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Orders Regarding Endowments Or Trust

2685. If a person makes something as a trust (Waqf) it ceases to be his property and neither he nor anybody else can either make a gift of it to any person or sell it. Moreover, no one can also inherit anything out of it. There is, however, no harm in selling it in some circumstances as mentioned in Article 2102 and **2103.**

2686. It is not necessary to utter the formula of endowment in Arabic. On the other hand if, for example, a person says: "I have endowed my house", and the person in whose favor the endowment has been made or his representative or guardian says: "I have accepted it" the endowment is in order. Rather, endowment can also be proved by action. For example, if a person leaves a mat in the masjid with the intention of endowing it or constructs a building with the intention of its being a masjid and places it at the disposal of the devotees, the endowment will be proved. And in the case of public endowment like masjid, school etc. which are endowed upon the general public or are endowed upon the indigent persons and the sayyids, it is not necessary for their being accepted by someone to be in order.

2687. If a person specifies a property for endowment, but regrets before uttering the formula, or dies, the endowment does not take place.

2688. If a person endows a property he should endow it for ever from the time of uttering the formula, and if, for example, he says: "This property will stand endowed after my death" the endowment is not in order, because it does not cover the period from the time of uttering the formula till the death of the person concerned. Furthermore, if he says: "This property will remain endowed for ten years and will not be endowed thereafter" or says: "It will be endowed for ten years and thereafter it will not be endowed for five years, and will become endowed again after the expiry of that period", the endowment is not in order.

2689. An endowment is in order when the property which has been endowed is placed at the disposal of some person or his representative or guardian. However, if a person endows something upon his minor children, and looks after it on their behalf with the intention that it may become their property, the endowment is in order.

2690. What is apparent is that in the case of public endowments like schools, masjid etc. possession is not a precondition for the validity of the endowment. The endowment is proved immediately upon their being endowed.

2691. It is necessary that the person who makes an endowment should be adult and sane, and should enjoy free will and authority and should be entitled legally to appropriate his property. Hence, as a prodigal (a person who spends his wealth on absurd things) is not entitled to appropriate his property, the endowment of anything made by him is not in order.

2692. If some property is made a Trust for a child who is in his mother's womb, it is difficult that such an endowment should be correct, and it is necessary to observe precaution in this case. However, if a Trust is created for some persons who are present at the time and after them for the persons who will be born later, although they may not be even in the womb of their mothers when the Trust is made for example if a person endows a property for his children and after them for his children's children and every succeeding group benefits from it, the endowment is in order.

2693. If a person creates a Trust for himself for example, if he endows a shop for himself so that its income may be spent upon his tomb after his death, the endowment is not in order. However, if, for example, he creates a Rust for the indigent persons, and later becomes indigent himself, he can benefit from the profit which accrues to the endowment.

2694. If a person specifies a mutawalli (custodian) of the property endowed by him, the custodian should act according to his instructions, and if he does not specify a custodian and, for example, he has endowed the property for some particular persons say for his children the authority rests with them, and if they are not adult the authority rests with their guardian. And the permission of the religious Head is not necessary for benefiting from the endowment.

2695. If a person endows a property, for example, for the indigent persons or for the sayyids, or he endows it with the object of spending its profit by way of alms, and he has not specified the custodian for the endowment, the authority with regard to the trust rests with the Religious Head.

2696. If a person creates a Trust for some particular persons (for example for his descendants) so that every group should benefit from it after another group, and the custodian of the Trust leases it out, and then dies, the lease does not become void. However, if the Trust has no custodian and one group of the persons, for whom the property has been endowed, leases it out and they die during the currency of the lease, and the next group does not endorse the lease, it becomes void; and if the leasee has given rent for the entire period, he is entitled to receive from their property the rent from the time of their death till the end of the period of lease.

2697. If the endowed property is decayed, its position as Trust is not affected except when the person making the endowment had some special object in view, which that property has ceased to serve. For example, if a person endows a garden for recreation and the garden is ruined, the endowment becomes

void and the garden reverts to the heirs of the person, who had made the endowment.

2698. If one part of a property has been endowed and the other part has not been endowed and the property has not been divided, the Religious Head or the custodian of the endowment can separate the endowed portion of the property in the light of the views of expert persons.

2699. If the custodian of a Trust is guilty of breach of trust and does not use its income on specified purposes the Religious Head should associate an honest person with him (the custodian) so that he may restrain him from acting dishonestly and in case this is not possible, he (the Religious Head) can appoint an honest custodian in his place.

2700. A carpet which has been endowed in Husayniya (religious place) cannot be taken to a masjid for offering prayers, even though the masjid may be near the Husayniyah.

2701. If a property is endowed for the repairs of a masjid and that masjid does not stand in need of repairs, and it is also not expected that it will need repairs for quite some time, the income from that property can be spent on a masjid which stands in need of repairs.

2702. If a person endows some property so that it may be spent on the repairs of a masjid and may be given to the Imam of the congregation and moazzin (one who call for prayers) of the masjid, and if it is satisfactorily known as to what quantity has been specified by the donor for each of them (i.e. for the repairs of the masjid, the Imam of congregation and the moazzin) it should be spent in the same manner. In case, however, it is not certain as to what was the intention of the donor the masjid should be repaired first; and then the remaining amount should be equally distributed between the Imam of the congregation and the moazzin, and it is better that these two persons should make a compromise between themselves about the distribution of that amount.

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