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**Decree of Amirul-Momenin, Sheikh al Qur'an and Hadith, Mawlawi Hebatullah Akhundzada, may Allah protect him regarding enforcement of the law on Special Court dealing with the cases of usurped Sultani (Emirate), public pasture and endowment lands**

Decree No: 4

Date: 2/October/2023 (1445/2/22 AH)

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**Article One:**

I shall approve the law on special court dealing with the cases of usurped Sultani (Emirate), public pasture, and endowment lands within (6) chapters and (23) articles.

**Article Two:**

This decree shall be effective from the date of approval and should be published in the official gazette together with the text of the aforementioned law.

Regards,

Amirul-Momenin, Sheikh al Qur'an and Hadith, Mawlawi Hebatullah Akhundzada

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In the name of Allah, the most gracious, the most merciful

Praise be to Allah, Lord of the Worlds, and may blessings and peace be upon the Master of the Prophets and Messengers, his family and companions, and those who follow them in righteousness until the Day of Judgment. And then: Allah Almighty said: O you who have believed, obey Allah and obey the Messenger and those in authority among you (An-Nisa: 59)

The Prophet Muhammad, may Allah bless him and grant him peace, said: Whoever obeys me has obeyed Allah, and whoever disobeys me has disobeyed Allah, and whoever obeys the ruler has obeyed me, and whoever disobeys the ruler has disobeyed me. [Narrated by Al-Bukhari No. 2957]

## **Sharia-based rules of the Special Court Dealing with the Cases of Usurped Sultani (Emirate), Public Pasture and Endowment Lands**

### **Chapter One**

#### **General Provisions**

##### **Base**

##### **Article 1:**

This law has been prepared based on Decree No. (3) dated 3/October/2022 (1444/3/7 AH) of His Excellency Amirul- Momenin Sheikh Al-Qur'an and Hadith Mawlawi Hebatullah Akhundzada, May Allah Protect him.

##### **Objectives**

##### **Article 2:**

The objectives of this law are as follows:

1- Regulating the duties and powers of the Special Court for Dealing with Usurped Sultani (Emirate), Public Pasture, and Endowment Lands. <sup>1</sup>

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<sup>1</sup> The government needs to write down rulings and regulations in our era in which the means of livelihood, the methods of interactions, and the affairs of life have expanded, and also the government's work has developed, and its departments and ministries have diversified in order to manage the government's affairs regularly and completely (Al- Seyasat Al Sharia, p 439, Dar Al-Ma'alim, Beirut.)

Omar bin Al-Khattab, may Allah be pleased with him, was not convinced of the good selection of the governors. Rather, he was specifying for them the method of work and the rules that they would follow to be a basis for holding them accountable later. (Omar bin Al-Khattab and the Fundamentals of Politics and Modern Administration by Sulaiman Al-Tamawi, p. 275, Dar Al-Fikr, Cairo).

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2- Provide ways for a special court to deal with Usurped Sultani (Emirate), Public Pasture, and Endowment Lands to settle these cases. <sup>2</sup>

## Terminologies

### Article 3:

The following terms refer to the following concepts:

1- **Land usurpation:** to take over land without the permission of the owner or a person who has the permission. <sup>3</sup>

2. **Land owned by someone: is the land with a certain owner and the authority to do all kinds of possessions on it.**<sup>4</sup>

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<sup>2</sup> - He said: The Prophet of Allah, may Allah 's prayers and peace be upon him, was reclining, so he sat down and said: "No, until you take the hand of the oppressor and you compel him to say the truth." (Sunan al-Tirmidhi, vol. 5, Page: 252, Publisher: Mustafa Al-Babi Al-Halabi Library and Press Company – Egypt).

So he established justice, returned the properties of the Umayyads to their people, and returned the usurped properties to the public treasury, (Tuhfat al-Turk regarding what should be done regarding the property, p. 78).

Article (58) of Majalatul Ahkam Al-Adliya : Interfering in the affairs of people should be based on the public interest. Because the Imam of the Muslims has general oversight over all the properties in public matters... because the Sultan was given authority from Allah Almighty in order to preserve the blood of his servants and protect their honor and property (Sharh Al-Majallat Al- Salim Bazej, part 1, p. 43)

<sup>3</sup> - Usurpation in Sharia law is taking the valued property of a respected person without the owner's permission in a way that removes his hand (Al Hedayah, Sharh Bedayat al-Mubtadi, vol. 4, p. 11. Publisher: The Islamic Library.

(Article: 881) Usurpation is taking someone's property and seizing it without his/her permission. The taker is called a usurper, and the seized property is called usurped and the owner is called the one from whom property is usurped. (Majalatul Ahkam Al Adliya)

He said in the Muhit Al Burhan: usurpation according to Islamic law means taking valuable and respected property without the owner's permission in a way that removes the owner's hand if it is in the hands of the owner or preventing the ownership if it is not in his/her hand. (Al-Fatawa al-Hindia, vol. 5, p. 119)

He said, without permission of who has permission, as Ibn al-Kamal did. (Al-Durr al-Mukhtar, Kitab al-Ghasab: vol. 5, p. 156, Osmania Press, Egypt)

<sup>4</sup> - Clause 10 – Lands, at the beginning of Islam, can be divided into owned and unowned lands: owned lands are those that have a specific owner who has the right to sell them, mortgage them, endow them, and use of them in all kinds and includes Ushri lands and owned Kharaj (conquered) lands (Ahkam Al Arazi & Shaker Nasser Haidar: p 7, Press: Ma'arif - Baghdad)

The owned lands are endowed, mortgaged, gifted, sold, pre-emption is applied, and can be inherited ( Sharh Majallat Al-Ahkam, vol 3.: p. 282, Publisher: Dar Al-Jeel

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**3- lands not owned by anyone:** these are all the lands that have become state lands due to having no ownership, unknown ownership, and no heirs, and the owned lands that were taken from the infidels by force or peace and were not given to the personal ownership but left for Muslims. <sup>5</sup>

**4- Emirate (state lands):** non-owned lands are called Emirate lands (state lands).<sup>6</sup>

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(Article: 5) – The owned properties( original and usufruct) of are those whose owners have the right to use them in kind and usufruct, including the Ushri lands, that can be sold, rented, loaned, gifted, donated, mortgaged, and inherited (Murshid al-Hiran, vol. 1, p. 43, Maktabat Dar al-Salam, Qahira)

<sup>5</sup> - Clause 10.. Unowned lands belonging to the public treasury that are as following:

(1) State lands, which are the lands that were kept for the state treasury and were not distributed to anyone, as well as those that were later transferred to the state treasury after death of the possessors who have no heir.

(2) Unowned Kharaj lands.

(3) Mawat (barren) lands.

(4) Mahmiah lands which are nowadays called abandoned lands that are lands left for public benefits such as roads and markets, or allocated to the people of a village such as pastures, summer houses, winter houses, and firewood places. (Ahkam Al Arazi, Shaker Nasser Haidar, p 7, Ma'arif Press - Baghdad)

- Abu Hanifa– May mercy of Allah be upon him - said : what was narrated from the Prophet Mohammad, May Allah bless him and his family and grant them peace , is this: “A person has no right except what his imam’s grants him, then if He did not give permission, so it does not belong to him. And because Mawat (barren) land is spoils (property seized from infidels), it is necessary to take the Imam’s permission, like all other seized properties. The reason for this is that the spoils (property seized from infidels) is a name for what has been seized by soldiers by force of horses and riders, as well as the Mawat (dead) lands. Because the entire land was under the hands of the soldiers that Muslims seized them forcefully and suddenly, so all of them were spoils (property seized from infidels). So no Muslim can take possession of them without the permission of the Imam, like all lands (Bada’i’ al-Sana’i’ fi Tartib al-Shara’i’, vol. 6, p. 193)

- But some of the later scholars issued a fatwa stating that what is beyond them is a land that is neither Ushri nor Kharaj land, but rather it is called the state land, and it is known as the Land of the Rule (Amir) which is the land that was conquered by force or by peace, but was not owned by the people, but rather allocated to the state treasury [Majma’ al-Anhar Fi Sharh Multaqa al-Abhar, vol. 2, p. 461 AD. Written by Amir Hamza ] [Islamic Jurisprudence, vol. 4, p. 4605]

<sup>6</sup> (7) - but - 1 – Iqta (allocation) of Sultan’s properties , 2 - the endowments of the fire temples, 3 - the properties of those who have no heirs , and the fugitives, 5 - the rebels, 6 - the lands allocated for building and repairing roads, and the lands allocated for postal expenses, 7- rivers, 8- forests all of these lands were regulated by Omar, may Allah Almighty be pleased from him, only for the government, and their annual income amounts to seven million, which were allocated to works for the public goodness. Sometimes an Iqta (allocations) was deducted from those lands for a person in exchange for his/her Islamic services, but these Iqta (allocations) were not excluded from the tax or Ushr in any way and the remaining lands were given to their previous owners after the clearance of the tax. (Al-Farouq Lashibli Al-Numani, p. 192)

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Every land that is not owned by individuals is owned by the state, whether the state exercises direct ownership over it or not, and it is called princely Amir lands in reference to ruling represented by the state (Al Masmua al Qazaya Al Islamia Moasira, vol. 3, p. 366) (Al Masmuat al Qazaya Al Islamia Moasira, vol. 3, pp. 367 and 368)

It is understood from this article that the Mawat (barren) land is brought to life in two ways: the first is to be the property of the reviving person, and the second is not to be the property of the reviving one but rather be the usufruct of the reviving person only. Based on the applicable land law, no one is authorized to revive the Mawat (barren) land as to be the property of the reviver. Rather, it is authorized to revive the Mawat (barren) land as the usufruct be the property of the state treasury, and in this case, the revived land becomes princely the land of Rule (Amiria Land) (Durar Al-Hukam Fi Sharh Majallat Al-Ahkam, vol. 3, p. 281 and 282, publisher: Dar Al-Jeel)

Article (1272): If someone revives and constructs a Mawat (barren) land with the Sultan's permission, he becomes its owner, and if the Sultan or his attorney appoints someone to revive the land on the condition that only benefits from it and does not take its ownership, that person should use that land in the manner he has been authorized and does not own that land (Journal of Judicial Provisions)

So, he has the right to use its usufruct according to what the Sultan permits him, but in terms of its ownership, it is owned by the state treasury, so he cannot inherit it as a Sharia inheritance and cannot sell it as he sells the rest of his property (Badr Al-Fatawa, vol. 1, p. 358, with reference to Sharh Al-Majallah by Muhammad Khaled Al-Atasi, vol. 4, p. 204)

- Abu Yusuf - may Allah Almighty have mercy on him - said in the book of Kharaj: the imam has the right to make decisions on all Mawat (barren) lands and everything that does not belong to anyone and decides what he deems appropriate, and more beneficial for Muslims (Rad Al-Muhtar Ala Al-Durr Al-Mukhtar, vol. 4, p. 193). Publisher: Dar Al-Fikr (Beirut)

- According to Muhammad, If the land is owned during Islam, it will not be dead, and if its owner is not known, it will be for the Muslim community (Islamic jurisprudence and its evidence, vol. 6, p. 409, publisher: Dar Al-Fikr - Syria - Damascus)

I said: This is a third type, that means neither Ushri nor Kharaj land. It is called the state land (Huz), and it is the one whose owners died without a heir and transferred to state treasury or obtained by force and kept for the Muslims until the Day of Resurrection, and its ruling, as mentioned in Tatarokhania, is this that it is permissible for the Imam to give to a irrigator in one of two ways: By positioning the owners in the position of an owner and paying the tax (Rad al-Muhtar `ala al-Durr al-Mukhtar, vol. 4, p. 179).

