

- **Inheritance: Laws of Inheritance & Unfair Gifts**

A woman “gifted” her house to her niece only two weeks before her death, thus depriving her heirs, two sisters and a brother, from their shares of inheritance. When objections were raised after the woman’s death, these were answered saying that the objections are borne out of jealousy, and that the deceased aunt simply dispensed with her own property as she was entitled to so, and that legal and religious experts were consulted. I recognize that it is every person’s fundamental right to sell, gift, donate or even to throw away any property that they legally own. However, I am not sure that under Islamic law, the lady was entitled to gift away to her niece. Kindly advise and also whether it was right for the niece to accept such a gift.

Let me first of all correct my reader’s statement. It is not the right of anyone to “throw away” any property they have. If someone behaves irrationally, or in a way deemed to be detrimental to his own or his family’s interests, then a decree may be issued by a court of law preventing that person from disposing with any property he owns. Any disposition with property should be clearly in the interest of the owner or his family.

I should also explain that in Islam, our right to our property is limited to our lifetime. It is not an absolute right, because all money and property belong to God alone. We are placed in charge of it by His will, and in accordance with His law. This is terminated the moment a person dies. He or she has no longer any claim over it. Hence, it is divided in accordance with God’s law of inheritance, not according to wishes of the deceased. However, God has allowed us to dispose with an amount not exceeding one-third of our property by will. This is a gesture of charity He has granted us, so that we are able to do something with that money for our poor relatives who are not our heirs, or to other poor people or to serve some charitable purposes. The Prophet, peace be upon him, says: “God has given you one-third of your property as part of His grace, so that you may give it away.”

If the lady in question gave her niece, who is not her heir, one third of her property, that would have been valid because it would be within the provisions of the Islamic law of inheritance. But she gave her the entire house, which was perhaps all that she owned. Moreover, the lady was ill and died without having recovered. The Prophet, peace be upon him, judged a similar case, when a man had freed six slaves he owned shortly before his death. He practically had no other money. His heirs put the case to the Prophet, peace be upon him, and he ruled that only one-third of his property could be dispensed with in this way. The Prophet, peace be upon him, freed two slaves and the other four were given to the man’s heirs to be divided among them in accordance with Islamic law.

This shows that the argument advanced by the beneficiary niece that the woman was merely dispensing with her property is invalid. The woman was ill, and she soon died. Hence, it is an action taken in the illness leading to her death. As such, it is to be reviewed and determined illegal.

From the details provided to me by my reader, the deed of the transfer or gift speaks of the woman and her niece loving each other as mother and daughter. The niece subsequently claiming that this is legal language. All this is irrelevant. If you love someone like you love your son or daughter, that love does not justify a change in the law of inheritance in that person's favor. Indeed you cannot give any one of your own children any extra portion of your property, other than what he or she may have as their share of inheritance. How come this niece claims all her aunt's property, depriving the real heirs of their shares?

Surely, the niece does not love her aunt, neither as mother nor as an aunt. If she takes the house, she leaves her aunt in a difficult position on the Day of Judgment. Moreover, she will have to answer to God for a serious situation. The Prophet, peace be upon him, says: "I am only a human being and you put to me your disputes. Some of you may have a better argument over others. Let everyone reflect: If I give him something, which belongs by right to his brother, I am only giving him a brand of fire. He may take it or leave it."

The niece in this case has the better argument in the shape of the deed of transfer. But the house is a brand of fire in her hand. If she takes it, it will definitely burn her hands. If she leaves it and gives it back to her aunt's heirs, she will get reward from God, which far outweighs what she gave up. ~

- **Inheritance: Of A Divorcee**

Does a divorced wife or her grown-up child inherit anything out of her ex-husband's property in the event of his death? Is a divorced wife allowed to use her ex-husband's name or must she give it up? If a man divorces his wife on charges of infidelity, does he have to pay her all what is due to her as per the Islamic law?

Children's right to inheritance of either one of their parents is not affected in any way by the severance of the marital relationship between their parents through divorce. Thus, when divorce occurs between the parents and either of them dies, the children inherit their deceased parent in the same way as if the marriage was not dissolved. Nor are the rights of inheritance of the children affected by their being in the custody of either parent. This is because the parent/child relationship is permanent and cannot be affected by the relationship between their parents.

