Partnership

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Q1678. I contributed to the capital of a company and appointed the owner of the company as my agent in so far as the investment is concerned provided that he pays me a fixed monthly sum of money. A year later, I settled for a plot of land he gave me in return for the money I put into the company and the profits thereof. Is this sharʿī?

A: As you invested in the company and authorized him to deal with it, there is no objection to receiving ḥalāl proceeds.

Q1679. A number of people bought an object collectively. They agreed between themselves to draw a lot to determine the owner. What is the ruling?

A: If the intention behind the draw is granting each individual's share in the object to the person who wins it, there is no harm in it. Yet, if the intention is transferring the joint ownership to the person who wins the lottery per se or their intention is mainly wining and losing, it is not sharʿī.

Q1680. Two people jointly bought a plot of land. They have been cultivating the land for some twenty years. One of the partners sold his share to a third party. Has he the right to do so? If he refuses to sell his share to his partner, can the latter do anything about it?

A: The partner has no right to force the other partner to sell him his share. Nor has he the right to object to the partner's selling his own share to another party. However, he can resort to pre-emption, provided that the prerequisites are available and the transaction is concluded.

Q1681. What is the ruling in the matter of dealing in shares in the stock exchange? It is to be noted, however, that the share itself is subject to the deal, rather than the capital of the company and that the price of the shares might go up as well as down. And what is the view if the activities of some companies are either ribā-based or doubtful?

A: If the value of the shares of a company or a bank is based on the shares themselves and their credit was issued by an authorized person, there is no objection to buying and selling them.
If the value of the shares is regarded as the value of the entire plant, mill, company, or bank as the capital thereof, in that each share constitutes part of the capital, there is no objection to buying and selling such shares provided that the total number of shares is known, besides other information with a view to avoiding any risk that could be thus perceived in the common view.

Q1682. As a result of a disagreement between the three of us, we decided to sell the poultry business we own as partners at auction. One of us won the bidding. Ever since, he has been procrastinating with regard to paying us our money. Can this transaction still be deemed sharʿī?

A: Getting the auction underway and tendering a higher price by one of the partners, or

any other party for that matter, is not sufficient to complete the sale and own the business. Therefore, if the sale of shares has not been concluded properly and in a sharʿī way, the partnership should remain intact. However, if the sale has gone through in a proper manner, the delay in paying the price for the business by the buyer should not render the sale transaction invalid.

Q1683. A group of people set up a company by way of partnership. The company was officially registered with the authorities. However, I relinquished my share in favor of another person who bought it from me. He paid me the price by five checks which bounced. When I approached the buyer, he took the checks from me and restored my share in the company, but he remained officially the stockholder. It transpired that he sold the share to another party. Has he the right to do so? And do I have the right to demand the restoration of my stake in the company?

A: If the buyer, who revoked this sale after he had got his checks back, sold the share to a third party before the cancellation, this sale is valid. If he had sold the share after the cancellation, this sale cannot go through unless you sanction it.

Q1684. Two brothers inherited a house from their father. They couldn't reach a settlement as how to divide the inheritance. The case was submitted to the court to decide it. The court consulted an expert, who advised that the property couldn't be divided and that it would be mustaḥabb for either of them to sell his share to the other or for the house as a whole to be sold to a third party. Accordingly, the property was sold at auction and the proceeds given to the two brothers. Is this sale sharʿī and can the two brothers receive their respective share of the proceeds?

A: There is no problem in that.

Q1685. One of the partners of a company bought some property with the company's money and registered it in the name of his wife. Who has ownership of the property? And is the wife legally bound to register the property in the name of the partners, even though her husband will not let her do it?

A: If the husband [partner] bought the property for himself or his wife on credit, then paid for it with money from the company, the property is his and his wife's. However, he becomes indebted to the rest of the partners insofar as their shares are concerned. If he exchanged it with the very company's money, the [validity of the] transaction proportionately hinges on the consent of the other partners.

Q1686. Is it permissible for some of the inheritors, or their agent, to have the right of disposal, in any way, in the estate that is still jointly owned by the heirs without the agreement of the rest of the heirs?

A: It is not permissible for any of the partners to have the right of disposal in a jointly owned property without the agreement of all the heirs. Nor is it permissible for any one of them to engage in any transaction concerning the property unless they secure the permission of all the partners.

Q1687. Some partners in a jointly owned property sold it without securing the agreement of all the shareholders. Is the sale valid and, therefore, binding on the other shareholders to agree to it, albeit they are not happy with the deal? And should the agreement of all partners be a condition? Does it matter whether the company was a commercial enterprise or a civil one, in that agreement must be secured for the latter and not the former?

A: This sale is valid and, therefore, enforceable insofar as the share owned by the party who sold it or gave permission to sell it. As for the remaining shares, this is dependent on their respective permissions, irrespective of how the company came into being.

Q1688. A person took a loan from the bank and built a house. The property was insured. After part of the property was damaged

due to flooding, the bank does not want to admit liability. For its part, the insurance company says that the damage cannot be covered because it falls outside the terms of the insurance policy. Whose responsibility is it then?

A: The insurance company cannot indemnify for the damage because it falls outside the remit of the policy. The cost of repairing the property, and indemnifying for any loss which is not the responsibility of others, should be borne by the owner. As for the bank, if it is a civil partner in the property, it should bear a share of the cost of repair proportionate to its stake unless the damage occurred due to somebody's default.

Q1689. Three people jointly bought a string of business properties. One of the partners refused to agree with the other two partners to be part of any business conducted therein, to sell, or to rent them out. Is it permissible for any partner: (a) to sell or lease his share without the permission of the other two partners? (b) to occupy the property without the permission of the other two partners?, and (c) to pick and choose any property for himself and leave the rest for others?