- but the lands conquered by Muslims are divided into three kinds:

One: It was owned by force or power until they were separated by force, captivity, or exile. Muslim scholars have different opinions regarding this kind of lands after they are taken over by Muslims... Abu Hanifa, said: the imam therein has a choice between dividing it among the occupiers, so it would be Ushri land, or returning it to the infidels with a tax to be imposed on it, so it will be a Kharaj land, and the infidels will become Zemmi (Dhimmi) infidels, or endows them for all Muslims, and this land will become the land of Islam [Al-Ahkam Al-Sultania, p. 215, publisher: Dar Al-Hadith - Qahira]

- So the right of the heirs will not be proved during apostasy, so all the properties that have no owner becomes the properties of the state treasury (Islamic jurisprudence and its evidence, vol. 10, p. 7880, publisher: Dar Al-Fikr - Syria - Damascus)

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## **The following lands are considered as emirate lands: <sup>7</sup>**

- So this indicates that the imam has the right, as he deems expedient, to appropriate the land from the treasury on the basis of ownership of its usufruct just as he gives the property itself, as there is no difference between the land and property to give to the one who is in need to make use of it. I did not see anyone who told us about it (Rad al-Muhtar ala al-Durr al-Mukhtar, 4 p. : 194 Publisher: Dar Al-Fikr - Beirut)

(Procedure of lands in Islam, by Mufti Muhammad Shafi', p. 109 and 110]

- According to Abu Hanifa, the revival of land should take place with the permission of the ruler, based on the hadith: "A person has only what his/her imam has allowed for him/her, so if he/she does not give permission, it is not to take this land, and because these lands were in the hands of the infidels, then they returned to the Muslims, so they are "Fay" and the imam is the one responsible for distributing the fay." and such as giving spoils (property taken for infidels) to the killer according to him, peace and blessings be upon him: "Whoever kills a dead person gets his spoils (property seized from infidels). This is an act of the Messenger, may Allah bless him and grant him peace, based on the imamate and politics way, not through the Sharia and prophecy." (Islamic Jurisprudence and its Evidence, vol. 6, p. 418, Publisher: Dar Al-Fikr - Syria - Damascus)

- According to the Hanafi and Maliki schools - and this is what the judge preferred based on two narrations from Ahmad – no Khums (fifth one) is imposed on spoils (property seized from infidels), and its place is the Muslims' treasury and is disbursed by the Imam, as deemed expedient, for the interests of the Muslims like protection of borders, and construction bridges and water canals, and provided for the expenses of scholars, educated people, judges, and workers, and provided for the fighters and their servants. (Al Masmuatul Feqhia al Kuwaitia, vol. 20, p. 19)

Abu Hanifa - may Allah have mercy upon him, said: it was has what was narrated from the Prophet, may Allah bless him and grant him peace, that (A person has only what his/her imam has allowed for him/her, so if he/she does not give permission, it is not to take this land.) And since the deed land is a spoil, it must be distributed by the Imam's permission, like all other spoils (property seized from infidels). The reason is that the spoils (property seized from infidels) is a name for what was obtained by the Muslim soldiers due to the loss of horses and sledges, and deed lands are the same; because the entire land was under the hands of war involved infidels (infidels in war) and Muslim took control of it by force and power, so all of them are spoils (property seized from infidels)and, so, it is not dedicated for some Muslims without the permission of the Imam, like all spoils (property seized from infidels) (Bada'ī' al-Sana'ī' Fi Tartib al Shara'ī', Part 6, p. 193)

<sup>7</sup> - Clause 10 -... and unowned lands belonging to the state treasury, which include the following:

(1) State lands, which are the lands that were kept for the state treasury and were not distributed to anyone, as well as those that changed to the state treasury property after the death of their owners who died while having no heirs

(2) Unowned Kharaj lands.

(3) Mawat (barren) lands.

(4) Mahmiyah lands, which are currently referred to as abandoned lands, which are lands left for public purposes such as public ways and markets, or allocated to the residents of a village, such as pastures, summer houses, winter houses, and firewood places. (Ahkam al Arazi. Shaker Nasser Haidar. Press: Ma'arif - Baghdad)

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A - **State land** (Huz).

B - **Kharaj land (conquered lands)**

C - **Mawat (barren) land**

D - **Muhmiyah Land** (abandoned land)

E - land registered in the Emirate (Government) land registration documents and the land registry office or has become Emirate (Government) land as a result of clearance, research, and investigation. <sup>8</sup>

F – the land where a person has no possession of more than 36 years and does not have other ownership causes. <sup>9</sup>

G- The land that a person has possessed for 36 years or more is registered in the Emirate's land registry office and in the land registration book under Emirate

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<sup>8</sup> - Every land that is not owned by individuals is owned by the state, whether the state exercises direct ownership over it or not, and it is called princely Amir lands in reference to ruling represented by the state (Al Masmua al Qazaya Al Islamia Moasira, vol. 3, p. 366) (Al Masmua al Qazaya Al Islamia Moasira, vol. 3, pp. 367 and 368)

- The lands registered in these offices are lands belonging to the public and charitable institutions, and it was including the lands in possession of persons under Khaqanic bonds. (Durar Al-Hukam Fi Sharh Majallat Al-Ahkam, vol. 4, p. 481, Publisher: Dar Al-Jeel)

<sup>9</sup> - Article (1661) The claim of the trustee and the mercenaries against the original endowment is heard up to thirty-six years, and it is not heard after passing thirty-six years. For example, if someone possesses a property as ownership for thirty-six years, then the trustee of an endowment claims, saying: That property is one of the ruler's (Amir) properties, do not hear his/her claim. [Majalatul Ahkam Al Adlia]

- For example, if someone possesses a land on the condition that it is his/her property, then the land officer's claim is heard that it is the ruler (Amir) land for thirty-six years. Similarly, if the landowner claims that the land is the ruler (Amir) land and the person in possession of the property claims that it is an endowment, then the landowner's claim is heard if thirty years have not passed, but if thirty years have passed, so his claim is not heard. (Durar Al-Hukam Fi Sharh Majallat Al-Ahkam, vol. 4, p. 305, Publisher: Dar Al-Jeel)

- Therefore, if someone usurped land and cultivated it, and another claimed that the land was his own land and that person usurped it from him, and the usurpation and ownership was proven, then the usurper is got out and the plaintiff is the one who has the possession. But if the plaintiff does not prove usurpation and the possession, then the irrigator is the one who has the possession and the plaintiff is the outsider. It is stated in the supplementary part of Radul Mukhtar that If one has a property, and the other one makes possession of it, it does not become his/her property. If it is claimed against him that you made possession of it and it was in his possession, but he/she denies and swears, It is known apparently that the new possession is not valid. (Durar Al-Hukam Fi Sharh Majallat Al-Ahkam, vol. 4, p. 332, Publisher: Dar Al-Jeel)

- If a person conquers another person's property or gains control over it, he will not be deemed to have the right to possess it [Al-Fatawa Al-Bazaziyya, vol. 6, p. 131, Al-Shamila Library, Al-Waqfiya, 440]

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(Government) land and has not been given to a person's ownership by previous governments.<sup>10</sup>

H- The land a person has possessed for 36 years or more, and no natural or legal person has filed a claim against him/her during the said period. Of course, the period of 23 years is to be considered as an excuse period and should not be registered as Emirate land in the land registration documents of the emirate and the land registry office, and the reason for the transfer ownership is also not known. This is an exclusion from the content of clause (f).<sup>11</sup>

**5- State land (Huz):** It is the land whose owner has died, left no heirs, and has been transferred to the Public Treasury, and all the lands owned by the infidels that were conquered by force or peace and were left for the Muslims.<sup>12</sup>

**6 - The Kharaj (conquered)land,** with no ownership, is the land that was conquered by force or peace and was given by the imam to dhimmis or their owners for its use, and the rest of it is left to the public treasury.<sup>13</sup>

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<sup>10</sup> - Article (1674) The right does not lapse with the lapse of time [Majalatul Ahkam Al Adlia]

[Durr Al-Hukam, vol. 4, p. 290, New Sadaqat Library]

<sup>11</sup> - whoever has something in his possession and it is not known whom it was transferred from, it remains in his possession, and he/she is not required to prove it. Then he said: whoever we find a location of it in his/her hand or possession, so it is possible that it was revived, or he obtained it correctly. It is not a requirement for the Imam to take anything out of anyone's hand except by a fixed and known right (Rad al-Muhtar ala al-Durr al-Mukhtar, vol. 4, p. 181, Publisher: Dar Al-Fikr, Beirut)

<sup>12</sup> - Regarding the lands of the estate, it is one that its owner has died without having an heir and the property is returned to the public treasury (Rad al Muhtar al "Al-Durr Al-Mukhtar: Explanation of Tanwir Al-basar", vol. 3, p. 280, Al-Rashidiyah Library, Kuwait.)

- I said: This is a third type, meaning neither Ushri nor Kharaj lands, called state lands, and this is one which its owner has died while having no heir and the property is returned to the public treasury, or it was conquered by force, and it was kept for the Muslims until the Day of Resurrection, and its condition, based on what is mentioned in the Tatarokhania, is this that it is permissible for the Imam to give to an irrigator in one of two ways: By positioning the owners in the position of an owner and paying the tax (Rad al-Muhtar `ala al-Durr al-Mukhtar, vol. 4, p. 179).

- But some of the later scholars issued a fatwa stating that what is beyond them is a land that is neither Ushri nor Kharaj land, but rather it is called the state land, and it is known as the Land of the Rule (Amir) which is the land that was conquered by force or by peace, but was not owned by the people, but rather allocated to the state treasury [Majma' al-Anhar Fi Sharh Multaqa al-Abhar, vol. 2, p. 461 AD. Written by Amir Hamza ] [Islamic Jurisprudence, vol. 4, p. 4605]

<sup>13</sup> - Lands that were conquered by force and power and left by the imam in possession of their owners, (either as a matter of ownership or as a matter of usufruct only) after imposing a jizya on them if they did not hand over it, and a tax on their lands whether they converted to Islam or not (3), Lands whose residents (non-Muslims) were

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**7- Mawat (barren) land:** is a non-profitable land that a person does not own, does not belong to the village pasture and is not a firewood place, is as far from the village as the loud sound cannot be heard from the last house of the village<sup>14</sup>, which is measured as one and a half miles (three thousand (3000) Gaz, each Gaz is ninety (90) centimeters) and two thousand seven hundred (2700) meters, each meter is one hundred (100) centimeters. <sup>15</sup>

**8- Muhmiyah (abandoned) Land:** is an abandoned land that has been set aside for public use, such as public roads, markets, or public pasture, or is allocated for the public use of a village, such as the threshing place, the firewood place, the cemetery, etc.<sup>16</sup>

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displaced or The Imam evacuated them from it, and placed other people of the Dhimmah (Zemmi) infidels (Ahkar Al Arazi, Shaker Nasser Haider, p. 6 and 7, Press: Ma'arif - Baghdad)

<sup>14</sup> - Article: (1270) Dead (mawat) lands are lands that do not belong to anyone and are not pastures or used for firewood of a village and are far away from end of the city in a way that the voice of a loud speaking person cannot be heard from the farthest houses of the village (Majalatul Ahkam Al Adlia]

(Article: 147) Mawat (barren) land, meaning permissible lands that are not profitable and are not in anyone's possession. [Murshid al Hairan Ela Marefat Ahwal al Ensan, v 1, Page 401, Dar Al-Salam Library, Cairo]

- Mawat (barren) land: are those lands that are nonprofitable due to lack of water, or due to predominance of the water on it, or anything like that, which prevents cultivation. So, if some of them are ordinary land and have no owner, or they were owned in Islam but no specific owner is known for them, and they are far from the village in such a way that if a person stay at the end of village and shout out, no sound could be heard, then it is called Mawat (barren) land. (Mukhtasar Al-Qadouri, Kitab Ehya al mawat: p. 140, Dar Al-Kutub Al-Ilmiyah, Beirut)

- So, the Mawat (barren) land is the land outside the city that was not owned by anyone nor any one has special right on it.( Bada'i' al-Sana'i', Ihya al-Mawat: [vol. 6, p. 194, Al-Jamali Press, Egypt, Hindi Fatwas, Ihya al-Mawat: vol. 5, p. 385. ]

<sup>15</sup> – it means that if someone stood at the end of the village and shouted out loudly, his voice would not be heard, and its measurement is estimated to be a mile and a half, i.e., half an hour. As the level of voice has been explained and estimated, it is similar to the usual voice of the muezzin (caller for prayer), and that it should be at a level that would not cause hardship to the soul of the shouter (Rad Al-Muhtar, Al-Khaniya, and Al-Turi). [Durar Al-Hukam, v 3, p. 277, Article 1270, Publisher: Dar Al-Jeel]

- [Imam Abu Yusuf (may Allah have mercy upon him) saying regarding the limit of pasture is complaint with the report of joint committee no (1) date: 1/11/1445)

<sup>16</sup> - Article: (1271) Lands close to the residential area shall be left to the people to be used as pasture, threshing area, or firewood place, and these shall be called Abandoned lands. (Majalatul Ahkam Al Adlia)

- Type four: Abandoned lands such as the public road, the prayer area, the public pasture, the firewood place, and the cemetery. Durr al Hukam Fi Sharh Al Majallat al-Ahkam: [v: 2, p. 582] Arab Library Quetta, Al Oqood Al Al-Durria fi Tanqih Al-Fatawa Al-Hamidiyah: Vol. 2, p. 227 ] Maktabatul Haramaian Al Sharafain, Quetta.

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**9- Public pasture:** is a permitted (mubah) land whose revival has been prohibited by the Amirull-Momenin, may Allah protect him, so that people graze their livestock in it.<sup>17</sup>

**10- Special pasture:** the abandoned land left as pasture for the villagers.<sup>18</sup>

**11- Waqf land (endowed land):** land whose ownership has been prohibited by the owner and whose benefits have been dedicated to the public or special charities. <sup>19</sup>

**12- Marsadah (allocated) Land:** is land that has been dedicated permanently for the use of public purposes such as Mosques, schools, and cemeteries or some

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(4) Mahmiah lands which are nowadays called abandoned lands that are lands left for public benefits such as roads and markets, or allocated to the people of a village such as pastures, summer houses, winter houses, and firewood places. (Ahkam Al Arazi, Shaker Nasser Haidar, p 7, Ma'arif Press - Baghdad)

<sup>17</sup> - Protecting the Mawat (barren) land means preventing it from being revived as ownership, in order to keep it for growing grasses and grazing livestock. Al-Ahkam Al-Sultaniya p 276 and Islamic Jurisprudence, vol. 6, p. 4628)

<sup>18</sup> - The pasture is located in the place of grazing, which is the land, and on pasture, and in a grazing source. [Al-Inaya Fi Sharh Al-Hidaya: Vol. 6, p. 418, Dar Al-Kutub Al-Ilmiyah, Beirut.]

- Article: (1271) Lands close to the residential area shall be left to the people to be used as pasture, threshing area, or firewood place, and these shall be called Abandoned lands. (Majalatul Ahkam Al Adliya)

- Pasture is also used to refer to the place of grazing, I mean the land (An Nahr Al Fayeq Fi Sharh al Kanz al-Daq'iqat, chapter of corrupt sale: [v: 3, p. 424]

The word pasture also applies to the place of grazing, meaning the land, and to the herds, and to the source of grazing ( Al Benaya sharh Al Hedaya, selling by throwing stones, striking, and touching: [v: 8, p. 158].

