

352131 - He took her share of the inheritance without her consent; can she take some of his wealth without his knowledge?

the question

If someone took wealth from me without my consent, and I need this wealth, and this wealth is my share of the inheritance, then is it permissible for me to take this wealth without his knowledge? If I actually take it, am I sinning?

Summary of answer

If someone has wealth that is with someone else, and he is not able to take it by lawful means, such as agreeing on a deal to get it back, or asking someone else to intervene and get it for him, or referring it to the courts, then in that case if he has an opportunity to take something of his opponent's wealth, he may take as much as is owed to him, according to the more correct of the two scholarly views. This issue is called "obtaining one's due when the opportunity arises." But that is subject to conditions which are explained in detail in the long answer. If these conditions are met, it is permissible for you to take as much as is owed to you from the one who took your wealth without your consent.

Detailed answer

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The concept of obtaining one's due when the opportunity arises

If someone has wealth that is with someone else, and he is not able to take it by lawful means, such as agreeing on a deal to get it back, or asking someone else to intervene and get it for him, or referring it to the courts, then in that case if he has an opportunity to take something of his

opponent's wealth, he may take as much as is owed to him, according to the more correct of the two scholarly views. This issue is called "obtaining one's due when the opportunity arises."

Al-'Iraaqi said in *Tarh at-Tathreeb* (8/226), commenting on the hadith of 'Uqbah ibn 'Aamir, who said: We said to the Messenger of Allah (blessings and peace of Allah be upon him): You send us and we halt among people who do not offer us hospitality; what do you think about that? The Messenger of Allah (blessings and peace of Allah be upon him) said: "If you halt among the people and they offer you what is appropriate for a guest, then accept it, but if they do not do that, then take from them what is due to the guest as is appropriate in their case." Narrated by al-Bukhaari (2461).

[al-'Iraaqi] said: ... al-Bukhaari (may Allah have mercy on him) quoted this as evidence regarding the issue of obtaining one's due when the opportunity arises. If a person is owed something by someone else, who withholds it and denies it, he has the right to take whatever he can of his wealth when he has the opportunity to do so, in return for what was withheld of his dues. Al-Bukhaari included this report in a chapter entitled: Chapter on one who has been wronged settling the score if he has the opportunity to take something from the wealth of the one who wronged him. And he narrated from Ibn Sireen that he said: He may settle the score with him, and he recited the verse (interpretation of the meaning): "*And if you punish [an enemy, O believers], punish with an equivalent of that with which you were harmed*" [an-Nahl 16:126].

Ash-Shafa'i said something similar, and affirmed that the person in this situation has the right to take his dues when it is not possible to settle the matter in the court, such as if the other person is denying it and the one who is owed something has no proof. He said: He should not take anything except wealth of the same type, if he has the opportunity to take something of the same type. If he cannot find anything except something of a different type, then it is permissible to take it.

If it is possible to get one's dues through the court, such as if the other person admits it but is delaying payment, or he denies it but there is proof, or he hopes that he will admit it in court when the judge asks him to swear an oath, can he still take it if he has the opportunity to do so,

or must he refer the matter to the judge? As-Shaafa'i had two opinions concerning that, the more sound of which, according to the majority, is that it is permissible to take it.

Ibn Battal said: Maalik had a different view. Ibn al-Qaasim narrated from him that he should not do that. According to another report, he may take it if he has the opportunity to do so, provided that he does not take more than his due. Ibn Wahb narrated from him that if the one who denies it does not owe anything to anyone else, then the one who was wronged may take his due from him, but if he does owe something to anyone else, he has no right to take anything except a certain amount, so that he will be on an equal footing with others who are owed money by that person.

Abu Haneefah said: If he owes him gold, he may take gold; if he owes him silver, he may take silver; if he owes him something that is measured by volume, he may take something that is measured by volume; if he owes him something that is measured by weight, he may take something that is measured by weight – and he should not take anything else. Zafar said: He may take something of equivalent value instead.

Ibn Battal said: The most correct view is the view that it is permissible [to take one's due if the opportunity arises], because it is supported by the verse and by the hadith of Hind. Do you not see that the Prophet (blessings and peace of Allah be upon him) permitted her to feed her husband's family from his wealth on a reasonable basis, to make up for his shortfall in feeding them. That also applies in the case of anyone who owes something to someone else, but he does not pay it or he denies it. In that case, it is permissible for [the one who has been wronged] to settle the score. End quote.

Guidelines on the permissibility of obtaining one's due when the opportunity arises.

In the answer to question no. 171676 , we explained that the issue of obtaining one's due when the opportunity arises is limited by three restrictions, which are known from the objectives and rulings of sharia, and from what the scholars have said:

The first restriction: one should not take more than one is entitled to.

The second restriction: there should be no risk of exposure and punishment.

The third restriction: it should not be possible for the one who has been wronged to get his dues through the court, because he is lacking proof or because of incompetence in the court system and what it could result in costs and delays.

If one of these conditions is not met, then it is not permissible for him to follow the principle of obtaining one's due when the opportunity arises.

If these conditions are met, it is permissible for you to take as much as you are entitled to from the one who took your wealth without your consent.

And Allah knows best.