

The lessor does not have to pay for the loss of an item if it is destroyed while in his possession as long as he was not negligent or did not himself cause any harm to the item.

The right to payment becomes obligatory when the contract is signed; one must make the payment when the item leased is handed over. However, it is permissible if the two parties agree on a delayed payment or payment over time. The worker deserves his wages as soon as he finishes his work.

Chapter Four: Endowments

This chapter has an introduction and a discussion of the following three topics:

Topic 1: The types of endowments;

Topic 2: Conditions of an endowment;

Topic 3: The difference between an endowment and a bequest.

Introduction

Lexical and Legal Definition of an Endowment

Lexically, *waqf* (وقف) is a verbal noun whose plural is *auqaaf*. One says, “*waqafa shai*” if something is retained or withheld. In legal terms, it refers to retaining a property or source while distributing its proceeds or returns.

The Basis for the Legality of Endowments

The basis for the legality of endowments is in the confirmed sunnah of the Messenger of Allah (peace be upon him) as well as in the consensus of the Muslim nation.

As for the sunnah, al-Bukhari and Muslim record that Umar said to the Messenger of Allah (peace be upon him), “O Messenger of Allah, I received wealth in Khaibar and I have never received any wealth more dear to me. What do you order

me to do with it?" The Messenger of Allah (peace be upon him) replied,

إن شئت حبست أصلها وتصدقت بها

"If you wish, you may retain the property while giving [its proceeds] away in charity." Umar did so on the condition that its property would not be sold, given as a gift or inherited. [Recorded by al-Bukhari.] Umar gave the proceeds in charity to the poor, his relatives, slaves buying their freedom, warriors fighting for the sake of Allah, travelers and visitors. There is no sin upon the person who is in charge of the endowment if he eats from it according to what is customary or if he feeds a friend an amount which is not great.

Endowments are something that are particular to the Muslims. Jaabir said, "None of the Companions of the Prophet (peace be upon him) would ever be of means except that he would establish an endowment." This shows that what most people do today is the opposite of what was known during the time of the Companions. Today, people only know bequests and they are ignorant about endowments.

The Wisdom Behind Sanctioning Endowments

(1) Those to whom Allah has been most generous by bestowing upon them riches and ease are hereby encouraged to increase their acts of obedience and acts getting them closer to Allah by specifying a certain portion of their wealth [to be used as a charitable endowment]. [This property will then] stay and the proceeds will continue to be produced [and given away], so that one does not have to fear that after his death the wealth may pass on to one who will not preserve it or keep it properly, making his efforts go to ruin and his descendents needy and in hardship. In order to prevent all of those possibilities and in order for the person himself to participate

in the good deeds, the concept of the endowment has been sanctioned in the lifetime of the person so that he may himself be part of it and put it where he wants so that its proceeds will continue to be beneficial after his lifetime as they were during his life.

(2) Endowments are a main cause of the establishment and maintenance of mosques, schools, hospices and similar other good deeds. Most of the mosques throughout history were established as endowments. In fact, all of the items that a mosque needs—of carpets, cleaning and sustenance for those maintain it—were and still are supported by the endowments.

The Wording of the Endowment

Some words for stating an endowment are explicit, such as, “I endow this,” “I keep this for such and such purpose.” Others are less explicit and more figurative, such as, “I give this in charity,” “I give this forever,” and so forth.

The figurative terms indicate an endowment in one of three ways:

(1) The intention, if spoken and intended by one of those figurative terms, becomes an endowment.

(2) If the figurative terms are used in conjunction with other explicit or figurative terms [making the matter clear], such as, “I give this in charity as an endowment,” or, “permanently,” and so on, [there is an endowment].

(3) A description of something as having the characteristics of an endowment, such as saying, “This is forbidden [for anyone to dispense with], it cannot be sold or given as a gift,” [indicates an endowment].

In the same way that endowments may be made by one’s clear or figurative speech, they may also be made by one’s actions, as in the case where a person sets up a mosque on his land and announces to the people to come and pray in it.

Topic One:

The Types of Endowments and What May Be Given as Endowments

Types of Endowments

With respect to who receives the first benefits of the endowments, endowments may be divided into two types: charitable and familial.

(1) Charitable endowments: This is where the first benefits of an endowment go to a charitable cause, even if only for a limited time period. After that time period, the benefits may be to a specific person or specific people. An example of this nature would be someone giving his land for a hospital or school and then after some time the land reverts to his children.

(2) Familial endowments: This is where the person, at the outset, may designate the proceeds to go to himself or another specific person or people and then, at the end, to charitable causes. For example, he may make an endowment for himself and then for his children and, after them, for general charitable causes.

