# 200127 - He died and left debts behind, and some of his heirs refuse to pay them off

## the question

A man died owing money to the bank, as well as taxes and debts to some individuals, but he had wealth and real estate. He left behind two wives and three sons, one of whom is a half-brother, and two daughters. How should the estate be distributed? Who should take on responsibility for paying off the debt? What is to be done if one of the heirs refuses to pay it off or take responsibility for the debt?

## Detailed answer

If a person dies and leaves behind wealth, then what his heirs must do is to begin by preparing him for burial and shrouding him, paying the costs thereof from the estate, then after that they must pay any outstanding debts from the estate, then fulfil any bequests from one third of the estate, if the deceased left any instructions to that effect. All of that must be done before dividing the estate among those heirs who are entitled to a share. The evidence for that is the verse in which Allah, may He be exalted, says (interpretation of the meaning):

“Allah commands you as regards your children’s (inheritance); to the male, a portion equal to that of two females; … (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts”

[an-Nisa’ 4:11].

Based on the above, what the heirs must do is hasten to discharge the outstanding obligations of their father by paying off the debts from the estate before it is divided. The scholars (may Allah have mercy on them) even stated that carrying out bequests and paying off debts may be done before the burial, because of the serious nature of debt. If it is not possible to pay off the debts immediately, because there is no ready cash or because the wealth is far away, then it is recommended for the heirs to accept responsibility for the dues of others on behalf of their

father, because if they delay or refuse to pay off his debts, they are sinning by denying that right or delaying payment thereof, so long as the deceased left behind enough wealth to pay off the debt.

Al-Bahooti (may Allah have mercy on him) said:

It is obligatory to hasten to pay off his debts and any other obligations he owed, such as offering expiation, performing Hajj in fulfilment of a vow and so on, or such as zakaah, returning wealth that had been entrusted to him, returning property seized by force, and returning borrowed items, because of the report narrated by ash-Shafaa'i, Ahmad and at-Tirmidhi – who classed it as hasan – from Abu Hurayrah, and attributed to the Prophet (blessings and peace of Allah be upon him): "The soul of the believer is held back by his debt until it is paid off on his behalf… All of that – i.e., paying off debts and fulfilling obligations, and distributing any bequests – should be done before offering the funeral prayer for him, because no one has any authority over his estate except after he has died and has been prepared for burial. In ar-Ri'aayah it says that that should be done before washing him, and in al-Mustaw'ab it says that it should be before he is buried. That is supported by what the authors said: What was done in the early days of Islam is that the Prophet (blessings and peace of Allah be upon him) would not offer the funeral prayer for one who owed a debt, and he would say: "Pray for your companion." It also says in al-Khasaa'is: If it is not possible to pay his debt immediately, because the wealth is not available and so on, then it is recommended for his heir or for others to take responsibility for paying it on his behalf, for the sake of Allah, by offering to guarantee it or to give something as a pledge, because doing that is taking measures to discharge his obligations. Otherwise, the heir is not free of obligation before it is paid off, as we shall see below. End quote.

Al-Hijaawi (may Allah have mercy on him) said: His bequests must be executed and haste must be made to pay off his debts.

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) said:

With regard to carrying out his final instructions (bequests), that is mentioned after preparation for burial; that is, haste should be made to carry out his final instructions, because carrying out

bequests is obligatory, but hastening to do so is either obligatory or recommended, because if the final instructions have to do with something that is obligatory, then haste must be made to discharge his obligation, and if they have to do with something that is voluntary, then that is hastening the reward for him. And a bequest or final instructions can only be either obligatory or voluntary.

The scholars said: So his final instructions or bequests should be carried out before he is buried. Subhaan Allah, if you see these words, and you see what some of the unjust heirs do, who delay paying off debt on behalf of the deceased in order to serve their own interests, so you may see that the deceased owed debts and he left behind property, but they say: We will not sell it; rather we will pay off the debt from the rents, even if that is ten years later. Or they say: The market for land is stagnant at present, so we will wait until it rises in value. But it may rise in value or it may fall in value. This is wrongdoing – Allah forbid. Perhaps those who do this are the children of the deceased, in which case this is a kind of disobedience and defiance towards parents as is obvious to anyone, because the deceased will be affected by the debt that he still owes.

If the final instructions were to do something that is obligatory, then haste must be made to do it; if it is the matter of something that is voluntary, it is Sunnah to hasten. But hastening is required, whether the instructions have to do with something obligatory or something that is mustahabb, before the funeral prayer is offered and the deceased is buried. This is the Sunnah.

