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Usurpation (Ghasb)

Usurpation means that a person unjustly seizes the property or right of another person. This is one of the major sins and one who commits it will be subjected to severe chastisement on the Day of Judgement. It has been reported from the Holy Prophet (s.a.w.a.) "*that whoever 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*".

Issue 2554: * If a person does not allow the people to benefit from a mosque, a school, a bridge and other places which have been constructed for the use of the public, he usurps their right. Similar is the case of a person who reserves a place in the mosque for himself and does not allow any other person to use it. And also one who drives that person out from that place commits a sin.

Issue 2555: * If it has been mutually agreed by the mortgager and the mortgagee that the mortgaged property will remain with the creditor or with a third party, the mortgager (i.e. the debtor) cannot take it back before having paid the debt. And if he takes, he must return to the creditor immediately.

Issue 2556: * If a third person usurps the property which has been mortgaged to a person, the owner of the property as well as the mortgagee can demand from him the thing he has usurped. When the thing is returned 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.

Issue 2557: * If a person usurps a property, he should return it to its owner, and if it is lost he should compensate him for it.

Issue 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. Moreover, if, for example, a person has usurped a house, he should pay its rent even if he does not occupy it.

Issue 2559: * If a person usurps something belonging to a child or an insane person, he should return it to his guardian, and if it has been lost he should replace it.

Issue 2560: * When two persons usurp a thing jointly, and if they have full control over it, each one of them is fully responsible for the whole of it, even if one of them alone might not have been able to usurp

it.

Issue 2561: * If a person mixes something usurped by him with another thing, for example, he mixes wheat usurped by him with barley, and if it is possible to separate them, he should separate them even if it may very difficult to do so, and return the usurped thing to its owner.

Issue 2562: * If a person usurps a piece of golden ornament, like an earring and melts it, he should return it with the difference between the value before and after the melting. And if with the object of not paying the difference, he says that he is ready to make it like the original one, the owner is not obliged to accept the offer. Also, the owner, too, cannot compel him to make it like the original one.

Issue 2563: * If a person changes a usurped thing into something better than before, for example, if he makes an earring from the gold usurped by him, and the owner asks him to give it to him in the same (i.e. changed) form, he should give it to him in that form. He cannot claim any charges from the owner for his labour. Similarly, he has no right to give him the thing in its original form without his permission, and if he gives the thing in its original form without his permission, or changes it into another shape, it is not known whether he will be responsible for the difference in the value.

Issue 2564: If a person changes the thing usurped by him in such way that it becomes better than its original form, but its owner asks him to change it back to its original condition, it will be obligatory on him to do so. And if due to the change, its value decreases, he should pay the difference in the value to the owner. Therefore, if he makes an earring from the gold usurped by him and its owner asks him to change it back to its original shape, and if after melting it, its value becomes less than what is originally was before making the earring, he should pay the difference.

Issue 2565: If a person usurps a piece of land and cultivates or plants trees on it, the crop 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 even if he may suffer loss for that. Also, he should pay rent to the owner of the land for the period the crop and the trees remained on his land, and should also make up for the damage done to the land, like, he should fill up the holes from which the trees are pulled out. And if the value of land decreases because of that, he should compensate. Moreover, he cannot compel the owner of the land to sell it or lease it out to him, nor can the owner of the land compel him to sell the trees or crops to him.

Issue 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.

Issue 2567: * If a thing usurped by a person perishes and if it is like a cow or a sheep, the price of each one of which differs on account of individual characteristics, the usurper should pay its price; and if its market value has undergone a change on the grounds of demand and supply, he should pay the cost which was at the time it perished. And the recommended precaution is that he should pay its highest

price from the time it was usurped till the time it perished.

Issue 2568: If the thing usurped by a person which has perished is like wheat and barley, whose prices do not differ due to individual specifications, he (the usurper) should pay a thing which is similar to the one usurped by him. However, the quality of that replacement should be the same as of the thing which has been usurped and has perished. For example, if he has usurped rice of superior quality, he cannot replace it with rice of inferior quality.

Issue 2569: * If a person usurps something like a sheep and if it perishes, and if its market price has not changed but during the time it was with him it became fat, the usurper should pay the price of a fat sheep.

Issue 2570: If the thing usurped by a person is usurped from him 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 demand whatever he has given from the second usurper. But if he is compensated by the second usurper, that second usurper cannot demand what he has given, from the first usurper.

Issue 2571: If one of the conditions of transaction is not present at the time of sale; for example, if a thing which should be purchased and sold by weight is sold without being weighed, the contract is void. And if the seller and the buyer accept the deal irrespective of the mode of transaction, there is no harm in it. Otherwise, the things taken by them from each other will be treated as usurped property and should be returned to each other. And if the property of each of them perishes while in the custody of the other, he should pay compensation for it regardless of whether or not he knows that the transaction was void.

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

Rules of the Lost Property When Found

Issue 2573: * Any lost property other than an animal, which does not bear any sign by means of which it may be possible to locate its owner, irrespective of whether its value is less than a dirham (12.6 chickpeas of coined silver) or not, can be kept for himself by one who finds it, but the recommended precaution is that he gives it away as Sadaqah on behalf of the owner, whoever he may be.