What is Proper to Be Made Endowments

There is a consensus that existing wealth that has a value to it [from the Islamic perspective], made up of immovable property, such as land or buildings, may be given as endowments. Movable property such as books, clothing, animals and weaponry may also be given. The Messenger of Allah (peace be upon him) said,

وَأَمَّا خَالِدٌ فَإِنَّكُمْ تَظْلِمُونَ خَالِدًا قَدْ احْتَبَسَ أَدْرَاعَهُ وَأَعْتَدَهُ
فِي سَبِيلِ اللَّهِ

As for Khaalid, you have done him wrong [by asking him for zakaat] as he is keeping his armor [as an endowment] and having it prepared for [fighting for] the sake of Allah.” [Recorded by al-Bukhari.] The agreement of the nation is that one may also give as an endowment the rugs, mats and lamps in the mosques; there is no objection to those types of endowments.

Jewelry may also be made an endowment for wearing and lending. This is because it is an article that may be benefited from perpetually and hence one may give it as an endowment like immovable property.

Topic Two:

The Conditions for an Endowment

The endowment is built upon two important factors: the one giving the endowment and the thing that is given as an endowment. Each one has specific conditions that it must meet.

Conditions for the One Making the Endowment

There are certain conditions that the one making the endowment must meet in order for the endowment to be considered valid. These are:

(1) The one making the endowment must be one legally capable of making donations. An endowment is not proper from one who has illegally seized property or who is

buying something and is not yet in full ownership of the thing that he wants to make an endowment.

(2) The one making the endowment must be sane. Endowments are not valid from the insane or weak of mind.

(3) The one making the endowment must be adult as endowments are not allowed from children, whether or not they have reached the "age of discernment".

(4) The one making the endowment must be someone who acts in a reasonable manner; endowments are not allowed from people who due to their stupidity or naiveté have been prohibited from dealing with their own wealth; nor are they allowed from the overly negligent.

Conditions for What is Being Made an Endowment

In order for the endowment to be executed, it must meet the following conditions:

(1) It must be wealth that has some value to it, either immovable property or otherwise.

(2) The endowment must be something known and specified.

(3) The endowment must be owned by the one making the endowment at the time he makes the endowment.

(4) The endowment must be privately owned and not commonly or publicly owned. It is not allowed to make one's share of public property an endowment.

(5) No one else may have any rights over the endowment.

(6) It must be the case that the benefit of the endowment is something commonly known.

(7) The benefits accruing from the endowment must be permissible.

How to Use the Benefits of Endowments

The benefits of endowments are obtained by their use, such as living in a house, riding an animal, using the wool, milk, eggs and fur of animals.

Topic Three:

The Difference Between an Endowment and a Bequest

There are a number of differences between an endowment and a bequest, including:

(1) In the case of an endowment, the property is maintained and not given away while the benefits or proceeds are given to others. In the case of a bequest, the ownership is attributed after the person's death to another by way of donation, regardless of whether it be the item itself or its usufruct.

(2) An endowment is binding and it is not allowed for a person to retract it according to the majority of the scholars. This is based on the statement of the Messenger of Allah (peace be upon him) to Umar,

إن شئت حبست أصلها وتصدقت بها

“If you wish, you may retain the property while giving [its proceeds] away in charity.” Umar did so on the condition that its property would not be sold, given as a gift or inherited. [Recorded by al-Bukhari.] Umar gave the proceeds in charity to the poor, relatives, slaves buying their freedom, warriors fighting for the sake of Allah, travelers and visitors. There is no harm if the one in charge of it eats from it according to

what is customarily acceptable or if he feeds a friend an amount which is not valuable.

As for an endowment, it is binding; however, it is permissible for the one making the bequest to rescind all or part of it.

(3) Endowment does not allow anyone to take over ownership of the endowed property; only the proceeds are owned. A bequest includes both the property itself and its proceeds.

(4) The ownership of the proceeds of an endowment becomes apparent during the lifetime of the one founding the endowment as well as after his death. The ownership of a bequest does not take effect until after the death of the one making the bequest.

(5) There is no limit to the maximum that one may give as an endowment. However, one may only bequeath up to one-third of one's property, unless the rightful heirs give their permission to give more.

(6) It is permissible to make one's heirs the benefactor of an endowment. In the case of a bequest, one may not bequest anything to a rightful heir unless the other rightful heirs permit such an act.

Chapter Five: Bequests

This chapter comprises an introduction and a discussion of the following three topics:

Topic 1: Types of bequests and their legal status;

Topic 2: Conditions for a bequest;

Topic 3: What nullifies a bequest.

Introduction

Definition of a Bequest

A bequest is the command to perform some act or disposition after the death of the one making the bequest. It may include acts like fulfilling a trust, giving something in charity, marrying off one's daughters, washing the dead, praying upon him and so forth.

The Basis for the Legality of a Bequest

The basis for bequests is found in the Quran, sunnah and consensus. Allah says,

كُتِبَ عَلَيْكُمُ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا
الْوَصِيَّةَ