145437 - Rulings on Conservatorship and Bankruptcy

the question

I would like to know whether or not it is permissible according to Islam to declare bankruptcy. If I declare bankruptcy, I will still acknowledge that I still have to pay the money that I owe, so to whom should I give back the money when I become able to do that? What advice can you give me in this regard?

Summary of answer

The bankrupt is the one who has debts that are greater than the wealth he owns. If the creditors ask the court to establish conservatorship and divide among them the wealth that the debtor has, the judge must respond to that. If any debts remain unpaid, then they are still owed by the one who is bankrupt until Allah blesses him with wealth whereupon he must repay these outstanding debts.

Detailed answer

Praise be to Allah.

The bankrupt (Muflis) is the one who has debts that are greater than the wealth he owns.

If the creditors ask the court to establish conservatorship (Hajr) and divide among them the wealth that the debtor has, the judge must respond to that.

Shaykh Salih Al-Fawzan (may Allah preserve him) said, explaining the rulings on conservatorship and bankruptcy:

“1. What is meant by conservatorship in Shari`ah is preventing a person from disposing of his wealth.

The evidence for that in the Quran is the verses in which Allah, may He be exalted, says (interpretation of the meaning):

{And do not give the weak-minded your property, which Allah has made a means of sustenance for you, but provide for them with it and clothe them and speak to them words of appropriate kindness.

And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgement, release their property to them.} [An-Nisa' 4:5-6]

These two verses indicate that conservatorship should be imposed in the case of one who is weak-minded and the orphan to prevent them having access to their wealth, lest they mishandle it and lose it. The wealth should not be given to such a person until after it is established that he is mature and competent. The Prophet (blessings and peace of Allah be upon him) imposed conservatorship on some of the Companions for the purpose of ensuring that the debt they owed to people would be paid off .

2. Conservatorship is of two types:

- The first type: conservatorship imposed on a person because he owes something to others, such as conservatorship imposed on a bankrupt person because of what he owes to his creditors.
- The second type: conservatorship imposed on a person because that is in his best interests, lest he squander his wealth or mishandle it, such as conservatorship in the case of a minor, a weak-minded person and one who is insane.

In the first case, which is conservatorship imposed on a person because he owes something to others, what is meant in this case is conservatorship imposed on one who is bankrupt. The bankrupt person is one who owes a debt that has now become due, but the wealth that he has is not sufficient to pay it off. He should be prevented from disposing of his wealth, so that he does not harm the creditors.

As for the debtor who is in financial difficulty and is not able to pay off anything of his debt , he is not to be asked for it, and he should be given more time, because Allah, may He be Exalted, says (interpretation of the meaning):

{And if someone is in hardship, then [let there be] postponement until [a time of] ease.} [Al-Baqarah 2:280]

As for the one who is able to pay off his debt, it is not permissible to impose conservatorship on him, because there is no need for that. Rather he should be instructed to pay off his debt when the creditors ask him to do so, because the Prophet (blessings and peace of Allah be upon him) said: “For a rich man to delay repayment is wrongdoing.” In other words, if one who can afford it is taking too long to pay off his debt, he is wronging the creditors, because he is withholding payment that he is obliged to make to people who are entitled to it. So if he refuses to pay off his debts, he should be imprisoned. Shaykh Taqiy Ad-Din Ibn Taymiyah (may Allah have mercy on him) said: Whoever is able to pay off his debt but refuses to do so should be forced to pay it off by means of beating and imprisonment. This was stated by the leading scholars among the companions of Malik, Ahmad, Ash-Shafi`i and others. He said: And I do not know of any difference of scholarly opinion concerning that.

The Prophet (blessings and peace of Allah be upon him) said: “For a rich man to delay repayment is wrongdoing, and it is permissible to speak ill of him and punish him.” (Narrated by Ahmad, Abu Dawud and others)

What is meant by speaking ill of him is complaining about him, and what is meant by punishing him is detaining him. The one who takes too long to pay off what he owes deserves to be punished by detention or otherwise, and that should be done repeatedly until he pays off what he owes. If he persists in taking too long to pay his debt, then the judge should intervene to sell his property and pay off his debts from the proceeds, because the judge will be playing the role of the one who is refusing to pay. That will also serve the purpose of alleviating harm from the creditors. The Prophet (blessings and peace of Allah be upon him) said: “There should be neither harm nor reciprocating harm.”

3. From the above, it becomes clear that in the case of debt, there are two scenarios:

- The first scenario: the debt has not yet become due. In this case, the debtor is not to be asked to pay it back until it becomes due, and he does not have to pay it before it becomes due. If the wealth he has is less than what he owes that has not yet become due, then he is not to be subjected to conservatorship because of that, and he is not to be prevented from disposing of his wealth.
- The second scenario: the debt is now due. In that case, there are two possibilities:

The first possibility is that the wealth he has is greater than the debt he owes. In this case, he is not to be subjected to conservatorship regarding his wealth, but he should be instructed to pay off the debt if the creditor asks for it. If he refuses to do that, then he should be detained and punished until he pays off what he owes. If he puts up with detention and punishment, and refuses to pay off the debt, then the judge should intervene to pay off his debt from his wealth, selling whatever he needs to sell in order to do that.

