

INHERITANCE OF A RUNNING BUSINESS

Q: 8-"Yousuf has a moderate sized business. Two of his sons assist him full time in the business. Two daughters are married. Yousuf passed away. The estate is not wound up immediately. Yousuf's two sons continued with the business. Finally after ten years it is decided that the estate should be wound up and each person given his/her respective share. In the meantime, since Yousuf's demise the business which was worth at Rs. 1,000,000 / = is now worth two million.

1.1: From what amount will the shares be calculated? Will the heirs who are not in the business be regarded as sleeping partners, whose capital was employed for the ten years after Yousuf's demise, and therefore be entitled to a share from the 2 million, or will their shares be calculated only from the Rs. 1,000,000/ -, and be regarded as an Amanat in the possession of the two brothers, in the business, for the past ten years?

1.2: Will it make any difference if the heirs out of the business had been demanding their shares constantly over the past ten years but no attention was paid by those in the business (i.e. will the mas'ala be any different in this situation compared to the situation where, after the demise of Yousuf, no heir spoke any word about their shares on the 'inheritance, and the first time this matter is touched on after ten years)?

1.3: What will be the mas'ala if the shares were worked out immediately upon the death of Yousuf, but the heirs running the business did not relinquish control and continued to run the business for the next ten years, without having paid out of the shares of the other heirs, despite having undertaken to do so upon the death of Yousuf?

2.1: Is the mas'ala in the following situation the same, one partner "walks out" of the business without taking anything, and after ten years demands to be given his shares. Will he be entitled to his share from the value of the business at that time "walking out" or the present value ten years later? (M. _Ryas Patel, Isipingo Beach South Africa)

A: It is a mandatory obligation of the heirs of a deceased person that immediately after his death they divide all his estate among themselves according to the shares prescribed by the Shariah. It is very unfortunate that most of the Muslims today do not comply with the rules of Shariah in this respect, and their negligence leads to serious disputes between the heirs of the deceased, and by the passage of time the problems become more complicated.

In the instant case it was the duty of the two sons of Yousuf that they distribute the estate between the legal heirs of their father or at least they should have affected a settlement with them, either by purchasing the shares of the other inheritors in the business, or by affecting a partnership with them, or by getting their permission to continue with the business on specific terms and conditions. If they have not done so, as it appears from the question, then it was not permissible for them to continue with the business and to use the capital of other inheritors for their own benefit. Therefore, all those profits which have accrued against the shares of other

inheritors are not Halaal for them. They can enjoy the profits accruing against their own shares, but they have to surrender all the profits relatable to the shares of the rest of the heirs according to their respective entitlement according to Shariah.

It does not make any difference whether the rest of the heirs had demanded their shares or not, because it was the duty of these two sons either to pay the share of each inheritor in the business or to make a settlement with them, and it was not lawful for them to use their shares without their permission.

However, it will be advisable for the benefit of both of the parties that they effect a compromise between them by taking these two brothers as active partners of the business and treating the rest of the heirs as the sleeping partners. In this case, an additional proportion of the profit may be allowed to the working partners against their labour, while rest of the heirs get lesser proportion of the profit as a sleeping partner generally does.

In short, the standpoint of the two sons running the business that the shares of other inheritors must be calculated only from one million is not acceptable, neither from the point of view of Shariah nor on the basis of justice and equity. The general principle of Shari'ah in this case is that they deserve only that part of the aggregate profits which relates to their own shares of inheritance, and the rest of the profits should be surrendered to each of the inheritors according to his entitlement in the inheritance. However, both the parties may effect a compromise by treating the business as partnership between all the inheritors, whereby the proportionate profit of the two working sons may be increased vis-a-vis the other partners on account of their labour. Such a compromise will be more advisable because it seems to be more equitable keeping in view the circumstances referred to in the question.

The case of a partner who walks out of the business without taking anything is different from the case of inheritance, because such a person has terminated the contract of partnership through his own free will. Therefore, he is entitled to those profits only which have accrued upto the time of the termination of the partnership.' He was entitled to get these profits at the time he left the business, but his failure to do so is a tacit permission to the remaining partners for continuing the business and treat his share of profit as trust with them. Therefore, he cannot claim the additional profit accruing after he terminated the partnership. On the contrary, in the case of inheritance the business after the death of the original owner came into the joint ownership of the inheritors and no inheritor can use the share of the other without his express permission, and even if other partners remain silent it did not mean that they had terminated their partnership with their free will. Therefore, the analogy of regular partnership cannot be applied here.

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