may be an easy one to determine, but the delay in sharing out the property of the deceased husband can only complicate matters.

Some families claim that they delay the division of inheritance because they want to keep the business of the deceased going, because if it remains a single unit, its returns are likely to be greater. That, however, is no reason to delay the division of the property. What the division actually means is that every one of the heirs gets to know his or her exact portion. The family business could still function as a single unit, but the claims of each one of the heirs are recognized, and the profits that the business makes can be divided in accordance with these shares. Moreover, if one of the heirs is running the business, he could be assigned a percentage in compensation for his work.

The other rule is that which relates to the claims of relatives whose parents would have had a share of inheritance, had they survived the deceased person. In both the two cases of this couple, i.e. the husband and the wife, brothers and sisters had died earlier, leaving behind some children. Had those brothers and sisters survived, they would have had shares of the inheritance of the husband and the wife in this case, but those brothers and sisters died earlier. Do their children receive that they would have received, had they been living? The answer is in the negative. When an heir dies before the person from whom he or she

would have inherited, the share of that heir is not transferred to his or her own heirs.

Now let us look at the division of the property of each of the husband and the wife. Since the husband died first, his wife receives one quarter of his property. The other three-quarters are divided among his surviving brother and sister on the basis that the brother's share is twice as much as the sisters. This means in practical terms that the husband's property is divided into four portions, with one going to his wife, one to his sister and two quarters to his brother.

In the case of the wife, the fact that her surviving brothers and sisters all have the same father as hers puts them at the same level of relationship to her. Hence, they all inherit at the same level, provided that each brother receives twice as much as each sister. Since the woman had no husband, no parents and no children, all her property is divided between her brothers and sisters. Her property should thus be divided into eight shares, with one share each to her two sisters, and two shares each to each one of her brothers.

It must be emphasized again that when the division of property of the wife is made, her share of her deceased husband's inheritance should be included. In other words, her brothers and sisters have a claim to one quarter of her husband's property to be shared out between them in the same proportion as her own property. Their claim to that portion of her husband's property is not a direct one, but through her. That one-quarter share should be added to her property before it is divided between her brothers and sisters. The servants have no claim to any share of inheritance. It is true that they may have been in the service of the family for a very long time, but this does not make them heirs. What their employers should have done is to include them in their wills. Every Muslim is required to have a will in which he assigns bequests either to poor people, or to those of his relatives who are not included as heirs. Some of these may be poor and deserve to be helped. Allah has enabled us to help such relatives and poor people by giving us the freedom to make bequests to them by will, provided that such bequests do not exceed, in their total value, one-third of our property.

You ask about their outstanding salaries. If there is a contract which defines the services of those employees, the contract should be applied. Incidentally, the contract could have been made verbally. There may be witnesses to it. A verbal contract is as binding a written one. If there was no contract, then their service is terminated by the death of their employers. If they have salaries unpaid for work done before the passing away of their employers, then those salaries are considered a debt against the estate. They are paid by the estate before any division of property takes place. It is clearly mentioned in the Quran that an outstanding debt is paid before the heirs are given their shares. Indeed, debts constitute the first claim against the property of a deceased person.