<sup>19</sup> – The meaning of pasture In Sharia is withholding the property as the property of donator, and giving the usufruct for charity as a loan, and this is the saying of Abu Hanifa (Al-Jawhara Al-Nira, vol. 1, p. 333, Publisher: Al-Khairiya Press)

- In Sharia: withholding a known thing in a known manner. Then, the Hanafi school of thought defined it as withholding one's property as property of Allah Almighty' and distributing its usufruct to those he loves. This is according to the companion. But, according to Abu Hanifa, it means keeping an the property as the property of donator and giving the usufruct for charity , even in a lumpsum form [Al-Durr Al-Mukhtar wa Aliahe Hashiyat Ibn Abidin, vol. 3, pp. 357-358]

- Abu Yusuf and Muhammad said, "It is withholding one's property as the property of Allah Almighty in such a way that the benefit reaches the people, so the title of property is changed from the donator to name of Allah. ( Al-Jawhara Al-Nairah, vol. 1, p. 333, Publisher: Al-Khairiah Press)

- Shihab al-Din said: He said in Tatemmah and Moual and the fatwa on their statements. (Hashiyat Al-Shalabi Ala Tabain Al Haqayeq, vol. 3, p. 325).

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beneficiaries of public treasury (Bait Al-Mal) by the decree of Amirul-Momenin, may Allah protect him.<sup>20</sup>

**13 – Aqta Tamlik (ownership allocation):** giving the possession of barren land or state land to someone by the Amirul-Momenin; may Allah protect him.<sup>21</sup>

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<sup>20</sup> - His saying: Imam observed the Land, meaning separating it from public treasury and allocated it for this case... according to his saying, it is management of land as of a Marsadah Land (Rad Al-Muhtar, vol. 4, p. 431, Publisher: Dar Al-Fikr Beirut)

That observation has the character of approval....

- Approving of this watching and continuing to use it in a way designated by the watcher. It is not permissible for an imam who comes after him to revoke it or nullify it according to consensus of great scholars (Mujtaeideen) (Al Masmuat al Feqhyyat al Kuwaitia, vol. 3, p. 108 and 111] [Ibn Abidin, vol. 3, p. 259 and Al Mahdiah fatwas, vol. 2, p. 647]

- (His saying, "Ersad and etc.) watching the way, I watched it a watching the same as perpetuating murder: I sit on the way for him, sit that one on Marsad like Jaafar, and "al-mirsad", and also with "al-murtasid," that is, by way of anticipation and waiting, and your lord is watching over you, meaning watching you, so nothing of your actions will be hidden from him, and are not missed by him (Misbah). The allocation of some villages and farms by Sultan (ruler) from the public treasury for mosques, religious schools, and etc. like for those who deserve from the public treasury, such as reciters, imams, muezzins, and etc. as monitoring what they need to be resolved, but it was not a real endowment because the Sultan did not own it, but rather it was specifying something from the public treasury for some of those who are deserving, and it is not permissible for those after him to change it and replace it as we have explained it in detail [Rad al-Muhtar: vol. 3, p. 368, before a chapter on the Jizyah. Osmania press, Egypt. ]

Al Ersad in the literature: means provision and preparation. meaning to prepare something for someone: prepared something. According to Muslim scholars, it is allocation of the yield of some of the lands of the public treasury for some of its expenses. ( Al Masmuat Al Feqhiya, [vol. 3, p. 107]

Al-Ersad: means to endow land owned by the state for a public interest by one of the rulers, such as a school or a hospital. It is known that this is permissible by virtue of general guardianship of ruler, but this is called Ersad (allocation), not endowment. (The truth of Islamic jurisprudence and its evidence: vol. 10, p. (7614, Maktabah Rashidiya Quetta. And Al-Fatawa al-Mahdiyah, vol. 2, p. 647)

<sup>21</sup> - (His statement about the ruling on Iqta (allocations), etc.). Abu Yusuf, may Allah Almighty have mercy upon him, said in the book of Kharaj: Imam has the right to allocate all that is dead and all that is lacking ownership for anyone, and he does what he deems best and most beneficial for the Muslims. He also said: allocate every land that is not belong to anyone, nor It had traces of a building on it. This indicates that the imam has the right to give the land from the public treasury on the basis of ownership for its slave when deems expedient just as he gives the money, since there is no difference between land and money to pay for what is due, so he took advantage of this interest, for I did not see anyone to tell it. What is famous in the books is this that Iqta' (allocation) is the ownership of the kharaj while leaving the property itself for public the treasury. [Rad al Muhtar, Jihad Book, Jizya Chapter: vol. 3, p. 366). Osmania press, Egypt.]

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**14- Aqta Manafeh (allocation for use of usufruct):** is giving only the rights of usufruct of a barren land or state land to someone by Amirul-Momeinin, may Allah protect him, without the right of ownership. <sup>22</sup>

**15- Registration Book of Emirate (Government) land:** It is a book in which Emirate (Government) lands are registered with quantitative and qualitative specifications. <sup>23</sup>

**16- Registration Book of Mawat (barren) lands:** is a book in which barren lands are registered with quantitative and qualitative specifications. <sup>24</sup>

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- the Imam has the authority to allocate what is not the property of a specific person; Because the decision on what is the right of general Muslims is up to the Imam, and he has the right to allocate some of them as he sees expedient as doing with the public treasury...( Al-Mabsoot Li Sarkhmi: Part: 23, p.: 10] Beirut.

<sup>22</sup> - (His statement about Iqta (allotments), etc.) Abu Yusuf, may Allah Almighty have mercy upon him, said in the Book of Kharaj: Imam has the right to allocate all that is dead and all that is lacking ownership for anyone, and he does what he deems best and most beneficial for the Muslims. He also said: allocate every land that is not belong to anyone, nor It had traces of a building on it. This indicates that the imam has the right to give the land from the public treasury on the basis of ownership for its slave when deems expedient just as he gives the money, since there is no difference between land and money to pay for what is due, so he took advantage of this interest, for I did not see anyone to tell it. What is famous in the books is this that Iqta' (allocation) is the ownership of the kharaj while leaving the property itself for public the treasury. [Rad al Muhtar, Jihad Book, Jizya Chapter: vol. 3, p. 366). Osmania press, Egypt.]

From here we know the ruling on Iqta (allocation) of the lands of the public treasury, as their result is this that the property itself is for the public treasury and the usufruct is for the one for whom it is allocated. (Al Bahr al Rayeq, section of rules on Murtaddin (vol. 5, p. 119) Dar al Arabia al Kubra, Egypt.)

- the Imam has the authority to allocate what is not the property of a specific person; Because what is the right of general Muslims, then the decision on it is up to the Imam, and he has the right to allocate some of them as he sees expedient as doing with the public treasury...( Al-Mabsoot Li Sarkhmi: Part: 23, p.: 10] Beirut.

<sup>23</sup> - Chapter 18: is about setting up the Diwan and mentioning its rulings. The Diwan is a place for preserving what is related to the Sultanate's rights, works and funds. And whoever carries out it from among the armies and workers... and the first one to compile the Diwan in Islam was Omar bin Al-Khattab, may Allah be pleased with him. (Al-Ahkam Al-Sultaniya, p.: 297)

Jubayr ibn al-Huraith said: Omar ibn al-Khattab consulted the Muslims regarding the preparation of the Diwan, Ali, may Allah be pleased with him, said: divide the wealth that you have accumulated every year, and not take any of it. Osman (may Allah be pleased with him) said: I see a lot of wealth that can accommodate the people, even if they do not count it, and it is known who took and who did not take. I was afraid that the matter would get confused, etc. (Al-Faruq, Behalehi Futuh al-Buldan, p. 449, and the History of the Caliphs by al-Suyuti, Chapter on the Priorities of Omar (may Allah be pleased with him), p. 115)

<sup>24</sup> - (Al-Ahkam Al-Sultaniyah, p. (297) (Al-Faruq, Behwalehi Futuh Al-Buldan, p. 449, and History of the Caliphs, by Al-Suyuti, Chapter on the Priorities of Omar (may Allah be pleased with him), p. (115))

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**17- Registration Book of Waqf lands (endowed land):** is a book in which the waqf (endowed) lands are registered with quantitative and qualitative specifications.

<sup>25</sup>

**18- Non-Sharia-Based Possessor (Zulyad):** a person who is a usurper or the possession has been transferred to him from a usurper. <sup>26</sup>

**19- Identification of land documents:** determining the correctness of sharia documents regarding land ownership. <sup>27</sup>

**20 – Land related to Public treasury (Bait Al-Mal):** This is the land mentioned in part 4 of this article regarding public treasury lands. <sup>28</sup>

**21- Deed:** A written document considered valid in proving the rights before the judge and when the ruling is issued. <sup>29</sup>

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(26) - (Al-Ahkam Al-Sultaniyah, p. (297) (Al-Faruq, Behwalehi Futuh Al-Buldan, p. 449, and History of the Caliphs, by Al-Suyuti, Chapter on the Priorities of Omar (may Allah be pleased with him), p. (115))

<sup>25</sup> - (Al-Ahkam Al-Sultaniyah, p. (297) (Al-Faruq, Behwalehi Futuh Al-Buldan, p. 449, and History of the Caliphs, by Al-Suyuti, Chapter on the Priorities of Omar (may Allah be pleased with him), p. (115))

<sup>26</sup> - Its interpretation in Sharia, it means to take valuable and respected property without the owner's permission in a way that removes the owner's possession if it is in his possession or prevent his possession if not in his possession. (Al hendia, vol. 5, p. 199, Al-Haqaniyah Library)

<sup>27</sup> - The judge shall keep a book of records in the court and record and write in that book the notifications and documents that he issues on a regular basis. He is avoiding from trickery and corruption, and takes care of accuracy by keeping that record. If he is dismissed, he hands over the aforementioned records to his successor, either by himself or by an honest representative. (Majalat al Ahkam Al Adliya, Article 1814)

It is permissible to judge and act without evidence based on the contents of the information and the document that were given by the judge of court if they are free from suspicion of trickery and forgery and observing the principles. (Majalat al Ahkam Al Adliya,, Article 1821)

(Al-Ahkam Al-Sultaniyah, p. (297) (Al-Faruq, Behwalehi Futuh Al-Buldan, p. 449, and History of the Caliphs, by Al-Suyuti, Chapter on the Priorities of Omar (may Allah be pleased with him), p. (115))

<sup>28</sup> - but - 1 – Iqta (allocation) of Sultan's family , 2 - the endowments of the fire temples, 3 - the properties of those who have no heirs , and the fugitives, 5 - the rebels, 6 - the lands allocated for building and repairing roads, and the lands allocated for postal expenses, 7- rivers, 8- forests all of these lands were regulated by Omar, may Allah Almighty be pleased from him, only for the government, and their annual income amounts to seven million, which were allocated to works for the public goodness. Sometimes a iqta (allocations) was deducted from those lands for a person in exchange for his/her Islamic services, but these iqta (allocations) were not excluded from the tax or Ushr in any way and the remaining lands were given to their previous owners after the clearance of the tax. (Al-Farouq Lashibli Al-Numani, p. 192)

<sup>29</sup> - Asnad, plural of sanad: means valid bonds and refuge, and calling the bond on proof has this meaning. (Durar Al-Hukam, Fi Sharh Majalat Al-Ahkam (vol. 4, p. 644)

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**22- Official document:** a written document stated in articles (151) to (153) of the administrative procedures of the judicial courts. <sup>30</sup>

**23- Intended for Exploitation (Moedun Lel Isteghlal):** Anything ready and determined for the rent only. <sup>31</sup>

**24- Connected growth (Zawayed Mutaselah):** Refers to enhancements and expansions that are inherent to the original entity and inseparable from its location, rendering them unsellable as standalone items. Examples include the natural growth or fattening of an animal.

**25- Disconnected growth (Zawayed Munfaselah):** Pertains to increments and expansions that, while incidental to the original, are capable of being detached from

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Al Hujat (proof): is what that has the mark of the judge on it and the handwriting of the two witnesses below that is given to the opposite party. (Radd al Muhtar, the book of judgment, subject: Abu Hanifa (may mercy of Allah be upon him) called for the judiciary three times: [vol. 4, p. 428] Osmaniya Press, Egypt.)

Hujat (proof) has two kinds of use in custom: first: the written proof by which rights are documented. It is considered valid in proving rights in judgment and judiciary... and if the document meets the applicable conditions, it is considered as written confession – Al masmuat al Feqhia al Kuwaiti: [v 25, p. 262].

Reviving the Mawat (barren) land [vol. 5, p. 382] Osmaniya Press, Egypt. Durar al-Huam [vol. 3, p. 281] An Kuwaitia Arabic library, Sharh al atasi: Article: 1272]

<sup>30</sup> - Article: (1737) Sultani's patents and Khaganate book entries, because they are safe from usual forgery. (Majalatul Al-Ahkam)

Article (1738) – it is also applied on the courts records if they have been found free of trickery and corruption in the manner mentioned in the court book.( Majalatul Al-Ahkam Al Adliya)

Article (1738) – it is also applied on the courts records if they have been found free of trickery and corruption in the manner mentioned in the book of Judgement (Durar Al Hukum sharh Majalatul Ahkam) (4/482).

