

LIVE

LIKE

BROTHERS

DEAL

LIKE

STRANGERS

MUFTI MUHAMMAD TAQI UTHMANI SAHEB

Judge of Shariah Court - Pakistan

PUBLISHED BY:
Madrasah Taaleemuddeen
Isipingo Beach, South Africa

INTRODUCTION

This short treatise, "LIVE LIKE BROTHERS — DEAL LIKE STRANGERS" is a translation of an article by Hazrath Mufti Muhammad Taqi Uthmani Saheb (*mudda Zilluhu*). The original article titled "*Mua'malaat Ki Safai' Aur Tanazu'aat*" was published in the July-94 issue of the monthly urdu magazine *Al-Balaagh*. The basic lesson expounded in this article is the total clarification of all our transactions and monetary matters. Hazrath Mufti Muhammad Taqi Saheb (*mudda zilluhu*), in his capacity as a judge of the Shariah court, has immense experience in these matters. In the light of this experience he has vividly described the common problems that repeatedly occur in our dealings — and has given practical solutions to these problems.

While the article perhaps highlights those problems which are prevalent in Pakistan, the situation is exactly the same in our own society. Often on the pretext of a "excellent friendship" and an "excellent mutual understanding" many things are taken for granted without any proper clarification of the finer details. With the passage of time huge cracks become apparent in the "excellent friendship." However no one is prepared to take the courage and sort out the matter. This situation continues to stagger along on the bumpy road ahead until it finally crashes, bringing in its wake much misery, ill-feeling and utter chaos. In most cases the resultant problems are almost impossible to solve.

It is thus extremely important that we take the advice contained in this booklet seriously and implement it in our dealings. It will save us tremendous misery and grief in the future.

May Allah Ta'ala accept this humble translation. May He grant Hazrat Mufti Saheb a long life and good health. *Aameen*.

19 Safar 1417 / 6 July 1996

“LIVE LIKE BROTHERS -- DEAL LIKE STRANGERS”

If one wishes to have a vague idea of the number of disputes that occur in the community, one will get a glimpse of this from the number of cases that come to the courts on a daily basis. However, due to the high costs and the time involved in bringing a matter to court, the majority of disputes don't even come to the courts. Rather the disputing parties try to grab whatever they can from each other, thus bringing about further enmity. The resultant animosity sometimes continues for generations.

If one gets to the root of these disputes, one would find that they basically revolve around money and property. Disputes relating to money and property have destroyed many close relationships and have transformed many close friends into arch enemies.

While there are various underlying reasons for this pathetic state of affairs, perhaps among the greatest reasons is the lack of complete financial clarity and order in one's financial matters.

A golden rule that our Deen teaches us is: **“LIVE LIKE BROTHERS -- DEAL LIKE STRANGERS”**. The lesson conveyed in this statement is that as far as our social lives are concerned we should treat one another like brothers. As much as possible we should assist one another and overlook one another's shortcomings. However, when it comes to money matters or aspects pertaining to property or partnerships, or the distribution of shares, etc., one should determine and clarify these matters like two total strangers. Just as two strangers would clarify the minutest detail, we should likewise conduct our transactions to the same degree of clarity and leave no ambiguity whatsoever. No aspect should be left totally in the dark, nor should anything be even minutely unclear.

If this golden advice of our Deen is adhered to during times of unity and good relationships, the door to many future disputes and problems will be completely closed. Unfortunately this golden rule is greatly ignored in most instances. The following are some examples of the disregard shown to this rule.

PARTNERSHIPS

Often several brothers are partners in the same business. At times the father and son/s are in the business together. Without any records being kept, all the “partners” take their expenses from the business and spend as they wish. However, the position of each person in the business is not clearly determined. For example, is the son or brother merely an employee in the business, or is he a partner? If he is an employee, what is his salary? If he is a partner, what is his percentage share of the profits? Without any of these aspects being clarified, each one draws from the business as he pleases. If anyone dares to suggest that these aspects need to be clarified, his suggestion is frowned upon. This suggestion is regarded as contrary to the dictates of mutual love and unity.

