197280 - He does not have any children and he wants to give his wealth to his wife and his brother’s daughter and donate the rest to charity

the question

I am 72 years old. I have 5 brothers and 2 sisters. I have a wife. I do not have children. I have adopted my brothers daughter. we 6 brothers are partners in a running company since 1962 and doing business together.
My share is 20% in the partnership company.
As my adopted daughter is helping me, I have the intention to gift 60% of my wealth to my adopted daughter & 25% to my wife during my life time and 15% for charity purpose after my life time.
For this purpose, I have written a Hiba to donate 60% of my wealth to my daughter and 25% to my wife during my life time.
In this context, I have also asked for a letter in writing from my 5 brothers &2 sisters that they will forsake their share in my wealth after my lifetime.
Should I ask them to forsake their wealth before my lifetime
Can I ask them to forsake their wealth after my lifetime.
Can I give 60% as gift to my adopted daughter during my lifetime.
Can I write a will to give 60% as gift to my adopter after my lifetime
Is what I am doing is correct according to the shariah?
If not, what is the best solution to share my wealth with the adopted daughter and advice Islamic methodology to divide my share.

Detailed answer

Praise be to Allah.

Firstly:

If what you mean by adoption is that this girl has become like your daughter, in the sense that she is named after you and carries you name, this is haram and is not permissible. Allah declared it invalid in the verse (interpretation of the meaning):

“nor has He made your adopted sons your real sons. That is but your saying with your mouths. But Allah says the truth, and He guides to the (Right) Way.

Call them (adopted sons) by (the names of) their fathers, that is more just with Allah. But if you know not their fathers (names, call them) your brothers in faith and Mawaleekum (your freed slaves)”

[al-Ahzaab 33:4-5].

But if what you mean by adoption is that you have taken her in and are looking after her and treating her kindly by spending on her and raising her, this is something that is encouraged (mustahabb) and -- in your case -- it comes under the heading of upholding ties of kinship, because your brother’s daughter is one of your relatives with whom you are obliged to uphold ties. It is well known that acts of kindness towards relatives are superior to acts of kindness towards strangers. An-Nasaa’i (2582), at-Tirmidhi (658) and Ibn Maajah (1844) narrated from Salmaan ibn ‘Aamir (may Allah be pleased with him) that the Prophet (blessings and peace of Allah be upon him) said: “Charity given to the poor is charity, and that given to a relative is two things: charity and upholding the ties of kinship.”

Classed as saheeh by al-Albaani in Saheeh an-Nasaa’i.

With regard to what you want to give to your brother’s daughter and your wife, if you want to give this gift to them when you are still alive, there is nothing wrong that that, subject to certain conditions:

1.

That you do that when you are in good health, not when you are sick and there is the fear that you may die, because a gift given in the latter case comes under the same ruling as inheritance, in

that it is not valid if given to an heir (one who automatically inherits according to the rules on inheritance), or to a stranger (non-relative) if it is more than one third of the wealth, unless the heirs agree to that.

Shaykh ‘Abdullah ibn Jibreen said: It is permissible for the husband, when he is still in good health and still alive, to give whatever he wants to his wife in return for her patience or help, or what he owes her of the mahr (dowry) or other wealth, so long as he does not do that in order to harm the other heirs. He may give her whatever he wants and it is not limited to one-quarter of his wealth.

The same applies to the wife: she may give her husband whatever she wants of her wealth or dowry, because Allah says (interpretation of the meaning):

“but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allah has made it lawful)”

[an-Nisa’ 4:4].

But that is not permissible in the event of illness, because then it is regarded as a bequest to an heir.

End quote from Fataawa Islamiyyah, 3/29

The scholars have discussed guidelines on illness in which there is the fear that the individual may die. Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said: The illness in which there is the fear that the individual may die is that in which if the individual dies, it is not regarded as something rare; in other words, it is nothing strange if the individual dies from that illness. And it was said that it refers to that in which it is thought likely that he will die. The illness in which there is no fear that the individual will die is that in which if the individual dies, it is something rare.

