Ṣulḥ

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Q1777. In a ṣulḥ deed, a man agreed with his wife to relinquish the ownership of all he owned in her favor. He also made her the guardian of their children. After his death, have the husband's parents any right in demanding a share of his estate?

A: If it is proved that the deceased has, during his lifetime, given his wife or any other party all his possessions in a ṣulḥ deed, so much so that he did not leave anything for himself till the moment of his death, there is no case for the parents, or the rest of heirs, i.e. they are not entitled to any inheritance. Thus, they have no right to demand from the wife anything of the property which became hers during her husband's lifetime.

Q1778. In a ṣulḥ deed, a person gave his son a part of his property. Two years later, the father sold the same property to his son. After the father had passed away, his heirs produced a medical report to the effect that the father was not in his full mental capacity. Did the sale of the same property, which was relinquished by the father to the son, supersede the agreement between the two parties? And suppose that the ṣulḥ still stands; is it enforceable in one-third of the property, which was relinquished, or in all of it?

A: The ṣulḥ deed is valid and enforceable .Unless the right of revocation by the giver has been proved, it is binding (irrevocable) as well. As a result, its subsequent sale by the donor at a later date was invalid, even in case the donor was enjoying full mental capacity. The ṣulḥ deed, which was materialized and ruled as both valid and binding, is enforceable in all the property that was relinquished.

Q1779. In a ṣulḥ deed, a person relinquished all his possessions, including his rights, and financial dues with the establishment of medical services. For its part, the said establishment argued that he had no right to transfer his entitlements with it. Thus, they declined to comply with the request. The person in question admitted that he was not frank, claiming that the whole thing was a ploy to extricate himself from paying the debts due from him to others. What is the ruling in this matter?

A: To bring about a ṣulḥ deed involving the property of other people or which others have a right in is dependent on the permission of the owners of the property or the one who has the right to it. Should the ṣulḥ deed concerning the absolute property of the person have been designed to avoid the payment of debts due to others, ruling that it is valid and enforceable is problematic, especially in the light of the fact that there is no hope that he could get further funds to settle his debts.

Q1780. In a document, it is written that a father transferred and turned part of his property over to his son through a ṣulḥ deed. Is such a document valid in shar'?

A: The document per se is not shar'ī evidence or proof that the ṣulḥ deed was made and what its mechanics were unless one is confident about its contents. However, if there is any doubt that the ṣulḥ deed was not concluded in a proper manner — while we are sure the owner made it — it should be deemed valid. Therefore, the property is the recipient's.

Q1781. At the time of our marriage, my father-in-law gave me a plot of land in return for a sum of money through a ṣulḥ contract and turned it over to me. The particulars of the agreement were written down, signed and witnessed. Now my father-in law claims that he really did not intend the agreement and it was not genuine. What is your view?

A: The said agreement is deemed valid. The claim that it was not genuine does not carry weight unless the claimant substantiates it.

Q1782. During his lifetime, my father made a ṣulḥ contract to the effect that all his property transferred to me in return for a sum of money that I should pay my sisters after his death. For their part, my sisters agreed to the arrangement and signed the will. After my father had passed away, I gave my sisters their shares of the agreed amount. Is it permissible for me to take ownership of the property and use it? And if my sisters are not happy with the arrangement, what should I do?

A: There is no harm in this agreement. The relinquished property is rightfully the recipient's. Dissatisfaction of the rest of the heirs is of no consequence.

Q1783. A person gave his property to one of his sons through ṣulḥ in the absence of some of his children and without the agreement of those present. Should such an agreement still be valid?

A: For the owner to give one of his [would be] heirs some property through ṣulḥ during his lifetime is not dependent on the approval of the rest of the heirs. They have no right to object to it. However, it is not permissible if it causes discord among the children.

Q1784. A person gives some property to another through ṣulḥ on the condition that the recipient makes use of it personally. Is it permissible for the latter to give it to a third-party, for the same purpose, or enter into a partnership for that matter, without the agreement of the previous owner? Should this be sharʿī, can the previous owner rescind the agreement?

A: It is not permissible for the recipient to disobey the conditions to which he was a party. Failure to do so would result in giving the previous owner. who made the ṣulḥ the right to cancel the agreement.

Q1785. Is it permissible for the owner, who concluded a ṣulḥ with another person, to withdraw and conclude another ṣulḥ with a third party, involving the same property without informing the person who was party to the first ṣulḥ?

A: If the ṣulḥ was concluded in a proper manner, it should be binding on the owner. Thus, he has no right to withdraw unless he has reserved the right to rescind the ṣulḥ. So, if he enters into a ṣulḥ with another party, its validity becomes dependent on the approval of the person who was party to the first ṣulḥ.

Q1786. After the death of a woman, her estate was duly distributed among her children. After the lapse of some considerable time, one of the daughters claimed that during her lifetime, the mother gave all of her property to the daughter. To substantiate her claim, she produced an unofficial document bearing her signature and that of her husband, alongside the alleged thumb print of her mother. She is now claiming to be the inheritor of all the property that belonged to her mother. What is the view on this matter?

A: Unless it is proved that the mother relinquished ownership of the property during her lifetime in favor of her daughter through a ṣulḥ deed, she has no right in what she is claiming. And the mere existence of such a document is not valid unless its contents are substantiated.

Q1787. A person gave his children the whole property he had through a ṣulḥ deed on the condition that he would remain in charge of the property throughout his life. I have the following questions to ask:
a) Is this agreement valid, considering the stipulated condition?
b) Assuming that it is valid and, therefore, enforceable, is it permissible for the proprietor to change his mind? Suppose that this is the case, is it permissible for him to sell part of the property to some of the parties to the ṣulḥ deed, and would this amount to

canceling the ṣulḥ deed? And finally, suppose that it is a cancellation of the ṣulḥ deed, should such cancellation extend to all the property or is restricted to the sold part?
c) What does the phrase, "to be in charge of property throughout the donor's life", imply? Does it mean the right of revocation, the right of transferring the ownership of the property to others, or the holding of actual control of the property and use it for life?

A:

a) The said ṣulḥ deed is valid and enforceable, even though it contains such a condition.
b) A ṣulḥ deed is among the contracts that are binding. The giver is, therefore, not allowed to cancel it unless there is a condition in the contract, giving him the right to do that. So, without such a condition, the sale of a part of the shared property to one of the shareholders is deemed invalid insofar as buyer's share is concerned. And regarding the shares of the other shareholders is considered as fuḍūlī and its validity depends on their approval.
c) Apparently, the phrase, "to be in charge of the property throughout the donor's life", means the right of handling the property physically, to the exclusion of the right of cancellation and the right of transferring the property to the others.