However, experience has proved time and again that the end result of such businesses is that it breeds contempt and enmity in the hearts. Especially if a wedding takes place in the family of one of the partners, the other partner feels that his rights are being trampled upon since his associate has taken much more from the business than what he was entitled to. While on the surface a front of love and unity is displayed, from within the flames of ill-feelings are kindled. Eventually when these ill-feelings become coupled with suspicions, the “partnership” explodes like an angry volcano and all the claims of love and unity are left bare. Arguments, verbal abuse and costly court cases become the order of the day. Brothers stop talking to each other. Rather, they cannot even then bear to look at one another. As for the business, properties, etc. each person grabs

whatever he can. Justice and fair dealing become the first victims in this entire saga. The matter then goes further with each partner criticising and belittling the other among his circle of friends.

Besides the above, since this “partnership” ran for years without any proper agreement, nor were proper records of the personal drawings and other expenses maintained, it becomes almost impossible to find an amicable solution which is agreeable to all the partners. All this chaos ensued as a result of not treating a business matter strictly in a formal manner from the very inception of the business, or at the time of a new partner joining the business. If each person’s position in the business was established from the very inception, his rights and duties were spelt out and all the details were recorded in a partnership agreement, the possibility of such problems and complications occurring would have been uprooted from the beginning.

LONGEST AAYAH

In the longest aayah of the Qur’an Allah Ta’ala has commanded the Muslims to write down the details of any credit transaction. If a small amount taken on credit must also be recorded, how much more important it is that complex business agreements be reduced to writing. The simple reason for this injunction is that the abovementioned problems may be avoided or, if somehow a problem does crop up, it would be easily possible to solve the matter in a fair and just manner.

EMPLOYEE OR PARTNER?

Therefore if more than one person works in the same business, it should be established from the very beginning as to what each one’s position in the business is. If a son has joined his father in the business, it must be established from the very first day as to whether he is merely helping his father as a favour, or whether he is an

employee, or has he joined as a partner? If he is just an employee, his salary must be clearly stipulated. It must also be clearly mentioned that the son in this case has no share whatsoever in the ownership of the business. If he is being made a partner, firstly it is a condition that he invests something into the business. If the son does not have any capital of his own to invest, the father could give him an amount as a gift. He would then invest this amount into the business and purchase a share therein. All these matters should be reduced to writing in the form of a partnership agreement. The share of profits that each partner would be entitled to should also be explicitly mentioned so that there is no problem later on.

EXTRA WORK

Furthermore, if any of the partners will be doing more work than the others, it should be established as to whether he would be doing this extra work on a voluntary basis, or will he be compensated for the extra work. If he will be compensated, will it be in the form of an increased share in the profits, or will it be in the form of a specific amount of salary? In short, every aspect pertaining to the duties and rights of each partner must be clearly written down so that no ambiguity remains.

If these aspects have not yet been determined and clarified in any business, it should be done as a matter of absolute urgency. Shyness or embarrassment of any sort should not become an obstacle, nor should one be concerned of any taunts or criticism in this regard. It is a great deception to regard the clarifying of our monetary matters as contrary to love and unity. Rather, the maintaining of love and unity is totally dependant on this clarification. Failure to do so could result in this superficial love and unity becoming a means of enmity and hatred in the future. Thus the teaching of our beautiful Deen is: **“LIVE LIKE BROTHERS -- DEAL LIKE STRANGERS”**.