End quote from ash-Sharh al-Mumti‘ ‘ala Zaad al-Mustaqni‘, 11/101

2.

That the purpose of giving this gift should not be to harm the heirs or deprive them of their

inheritance. We have previously explained that giving gift with the intention of causing harm to the heirs is haram and is not permissible. Please see fatwa no. 182290

In fact, what clearly appears to be the case from your question is that you want to deprive your brothers and sisters of their inheritance, hence you want them to give you a guarantee that they will not demand their rights to the inheritance after you die. This is undoubtedly something haram. It is also haram for you to do anything with the intention of harming some of the heirs or depriving them of their inheritance.

3.

The gift that you want to give to your brother's daughter or to your wife should be handed over during your lifetime, so that they are incomplete control of it and are fully able to dispose of it as any owner is able to dispose of his property.

But if you gave this wealth to them on the condition that it would be handed over to them and come under their control and they would be able to dispose of it after your death, then this is a bequest, not a gift. It is not permissible to make a bequest to one's wife, because she is an heir (who is automatically entitled to a share of the estate according to sharee'ah), and there can be no bequest to an heir, because of the report narrated by Abu Dawood (2870), at-Tirmidhi (2120), an-Nasaa'i (4641), and Ibn Maajah (2713) from Abu Umaamah (may Allah be pleased with him) who said: I heard the Messenger of Allah (blessings and peace of Allah be upon him) say: "Allaah has given each person who has rights his rights, and there is no bequest for an heir."

Classed as saheeh by Shaykh al-Albaani in Saheeh Abi Dawood.

But if it so happens that the deceased had made a bequest to one of the heirs, and the other heirs approved of that bequest, then it may be executed, because the Messenger (blessings and peace of Allah be upon him) said: "It is not permissible to make a bequest to an heir unless the other heirs agree."

Narrated by ad-Daaraqutni; classed as hasan by al-Haafiz Ibn Hajar in Buloogh al-Maraam

Ibn Qudaamah (may Allah have mercy on him) said in al-Mughni (6/59): If he makes a bequest to one of his heirs, and the other heirs did not agree to it, then it is not valid, and there is no difference of scholarly opinion on this matter. Ibn al-Mundhir and Ibn ‘Abd al-Barr said: The scholars are unanimously agreed on that, and there are reports from the Messenger of Allah (blessings and peace of Allah be upon him) to that effect. Abu Umaamah said: I heard the Messenger of Allah (blessings and peace of Allah be upon him) say: “Allaah has given each person who has rights his rights, and there is no bequest for an heir.”

Narrated by Abu Dawood, Ibn Maajah and at-Tirmidhi. But if they (the other heirs) agree to it, then it is permissible according to the majority of scholars. End quote.

With regard to the bequest to your brother’s daughter, it is permissible as she is not one of the heirs. In this case the bequest to her is regarded as Islamically acceptable, so as to ensure that she will get the money after you die. But it is not permissible to bequeath to her or to anyone else anything but one third or less, no more than that. The Messenger (blessings and peace of Allah be upon him) forbade Sa‘d ibn Abi Waqqaas (may Allah be pleased with him) to bequeath more than one third. al-Bukhaari (2742) and Muslim (1628) narrated that Sa‘d ibn Abi Waqqaas said: O Messenger of Allah, can I bequeath all my wealth? He said: “No.” I said: Then one half? He said: “No.” I said: One third? He said: “Yes, but one third is a lot. If you leave your family well off that is better than leaving them asking of people.”

It says in Fataawa al-Lajnah ad-Daa’imah (16/317): It is not permissible to bequeath more than one third, and a bequest to an heir is not valid unless the other heirs agree, because of the words of the Prophet (blessings and peace of Allah be upon him) said: “Allah has given each person who has rights his rights, and there is no bequest for an heir.” Narrated by Ahmad, Abu Dawood, at-Tirmidhi, Ibn Maajah, and ad-Daaraqutni, who added at the end of it: “unless the [other] heirs agree.” End quote.

