

Inheritance Conflicts

THE POTENTIAL FOR CONFLICT in money matters is an open secret. If one's financial matters are not absolutely clear, problems in most instances are bound to arise. These problems sometimes lead to serious conflict which often result in split families and estranged friends. In many cases the problem remains dormant and does not surface... until it is finally the time of distributing the inheritance. Then it suddenly explodes, bringing in its wake much misery and unhappiness.

Actually there should never be any serious problem. If the financial matters of the deceased were not absolutely in order, they can be sorted out. The root problem at this time is that the **SHARIAH** is often totally cast aside. Suddenly the apparent piety also evaporates. Such statements are then heard which should never even cross a Muslim's mind, let alone come onto his tongue. The unIslamic laws of the land are then placed above the laws of Allah Ta'ala.

MY RIGHT?

The severity of this situation should be understood well. On many occasions it has happened that the deceased had drawn a will that was not according to the Shariah. For example he made a *wasiyyat* (bequest) that the business or a certain property should be given to one particular son. Such a bequest is not valid since it contradicts the Hadith that "there is no *wasiyyat* for an heir." Thus the simple thing to do is to totally ignore the unIslamic bequest and distribute the estate strictly according to the Shariah. However, in many instances, perhaps innocently (due to not knowing the law), the person who stood to gain a few coppers more on the basis of the unIslamic will counters: "*But it is my right!*" If he is denied this "right" he will be prepared to even go to the western courts to receive it. At this point it should be considered: "If a non-Muslim made a bequest for this very person that he should be given a million bottles of wine or one ton of pork, would he still claim "*It is my right*" and consume it? Demanding the Haraam bequest is really no different. It is usurping the rights of others for which one will have to pay dearly in the Hereafter.

Nevertheless it is imperative that one has his financial affairs in order so that these problems are avoided upon one's death. There are several aspects which require attention. A few are discussed hereunder.

MARRIAGE CONTRACT

One common problem is the marriage contract. According to South African law, if the marriage was registered without a proper ante nuptial contract (which is the only contract that is compatible with Islamic Law), it automatically becomes a marriage in community of property. This means that everything (including their personal belongings) is now jointly owned by the couple. Upon the death of either of them, half of the entire estate will go to the surviving spouse, even if in reality 90% belonged to the deceased. This is clearly contrary to the Shariah. According to the Shariah, the husband will be the exclusive owner of his items. The wife will own her belongings exclusively. Upon their death it will be distributed to their respective heirs as outlined in the Shariah. Once again, despite the marriage in community of property, there really should be no problem. All that is necessary is that the heirs re-distribute the inheritance according to Islamic Law, irrespective of what the

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implications of the community of property are. However, experience has shown that in many instances the wife demanded a distribution according to the unIslamic western law. Therefore it is necessary to have this matter in order as well by reversing the community of property to a proper ante nuptial contract. An Alim with experience in these aspects could be contacted for guidance in this matter.

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WHOSE PROPERTY?



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The above also highlights the aspect of definition of property. It has already been stated that according to the Shariah, the husband and wife are the sole owners of their respective belongings. However, when it comes to household effects, there is always much confusion as to who many of the items really belong. If the wife has acquired something with her own money, that will not form part of the husbands estate and vice versa. If they have received something jointly as a gift, they will own it in equal proportions. This problem is particularly common in those instances where the wife also has an income of her own but it is combined with the husbands income to meet the expenses and purchase what is required. Lack of clarity in this matter at times can even affect the rights of orphans. Therefore, this should be clarified. A simple solution would be for one of the spouses to buy off those items whose ownership is not clear from the other or alternately just give it as a gift. It sounds trivial, but it is extremely important.

ISLAMIC WILL

Another problem comes up when there is no Islamic will. According to the Hadith, a person should not even spend two nights without his will having been drawn. An Islamic will is extremely important to avoid any dispute. Drawing a will is no difficult task. The Jamiatul Ulama Natal has ready-made wills drawn. All one has to do is fill in the blanks and the will is complete. This will is also available at their offices.

This is just a very brief discussion of few aspects that affect the proper distribution of inheritance. There are many more details for which one should refer to the Ulama. May Allah Ta'ala enable us to have our matters 100 % according to the Shariah.

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