The second possibility is that the wealth he has is less than the debt he owes. In this case, he should be subjected to conservatorship and prevented from disposing of his wealth, if he has creditors who ask for that, lest he harm them. That is because of the Hadith of Ka‘b ibn Malik (may Allah be pleased with him), according to which the Messenger of Allah (blessings and peace of Allah be upon him) imposed conservatorship on Mu‘adh (may Allah be pleased with him) and sold his property. Narrated by Ad-Daraqutni and by Al-Hakim, who classed it as authentic. Ibn As-Salah (may Allah have mercy on him) said: It is a proven Hadith. If he is subjected to conservatorship in this case, then that should be announced and it should be made known to people that conservatorship has been imposed on him, lest they be deceived by him and do business with him, then end up losing their wealth.

4. There are five rulings having to do with imposing conservatorship on someone.

- The first ruling is that the rights of the creditors are connected to his wealth that existed before conservatorship was imposed and to any wealth that he acquired after it was

imposed. So the wealth that he acquired later is subject to the conservatorship, just like the wealth that he owned before that. Thus he will have no authority to dispose of the wealth that he acquired after conservatorship was imposed in any way whatsoever. Even the wealth that he acquired before it was imposed cannot be disposed of in any way that harms his creditors.

Imam Ibn Al-Qayyim (may Allah have mercy on him) said:

If what he owes of debts is equal to or more than what he has of wealth, then any donation he makes is not valid if he donates it in a way that harms his creditors, regardless of whether the judge has imposed conservatorship on him or not. This is the view of Malik (may Allah have mercy on him) and it is the view favoured by our Shaykh – meaning Shaykh Al-Islam Ibn Taymiyah (may Allah have mercy on him). He said: And it is the correct view, and no other view is appropriate according to the general guidelines of the [Hanbali] Madhhab. In fact, this is in accordance with the teachings and general guidelines of Shari`ah, because the rights of the creditors are connected to his wealth, therefore the judge has the right to impose conservatorship on him. Were it not for the fact that the creditors' rights are connected to his wealth, then the judge could not impose conservatorship on him. Therefore he is like one who is terminally ill; allowing this debtor to donate his wealth would mean that the creditors would lose what is rightfully theirs, and Shari`ah cannot approve of such a thing. Rather Shari`ah emphasises the importance of protecting the rights of those who have rights by all possible means, and bars any means that could lead to the loss of their rights. End quote.

- The second ruling is that if someone finds his exact wealth with the debtor that he sold to him or loaned to him or rented to him before conservatorship was imposed on him, then he has the right to take it back from the one who is bankrupt, because the Prophet (blessings and peace of Allah be upon him) said: "Whoever finds his own goods with one who has become bankrupt, has more right to them [than other creditors]." (Al-Bukhari and Muslim). The jurists (may Allah have mercy on them) stipulated six conditions in order for the one who finds his property with one who is bankrupt and has had conservatorship imposed on him to

take it back:

1. The bankrupt person should still be alive in order for him to take his property back from him, because of the report narrated by Abu Dawud (may Allah have mercy on him), according to which the Prophet (blessings and peace of Allah be upon him) said: “If [the debtor] has died, then the owner of the goods becomes equal to all other creditors.”
2. The bankrupt person should still owe him the price in full. If the creditor has received anything of its price, he is not entitled to take back the goods.
3. The goods should be fully in the possession of the bankrupt person. If the creditor only finds some of them, he cannot take them back, because he has not found his exact property; rather he has only found some of it.
4. The goods should be in the same condition as when they were sold, and none of their characteristics should have changed.
5. The goods should not be connected to the rights of someone else, such as if the bankrupt person gave them in pledge as collateral, and the like.
6. The goods should not have increased in size, such as growing fat [in the case of livestock].

If all these conditions are fulfilled, then it is permissible for the owner of the goods to take them away, if it has become known that the one who has them has become bankrupt, because of the hadith quoted above.

- The third ruling is that the creditors should stop demanding repayment from him after conservatorship is imposed on him, until after it is lifted. So whoever sells something to him or lends something to him during this period should ask him to pay him or return it after the conservatorship is lifted.
- The fourth ruling is that the judge may sell his property and divide its price commensurate with the size of the debts that are currently due, because this is the purpose of imposing conservatorship on him. Delaying that is wronging the creditors. However, the judge should leave for the bankrupt person whatever he needs of shelter and sustenance, and so on.

As for any debt that is not yet due, it does not become due when the person declares bankruptcy,

and that does not impact the currently-due debts, because the deferral of time for payment is the right of the bankrupt individual, and that right, like all others, cannot be waived. It remains something that the bankrupt person owes. Then after distributing his wealth to those creditors whose payment is currently due, once he has paid them off and none of those currently-due debts remain, the conservatorship should be lifted automatically, without any need for a judicial ruling, because the reason for it no longer applies. If he still owes anything of the debts that are currently due, then the conservatorship is not to be lifted from him except by a judicial ruling, because the judge is the one who ruled that he was to be subject to conservatorship, so he is the one who should rule that the conservatorship is to be lifted." (Al-Mulakhkhas Al-Fiqhi 2/89-95)

If any debts remain unpaid, then they are still owed by the one who is bankrupt, until Allah, may He be Exalted, blesses him with wealth, whereupon he must repay these outstanding debts.

And Allah knows best.