

Usurpation (Ghasb)

Usurpation means that a person may unjustly seize the property or right of another person. This is one of the major sins and one who commits it will be subjected to severe torture on the Day of Judgement. It has been quoted from the Holy Prophet that if a person usurps one span of another's land, seven layers of that land will be put round his neck like a yoke on the Day of Judgement.

2554. If a person does not allow the people to benefit from a masjid, a school, a bridge and other things which have been constructed for the use of the public at large, he usurps their right. Similarly if a person reserves a place in the masjid for himself and does not allow any other person to use it.

2555. A thing which a person mortgages to the creditor should remain with the latter so that if the debtor does not repay the debt, he (the creditor) may realize it out of that thing. Hence, if the debtor takes away that thing from him before repaying his debt, he usurps his right.

2556. If a third person usurps the property which has been mortgaged to a person the owner of the property as well as the creditor can demand from him the thing usurped by him and if the thing is taken back from him it becomes mortgaged again. And if that thing perishes and its substitute is taken that substitute also becomes mortgaged like the original thing itself.

2557. If a person usurps a thing he should return it to its owner and in case that thing perishes he should compensate him for it.

2558. If some benefit accrues from a thing which has been usurped for example if a lamb is born of a sheep which has been usurped it belongs to the owner of that thing. Moreover, if, for example, a person has usurped a house and though he does not live in it, he should pay its rent.

2559. If a person usurps something belonging to a child or an insane person, he should give it to his guardian, and if it has perished he should give compensation for it.

2560. When two persons usurp a thing jointly each one of them is responsible for half of it, though one of them alone might have been able to usurp it.

2561. If a person mixes something usurped by him with another thing for example, he mixes the wheat usurped by him with barley and if it is possible to separate them, he should separate them though it may involve hardship to him, and should return the usurped thing to its owner.

2562. If, for example, a person breaks an earring usurped by him, he should return it to its owner along with the wages for its repairs. And if with the object of not giving the wages he says that he is ready to make it like the original one, the owner is not obliged to accept the offer. Furthermore, the owner, too, cannot compel him to make it like the original one.

2563. If a person changes a usurped thing in such a way that it becomes better than before (for example, if he makes an earring of the gold usurped by him) and the owner of the thing asks him to give it to him in the same (i.e. changed) shape he should give it to him in that shape. He cannot claim wages from him for the trouble taken by him. Similarly he is not entitled to give him the thing in its original shape without his permission and if he gives the thing in its original shape without his permission, he should also give the owner the wages for making the earring etc out of it.

2564. If a person changes the thing usurped by him in such way that it becomes better than before but its owner asks him to change it into its original condition, it is obligatory for him to change it into its original condition. And if on account of the change its value decreases, he should give the difference in the value to the owner. Hence, if he makes an earring of the gold usurped by him and its owner asks him to change it into its original shape, and if after melting it, its value becomes less than what it originally was before making the earring, he should pay the difference.

2565. If a person usurps a piece of land and cultivates or plants trees in it, the produce of farming and the trees and their fruits are his own property, and if the owner of the land is not agreeable to the crops and the trees remaining on his land, the person who has usurped the land, should pull them out immediately though he may suffer loss for that and should also pay rent to the owner of the land for the period they remained on his land and should also make up for the damage done to the land e.g. he should fill the places from which the trees are pulled out and if the value of land decreases on account of that he should compensate. Moreover, he cannot compel the owner of the land to sell it or lease it out to him, and the owner of the land too cannot compel him to sell the trees or crops to him.

2566. If the owner of the land agrees to the crops and trees remaining on his land it is not necessary for the usurper of the land to pull them out. However, he should pay the rent of the land from the time he usurped it till the time the owner of the land agreed to the trees and crops remaining on it.

2567. If a thing usurped by a person perishes and if that thing is like a cow or a sheep the price of each one of which differs in the eyes of the wise men on account of their characteristics, the usurper should pay its price and if its market value has undergone a change, he should pay the cost which was at the time of its being usurped. And the recommended precaution is that he should pay its highest price from the time it was usurped till the time it perished.

2568. If the thing usurped by a person which has perished is like wheat and barley whose prices do not differ on account of personal specifications he (the usurper) should pay a thing which is similar to the one usurped by him. However the specifications of that thing from the point of view of kind and class should be like those of the thing which has been usurped and has perished. For example, if he has usurped rice of superior quality he cannot give in lieu of it rice of inferior quality.

2569. If a person usurps a thing which is like a sheep and it perishes and if its market price has not changed but during the time it was with him, it has, for example, become fat, the usurper should pay the price which it would have fetched when it was fat.

2570. If the thing usurped by a person is usurped by another person and it perishes the owner of the thing can take its compensation from any one of them or can demand a part of the compensation from each of them. And if he takes compensation for the thing from the first usurper the first usurper can take, whatever he has given, from the second usurper, but if he takes it from the second usurper he cannot demand what he has given, from the first usurper.

2571. If one of the conditions of contract is not present about a thing which is being sold; for example if a transaction is made about a thing which should be purchased and sold by weight without its being weighed, the contract is void. And if the seller and the buyer agree, irrespective of the contract, to appropriate the property of each other there is no harm in it. Otherwise the things taken by them from each other are like usurped property and should be returned by them to each other. And in case the property of each of them perishes while in the custody of the other he should pay compensation for it whether or not he knows that the contract is void.

2572. If a person takes some property from a seller so that he may see it or may keep it with him, so that he may purchase it, if he likes it, and in case that property perishes, he should pay compensation for it to its owner.

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