<sup>31</sup> - (Article 417): A thing prepared for exploitation (al Moedo Lel Istaghlal) is a thing that has been prepared and designated to be given on rent, such as a house, a bathroom, or a shop that are related to constructed buildings and bought on the condition that they be rented, as well as rental carriages and the animals, and renting something for three consecutive years is evidence that it is prepared for exploitation and use. What someone created for himself becomes prepared for exploitation by informing people that it is prepared for exploitation. [Majalatul Al-Ahkam Al Adliya and Durar Al Hukum sharh Majalatul Ahkam, vol. 1, p. 379, Publisher: Darar Al-Kutub Al-Ilmiyah, Lebanon / Beirut]

It is understood that the things prepared for exploitation are not limited to real estate only, as was mentioned, but also include animals and movables that are prepared for exploitation, and the magazine is saying the same thing (see Article 596). According to this article, the same applies also to animals and Real estate ( Durar Al Hukum sharh Majalatul Ahkam, v 1, p. 379, Publisher: Dar Al-Kutub Al-Ilmiyah Lebanon / Beirut]

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their source and sold independently. Examples include products such as milk, fruit, and eggs.<sup>32</sup>

## **Implementing authorities and their short names**

### **Article 4:**

(1) The Special Court for dealing with usurped Sultani (emirate), public pasture, and endowment lands in this Law shall be referred to hereafter as Special Court.

(2) The Commission for Prevention of Land Usurpation and Restitution of Usurped Lands in this law shall be referred to hereafter as commission.<sup>33</sup>

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<sup>32</sup> - The criterion for Zawayed Mutaselah (inseparable growth) is this that they cannot be separated from its place and sold separately. This is as if he bought an animal and it became fat after it was lean, or it grew bigger after it was small. Fatness and oldness are connected to the animal and a part of it that cannot be separated from it. Likewise, if he buys a small tree and it grows. But, Zawayed Munfaselah (Detached growth) is that that can be separated from its place and sold separately, such as the fruit of the tree, milk, and eggs [Jurisprudence on the Four religions, vol. 2, p. 185, publisher: Dar Al-Kutub Al-Ilmiya, Beirut - Lebanon]

The Hanafi school of thought divided the zawayed (growth) into the following types:

1 - Zawayed Mutaselah (inseparable growth) that is generated from the origin such as fatness in the animal and its increase in weight, recovery from a disease that it was suffering from, maturity in the fruit, and pregnancy that occurs at the time of option (kheyar). But what is present at the time of signing contract, it is contracted for, like the mother, and it is compensated with a portion of the price, according to what the Shafi' said.

2 - Zawayed Mutaselah (inseparable growth) that is not generated from the origin such as dyeing, sewing, building house on the land, and planting in it, and increase of ghee in the market.

3- Zawayed Mutaselah (inseparable growth) that is generated from the origin such as child, fruits, milk, eggs, and wool.

4 - Zawayed Munfaselah (Detached growth) that is not generated from the origin such as the earning of the wage-earner, compensation for a crime on an animal organ, and compensation which is considered a dowry for having intercourse with a sheep. This is the division of Hanafi of the Zawayed (growths), and they are the Muslim scholars who are most careful about diversifying them, due to the differences in their rulings according to these types [al Masmuatul Feqhiyat al Kuwaitiya, vol. 20, p. 100, publisher: Dar Al-Kutub Al-Ilmiyah, Beirut - Lebanon]

<sup>33</sup> They stipulated that every speaker interprets his word according to his custom, so if the speaker of the word is the Lawgiver, then it is interpreted according to the legal reality, and If the speaker is one of the people who is professional in literature, then his words are interpreted according to his own custom, and the words of the people making contracts and performances are interpreted according to their custom with their clients. The resulting obligations are interpreted according to what the word indicates considering their custom [Al-Masmuat Al-Feqhiat Al-Kuwaitiya, vol. 30, p. 55]

In terminology: it is the agreement of people on a specific thing, and each science has its own terminology. [intermediate dictionary]

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## **Powers of Special Court**

### **Article 5:**

The jurisdiction of the special court extends to the resolution of disputes and legal actions concerning properties, usufructs, annexations, and affiliations associated with embezzled emirate (government) assets, communal grazing lands, and endowment properties. This authority is conferred upon the court by a designated commission as outlined below:

- 1- Emirate lands have been usurped for industrial or commercial facilities, towns, houses, public facilities, and other purposes.
- 2- Waqf (endowed) land that has been used contrary to the Waqf (endowment) purpose.<sup>34</sup>

## **The Right to File Lawsuit**

### **Article 6:**

In the case of usurpation the property, usufructs, annexes, associates of the emirate's land, public pasture, and endowment lands, only the commission has the right to file a lawsuit before the special court.<sup>35</sup>

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- (Article 45): Determination by custom is the same as determination in writing [Majalatul Al-Ahkam Al-Adliya]

<sup>34</sup> Article: (1801) The judgement is bound and specified in time or place and exclusion of certain disputes...or if a judge in a court is authorized to hear some specific issue but is not authorized to hear anything other than that, then he may only hear the issues that he has been authorized and issue ruling on them, but he has no right to hear and issue ruling on cases other than them. [Majalatul Al-Ahkam Al-Adliya.]

As said in the summary, the judgement may be specified and restricted by time and place, with the exception of some disputes [Al-Ashbah Wa'l-Naza'ir, p. 194, Maktabat Al-Haramain Al-Sharifain, Quetta].

Then the judge restricts his jurisdiction to the time, place, and events. Radd al-Muhtar: Vol. 4, p. 331, Maktabat Majidiay Quetta, Jami' al-Fusuln: Vol. 1, p. 14, Maktabat Islami, Quetta Library.]

The dispute regarding the public treasury: if a claim is made against the public treasury, or the treasury has a right against someone else, and the lawsuit is filed before the judge, the judge, to whom the case is brought, has the right to issue ruling on it, even if he was one of the deserving parties. [Al-masmuat Al-Feqhiat Al-Kuwaitiya: Vol. 8, p. 243]

<sup>35</sup> As for disputes related to the treasury, the custodian of the treasury appointed by the Sultan can be a plaintiff and defendant in the aforementioned disputes. So he has the right to litigate in matters related to the public treasury both as plaintiff and defendant (Takmilat Radd al-Muhter)

But in our time, the official departments have agents appointed by the order of Sultan. Durar Al-Hukam, Fi Sharh Majalatal Al-Ahkam: Vol. 4, p. 250).

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## **Terms for Filing Lawsuit**

### **Article 7:**

(1) The complaint statement regarding land cases referred to the special court for settlement should include, to the extent possible, the records of the evidence, circumstantial evidence, and information on the subject of the claim and the claimant's evidence and reasons.<sup>36</sup>

(2) If the Sultan's decrees, deeds, and court decisions are mentioned as references, their original documents should be presented. Their copies are not considered valid.<sup>37</sup>

(3) The commission must officially introduce its defense lawyer to the special court to process the case.<sup>38</sup>

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My master said in his comment on him: It must be restricted to what when the Sultan assigns him to collect and keep it, but if he assigns him to claim and to defend any claim, both his claiming and defending will be heard and he owns in that what the Sultan owns because Sultan delegated to him what he owns, and this is an issue that occurs frequently. (Qurrat Ain al- Akhyar Le Takmilat Radd al-Muhtar, vol. 1, p. 37, Osmania Press, Egypt).

(His statement and its apparent meaning is this that the agent of the public treasury is not an opposite party). Al-Ramli said that it must be restricted to what the Sultan has appointed to him to collect and keep it. However, if he has appointed him to claim and to defend any claim, his claiming and defending will be heard and he owns in that what the Sultan owns because Sultan delegated to him what he owns, and this is An issue that occurs frequently. (Al-Bahr Al-Raiq: v7: p. 79, Dar al-Kutub al-Shar'iyah Wa al-Adabiyah, Quetta)

<sup>36</sup> Although Omar (may Allah be pleased with him) established many laws and rules for resolving the disputes, but these laws and rules had limits such that they did not affect the experiences of justice, its ease, and its low cost. What was most important to him was to implement justice easily and without any bothering. (Al-Farooq, p. 212, al-Maktab Al-la Saqafah)

- Omar (may Allah be pleased with him) established great rules and principles (Al-Farooq, p. 231).

It has been narrated from Hudhayfah (may Allah be pleased with him) that: The Messenger of Allah, may Allah bless him and grant him peace, said: Follow those after me, Abu Bakr and Omar. Abu Issa said: This is a Hasan (good) hadith (Sunan al-Tirmidhi, Abwab al- Manaqeb, Hadith No. 3662)

<sup>37</sup> Although Omar (may Allah be pleased with him) established many laws and rules for resolving the disputes, but these laws and rules had limits such that they did not affect the experiences of justice, its ease, and its low cost. What was most important to him was to implement justice easily and without any bothering. (Al-Farooq, p. 212, al-Maktab Al-la Saqafah)

- (Administrative Procedure, article 268)

- (Explanation of Majallat Al-Ahkam Lel Atasi, vol. 5, p. 365, Rashidiya Library)

<sup>38</sup> The subject matter that It is obligatory to obey the Imam in what does not involve disobedience... He said in Al-Mi'raj: because obedience to the Imam in what does not involve disobedience is obligatory. Rad al-Muhtar,

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## Chapter Two:

### General Provisions of Usurped Lands

#### Liability and Nonliability of Usurped Land

##### Article 8:

(1) The usurper is obliged to hand over the usurped land to the one whose land usurped without any changes or deficiency.<sup>39</sup>

(2) If the value of the land is decreased due to the act of the usurper, the usurper is liable to pay the decreased loss, and if the land has been destroyed due to natural disasters, the usurper is not liable.<sup>40</sup>

(3) In the cases mentioned in paragraph (2) of this article, there is a liability in terms of waqf land, an orphan, public treasury, land intended for exploitation, and lands that have been sold by usurpers.<sup>41</sup>

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Bab al-Eidain: [vol. 1, p. 780] Dor al-Sa'ada Library, Egypt. The same has been mentioned in Bahr al- Rayeq: [v: 2, p. 173]. Durar Al-Hukam Fi Sharh Majalatul Al-Ahkam: [v: 4, p. 604]

- Adherence to those systems that do not violate the provisions of Islamic Sharia is a Sharia obligation, because it is part of obedience to the ruler in what he regulates based on the evidence of the mandated interests. These systems should include Sharia rulings that have not been applied in this regards. (Islamic jurisprudence and its evidence, vol. 7, p. 5215, publisher: Dar Al-Fikr - Syria - Damascus)

<sup>39</sup> Article (905) If the usurped property is a real estate, the usurper must return it to its owner without any changing or deficiency [Majalatul Ahkam]

- Regarding ruling of usurpation, one of its rulings is that the usurped property must be returned as long as it is without deficiency (Tuhfat al- Foqaha, Hukm al Ghasb: [v: 3, p. 91] Dar Al-Kutub Al-Ilmiyah, Beirut, Bada'i' Al-Sana'i', Kitab Al-Ghasb, chapter on the ruling on usurpation: (14817). Jamalia Press, Egypt.)

<sup>40</sup> (And usurpation) only occurs (in what is transferred. If he took possession of property and it destroyed in his possession) by a natural disaster like an overwhelming torrent (he would not be liable) (Al-Durr Al-Mukhtar), v 6, p. 186)

- And if he usurps a property and it is destroyed in his possession because of the flood overcomes it and it is destroyed under water, or he usurps a house and it is destroyed by a natural disaster or flood, then the property is destroyed, he is not liable according to Abu Hanifa and Abu Yusuf) (Al-Bahr Al-Raiq Sharh Kanz Al-Daqa'iq, vol. 8, p. (126)

<sup>41</sup> (Article: 905)... If the usurped property is an endowment, then the fatwa, based on the doctrine of Imam Muhammad, is the liability of usurper. The property of an orphan in this matter is the same as endowment. (Al Dor Al-Montaqi). Therefore, if someone usurps the endowed property and it is damaged while it is in his possession by a natural disaster, he/she is liable. The same applies to the property of an orphan or property intended for exploitation that the liability is must because of usurpation and violent destruction(Al- Hamavi). A

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## **Shariah Rulings Regarding Dispossessing of Usurped Lands**

### **Article 9:**

(1) If the usurper has built a house or planted trees on the land, the usurper is obliged in any case to destroy the house or uproot the trees.<sup>42</sup>

(2) If the destruction of a house or trees is detrimental to the land, the owner of the land can pay the price of the trees and house to the usurper.<sup>43</sup>

(3) If the price of the house and trees is more than the price of the land, and the usurper has planted the trees or built the house based on the Sharia basis, such as

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person can be liable against property in six cases: If the usurped property is endowment property, it has liability even if it is damaged at the hand of the usurper without any infringement. If the usurper is judged to be liable against the price in this manner, then he purchases another property for the endowment with this price, and it becomes a waqf as the first one. (al-Tahtawi). If the usurped property is an orphan's property, it has liability even if it is damaged in the hands of the usurper without any infringement. If the usurped property is a property prepared for Exploitation, it has liability. [Durar Al-Hukam, Sharh Majalat Al-Ahkam, vol. 2, p. 553, Maktabah: Sadaqat jadid]

- If the usurped property is bought from another person and delivered to him, he/she is considered liable because the sale and delivery are considered depreciation (Al-Tahtawi). Durar Al-Hukam, sharh Majalat Al-Ahkam [vol. 2, p. 570]

( if his property is usurped) meaning the endowment property(liability is must), meaning the liability is must in case of usurpation of the property and the endowment houses as the liability is must in case of usurping the benefits of the endowment, and there is a fatwa on this. (Majma' al-Anhar: vol. 2, p. 601, Makbata Rashidiya Quetta, Radd al-Muhtar, Kitab al-Ijarah. : v: 5, p. 17, Osmania Press, Egypt]

- Question: The land of the orphan and the land of the public treasury have the same ruling as endowment land. Then the orphan's land has the same ruling as endowment land, as mentioned in Al-Jawharah. And the writer of Bahr and Mosannif. The treasury land is the same as it is mentioned in Khairiya and it is stated in the lawsuit book: The lands of the treasury have the approved endowment rulings. Radal Al-Muhtar, Kitab Al-Waqf, The Orphan's Land and the treasury land have the same ruling as Endowment Land (54913), Osmania Press, Egypt.