Many of the scholars regard it as mustahabb or encouraged for the one who makes a bequest to bequeath less than one third. It says in al-Kaafi fi Fiqh Ibn Hanbal (2/265): Ibn ‘Abbaas said: I wish that people would bequeath less than one third, because the Messenger of Allah (blessings and

peace of Allah be upon him) said “… but one third is a lot.” Agreed upon. Abu Bakr bequeathed one fifth and said: I am pleased with what Allah is pleased with for Himself. ‘Ali said: Bequeathing one fifth is dearer to me then bequeathing one third. End quote.

However it should be pointed out that making a bequest with the aim of harming the heirs is not permissible, as we have explained in fatwa no. 74974.

With regard to your request from your siblings to give up their shares of what you leave behind, we do not advise you to do that for several reasons:

1.This instruction is indicative of the intention to deprive them of their legitimate shar‘i rights, and it is well known that this is a haram purpose. We have explained above that bequests and gifts aimed at harming the heirs or denying them their legitimate shar‘i right to inheritance is forbidden in Islam.

2.This instruction could cause alienation and resentment between you and your siblings. The Shaytaan could take advantage of it to spoil the relationship between you; he could whisper (waswaas) to your siblings and instil in their minds the idea that you hate them and do not want them to benefit from your wealth after you are gone.

3.They may agree and give up their share of the inheritance unwillingly, out of shyness and embarrassment. It is well known that it is not permissible to use embarrassment to take people’s rights away from them. It says in al-Fataawa al-Fiqhiyyah al-Kubra (3/30):

Do you not see that there is scholarly consensus on the fact that if something is taken from a person by means of embarrassment, when there is no willingness on his part, the one who takes it does not gain possession of it. The scholars explained that as involving compulsion using the weapon of embarrassment, which is like compulsion using a real weapon. In fact many people would accept the real sword and put up with the injuries it causes when they would not accept the sword of embarrassment, out of fear for their dignity and standing which to which wise people give precedence and fear greatly for it. End quote.

With regard to the Islamic ruling on the estate, it is as follows.

Firstly:

The costs of preparing the deceased, namely ghusl, shrouding and burying, should come from his estate. It says in Saheeh al-Bukhaari (2/77): Ibraaheem said: First of all comes (the cost of) the shroud, then paying of debts, then bequests. Sufyaan said: The cost of the grave and ghusl come under the heading of shrouding. End quote.

Secondly:

After preparation of the deceased, his debts should be paid off from his estate, if the deceased owes any debts. Then any bequests that he made should be given, up to a limit of one third or less, because Allah, may He be exalted, says (interpretation of the meaning): "…after the payment of legacies he may have bequeathed or debts" [an-Nisa' 4:11].

Thirdly:

The estate is to be divided among the heirs according to the rulings of sharee'ah. With regard to your estate in particular, the inheritance is to be divided among your wife and your siblings, if you die before them. Your wife is entitled to one quarter of the estate because you have no children to inherit from you. Allah, may He be exalted, says (interpretation of the meaning):

"their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts"

[an-Nisa' 4:12].

The rest of the estate goes to your siblings, with each male getting the share of two females; in other words, the brother gets twice as much as the sister.

To sum up:

What we advise you to do is to make a bequest to your brother's daughter whom you have

adopted, giving her something from your legacy that is no more than one third, which she will receive after your death, or you can give it to her whilst you are still alive.

Your wife is entitled to one quarter of your estate on the basis of inheritance. If you are afraid that she will not be given her rights after you die, then you can give that to her whilst you are still alive.

If you want to denote some of your wealth to charity whilst you are still alive, and you are not suffering from illness that is likely to lead to your death, then you may donate whatever you want, but do not neglect the rights of your heirs who will come after you or deprive them of taking some of your wealth.

And Allah knows best.