HOME OWNERSHIP

Another situation which affects many people in our community, especially the middle class, is the acquisition of a home. In many instances the house is built or purchased jointly by several members of the family. If the father has commenced the building of a house, the sons also contribute from their personal incomes to the extent of their ability. However, in most of these instances these contributions are made without considering any of the resultant factors, and often without any proper records being kept. It is not determined whether the amount that the son has contributed is a (a) gift to the father or (b) a loan to him, or (c) is he becoming a proportionate shareholder in the home. If he has given the money as a gift to the father, neither will he own any share in the house nor will he have the right to demand the repayment of his contributions. If it was a loan, the home will still belong solely to the father but the father will be indebted to him for the sum that he contributed. In the third case he will become a proportionate shareholder in the home. Thus as the value of the house increases, the value of his share will likewise increase. Hence each case has its own resultant effect which differs greatly from the others. However, since these factors were not considered prior to the contributions being made, nor were proper records kept, the matter results in serious problems. When the value of the house increases, it becomes a matter of severe contention. This situation becomes a means of serious dispute, especially at the time when the father passes away and his inheritance is now being distributed. The problem sometimes becomes impossible to solve and the entire family is adversely affected.¹

However, if the golden teaching of our Deen was adhered to by

1. Like the acquisition of a house, perhaps a more common aspect in middle-class families is the purchasing of a car. The car is on the name of only one person, but all contribute towards its payment. Here again, no clarification takes place as to the nature of the contributions, which later results in problems. Thus here too the matter should be absolutely clarified. (Translator)

clarifying all the matters right from the very inception and properly recording them, this chaos affecting the entire family would have been avoided.

INHERITANCE

The third situation pertains to the winding up of the estate. When a person passes away, the Shariah requires that his estate must be immediately wound up and distributed among the *Shar'i* heirs. However, this is also severely neglected in our society. At times whatever each heir can take hold of, he simply usurps. No consideration is given to *halaal* and *haram*. In many instances there is no intention to deprive anyone of their right. Nevertheless, either due to ignorance or negligence, the inheritance is not distributed. If the deceased left behind a business, the son that worked in the business during the father's lifetime continues to run it. However, no clarification takes place as to what is the present position of the business? Nor is there any mention of how the other heirs will be paid out their shares, or which item of the estate will be given to which heir? Instead, if anyone even suggests that the estate should be distributed, his suggestion is regarded as extremely uncouth and it is immediately shot down with comments such as: "*Our father's kafan is not yet soiled and here he is worried about distributing the estate!*"

ORDER OF SHARIAH

However, this distribution is an order of the *Shariah*. The necessity of having our matters absolutely clear also requires that the estate should be speedily distributed. Ignoring this basic order also becomes a means of serious conflict. As time passes, the other heirs constantly remember their right in the estate which they have not received as yet. They are grieved by this. Also as time passes the value of the estate differs greatly compared to the time of the death of the father. Hence, since nothing was clarified, the matter now becomes complicated. To amicably resolve the complications becomes a difficult matter. As a result the matter which finally results in disputes, quarrels, and

fight^s.²

If the estate was speedily wound-up and distributed in accordance to the command of the Shariah and all the matters of the estate were mutually finalised, very little possibility would have existed for any conflict to arise. In fact, it would have become a means of greater love and unity among the family members.

The above are just three simple examples of problems that result from a lack of clarity in our dealings. In reality, the lack of clarity in financial matters has become such a disease that has affected all sectors of our society and kindled the flames of *fitnah* and disputes. Whether the matter is big or small -- it must be absolutely clear. No shyness or embarrassment or the consideration of any relationship must become an obstacle in clarifying the matter. Once the matter has been cleared and all the conditions, etc. have been determined, each one should extend the greatest kindness and generosity possible to the other. This is the meaning of the golden rule:

“LIVE LIKE BROTHERS -- DEAL LIKE STRANGERS”

2. Often one particular member of the family takes it upon himself to handle the winding up process. He alone knows what he is doing. Sometimes the months and years drag along and the other heirs are not even informed of what is happening. This creates much suspicion and ill-feeling which later explodes into severe conflicts and disputes. It is therefore necessary that all the heirs should sit down together as soon as possible and mutually decide as to how the winding-up process should be handled. All the heirs should then be regularly informed as to what progress has been made. (Translator)