<sup>42</sup> (Article) If the usurped property is a land and the usurper built a house on it or planted trees on it, the usurper will be ordered to uproot them. Majalat Al-Ahkam Adliya.

He said in Hidayah: And whoever usurps a land and plants trees or builds a house on it, it will be said to him: Uproot the house and trees and return the land. Al-Hidayah, The Book of Usurpation, a chapter on what is changed by the action of the usurper [vol. 3, p. 377] published by Maktab Rashidiya Quetta, Al-Mukhtar, a chapter on what is changed by the action of the usurper: [p. 162] printed by Dar Al-Beirut, Damascus.

<sup>43</sup> (Article: 906) If the uprooting is harmful to the land, then the one whose land is usurped has the right to pay the price of things to be uprooted and to seize the land. Majalat Al-Ahkam Adliya..

- Al-Hidayah, The Book of Usurpation, a chapter on what is changed by the action of the usurper: [vol. 3, p. 377, Rashidiya Quetta, Bada'i' al-Sana'i Library, Kitab al-Ghasb: Vol. 7, p. 149, Al-Jamalia Press, Egypt]

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inheritance of land from the father and then the original owner is found, the usurper can give the price of the land to the one whose land is usurped and keep the land for him/herself.<sup>44</sup>

(4) If the price of the built house or planted trees is less than or equal to the price of the land, it is directed to demolish and uproot the house and trees.<sup>45</sup>

(5) The provisions of paragraphs (2) and (3) of this article do not apply to the usurpation of public lands. In this case, he/she is obliged to destroy the house and trees, and the land should be returned to its original state.<sup>46</sup>

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<sup>44</sup> (Article: 906) But if the value of the trees or building exceeds the value of the land and it was created or planted for a Sharia reason, the owner of the building or trees is to pay the price of the land and owns it. For example, if someone built a house on a plot of land inherited from his father with a cost that exceeded the value of the plot, then the real owner is found, the builder gives the value of the plot and seizes it. (Majalat Al-Ahkam Adliya)

- If the value of the building is more, then the usurper has the right to pay the value of the area, and seizes it. Tabeen Al-Haqayeq, the Book of Usurpation [Part: 5, p.: 229].

If he builds the house or planted the trees on the basis of a Sharia reason that exists in reality and support the ownership for him. In this case, the price of house and trees are paid to the owner of buildings and trees and he owns them even if such reason appears not to be a real reason after that. (Durar Al-Hukam, sharh Majalat Al-Ahkam: v: 2, p. 577)

<sup>45</sup> You must know that it is stated in all the texts except Al-Durar that the usurper should be ordered to uproot and return the land empty to its owner, and it has been said in Majma' al-Anhar that it is the apparent meaning of the narration... it means that the Majalah has taken the apparent meaning of the narration in which the texts are focusing on a case where the builder or planter is gets oppressor. and I took Al-Karkhi's saying in which the builder or planter is not oppressor regarding building and planting, and it is well detailed that whoever builds or plants on land inherited to him from his father, for example, is not oppressor. So if he deserves, it is taken from the detailed fatwa of Al-Karkhi... Fifth: It was quoted in Rad Al-Muhthar from Thatharokhania referring to Karkhi's statement that if the value of the building or plants is equal to the value of the land, the land is sold along with the house or trees and the price will be divided among them. I learned that the Majalah took Al-Karkhi's opinion regarding the case when the builder was not oppressor and the value of the building or trees was more than the value of the land, but the Majalah was silent about where the value is equal, so, should Al-Karkhi's statement be followed regarding the sale of them or refer to the apparent meaning of the narration regarding uprooting and returning back? The second apparent reason based on this article is this that the Al-Karkhi's statement can be referred considering the two following conditions:

The first condition: the value of the trees or building should be more than the value of the land. The second condition: it should be for an alleged Sharia reason. If one of the two conditions is missing, the apparent meaning of the narration mentioned at the beginning of the article must be taken. So think about it and understand. (Sharh Majalat Al-Atassi: Vol. 3, pp. 441, 444)

<sup>46</sup> If a member of the public people claims and request to demolish and remove the buildings that were erected on the public road that must be demolished, and the plaintiff reconciles with the defendant, then reconciliation is not permissible. In this case, the plaintiff has the right to reconcile and others have the right to request

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(6) if it is decided to destroy the house or trees mentioned in paragraphs (1, 2, 3, and 4) of this article, it can be resolved through mediation as well with the parties' consent.<sup>47</sup>

### **Liability with regard to destructed growth (zawayed)**

#### **Article 10:**

(1) If connected growth occurs in the usurped property after the usurpation, such as the garden that the branches of its trees grow up at the time of possession of usurper or separate growth/increase occurred, such as The trees that bear fruit at the time of possession of the usurper, the growth/increase in both cases are a deposit before the usurper and must be returned to its owner.

(2) If the usurper destroys the growth/increase mentioned in paragraph (1) of this article or it is lost by the usurper after asking him/her to return and the usurper denies it, the usurper is liable for the compensation.<sup>48</sup>

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demolition and filing lawsuit (Al-Khania) because the public road is a common property among the people and none of the public members has the right to ask for the replacement, but he has the right only to lift and prohibit base on the probation (hasbah). [Durar al-Hukam, vol. 3, p. 230, Maktabat Arabia Quetta]

. Conclusion: If the house or plant is built or planted on a abandoned land for public use such as a road or pasture, it is to be uprooted in every case, even if the uprooting is harmful to the land, or if it was built or planted based on any interpretation regarding the land, because no one of the public or all of them are not allowed to come together to change this land to something other than what it was originally intended for. Sharh Majalat Salim Bazej: v: 1, p. 400]. Maktabat Hanafiya Quetta.

- Abandoned lands such as the public road, the prayer area, the public pasture, the firewood place, and the cemetery. Since this kinds of the lands do not have special owner, it is not imaginable to build building and plant trees on them with the owner's permission and to give permission to a member of the public or all of them for building or planting and exploiting them in a way other than the way they were intended for. This is not permissible. Durar al-Hukam, Sharh Majallat al-Ahkam [vol. 2, p. 582], Murshid al-Hairan, Article: (9): [p. 10].

<sup>47</sup> Reconciliation is legally permissible; Prophet Mohammad, may Allah bless him and grant him peace: said: reconciliation is permissible among Muslims, unless it is a reconciliation that prohibits what is permissible or makes permissible what is forbidden. Narrated by Al-Tirmidhi and Ibn Majah, and Tirmidhi said this is a good and authentic hadith.

<sup>48</sup> (Article: 903) The growths (Zawayed) of usurped land belong to its owner. If the usurper demolishes them, he/she is liable. For example, if the usurper demolishes... the fruit of the usurped orchard... that obtained when it was in the possession of the usurper, he/she is liable, because it is the property of the person from whom it is usurped. (Majalat Al-Ahkam Adliya]

- (The fruit of the usurped orchard is a trust in the hands of the usurper and the usurper will not be liable except when transgressing or denying after the request of the owner) and the gains obtained through exploitation of the usurper is not part of the growth that can have liability by transgression because it is a compensation for the

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## **Liability with Regard to Usufruct**

### **Article 11:**

(1) If a person exploits or suspends the exploitation of another person's land without permission, there is no liability with regard to its usufruct, even if it is usurpation.<sup>49</sup>

(2) The following cases are excluded from paragraph (1) of this article, and the usurper is liable with regard to their usufructs:<sup>50</sup>

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benefits of the one whose land is usurped. According to us, no one can be liable for its usufructs and as well as for its substitute. [Al-Inaya Sharh Al-Hidaya, Dar Al-Fikr Number of parts: 10]

The growth of the usurped property, meaning the connected growth of the usurped property, or the separate growth obtained in the hands of the usurper after the usurpation are for its owner. Meaning that it is the property of the one whose property is usurped and this property is a trust in the hands of the usurper and must be returned. The usurper has no right to claim any expenses in this way. As well as, the usurper has no right to take his expenses for watering it, he does not have the right to ask for the wage for its maintenance. Durar al-Hukam, Sharh Majallat [vol. 2, p. 562]. ]

If the owner asks for the separated growth from the usurper and the usurper denies, meaning, did not give the separated growth after the request, and then they were destroyed, the usurper would be liable even if they were damaged without any transgression. (Al-Kanz). Regarding the connected growth, their destruction does not lead to liability according to the Imam Azam. According to the two Imams, they lead to liability. For example, if the usurper demolishes... the fruit of the usurped orchard or garden while the usurped property was in his hand, he must return it to its owner if it exists. But, if he has consumed it, he is liable for it. For example, if someone usurps a sheep and its wool grows while it is in the usurper's hand, or he usurps a garden and its branches grow while it is in his hand, and the usurper cuts off the wool and the branches and consumes them, and the wool and the branches grew and sprouted again, he is liable for the wool and the branches that he has cut off at the first time (Al-Hedayat Al- Aini, Al-Enaya, Mama Al- Anhar) and there is no doubt that the usurper is liable for the sheep and the branches separately, and the expression of consumption in the example is to avoid the destruction at the hands of the usurper without transgression and negligence and without denial after request. If it is demolished in the prescribed manner, then there is no liability according to the Hanafi imams. Durar Al-Hukam, Sharh Majalat Al-Ahkam: v: 2, p. 565]

<sup>49</sup> Article: (596) If someone uses property without the permission of its owner, it is considered usurpation and he is not obligated to pay for its benefits. (Majalat Al-Ahkam Adliya)

<sup>50</sup> Article: (596) If someone uses a property without the permission of its owner, it is considered usurpation and he is not obligated to pay for its benefits, but if it is an endowment property or the property of minor orphan, then he is liable for the benefit, meaning, the quantum meruit (Ujrat Al- Medhl) in all cases, and if it is intended for exploitation, he is liable for the benefit, meaning, the quantum meruit (Ujrat Al- Medhl) if not interpreted as property or a contract. For example, if someone lives in another person's house for a period of time without a rental contract, he is not obligated to pay the rent, but if that house is an endowment or an orphan's house, then he is considered liable in any situation. It means, whether interpreted as a property or a contract or not, its quantum meruit (Ujrat Al- Medhl) should be paid for the period of accommodation in that house, and likewise if it is a rental house but it was not interpreted as property or contract, it requires a the quantum meruit (Ujrat Al-

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1 - Waqf land.

2 - Orphan land.

3-Public treasury (Bait Al-Mal) land

4- Minor's land.

5- Property intended for exploitation (ready for rent) on the condition that it is not interpreted as property or contract. <sup>51</sup>

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Medhl). Likewise, if someone uses a rented animal without its owner's permission, an quantum meruit (Ujrat Al-Medhl) is required. Majalat Al-Ahkam Adliya (Article: 597) and (Article: 598).

- Question: The land of the orphan and the land of the public treasury have the same ruling as endowment land. Then the orphan's land has the same ruling as endowment land as mentioned in Al-Jawharah. And the writer of Bahr and Mosannif said the same. Treasury land is the same as it is mentioned in Khairia. It is stated in the lawsuit book: The lands of the treasury have the approved endowment rulings. Radal Al-Muhtar, Kitab Al-Waqf, The Orphan's Land and the treasury land have the same ruling as Endowment Land (54913), Osmania Press, Egypt.

But if the usurped land is a Sultan land or an endowment land such as allocated lands, then the ruling on it is based on what was stated in its specific law, not belonging to the provisions of Majalah. Durar al-Hukam Sharh Majat Al-Ahkam: [vol. 1, p. 0 69].

The benefits of the usurped property have no liability at all according to the Imam Azam, who is a Muslim Jurist in Islamic law, and the two imams, Abu Yusuf and Muhammad, who are Muslim jurists in the school of thought. But, the late Hanafi Muslim scholars, who are in favor of extraction (Takhrij and preference (Tarjeh) amongst Hanafi school of thought and saw people's encroachment on the properties of orphans and endowments issued a fatwa on the liability in these two cases in order to prevent from corrupt expectations. See the explanation of the two articles: (39, 596). Dorr Al-Hukam Sharh Majalat Al-Ahkam: [v: 4, p. 693]

Third: If the transgression is usurpation, then the wage is not obligatory unless it is in the property intended for exploitation, or in the property of an orphan, or an endowment, or the public treasury. If the property belongs to one of these cases, then the quantum meruit (Ujrat Al- Medhl) is required. Dorr Al-Hukam. (460/1) Maktab Arabia Quetta.