A)
1. It is permissible for any partner to sell his own share without any need to obtain the permission of the other partners.
2. It is not permissible for any partner to occupy a jointly owned property unless he secures the permission of the other partners.
3. It is not permissible for any partner to choose his own share of the jointly owned property without the permission of the other partners.

Q1690. A group of people wants to build a ḥusayniyyah on a green piece of land. Those who have a stake in the land do not agree to the project. What is the ruling in the matter, especially when there is a possibility that the land could be anfāl or a public facility?

A: If the land is a common property, any involvement in it hinges upon consent of all those who have a vested interest in it. If it is anfāl, the decision concerning it should be left to the Islamic state. It is not permissible to have any involvement in the property without the government permitting it. If it is a public utility, the same ruling is applicable.

Q1691. A number of people inherited an orchard. One of the inheritors refuses to sell his share. Is it permissible for the other shareholders, or a government department, to force him to do so?

A: Neither the other partners nor anyone else can coerce the partner to sell his share, especially where partitioning is possible. In this case, each of the partners can demand from the others to partition their share unless the law of the Islamic government does not permit the partitioning of the plantation. Such legal requirements have to be respected.
If the jointly possessed property cannot be demarcated, any partner can have recourse to the authorized religious authority to force the unwilling party to sell their share or buy the shares of the other partners.

Q1692. Four brothers live of a jointly owned property. Two of them got married and undertook that each would be responsible for bringing one of the younger brothers up and bearing the expenses arising from his marriage. However, neither kept his pledge. The younger brothers now want to have their share of the property and live independently. How should they go about distributing the possessions between themselves?

A: The elder brothers should compensate any amounts that have been spent of the jointly owned property, which the other brothers did not equally spend. They [i.e. the younger brothers] have the right to demand compensation. Then the remaining amount of the

jointly owned property should be distributed equally among all the brothers.
Another way of distribution would be that each of those brothers, who have spent less than the others, should take an equal share of the property to be put on a par with those who have enjoyed spending of the jointly owned property. Once this is done, the remaining amount should be distributed equally between them.

Q1693. The tea company in the country has a policy of forcing retailers to become members in the company. Has the company the right to do so? And is such membership valid?

A: Should the company offer the members facilities and services and give them tea provided that they are its members and deal only with it, there is no objection to that. Nor is there any harm in such membership.

Q1694. Is it permissible for the management of a company to spend its profits in charity without seeking the permission of the shareholders?

A: Making a decision about dividends rests with the shareholder himself. Thus, if someone else spends the dividends without either power of attorney or permission from the shareholder, he should be held responsible to compensate the shareholder, even though the income is spent in charitable causes.

Q1695. Three people set up a joint business venture. One of them contributed half of the capital and the other two a quarter each. They agreed that the profits should be distributed between them each according to their shares. The two partners, who contributed a quarter each of the capital, run the business full-time, whereas the partner, who owns half of the company's capital, seldom works. Is this partnership valid?

A: For shareholders, it is not necessary to have equal shares in the investments. However, there is no objection to distributing the profits equally between the partners, regardless of the percentage of their respective shares in the company. As regards running the business, each of them will be renumerated for his work if nothing is stipulated in the contract in this regard.

Q1696. Both the public and the private sectors jointly own a company. The shareholders appointed the management team. Is it permissible for the company staff to use the company cars for their personal business?

A: Using the transport means and other company property in non-company business is dependent on the permission of the shareholders or their official agents.

Q1697. According to the company charter, a committee, whose responsibility is to settle disputes, has to be set up. The committee cannot be set up because 51% of the shareholders have forgone their rights. Is it obligatory on those shareholders who have relinquished their rights to demand the formation of the committee so that the rights of the existing shareholders are upheld?

A: If the members — as required by the company charter — undertook to form the arbitration committee when it is necessary to do so, they have to abide by their undertaking. The issue of some shareholders relinquishing their rights should not be taken as a pretext for not honoring the pledge concerning the setting up of the arbitration committee.

Q1698. Two people set up a company. Both of them had a stake in the business to meet the setting-up cost including sarqoflī that had been paid for the property. One of the two partners left the business, taking with him his share of the capital. The other partner

has continued running the business. The partner who opted out is claiming that he should be given a share of the transactions concluded by the existing partner. What is the ruling in the matter?

A: In itself, partaking in the ownership and sarqoflī of a commercial place is not sufficient for having a part in the [actual] trading and getting a share of the profits. The yardstick is to have a share in the running capital. Accordingly, if the continuation of one of the partners in running the business has occurred after they decided to divide the jointly owned capital in a proper way so much so that one of them took away his share, the latter should have no right in the transactions his [former] partner has concluded. However, should there be any transactions before the actual breaking up of the company, the partner has a right in the commercial activity of his partner in a measure equivalent to his stake of the capital.

Q1699. Is it permissible for me to deny my sister the right to take away her share in the company for fear that she might use the funds she will acquire in projects that serve to spread un-Islamic practices?

A: No partner has the right to prevent any of the other partners from getting their share and also it is not permissible to deprive them of access to their property fearing that they might use their property in the avenues of evil, disobedience, and other unlawful activity. The partners must accede to the request of any partner wanting to break ranks. It is to be noted, however, that the partners who want to go it alone should be mindful of their duty as not to utilize their property in bankrolling forbidden activities. For their part, the other partners should forbid them from evil if they use their property in any avenue that is deemed ḥarām.