The claim of a divorced wife to inherit her ex-husband is affected by several factors. We can say in short that if divorce takes place when the man is in sound health, and if the waiting period of the divorced wife (approximately three months) has lapsed before her ex-husband's death, she does not have a claim to any share in his estate. If, on the other hand, the husband dies during the waiting period after he has pronounced the divorce, the woman in this case has the same right as an un-divorced wife, provided that the divorce is revocable. This means that the divorce is a first or second time divorce, in which case the man can revoke the divorce within the waiting period and the couple are reunited in marriage without any need for a fresh marriage contract or a fresh dowry.

It may happen that a man divorces his wife when he falls ill and suspects that he is soon to die. His purpose of this divorce is to get rid of his wife so that she does not share his inheritance with his other heirs. If this is the case, and the man actually dies as a result of that illness, a divorced wife still inherits him, whether her waiting period has lapsed or not at the actual time of his death. This is because Islam does not like injustice of any sort. The man's action in this case is an act of injustice by which he aims to disinherit his wife. Islam does not allow anyone to disinherit any of his heirs. God has made known His ruling of how inheritance should be divided among the deceased person's heirs and no one can devise any method in order to usurp the right of any heir in favor of any other. Anyone who attempts this is guilty of a grave sin.

When a marriage takes place between a man and woman according to the Islamic way, the woman does not adopt her husband's name. She maintains the surname of her father. Hence, the question whether she should relinquish her husband's name when she is divorced does not arise.

The answer to your last question about divorce on grounds of infidelity depends on whether infidelity is proved according to Islamic law or not. Adultery is considered proved in Islam only if confession of guilt is made freely or four male witnesses testify to have seen with their eyes adultery being committed.

Short of such a proof, the divorced wife continues to enjoy all her rights. Islam does not allow suspicions to affect people's rights. The wisdom behind this is self-evident. Any person could claim to suspect his wife if he wants to disinherit her for any reason. That could lead toward much injustice. Islam prevents that injustice from taking place by requiring indisputable proof of adultery before treating a person as an adulterer. ~

- **Inheritance: Registering Property to Heirs**

I have four married daughters, and I live with my wife in a house, which is registered, together with its land jointly in the name of my wife and myself. We also own another piece of land, one quarter of which is registered in my wife's name. Is it permissible to register the remainder of this property in the names of our four daughters, on condition that they are able to take charge of it only after our deaths?

God has placed us in charge of our money, but He has not made such money our own property. It remains God's property. He says in the Qur'an "Give them (i.e. slaves wishing to buy their freedom a portion of God's wealth which he has given you." (24: 33) Consider how God describes our wealth as His own. This applies to the property of the individual and to that of the State. Hence, it is an Islamic principle that when a person dies, his property reverts back to its owner, i.e. God who has all control over its distribution. Thus the Islamic system of inheritance does not allow any amendments. No one can disinherit an heir nor give him or her anything over or below their assigned shares. The only way a person can determine that any thing is used after his death in a particular fashion is through a will. Thus a person can leave by will a portion of his property not exceeding one-third of that property.

He should give these either to relatives who are not among his heirs or to poor people or to charitable purposes.

During their life time, people are given control over their property but they are required to always maintain fairness and to use it for purpose that please God and do not incur His displeasure. Thus when a person gives a gift to one of his children he should give all his children similar gifts maintaining equality between them all. This means he should give his daughter as much as he gives his son, because the rights of boys and girls are the same, which has good reason.

Why would one wish to register property in his children's names while at the same time retain its use for the rest of his lifetime? This suggests inheritance rather than giving gift. With regard to inheritance, we have been clearly instructed that we must not precipitate God's ruling, which means we must not distribute our property to our heirs in our lifetime. How does anyone know who will inherit him when he dies. A person may have 6 children; all of them healthy and he may be weak and old. Yet he may survive some of them. Or he may have other property by the time when he dies. How can he tell? Hence, it is not right to divide one's property in favor of one's heirs, even if he does that in accordance with the Islamic law of inheritance.

But people try to do that normally to get round certain rules of the law of inheritance. In this case for example the four daughters would inherit only two-thirds of their parents' property and the remainder would go to other heirs. The method suggested by the reader aims at giving the four daughters the full property. This is not fair, and hence, it is not permissible. The only course for that is to give the daughters the property now, dividing it among them equally and giving them full control over it. The parents may not wish to do that because it may lead to complications particularly if one of the daughters decides to sell her portion. Hence, my advice to my reader is to trust to God's wisdom and leave matters as they are until the time comes when the property reverts to its owner, God, who determines what is best for every one.