Article (460) (Anyone who disrupts the use of usufruct of an endowment, whether a house, shop, or land, by seizing it without right, is called a usurper. So, he must pay the quantum meruit (Ujrat Al- Medhl) for the period during which he has disrupted use of the benefit. [Law of Justice and Equity]

<sup>51</sup> - (Article 417): A thing prepared for exploitation (al Moedo Lel Istaghlal) is a thing that has been prepared and designated to be given on rent, such as a house, a bathroom, or a shop that are related to constructed buildings and bought on the condition that they be rented, as well as rental carriages and the animals, and renting something for three consecutive years is evidence that it is prepared for exploitation and use. What someone created for himself becomes prepared for exploitation by informing people that it is prepared for exploitation. [Majalatul Al-Ahkam Al Adliya and Durar Al Hukam Fi Sharh Majalat Al- Ahkam, vol. 1, p. 379, Publisher: Darar Al-Kutub Al-Ilmiyah, Lebanon / Beirut)

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## Chapter Three

### Owned Lands

#### Types of Owned Lands

##### **Article 12:**

The following lands are considered owned lands:

1- Lands that have been separated from public treasury (Bait Al-Mal) lands and Mawat (barren) lands and given to be owned by the people according to Sharia principles. <sup>52</sup>

2- Ushri lands <sup>53</sup>

Note: Lands that their Ushr (one-tenth) are to be paid, such as deserts and mountains, are not considered the personal property of a person. These lands are not called Ushri land according to Muslim scholars (Foqaha) <sup>54</sup>

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- It is understood that the things prepared for exploitation are not limited to real estate only, as was mentioned, but also include animals and movables that are prepared for exploitation, and the magazine is saying the same thing (see Article 596). According to this article, the same applies also to animals and Real estate ( Durar Al Hukum sharh Majalatul Ahkam, v 1, p. 379, Publisher: Dar Al-Kutub Al-Ilmiyah Lebanon / Beirut]

<sup>52</sup> Abu Yusuf, may Allah Almighty have mercy upon him, said in the Kharaj book: Imam has the right to allocate all that is dead and all that is lacking ownership for anyone, and he does what he deems best and most beneficial for the Muslims. He also said, "Every land that is not belong to anyone, and nor there is not a trace of building on it, then someone seizes it and built it and lived in it." If it is in the land of kharja (conquered land), then the kharaj must be paid, and if it is an `Ushri land, then the one tenth is due to be paid(Rad al-Muhtaar ala al-Durr al-Mukhtar, vol. 4, p. 193, Publisher: Dar Al-Fikr - Beirut).

<sup>53</sup> And Abu Hanifa, the imam, said, "the Imam is optional whether to divide it among the spoils holders, so it becomes 'Ushri' land, or return it to the polytheists with a tax to be paid, so it will become a Kharaj land, and the polytheists will be considered dhimmi, or He will endow it for all Muslims, then this land will become a land of Islam, (Al-Ahkam Al-Sultania, p: 215, Publisher: Dar Al-Hadith - Cairo)

<sup>54</sup> And it is obligatory where it is neither `Ushri nor kharja such as deserts and mountains, and that the product obtained from it is the reason for this obligation, and that is obligatory with regard to the land of child, insane, and the public offices because it is the expenses of the land, and that is obligatory because the ownership of land is not a condition in it. Rather, the condition is the ownership of the product obtained from the land, so it is obligatory in the endowment lands. (Rad al-Muhtaar ala al-Durr al-Mukhtar , vol. 4, p. 178, Publisher: Dar Al-Fikr, Beirut)

- He stated that ownership of land is not a condition for the obligation of one tenth (ushr), but rather the condition is ownership of products of the lands; Because it is obligatory for the product nor for the land itself, so

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3- Kharaj (conquered) lands <sup>55</sup>

4- Land whose owner is unable to cultivate it and pay its Kharaj (tax), and hands it over to the Amir so that its benefits compensate its kharaj. <sup>56</sup>

5- The land that its possessor (zulyad) is known, but the person from whom this land was transferred is not known. <sup>57</sup>

## Rulings of Owned Lands

### **Article 13:**

(1) The rulings with regard to the owned lands are as follows:

1- No one has the right to make use of an owned land, whether revived or ruined, without the permission of its owner. <sup>58</sup>

2- The owned ruined land whose watering source has been destroyed, even if it has been ruined for many years, shall not be removed from the owner's ownership. <sup>59</sup>

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his ownership or non-ownership is equal (Rad al-Muḥṭhār ala al-Durr al-Mukhtar, vol. 2, p. 326, publisher: Dar Al-Fikr - Beirut)

<sup>55</sup> His saying, "It is permissible for them to sell it and make its exploitation," it means through mortgage and endowment, because if Imam conquers a land forcefully, he has the right to give it for the people for residence and impose the tax (kharja) on that land and impose poll (Jizya) on its residents. So, the land will remain the property of its residences (Rad Al-Muhtar Ala Al-Durr Al-Mukhtar, vol. 4, p. 178 Publisher: Dar Al-Fikr -Beirut]

<sup>56</sup> And it is not permissible for the imam to endow the land of the Huz (state land), because it has no owner (said in Tatarokhania) and not permissible for its owner, he said, the Huz (state) land is a land whose owner was unable to cultivate it or pay its tax, so he handed it over to the imam so that its usufructs be compensation for the tax [Al-Bahr Al-Raiq Sharh Kanz Al-Daqa'iq, vol. 5, p. 203, publisher : Dar Al-Kitab Al-Islami]

Al-Huz (state) land: It is land owned by some individuals who were unable to exploit it. So the government took control of it in order to exploit it and collect its taxes. So it is not permissible to endow it because the government does not own it, but it is still belonging to its owners. [Islamic jurisprudence and its evidence, vol. 10, p. 303, publisher: Dar Al-Fikr - Syria - Damascus]

<sup>57</sup> Whoever has something in his hand and it is not known from whom it was transferred to him, it remains in his possession, and he is not required to prove it. Then he said: And whoever we find a land in his possession or ownership, it is possible he might have revived it, or obtained it in a correctly manner.. Oh, it is to say that the Imam has no right to take anything out of anyone's hand except by a well-established and known right. (Rad Al-Muhtar Ala Al-Durr Al-Mukhtar, vol. 4, p. 181, Publisher: Dar Al-Fikr - Beirut)

<sup>58</sup> (Article (96): No one is authorized to make use of another person's property without his/her permission (Majalat Al-Ahkam Adliya)

<sup>59</sup> (but) regarding the owned and inhabited lands, no one can make use of them without the permission of their owners, because the immunity of the ownership prevents that. The same is a destructed land whose water has

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(2) All kinds of land exploitations, whether revived or ruined, by the owner are permissible except if they belong to the right of another one. <sup>60</sup>

(3) If the owned land is the right of another person, its owner is prohibited from making independent use and possession. <sup>61</sup>

(4) Ruined land that does not have a specific owner is considered Luqata land (a property found while its owner is not known). <sup>62</sup>

## Chapter Four

### Powers and Authorities of Amir al-Mu'minin regarding Emirate Lands

been cut off, and years have passed since that time, because ownership still exists over it even if the time lapses and even it is allowed to sell it, endow it, or lease it and it will be considered as inheritance when its owner dies. This is applicable when its owner is known. But, if he/she is not known, then its ruling is the same as the ruling of the loqata (lost property whose owner is not known) which is defined in its related book, Inshallah. Bada'i Al-Sana'i, Al-Arazi Book: v: 6, p: 192, Al-Jamalia Press, Egypt and Murshid Al-Hairan: [Article: 5].

It means that it should not be owned by a Muslim or a non-Muslim (Dhimmi). If it is owned by a Muslim or a non-Muslim (Dhimmi), it becomes destructed land and the water is cut off from it and the people are deprived of their pasture and firewood, then it is not a mawat (barren) land and cannot be owned by the permission of the Imam according to the opinions of all Muslim scholars, because what was owned by a Muslim or a non-Muslim (dhimmi), its ownership is not removed by destruction and cutting of water and preemption right from it according to our close opinions. Al-Benaya Sharh Al-Hidayah [vol. 12, p. 280].

- (His saying: Then if the owner is known, it belongs to him (or to his heir if known). Hashiat Al-Shalabi Ala Tabeen Al- Haqayeq [v: 6, p. 34] Al-Kubra Al-Amiriya Press - Bulaq, Cairo

<sup>60</sup> Article (1192): Everyone can make exploitation of his/her property as he/she wishes, but if it is related to the right of another person, then the owner is prevented to make its use in an independent manner (Journal of Judicial Rulings)

Owned lands are endowed, mortgaged, gifted, sold, pre-emption can takes place, and can be inherited. Durar Al-Hukam, Sharh Majalat Al-Ahkam: Vol. 3, p. 282], Al-Atassi: [vol. 4, p. 204]

<sup>61</sup> Article (1192) Everyone make exploitation of his/her property as he/she wishes, but if it is related to the right of another person, then the owner is prevented to make its use in an independent manner (Journal of Judicial Rulings)

<sup>62</sup> And the same is a destructed land whose water has been cut off, and years have passed since that time, because ownership exists over it, even if the time lapses and even it is permissible to sell it, endow it, or lease it and it will be considered as inheritance when its owner dies. This is right when it owner is known, but if he is not known, then its ruling is the same as the ruling of the Loqatha (a property found while its owner is not known) which is defined in its book, Inshallah. Bada'i Al-Sana'i, Al-Arazi Book: v: 6, p: 192, Al-Jamalia Press, Egypt and Murshid Al-Hairan: [Article: 5].

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## **Powers and Authorities Related to the State Land (Huz)**

### **Article 14:**

(1) Amir al-Mu'minin, May Allah almighty protect him, has the following powers and authorities regarding the state (hus) land:

1- It is permissible for the Amir al-Mu'minin, may Allah Almighty protect him, to sell the state land as deemed expedient.<sup>63</sup>

2- It is permissible for the Amir al-Mu'minin, may Allah Almighty protect him, to allocate the state land, as deems expedient, to a person for ownership or for the exploitation of usufructs.<sup>64</sup>

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<sup>63</sup> The imam has a general mandate and he has the right to take actions based on the interests of the Muslims, and it is permissible for the imam to take the replacement of a public property. For this reason, if he sells something from the public treasury, his sale is valid. So his saying "something" is indefinite in the context of the condition that applies to the real estate and others whether for a need or for something else. (Al-Muhtar Ala Al-Durr Al-Mukhtar: A: p. 356] The Osmania Press, Egypt. Menhat Al- Khaliq Ala Bahr Al- Rayeq, v: 5, p. 114]. Tabeen Al- Haqayeq Ala Kanz al-Daqa'iq: 5, p. 37.)

- I said, this is a third type, it means neither Ushria nor Kharajia land, called state land. It is land whose owner died without having any heir and transferred to the public treasury, or it was conquered by force and kept for the Muslims until the Day of Resurrection. Its ruling, based on what is mentioned in the Tatarokhania, is that it is permissible for the imam to give it to the farmers in one of two ways, either by place them in the position of the owners for cultivation and giving the tax, or by leasing it to them for the same amount of the tax, so the amount is taken for the imam. Hashiat Rad Al-Mukhtar Al Al-Durr Al-Mukhtar, v 12, pp. 663 and 664]

<sup>64</sup> (His statement about the ruling on Iqta (allocations), etc.). Abu Yusuf, may Allah Almighty have mercy upon him, said in the Kharaj book: Imam has the right to allocate all that is dead and all that is lacking ownership for anyone, and he does what he deems best and most beneficial for the Muslims. He also said: allocate every land that is not belong to anyone, nor It has traces of a building on it. This indicates that the imam has the right to allocate, when deems expedient, the land from the public treasury on the basis of ownership for its slave just as he gives the money because there is no difference between the land and money to pay for what is due. So take the advantage of this interest since I did not see anyone to tell it. It is famous in the books that Iqta' (allocation) is the ownership of the kharaj while leaving the property itself for public the treasury. [Rad al Muhtar, Jihad Book, Jizya Chapter: vol. 3, p. 366). Osmania press, Egypt.]

From here we know the ruling on the allocated lands related to public treasury. As the result, the land itself is for the public treasury and the tax is for the one to whom it is allocated. [al-Bahr Al-Rayeq, Bab al- Ahkam Al-Mortaddin [vol. 5, p. 119] Dar Al- Arabiat Al-Kubra, Egypt.]

The imam has the authority to allocate what is not the property of a specific person. Because the right to take decision on what is generally belongs to Muslims is up to the Imam, and he has the right to allocate some of the property to some of them according to what he sees expedient, the same as he is doing regarding the public treasury... Al-Mabsoot Les-Sarkhasi: Part: 23, p. 10, Beirut]

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3- It is permissible for the Amir al-Mu'minin, may Allah Almighty protect him, to lease the state land, as deems expedient, to a person. <sup>65</sup>

4- It is permissible for the Amir al-Mu'minin, may Allah Almighty protect him, to allocate the state land for some charitable purposes, such as the mosque, Eid Day ceremony, religious schools, hospitals, etc. <sup>66</sup>

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<sup>65</sup> The following was stated in the fatwas of (Al-Kazoruniyah): But the Muslim scholars' general opinions regarding leasing the lands of the public treasury indicates that it is absolutely permissible whether the term of lease be short or long. Their positive points of views about Imam's right to make use of public land whether by selling or allocating proves this fact. (Al-Zaighali, Al-Tanqih, Radd al-Muhtār al-Anqerwi, Al-Hindiya, Al-Faiziyah, Al-Bahr, Ibn Abidin's Commentaries on Al-Bahr). Durar Al-Hukam, Sharh Majalat Al-Ahkam [vol. 1, p. 561]

I did not find anyone who stated that the lands of the public treasury are rented for a long or short period as they did in endowments and the orphan's land. The generality of their views indicates that leasing of land is generally permissible whether for a long term or short, etc. So what it is certain is this that the orphan's land can only be leased for a short term. [Tanqeh Al-Fatawa Al-Hamidiyah, Book of Endowments, Chapter Two, on the provisions regarding the rights of the people deserving endowment: vol. 1, p. 176].

