119655 - If he lets one of his sons live in an apartment for free, is he obliged to treat the rest of his sons equally?

the question

I have two daughters and four sons. One of the daughters is married and one of the sons is also married. I built four apartments for the sons to live in for free, on condition that they give the girls their right from the rents, on the basis that each male will have the share of two females. Now my son who is married is living in one of these apartments and he is giving one third of the rent to his married sister only. But does he have to give something to his sister who is not married, and who is under my care at present? Similarly does he have to give to his brothers who are also under my care at present? Please note that they will get similar apartments after they marry, if Allaah wills.

Detailed answer

Praise be to Allah.

Firstly:

It is essential to differentiate between maintenance and gifts. The maintenance that the father spends on his children varies according to their needs. What is spent on a small child is not the same as what is spent on an older child, and the expenses of a child who is studying at the elementary stages is not like the expenses of a child who is studying at the University. The expenses of a daughter are not usually like the expenses of a son.

This includes the expenses of marriage. If a father spends on the marriage of one of his sons, he is not obliged to give something similar to those who are not married, because this comes under the heading of expenses which are given only to the one who needs it. When another one grows up he will arrange his marriage too, and so on.

This may also be said to regard to accommodation. If the father has a house or apartment, and the married son needs it, the father may give it to him for him to make use of it, not to own it, and

thus he meets his need. The same applies if he needs a car for example; he may give it to him to drive it but not to take possession of it.

The point is that he may give each son what he needs and what is appropriate for him.

As for gifts which are additional to maintenance, this is where equality and fairness is required and it is haraam to prefer one son over the others. Sons should be given equal gifts, and each male is given a share of two females.

Shaykh Ibn ‘Uthaymeen (may Allaah have mercy on him) said, pointing out the difference between maintenance and giving:

if we assume that one of them is at school and needs expenses for school such as books, exercise books, pens, ink and the like, and the other one does not need that, and he is older than him but he does not need those things, if he gives something to the first one does he have to give something similar to the second?

The answer is that he does not have to do that, because being fair in spending on maintenance means giving each one what he needs. An example of that is if a son needs a ghutrah and cap which costs 100 riyals, and the female needs earrings which cost 1000 riyals. What is fair?

The answer is that what is fair is to buy the headgear for the boy for 100 riyals, and to buy earrings for the girl for 1000 riyals, which is 10 times more than what the boy gets. This is fair.

Another example: if one of them needs to get married and the other does not, what is fair?

The answer is that he should give the one who needs to get married and not to the other. It is to be regarded as a mistake when some people arrange marriages for their sons who have reached the age of marriage, and they have younger sons, so they write in their wills that the sons who are not yet married are to have marriages arranged for them with the costs covered from one third of the will [which it is permitted to bequeath]. This is not permissible, because marriage comes under the heading of meeting needs, and these children have not reached the age of marriage, so making this will in their favour is haraam and should not be executed, because even the heirs are

not permitted to execute the will except if they are of the age of maturity and give their consent, in which case each heir may decide to carry out these wishes with regard to his own share. End quote from al-Sharh al-Mumti' (4/599).

With regard to the obligation of treating children equally in giving, please see the answer to question number 22169.

Secondly:

On the basis of the above, if a person has a son who is married and needs accommodation, there is nothing wrong with giving him permission to live in one of the apartments, whilst retaining ownership of it, and he does not have to give anything to his brothers or sisters. Similarly, you do not have to give them anything, so long as they are not in need of accommodation, either because they are living with you and under your care, or because the daughter is living with her husband.

If the son does not need accommodation, then letting him live in the apartment for free comes under the heading of giving, in which case you have to pay attention to fairness, by giving the rest of his siblings something equivalent to the rent of the apartment, or by making the son pay rent which should go to you, or giving all of his siblings their share of the rent.

If you want to give your children ownership of the apartments, then you have to treat them fairly and give each male twice the share of each female, as in the case of inheritance. It is wrong to give the apartment to the son, for example, and then tell him: Give to your brothers and sisters, or to put it in the ownership of the males and tell them to give to the females, because they may or may not give to them. The fact that the son needs the accommodation -- if he indeed needs it – can be met by letting him live there, without giving him possession. If the father wants to give him possession, then he must treat them all fairly, and it must be documented properly in order to prevent disputes and differences between the children.

May Allaah help us all to do that which He loves and which pleases Him.

And Allaah knows best.