265477 - Is it permissible to borrow from an orphan’s wealth?

the question

My husband died a short while ago, and I have two daughters. My parents had to come and live with me, but that means that my father has to travel a long way to his work. I have money that belongs to me and my two daughters; is it permissible for me to use some of this money to buy a three-wheeled motorcycle for my father (because he goes around and sells goods) on the basis that he is our provider, for me and my daughters? Please note that in a few months’ time I will start to receive my husband’s pension, in sha Allah.

Detailed answer

Praise be to Allah.

Firstly:

It is permissible to use some of your money to buy a motorbike for your father, because it is valid for an adult of sound mind to give up some of his or her money for nothing in return.

Secondly:

It is not permissible to give any of the orphan’s wealth as a loan or gift, or any other kind of giving that brings no benefit to the orphan, because Allah, may He be exalted, says (interpretation of the meaning):

{And do not approach the orphan's property except in a way that is best} [al-An‘am 6:152]

{They ask you concerning [the property of] orphans. Say: The best thing to do is to manage it in their best interests} [al-Baqarah 2:220].

It says in *al-Mawsu‘ah al-Fiqhiyyah* (43/198): The Hanafis, Malikis, Shafa‘is and Hanbalis are of the

view that the guardian who is in charge of an orphan and his wealth has no right to give away the wealth of a minor, whether that is by way of charity or a gift for nothing in return, because giving away some of the minor's wealth brings him no benefit, and it is contrary to the purpose of being in charge of and taking care of an orphan, which is to protect his wealth and manage it in a manner that will bring benefit to the minor, based on the verse in which Allah, may He be exalted, says (interpretation of the meaning):

{And do not approach the orphan's property except in a way that is best} [al-An'am 6:152].

Thus it is forbidden to approach the orphan's wealth or property except in a manner that will serve the orphan's interests. Giving away the money does not serve any interest for the orphan; rather it is disposing of his wealth in a manner other than that which Allah has enjoined. Therefore it is forbidden and not allowed to do that. End quote.

Based on that, it is not permissible to take anything of your daughters' wealth except in a manner that will clearly or most likely benefit them.

You mentioned two things:

1. That your father will use this motorbike for work, and he is your provider.

2. In a few months' time, you will start to receive your husband's pension, so you will no longer need your father's support.

So long as the two girls have wealth of their own, their maintenance should come from their wealth and there is no need for their grandfather to spend on them. In this case, he is not obliged to spend on them from his own wealth.

But if what will be taken from the girls' wealth to buy the motorbike will bring extra benefit to them as a result of your father working for these few months, or the benefit will continue after that, such as if this motorbike will increase your father's business or increase his profits so that he will be able to spend on them in a better way, then there is nothing wrong with giving him a loan from the girls' wealth, because that serves an interest for them.

But if it will not bring them any extra benefit – rather it will bring some benefit that is equal or less – then it is not permissible to take anything from their wealth.

The basic principle is that it is prohibited to consume an orphan’s wealth, and it is obligatory to spend from his own wealth on what will serve his interests.

Al-Khatib ash-Sharbini said in Mughni al-Muhtaj (3/151): The guardian should manage the orphan’s wealth or property in a manner that serves the latter’s interests, and this is obligatory, because Allah, may He be exalted, says (interpretation of the meaning):

{And do not approach the orphan's property except in a way that is best} [al-An‘am 6:152]

{if you mix their affairs with yours, then they are your brothers; but Allah knows who is dishonest and who is honest} [al-Baqarah 2:220].

Therefore managing their wealth in a way that does not bring any benefit or cause any harm is not allowed, because it serves no interest, and that is indeed the case.

The guardian must protect the child’s wealth from being wasted, and he must invest it in such a way as to replace what he spends on maintenance and other things, if possible. End quote.

The Permanent Committee for Ifta’ (14/221) was asked the following question: He has money that belongs to orphans, and this money is deposited in one of the banks in Saudi Arabia without interest, for the orphans. Someone is asking for a loan from this money, for an amount of sixty thousand riyals, and at that time he said: I shall pay it back in instalments over thirty-five months, in monthly instalments of 2,400 riyals. He said: I will willingly give the orphans 12,000 riyals in addition to what I borrow of their money; I will do this voluntarily, and not as a stipulated condition. As long as I going to keep this money for a while, perhaps there is nothing wrong with this extra amount that I want to give.

They replied: If the situation is as you stated, it is not permissible for you to lend any of the orphans’ wealth, either to the person you mention or anyone else, and regardless of whether there is the intention to give them something extra or not. Rather it is prescribed for you to seek

someone who will do trade with it for a known percentage of the profit, such as half and the like, on the condition that the person must be trustworthy.

And Allah is the source of strength. May Allah send blessings and peace upon Muhammad and his family and companions.

Shaykh ‘Abd al-‘Aziz ibn ‘Abdillah ibn Baz, Shaykh ‘Abd ar-Razzaq ‘Afifi, Shaykh ‘Abdullah ibn Ghadyan, Shaykh ‘Abdullah ibn Qa‘ud. End quote.

Conclusion: it is not permissible for you to take anything from their wealth to buy the motorbike for their grandfather, unless that is going to bring them some extra benefit.

Thirdly:

It is permissible for the one who is looking after the orphans’ affairs and taking care of them to eat from their wealth on a reasonable basis, if he needs to do that, because Allah, may He be exalted, says (interpretation of the meaning):

{ And do not give the feeble-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. And do not consume it excessively and quickly, [anticipating] that they will grow up. And whoever, [when acting as guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor - let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Reckoner} [an-Nisa’ 4:5-6].

The jurists say: He may consume the lesser of two amounts: the wages for one who does the same work, or as much as he needs. In other words, if his work and efforts deserve a fee of one hundred, for example, and what he needs is worth ninety, then he should take ninety.

And Allah knows best.