The ruling of the ruler regarding the issue on which the extraction of opinion (ijtihad) is done resolves the dispute. Rad Al-Muhtar, Chapter on the Qera'ah: v: 1, p. 501] Osmania Press, Egypt.].

<sup>66</sup> It was mentioned in Fathh al-Qadir that the Sultan must endow a land for mosque from the public treasury [Ibn Nujim al-Iqtisadiyah, p 132].

- Endowing a mosque for the Muslims from the public treasury is obligatory for the imam, otherwise it is the responsibility of the Muslims... (His saying, "endowing a mosque,") means in every town, according to the apparent meaning [Rad Al-Muhtar Ala Al-Durr Al-Mukhtar, v 3, p. 736, subject matter of the Rulings of Vows, Publisher: Dar Al-Fikr, Beirut]

- This clearly states that the sultans' endowments from the public treasury are called allocations, not true endowments, and what is spent for the expenses of the public treasury is not considered violation... And Allamah Qasem said in Al-Tuhfah Al-Mariziah: it is clear that the endowment of Sultan from the land of the public treasury is correct. I said: Perhaps he intends that it is obligatory and should not be changed if it has a public interest, as Al-Tarsusi narrated from Qazi Khan that if the Sultan endows a public treasury land for the public interest of the Muslims, it is permissible. Ibn Wahban said: because if he preferred to allocate it for Sharia based expenses, he would have prevented those unjust rulers to use it for non-sharia based cases. He stated that this kind of points of view indicates that it is permissible to spend it in specified cases that the Sultan has defined them as public interest. Rad al-Muhtar, Chapter on Qera'ah, vol. 1, p. 501] Osmania Press, Egypt.

Article: (214): If the Sultan or his deputy endows a land from the lands of the public treasury, currently known as the lands of the Emirate, by allocating it for a public interest, the next Sultan has the right to violate his condition in terms of the increase and decrease in the share allocated for the beneficiaries, and he has no right to revoke it or allocates it for a purpose that is not allocated for. The Law of Justice and Equity, written by: Qadri Pasha, Behawalate Tanqeh Al-fatwa Al-Hamidia and Rad al-Muhtar al- Feqh al, Islami and its evidence: vol. 10, p. 7614. Maktabat Rashidia Quetta)

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(2) If Amir al-Mu'minin, may Allah Almighty protect him, gives the state land to a person for ownership, then the next Amirs (rulers) cannot reject it and cannot dispossess whoever (heir or customer) the land is in his/her possession. <sup>67</sup>

### **Powers and Authorities related to Mawat (barren) Land**

#### **Article 15:**

(1) Amir al-Mu'minin, may Allah Almighty protect him, has general and obsolete authority regarding the mawat (barren) lands according to expediency. <sup>68</sup>

(2) If Amir al-Mu'minin, may Allah Almighty protect him, allocate the Mawat (barren) land to a person for ownership, he/she becomes its owner by reviving it. <sup>69</sup>

(3) If the person mentioned in paragraph (2) of this article does not revive the allocated land within three (3) years, he/she is no longer entitled to possess it. <sup>70</sup>

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<sup>67</sup> And everyone to whom the Mahdioun rulers allocated a land from the black land (Iraq lands in old time), the land of the Arabs, and the mountains from the types we mentioned, the Imam has the right to allocate it, and it is not permissible for those who come after them to return it, nor to take it out of the possession of those who inherited it or bought it. Rad Al-Muhthar, book of jihad, chapter of jizyah: [Vol. 3, p. 366, Osmania Press, Egypt.]

- It means that the ruling of those other than the Mahdioun is not like this. Ghamz Oyoun Al-Basayer Sharh Al-Ashbah Wa Al-Nazayer: The fifth rule: The Imam's behavior against the followers is depending on the public interest. [v :1, p. 332] part (3) Edarat Al-Quran and Uloom Al-Islamia, Karachi. Al-Mabsoot Les-Sarkhsi, Kitab Al-Shorb [Part: 23, p. 183] Beirut.

<sup>68</sup> Abu Yusuf, may Allah Almighty have mercy upon him, said in the Kharaj book: Imam has the right to allocate all that is Mawat (barren) lands and all that is lacking ownership for anyone, and he does what he deems best and most beneficial for the Muslims. [Rad Al- Muhthar Ala Al-Dur Al-Mukhtar, vol. 4, p. 193. Publisher: Dar Al-Fikr -Beirut]

<sup>69</sup> Article (1272): If someone revives and construct a Mawat (barren) land with the Sultan's permission, he becomes its owner. If the Sultan or his defense attorney appoints someone to revive the land on the condition that makes only use of its benefits and does not take its ownership, that person should use that land in the manner he has been authorized and does not own it. (Journal of Judicial Provisions)

- It is understood from this article that the Mawat (barren) lands are revived in two ways: first, it be the property of the reviver, and the second, it is not be the property of the reviver, but only its usufruct be for reviver. Durar Al-Hukam [vol. 3, p. 281].

<sup>70</sup> Article: (1279) If someone removes the stones from a place of Mawat (barren) land, he/she will be given the priority to revive it for a period of three years. If he does not revive it within three years, then he/she has no right anymore, and it may be given to someone else to revive it. [Majalat Al-Ahkam Al-Adliya. Bada'i' al-Sana'i': vol., p. 193, printed by: Osmania Press, Egypt]

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(4) When Amir al-Mu'minin, may Allah Almighty protect him, allocates the Mawat (barren) land to a person for the use of its usufruct, he/she is only the owner of the usufruct and is not the owner of the land itself. <sup>71</sup>

(5) If a person has revived the land without the permission of Amir al-Mu'minin, may Allah Almighty protect him, he/she will be charged a similar price. If he/she does not agree with a similar price, it will be sold to others through a bidding process.

(6) If Amir al-Mu'minin, may Allah Almighty protect him, deems it expedient to give the land without any similar price or bidding. <sup>72</sup>

## **Rulings Related to Abandoned Land**

### **Article 16:**

(1) The needy persons can use the abandoned land in a group form. One person has no right to prevent another person from using it. <sup>73</sup>

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<sup>71</sup> Article (1272): If someone revives and construct a Mawat (barren) land with the Sultan's permission, he becomes its owner, and if the Sultan or his attorney appoints someone to revive the land on the condition that only benefits from it and does not take its ownership, that person should use that land in the manner he has been authorized and does not own that land (Journal of Judicial Provisions)

- It is understood from this article that the Mawat (barren) lands are revived in two ways: first, it be the property of the reviver, and the second, it is not be the property of the reviver, but only its usufruct be for reviver. Durar Al-Hukam [vol. 3, p. 281].

<sup>72</sup> It is stated in the Land Law that if someone revives a land without the permission of Sultan, then the equivalent price will be taken from him and the land will be given for him to be owned it if he is asking for it. If he does ask the equivalent price, then it will be given to someone else through auction.) [Durar al-Hukam (281/3), Maktabat Arabia Quetta]

- It is better for the imam to give it for him if he revives it and not take it back from him. This is when he does not seek permission by ignorance, but if he abandons it for humiliation of the Imam, the Imam can take it back as penalty. [Al-Jowharat Al-Nira Sharh Qaddouri, Book of Reviving the Mawat (barren) land]

<sup>73</sup> So the lands inside the town will not be considered as Mawat (barren) land at all, nor is any associate land outside the town as of firewood place for residents or any pasture for them until the Imam owns its allotments, because whatever is as associates of the residents of the town is the right of the residents of that town such as the courtyard of their houses. If they are allocated, their rights will be violated. Likewise, the Salty land, bitumen, oil, and other things that Muslims need them are not considered as Mawat (barren) land, and the imam has no right to allocate them for a person because it is the right of the Muslims in general. If it is allocated, their right is violated and this is not permissible. Bada' Al-Sana' I [v: 6, p. 194].



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(2) If a person has constructed a house or planted trees in the abandoned land for the purpose of ownership or with the permission of the people, he/should destroy it even if it damages the land. <sup>74</sup>

## **Powers and Authorities Related to Public and Special Pasture Lands**

### **Article 17:**

(1) Amir al-Mu'minin, may Allah Almighty protect him, can revoke the allocation of land for public pasture and allocate it for other exploitations according to Shariah-based interests. <sup>75</sup>

(2) No person can revive the public pasture arbitrarily. <sup>76</sup>

(3) No one can revive a special pasture; even Amir al-Mu'minin, may Allah Almighty protect him, cannot allocate a special pasture to someone. <sup>77</sup>

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<sup>74</sup> Section Four: Abandoned lands such as the public road, prayer area, public pasture, firewood place, and cemetery. Since this kinds of lands do not have a specific owner, and it is not permissible to build a house and plant trees on them with the owner's permission and give permission to one of the public people, or all of them, to build a house, plant trees and manage them In a way other than what it they were dedicated for, this is not permissible. Anyhow, it is necessary to remove the new structures that are built on them, uproot the tree, and return them to their previous condition. For example, if someone built a place in the village transport vehicles, its people have the right to consult the ruler and destroy the building (al-Bahja). In this case, there is no case of following the minority by the majority as it takes place in case of construction under the pretext of a legitimate reason. As well as it is not permissible to give the price of house that is to be destroyed to the owner if the destruction is harmful to the land. Dorr Al- Humak Sharh Majalat Al-Ahkam (58212), Maktab Arabia Quetta. If a building is built or trees planted on land left for public utility such as a road or pasture, then it is ordered to be uprooted in every case, meaning, even if the uprooting is harmful to the land, or the land was built or trees planted according to any interpretations regarding land because no one from the public people, or all of them are not allowed to come together to turn this land into something else other than it is dedicated for. Sharh Majalat Salim Bazej (40011), Maktabat Hanafiya Quetta, Osmania Land Law, Article 96.093.

<sup>75</sup> The thirteenth type: allocating lands shared among the common Muslims, where charity camels and other animals graze, as Omar ibn al-Khattab, may Allah be pleased with him, did. This is not the ruling, and those coming after him have the right to nullify this allocation and do in those lands what the legitimate interest requires. Moen Al-Hukam [p. :40] Maktabat Al-Arabia, Quetta).

<sup>76</sup> The thirteenth type: allocating lands shared among the common Muslims, where charity camels and other animals graze, as Omar ibn al-Khattab, may Allah be pleased with him, did. This is not the ruling, and those coming after him have the right to nullify this allocation and do in those lands what the legitimate interest requires. Moen Al-Hukam [p. :40] Maktabat Al-Arabia, Quetta).

<sup>77</sup> So the lands inside the town will not be considered as Mawat (barren) land at all, nor is any associate land outside the town as of firewood place for residents or any pasture for them until the Imam owns its allotments, because whatever is as associates of the residents of the town is the right of the residents of that town such as the courtyard of their houses. If they are allocated, their rights will be violated. Likewise, the Salty land, bitumen, oil, and other things that Muslims need them are not considered as Mawat (barren) land, and the imam has no

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(4) If a village is removed from the personal ownership of the people (all charges will be ended in the case of the acquisition), then the special pasture will have the status of Mawat (barren) land. <sup>78</sup>

(5) A pasture that has been allocated to a specific village a long time ago is considered shared land for all the residents of that village. <sup>79</sup>

(6) The residents of another village cannot graze their cattle in a special pasture. <sup>80</sup>

(7) If a person builds a house in a village for residence and settles in it, he has the right to graze his/her defined and common cattle in the special pasture of this village. <sup>81</sup>

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right to allocate them for a person because it is the right of the Muslims in general. If it is allocated, their right is violated and this is not permissible. Bada'ī Al-Sana'ī [v: 6, p. 194].

<sup>78</sup> The thirteenth type: allocating lands shared among the common Muslims, where charity camels and other animals graze, as Omar ibn al-Khattab, may Allah be pleased with him, did. This is not the ruling, and those coming after him have the right to nullify this allocation and do in those lands what the legitimate interest requires. Moen Al-Hukam [p. :40] Maktabat Al-Arabia, Quetta).

