

279374 - Does he have to return the money that his brother spent on him?

the question

My mother died in 2004 and all the financial affairs were taken care by my two elder brothers, whatever money they got (mother retirement and pension, father retirement money etc.) where they spent and on whom they spent no one questioned and we as younger brother trusted all the decision taken by them for us. My elder brothers paid the money for my education and wedding and never said to me that they will take the money back. Now after 13 years of my mother's death one of my elder brother is demanding all the money he has spent on me from his pocket, and also the demanding money for the number of days I stayed in his house during the period I was getting educated. My father is alive and we kept him away from all this because he is old and he has done everything for us all his life. I want to ask you if my brothers have not told me in advance that they will ask the money spent on me then am I liable to give back the money? My brother is furious and he is shouting at me and saying that I have to give in akhrat. I don't want to hurt anyone and I don't want to serve the relationship ties. Please help me take a right decision in the light of Shariah and also please let me know if i am eligible for Haj in these conditions?

Detailed answer

Firstly:

Whatever your brothers spent on you from the pension of your mother or your father, or from other wealth belonging to your parents, they have no right to demand any of it from you. This is quite clear.

Secondly:

Whatever your oldest brother spent on you from his own wealth is subject to further discussion.

1. If your father was in financial difficulty and unable to spend on you, and your brother was well off, then he was obliged to spend on his father and his young dependents, and those on

whom the father is obliged to spend.

If he did that, then he has no right to ask you for anything.

Shaykh al-Islam Ibn Taymiyah (may Allah have mercy on him) said: The son who is well off should spend on his father who is in difficulty, and his father's wife, and his younger siblings.

End quote from al-Ikhtiyaaraat, p. 409.

2. If your father was well off, then your brother was not obliged to spend on you, and you do not have to spend on him either, because he would not inherit from you if you died.

In that case, if he spent on you with the intention of upholding ties of kinship, he does not have the right now to ask for anything.

If there is a dispute, and the one on whom money was spent (the recipient) says that this was upholding ties of kinship, but the one who spent on him (the benefactor) says that he wanted to be repaid, then what counts is the statement of the one who spent of his own wealth, provided that he swears an oath to that effect.

Ad-Dardeer said in ash-Sharh al-Kabeer (2/518):

In the case of one who spent on a minor seeking repayment, if at the time when he spent on the minor, the child had his own wealth or had a father who was well off, and the one who spent on him was aware of that and swore that he spent on him with the expectation that he would be repaid (then he has the right to take his money back). However, there is no need for him to swear an oath if there were witnesses.

But if the child had no wealth at the time when the benefactor was spending on him, then the benefactor has no right to demand repayment. End quote.

Ad-Dasooqi said in his Haashiyah: If the recipient claims that the spending was by way of upholding ties of kinship, and the benefactor claims that he did not intend it by way of upholding ties of kinship – rather he expected to be repaid or he did not have any intention in mind – then what matters is what the benefactor says, provided he swears an oath to that effect,

whether the recipient was a wife or otherwise. So let him swear that he spent with the expectation of being repaid, or that he spent and did not intend it as being by way of upholding ties of kinship. When an oath is required is when the benefactor has no witnesses to support his claims that he gave with the expectation of repayment, otherwise there is no need for an oath. End quote.

It should be noted that circumstantial evidence carries weight regarding this issue. If the circumstantial evidence indicates that the spending was by way of showing kindness to a relative, such as if he did not ask for his money to be repaid for a long time, or he did not tell you to take money for your needs from your wealthy father, then no attention should be paid to his saying now that he spent with the expectation of being repaid and his intention was to ask for repayment.

Al-Khurashi said (4/196): Except if she gave it with the intention of upholding ties of kinship, in which case she cannot ask for the return of what she spent on her husband or on a non-mahram relative.

Al-‘Adawi said in his Haashiyah: It should be noted that you can tell whether it was spent by way of upholding ties of kinship through the circumstantial evidence, so think about it. End quote.

All of this is assuming that your father was well off when he spent on you.

If he was not well off, then your brother’s spending on you was obligatory, as mentioned above.

In the case of it being permissible for your brother to request repayment of what he spent on you, he should ask your father, not you.

You are not to be asked to return anything to him, whatever the case.

But what appears to be the case is that what is prompting him to do this is the dispute between you and him, hence you do not say anything about your other brother’s attitude concerning this issue.

Our advice to you all is to reconcile amongst yourselves, and to remember that you are kin and relatives; upholding ties of kinship is obligatory and severing those ties is forbidden.

If you are able to go for Hajj then you should hasten to do so, for Hajj is obligatory immediately once one is able to do it, according to many of the fuqaha'.

And Allah knows best.