

Rules Regarding Waqf

Issue 2685: If a person makes something Waqf, it ceases to be his property, and neither he nor anybody else can either gift it or sell it to any person. Also, no one can inherit anything out of it. There is, however, no harm in selling it in certain circumstances, as mentioned in rules nos. 2102 and 2103.

Issue 2686: * It is not necessary to utter the formal declaration of Waqf in Arabic. If, for example, a person says: "I have waqfed this book for the students" it will be considered valid. In fact, Waqf is established by conduct as well. Therefore, if a person spreads a mat in a mosque with an intention of Waqf, or constructs a building having an appearance of a mosque, with an intention of giving it away as a mosque, the Waqf will be established. In the cases of public Waqfs, like a mosque, a madressah, any public utility, or Waqf for general poor or Sadat, it does not require anyone to make a formal acceptance. In fact, even private Waqf, like the one created for one's own children, do not require any reciprocal acceptance.

Issue 2687: * If a person marks a property for Waqf, but regrets before actually making a Waqf, or dies, the Waqf is not considered as established.

Issue 2688: * If a person Waqfs a property, he should make it a perpetual Waqf from the day he declares the Waqf. Therefore, if he says: "This property is Waqf after my death" the Waqf will not be valid, because it would not cover the period from the time of declaration till his death. Also, if he says: "This property will remain Waqf for ten years and will not be Waqf thereafter" or says: "It will be Waqf for ten years and thereafter it will not be Waqf for five years, and will become Waqf again after the expiry of that period", such a Waqf will not be valid.

Issue 2689: * A private Waqf will be valid when the property which has been waqfed is given away, at the disposal of beneficiaries of the first category, or their representative or guardian. And, if a person Waqfs something upon his minor children, and looks after it on their behalf with the intention that it will become their property, the Waqf is in order.

Issue 2690: In the case of public Waqf like madressahs, mosques etc. it is not necessary that it be possessed by any gesture. The Waqf is established immediately upon its declaration as such.

Issue 2691: It is necessary that the person who makes a Waqf should be Baligh and sane, and should be doing so of his free will and niyyat. Also, he should have the right, according to Shariah, of disposal and discretion over his property. Based on this, feeble-minded person who squanders his wealth and is therefore debarred, cannot make a valid Waqf.

Issue 2692: If some property is made Waqf for an unborn child, it is a matter of Ishkal for that Waqf to be valid, and it is necessary to observe precaution in this case. But, if Waqf is created for some persons who are present at that time, and also for the persons who will be born later, even if they may not be in the womb of their mothers when the Waqf was made, it will be in order. For example, if a person Waqfs a property for his children and after them for his grandchildren, and for every succeeding generation to benefit from it, the Waqf is in order.

Issue 2693: If a person creates a Waqf for himself, for example, if he Waqfs a shop for himself so that its income may be spent for the construction of his tomb after his death, the Waqf is not in order. But, if, he creates a Waqf for the poor and later on, he himself becomes poor, he can benefit from the accruals of that Waqf.

Issue 2694: * If a person appoints a Mutawalli (trustee) of the property waqfed by him, the trustee should act according to his instructions, but if he does not appoint a trustee and say, he has waqfed the property for a particular group, like, for his children, the discretion rests with them, and if they are not baligh, the discretion rests with their guardian. And the permission of the Mujtahid is not necessary for appropriating any benefit from the Waqf. But for any such steps taken to safeguard the interest of the Waqf, or the interest of future generations, like repairing or hiring it for the benefit of the future generation, permission from the Mujtahid is necessary.

Issue 2695: If a person Waqfs a property, for example, for the poor, or for the Sayyids, or he Waqfs it for charitable purposes, and does not appoint the trustee for the Waqf, the discretion with regard to that Waqf rests with the Mujtahid.

Issue 2696: If a person Waqfs a property for a particular group, like, his descendants, so that every generation should benefit from it successively, and to achieve that purpose, the trustee of the Waqf leases it out, and then dies, the lease will not become void. But, if the Waqf has no trustee, and one generation for whom the property has been waqfed, leases it out and they die during the currency of the lease, and the next generation does not endorse the lease, the lease becomes void; and if the lessee has given rent for the entire period, he is entitled to receive the refund of rent which covers a period from the time of their death till the end of the period of lease.

Issue 2697: * If the Waqfed property is ruined, its position as Waqf is not affected, except when the Waqf is of a special nature, and that special feature ceases to exist. For example, if a person endows a garden and the garden is ruined, the Waqf becomes void and the garden reverts to the heirs of the person.

Issue 2698: * If one part of a property has been waqfed and the other part is not, and the property is undivided, the Mujtahid, or the trustee of the Waqf, or the beneficiaries can divide the property and separate the Waqf part in consultation with the experts.

Issue 2699: If the trustee of Waqf acts dishonestly, and does not use its income for the special purposes, the Mujtahid should assign an honest person to act with the dishonest trustee in order to restrain him from acting dishonestly. And if this is not possible, the Mujtahid can replace him with an honest trustee.

Issue 2700: A carpet which has been waqfed in Husayniya (Imambargah) cannot be used in mosque for offering prayers, even if the mosque may be near the Husayniyah.

Issue 2701: * If a property is waqfed for the maintenance of a mosque, and that mosque does not stand in need of repairs, and it is also not expected that it will need repairs for quite some time, and if it is not possible to collect and deposit the accrual till such time when it could be used for the repairs, then, as an obligatory precaution, the income should be used for the purposes which has nearest conformity with the intention of the one who waqfed it, like spending it in other needs of the same mosque, or for the repairs of any other mosque.

Issue 2702: * If a person waqfs some property for the repairs of a mosque, and the Imam of the congregation, and the Mu'azzin, and if the quantity for each has been specified by the donor, it should be spent in the same manner. But if, it is not specified, the mosque should be repaired first, and if there is any balance, it should be distributed between the Imam of the congregation and Mu'azzin, by the trustee, as he deems fit and proper. But it is better that these two beneficiaries reach a compromise between them in respect of the distribution.

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