Issue 2574: * If a person finds a property whose value is less than a dirham, and if its owner is known, and the person who finds it does not know whether or not the owner would be happy about it, he cannot pick it up without his (i.e. the owner's) permission. And if its owner is not known, the person who finds should, as an obligatory precaution, give it away as Sadaqah on behalf of the owner, whoever he may be. And when the owner is found, the replacement should be given to him if he does not approve the

Sadaqah given on his behalf.

Issue 2575: * If a person finds something which bears a sign by means of which its owner can be located, and even if he comes to know that its owner is a non-Muslim whose property must be protected, and if the value of that thing reaches one dirham, he should make an announcement about it at the place of gathering of the people for one year from the day on which he finds that thing.

Issue 2576: If a person does not wish to make an announcement himself, he can ask another reliable person to make the announcement, on his behalf.

Issue 2577: * If the person who finds such a thing makes announcement for one year, but the owner of the property does not turn up he should act as follows:

(i) If he has found that thing at a place other than the Haram of Makkah, he can retain it on behalf of the owner, so that he may give it to him when he appears, or give it as Sadaqah to the poor on behalf of the owner. As an obligatory precaution, he should not keep it for himself.

(ii) If he has found that thing in the Haram, the obligatory precaution is that he should give it away as Sadaqah.

Issue 2578: * If the person makes announcement for one year and the owner of the property does not turn up, and he continues to care for it on behalf of its owner, and in the meantime it is lost, he will not be responsible for the loss if he has not been negligent nor over cautious about it. And if he gave it as Sadaqah on behalf of the owner, then the owner will have an option either to approve the Sadaqah or demand its replacement. And the thawab for the Sadaqah will go to him who gave the Sadaqah.

Issue 2579: * If a person finds a property, and purposely does not make an announcement according to the rules mentioned above, he commits a sin, and at the same time remains wajib on him to make an announcement if he thinks it can be helpful.

Issue 2580: * If an insane person or a child who is not Baligh finds something which bears a sign and is worth one dirham, his guardian can make an announcement. In fact, it is obligatory upon him to announce if he has taken its possession from the child or the insane person. And if the owner is not found even after having announced for a year, he should act as rule no. 2577.

Issue 2581: * If during the year in which a person has been making an announcement (about something having been lost and found) he loses all hope of finding the owner, he should give it away as Sadaqah with the permission of the Mujtahid.

Issue 2582: * If the property is lost during the year in which he has been making an announcement, and he has been negligent in caring for it, or has been over cautious, he will be responsible to the owner for replacement, and should also continue announcing. But if he has not been negligent nor over cautious, it is not obligatory for him to pay anything.

Issue 2583: * If the property which bears a mark, and has value equal to one dirham, is found at a place where it is known that the owner of the property will not be found by means of announcement, he should give it to the poor persons as Sadaqah on behalf of the owner on the very first day with the permission of the Mujtahid, and he should not wait till the year ends.

Issue 2584: * If a person finds a thing and possesses it under the impression that it is his own property, but learns later that it is not his property, he should act as outlined in the foregoing rule.

Issue 2585: * The announcement for the lost article should be made in such a way that the owner, if he hears it, would be drawn to investigate if the thing is his. And this differs in every situation. For example, at times it may be sufficient to declare that an article has been found, and at times, it is important to define it, like, saying that a piece of gold is found. Further still, it may be necessary to say that an earring of gold has been found, and so on. But in all cases, total description should not be given so that it is not identified fully.

Issue 2586: If a person finds something and another person claims that it is his, and also mentions certain marks of identification, the former should give that thing to him only if he is satisfied that it belongs to him. It is not necessary for the latter to mention the marks of which mostly even the owners do not take notice.

Issue 2587: If the value of a thing which a person finds is equal to one dirham, and he does not make an announcement about it, but leaves it in the mosque or at places of general assembly, and the thing is lost or somebody picks it up, the person who found the thing will be responsible.

Issue 2588: * If a person finds a thing which is perishable, he should keep it for as long as it does not perish, and as an obligatory precaution, announce about it, and if he does not find the owner, as a precaution, he should fix its value with the permission of the Mujatahid or his Wakil and sell it, keeping the money with him. In the meantime, he should continue with the announcement till one year, and if the owner is not found, he will act as explained in rule no. 2577.

Issue 2589: * If the thing found by somebody is with him at the time of performing Wudhu and offering prayers, and if he has no intention of returning it to its owner if he is found, his Wudhu and prayers do not become void.

Issue 2590: If a pair of shoes of a person is taken away and is replaced by another pair of shoes, and he knows that the pair of shoes which is now with him belongs to a certain person who would not mind if he took his shoes instead of his own, he can take them. Similar rule applies if he knows that he has been unjustly robbed of his shoes; but in this particular case, the value of shoes left behind must not exceed the value of his own shoes, otherwise the difference of the price will be treated as article whose owner is unknown. And in any other situation other than the two mentioned herein, the shoes will be considered as articles of unknown ownership.

Issue 2591: * If a man has some property of 'unknown ownership' that is, its owner is not known and if it cannot be classified as lost, he is allowed to use it in a manner that would be agreeable to the owner, provided that he is sure that the owner will have no objection in principle. Otherwise, he must try to find the owner, and continue doing so for as long as he thinks it useful. And when he despairs, he should, with the permission of the Mujtahid, give it away as Sadaqah to the poor. If the owner later on turns up, and if he does not approve the Sadaqah which was given, as a precaution, he must give him a replacement.

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