The words it is “obligatory to hasten to pay off his debt” refer to the debt of the deceased, whether it is something that he owes to Allah or to other people.

Debts owed to Allah include: zakaah, expiation (kafaarah), fulfilment of vows (nudhoor), and so on.

Debts owed to people include loans, the price of items purchased, rent, liability for damage caused, and other rights that are owed to people. In that case it is obligatory to hasten to settle the matter as soon as possible, and delaying it is haraam.

The evidence for that is both textual and rational.

With regard to textual evidence: the Prophet (blessings and peace of Allah be upon him) said: “The soul of the believer is held back by his debt until it is paid off on his behalf.” There is some weakness in this hadith, but it is supported by the hadith of Abu Qataadah about the man who was brought to the Messenger (blessings and peace of Allah be upon him) who asked: “Does he owe any debt?” They said: Yes, two dinars. So he (the Prophet (blessings and peace of Allah be upon him)) stepped back and did not offer the funeral prayer for him, then Abu Qataadah said: I will pay the two dinars, O Messenger of Allah. He said: Are you paying the due of the creditor in order to absolve the deceased? He said: Yes. So he went forward and offered the (funeral) prayer.

With regard to rational evidence: that is because in principle what is required is to hasten to do it, and it is not permissible to delay obligatory deeds unless there is a valid reason for doing so.

End quote from ash-Sharh al-Mumti‘ (5/260)

Shaykh Muhammad al-Mukhtaar ash-Shinqeeti (may Allah preserve him) said:

Hence the heirs are sinning by delaying payment of the debts. If the father or relative died, and left behind wealth or left behind a house, and he owed a debt, then the heirs must sell the house in order to pay off his debt, and they should rent (their accommodation) or move somewhere else. As for leaving the debt without discharging the obligation, when he had left behind some wealth with which the debt could be paid off, this is injustice towards the deceased, and if that has to do with parents then the matter is even more serious. It is narrated in a report from the Prophet (blessings and peace of Allah be upon him) that the soul of the believer is held back by his debt. One of the scholars said: If a person owes a debt, then bliss will be withheld from him until his debt is paid off. Therefore he said: “The soul of the believer is held in pledge for his debt.” According to another version: “[It] is held back by his debt.” What is meant is that it is held back from bliss until his debt is paid off.

This is supported by the hadith of Abu Qataadah (may Allah be pleased with him) that is narrated in as-Saheeh: When a man was brought to the Messenger of Allah (blessings and peace

of Allah be upon him), he (blessings and peace of Allah be upon him) said: “Did he leave behind any debt?”

They said Two dinars:

He said: Did he leave behind anything to pay it off?

They said: No.

He said: “Pray for your companion (i.e., the funeral prayer).”

Abu Qataadah said: I will take responsibility for (the two dinars), O Messenger of Allah. So the Prophet (blessings and peace of Allah be upon him) offered the funeral prayer for him. Abu Qataadah said: Every time he met me, he asked me: “Have you paid it off on his behalf?” And I would say: Not yet.

(That went on) until he met me one day and said: “Have you paid it off on his behalf?”

I said: Yes.

He said: “Now his skin is cooled off.”

This is indicative of the seriousness of the matter of debt, and that haste should be made to pay off debts, especially the debts of parents, because in that case the matter is more serious.

And Allah knows best.

End quote from Sharh az-Zaad.

Secondly:

After paying off the debts of the deceased, the estate is to be shared among his heirs as follows:

The two wives get one eighth, because there are descendants who inherit. That is to be divided equally between them. This is according to scholarly consensus.

See: al-Mughni by Ibn Qudaamah (6/171)

Then the remainder of the estate is to be divided among the children of the deceased, with each male getting the share of two females, and it is the same for both full siblings and half siblings through the father; all are equally entitled to their share of the father's estate. Allah, may He be exalted, says (interpretation of the meaning): "Allah commands you as regards your childrens (inheritance); to the male, a portion equal to that of two females" [an-Nisa' 4:11].

If some of the heirs refuse to pay off the debt, their share of the estate should be withheld until the debt of the deceased is paid off, and they should not be allowed to dispose of it.

The ones to whom the debt is owed should take them to court for that, and the heirs should be prevented from disposing of the estate until the creditors have received what they are owed.

And Allah knows best.