<sup>79</sup> Article: (97) The pasture that has been allocated since very old times to one of the villages for the grazing of the animals of the people of that village only, the people of another village do not have the right to graze their animals on it. Likewise, the pasture that has been dedicated as common pasture since old times among the residents of two, three or more villages located in these villages, the people of those villages can graze their animals jointly, and no one can prevent other one from grazing in them. The same is pasture areas belong to the people of one village independently or to the people of some villages jointly that cannot be bought or sold... (Osmania Land Law, Article: 100)

<sup>80</sup> when the residents of a village that have desert and the mountain, place for pasture, field, and a firewood place attributed to its residents and have a place they graze their livestock and animals and cut firewood from it gave permission to other people to graze on it and collect firewood from it in a way that harms them and their livestock and animals, they have the right to prevent everyone who wants to graze on it or collects firewood from it. (Al-Kharaj, pp. 116 and 117, Publisher: Maktabat Al-Azhariya for Toradh)

Article: (97) The pasture that has been allocated since very old times to one of the villages for the grazing of the animals of the people of that village only, the people of another village do not have the right to graze their animals on it. Likewise, the pasture that has been dedicated as common pasture since old times among the residents of two, three or more villages located in these villages, the people of those villages can graze their animals jointly, and no one can prevent other one from grazing in them. The same is true for pasture areas that belong to the people of one village independently or to the people of some villages jointly and cannot be bought or sold... (Osmania Land Law, Article: 100)

<sup>81</sup> But, if a person who comes to a village from outside and builds a house with the intention of settling, he can acquire a number of animals from outside the village and graze them in the pasture of that village. Likewise, the person who finally takes his house is not prevented from grazing as many animals as can. the Osmania Land Law. Ketab Al-Kharaj by Imam Abu Yusuf, chapter on crops and customs: [p. 116]

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(8) If a village is constructed on a Mawat (barren) land with the permission of Amir al-Mu'minin, may Allah Almighty protect him. Then, places should be allocated close to the village for pasture, cemetery, <sup>82</sup>

(9) It is not permissible to make any kind of use and possession in the special pasture, and the lapse of time cannot prevent it from being a pasture. <sup>83</sup>

## Chapter Five:

### Provisions of Marsadah and Waqf lands

#### Shariah Rulings Related to Marsadah (Allocated) Land

##### **Article 18:**

(1) Marsadah (allocated) land has the same ruling as of waqf land. <sup>84</sup>

(2) Successor Amirs (rulers) cannot cancel the land allocated by Amir al-Mu'minin; may Allah almighty protect him or change one of its defined boundaries. <sup>85</sup>

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<sup>82</sup> Article (1271) Lands close to houses are dedicated to the residents on the condition that they be used as a pasture, a threshing place, or a firewood place. These lands are called abandoned lands. (Majalatul Ahkam Al-Adliya)

<sup>83</sup> Article (1675) There is no consideration with regard to the lapse of time in claims related to issues that their benefits are for the public people such as a public road, a river, or a pasture. For example: If someone possesses a pasture designated for a village and use it for fifty years without dispute, then the people of the village make claim against him/her, their claim would be heard (Majalatul Ahkam Al-Adliya)

<sup>84</sup> And the allocation (Ersad) is equivalent to endowment (waqf). (Rad al-Muhtar, Kitab al-Waqf, important branches of the fatwa: Part 3, p. 474, Osmania Press, Egypt)

<sup>85</sup> The same is the allocation of some villages and farms by Sultan (ruler) for mosques, religious schools, and etc and also for those who deserve from the public treasury, such as reciters, imams, muezzins, and others in which that Sultan allocates for them what they need to be resolved, but it is not a real endowment because the Sultan did not own it, rather it was allocating something from the public treasury for some of those who are deserving, and it is not permissible for those after him to change it and replace it as we have explained it in detail (Rad al-Muhtar `ala al-Durr al-Mukhtar, 4, p. 19). 5 Publisher: Dar Al-Fikr Beirut)

- This clearly states that the Sultans' endowments from the public treasury are allocations not true endowments, and that What is expended for the treasury will not be revoked (Rad Al-Muhtar Ala Al-Durr Al-Mukhtar, vol. 4, p. 184, Publisher: Dar Al-Fikr - Beirut)

- Article: (214): If the Sultan or his deputy endows land from the lands of the public treasury, currently known as the lands of the Emirate, by allocating it for a public interest, the next Sultan has the right to violate his condition

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(3) If a Marsadah land makes a profit, its profit will be used for a similar purpose, such as an unused mosque that will be used for the benefit of another mosque.<sup>86</sup>

(4) If a person has made a house or planted trees on a Marsadah land that is not compliant with the specific purpose of Marsadah, he/she is obliged to destroy it.<sup>87</sup>

(5) If the usurper has made a house or planted trees on the Marsadah land that its destruction will damage the land, the usurper cannot destroy it, but the usurper is

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in terms of the increase and decrease in the share allocated for the beneficiaries, and he has no right to revoke it or divert it from the point of view that land is allocated for. The Law of Justice and Equity, written by: Qadri Pasha, Behawalate Tanqeh Al-fatwa Al-Hamidia and Rad al-Muhtar al- Feqh al, Islami and its evidence: vol. 10, p. 7614. Maktabat Rashidia Quetta)

<sup>86</sup> If the endowment is destroyed, its endowed property shall be spent on the same ones. So, the endowments for the mosque shall be spend for another mosque, and the endowments for the state land (huz) shall be transferred to another state land, and the endowment shall be the same as waqf (Rad al-Muhtār, Book of Endowments, Important Branches of the Fatwa: Volume 3, p. 474, Osmania Press, Egypt)

<sup>87</sup> (The answer: The farmers in the aforementioned village are not permitted to farm or build therein without Sharia permission. If they do, then the one with the Sharia jurisdiction has the choice to keep what they did against a quantum meruit (Ujrat Al- Medhl) if it is better for the waqf, and to demolish it for free and what are inside the borders of the mentioned village even the sheep and animal of the villagers are included in the waqf and the ruling of ruler is applicable on them. So no one has the right to reside in it or construct a building in it without a Sharia permission.(Al-Oqood al- Dorria Fi Thanqeh al- Fatawa al- Hamidia, v. 1, p. 190, Maktabat Rashidia Quetta)

If the land is an endowment or an orphan's property, then the custom of people is considered if it is more beneficial. If the custom is not more beneficial, then the same land must be rewarded, as they say: the fatwa shall be issued regarding what is most beneficial for the waqf [Al-Masmuatul Feqhiyat Al-Kuwaitiya, vol. 1, p. 241, Maktabat Amir Hamza]

- If the usurper has cultivated the fertilized land and its product was close to be reached. The one whose land is usurped does not have to wait until the time of production collection. The usurper shall be forced to uproot his crops immediately and return the cultivated land to the one whose land is usurped. [Durar al-Hukam, vol. 7, p. 567, Maktabat Amir Hamza]

- The same is the allocation of some villages and farms by Sultan (ruler) for mosques, religious schools, and etc. and also for those who deserve from the public treasury, such as reciters, imams, muezzins, and etc. that is allocating for them what they need to be resolved, but it was not a real endowment because the Sultan did not own it, rather it was allocating something from the public treasury for some of those who are deserving, and it is not permissible for those after him to change it and replace it as we have explained it in detail (Rad al-Muhtār ala al-Durr al-Mukhtar, vol. 4, p. 195, publisher: Dar Al-Fikr, Beirut)

In this case it is clear that the sultans' endowments from the treasury are allocations, not real endowments, and that what spent for public treasury cannot be revoked (Rad al-Muhtār ala al-Durr al-Mukhtar, vol. 4, p. 184, Publisher: Dar Al-Fikr, Beirut)

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provided with the price of that house or tree. But, in cases of no damage, the custodian can also compromise with the usurper against something.<sup>88</sup>

(6) If the usurper has cultivated the waqf land and the rest of it is not useful for the waqf, the usurper should immediately destroy it.<sup>89</sup>

(7) If the usurper destroys the waqf house or destroys its trees, then he/she will be liable to build the house and plant the trees.<sup>90</sup>

(8) If the land is destroyed at the hands of the usurper due to natural disasters, the usurper is liable to pay its price, and if the usurper manages to revive this land and

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<sup>88</sup> And the allocation (Ersad) is equivalent to endowment (waqf). (Rad al-Muhtar, Kitab al-Waqf, important branches of the fatwa: Part 3, p. 474, Osmania Press, Egypt)

- Article (441) (The usurper increases something profitable in the waqf (endowed property). If usurper increases something profitable in the waqf (endowed property) such as a building or a tree, the judge orders him to remove and uproot it if its removal will not harm the waqf land. If it is harmful, the usurper does not have the right to remove it. Rather, the guardian of the waqf owns it for the same value of the destroyed building and the uprooted plants which is paid from the endowment's harvest. The guardian can reconcile against something from the harvest if it is to the interest of endowment. If the usurped land is cultivated, it should be destroyed if the products is not obtained. (Law of Justice and Equity)

- If the usurper add something on it on his own initiative, if it is something that is not property nor have the ruling of property, then the guardian takes it for nothing in against, and if it is something profitable like plants and buildings, the usurper is ordered to remove the building and uproot the trees unless it is harming the endowment by destroying the land or by uprooting trees or destroying the building of the endowment due to removal of its construction, then the usurper is not ordered to do so, rather he is prevented from doing so if he wanted to do so, and the guardian guarantees its value (Al-Mohit al-Burhani, Book of the Endowment, Chapter Twenty: [C: 6, p. 193] The Maktabat Al-Ilmiya, Beirut., Tanqeh al- Fatawi al- Hamidiya, v 1, p 183, Maktabat al-Haramain al-Sharifain, Qetta)

<sup>89</sup> If the usurper has cultivated the fertilized land and its product was close to be reached. The one whose land is usurped does not have to wait until the time of production collection. The usurper shall be forced to uproot his crops immediately and return the cultivated land to the one whose land is usurped. [Durar al-Hukam, vol. 7, p. 567, Maktabat Amir Hamza]

Article: (441)... And if the land is usurped and cultivated, he is ordered to uproot it even if the harvest has not been obtained (Law of Justice and Equity)

<sup>90</sup> Article: (442) (The usurper destroys the endowed house or uproots its trees) If the usurper destroys the endowed house or uproots its trees, he is liable for the value of the constructed building and planted trees and the value of the land if it is not possible to return it to the guardian. If the usurper returns the plot, its value will be returned to him. Law of Justice and Equity.

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hands it over to the guardian, the guardian is obliged to return the price to the usurper.<sup>91</sup>

### **Returning the fruits of usurped land or its similar one**

#### **Article 19:**

If the usurped waqf land is a garden, the usurper who took the fruit from it should return the same fruit, and if it is not available, then he/she should return a similar one.<sup>92</sup>

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<sup>91</sup> Article: (442) (The usurper destroys the endowed house or uproots its trees) If the usurper destroys the endowed house or uproots its trees, he is liable for the value of the constructed building and planted trees and the value of the land if it is not possible to return it to the guardian. If the usurper returns the plot, its value will be returned to him. Law of Justice and Equity.

- If a person usurps the endowed house or the endowed land and destroys the building of the house and uproots the trees, the guardian has the right to make him liable for the value of the trees, palm trees, and the building if the usurper is not able to return them, and he is liable for the value of the building built and the value of the trees and palm trees growing in the land. If the usurper pays the value, and then the house, the land, the plots, and the trees appeared, meaning: the usurper has been able to return the house, loss, and the trees, then the usurper returns the land to the one who endowed it, but the money and trees belong to the usurper, and the guardian returns the share of the land to the usurper. the same is with what is in the store and environment and the fatwas of Qadi Khan, Al-Hindia: [Volume: 2, p. 448].Maktabat al- Rashidia Quetta, Al-Muhit Al-Burhani, Kitab al-Waqf, Chapter Twenty [vol. 6, p. 195], Maktabat Al-Ilmiya, Beirut. And [Masmuat Al- Feqhiya, vol. 31, p 241, Maktabat Amir Hamzah]

<sup>92</sup> Article (443) Law of Justice and Equity

- (Article: 905)... If the usurped property is a waqf property, then the fatwa according to Imam Muhammad is to make the usurper liable for the usurped property. The orphan's property is the same in this regard (Al- Dor Al-Montaqi). Accordingly, if someone usurps the endowed property and it is damaged by a natural disaster while it is in his possession, he is considered liable. The same applies to the property that is belonging to an orphan or ready for exploitation that is also considered liable for usurpation and destruction (Al-Hamavi). A person will be liable with regard to real estate property in the six following cases:

- If the usurped property is an endowment property, the usurper is liable even if it is damaged in the hands of the usurper without any intention.

- If the usurper is judged to be liable in this manner, then he should buy another property with the same value for the endowment, and it will be the waqf as of the first land. (Al-Tahtawi).

- If the usurped property is an orphan's property, the usurper is liable even if it is destroyed in the hands of the usurper without any intension.

- If the usurped property is a property prepared for exploitation, it has liability. [Durar Al-Ahkam Fi Sharh Majalat Al-Ahkam, v 2, p. 553, Maktabat New Sadaqat]

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## **Chapter Six: Validity of Official Documents**

### **Article 20:**

It is required to act regarding documents in accordance with the administrative procedure of the judicial courts, including Article 150 to Article 171. <sup>93</sup>

Details of the aforementioned articles of the administrative procedure of judicial courts are as follows:

### **Article 150:**

Documents are of two types: obligations and contracts. Documents that are subject to Sharia rulings are documents that have been officially approved, signed, and concluded by special officials.

### **Article 151:**

The approval and registration of official documents is done by the court, and the contracts and obligations contained in them are prepared and concluded in the presence of the court board. <sup>94</sup>

### **Article 152:**

The official documents mentioned in article (151) must be written legally by the court in the presence of the contracting parties and capable witnesses, and then they will be signed by the parties and witnesses and will be sealed and signed by the court. <sup>95</sup>

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- And if there are palms and trees on the land of the endowment that the usurper exploited for years, and then he wanted to return the land, palms, and trees, he should return the crops along with them if available, and if they were consumed, he should return their similar ones, and the same is with what is in the store and what the usurper in exchange for the crops. There is a difference in the ways in which he obtained it. The same is environment. Al - Hindia [Volume: 2, p. 449].Maktabat al- Rashidia Quetta, Al-Muhit Al-Burhani, Kitab al-Waqf, Chapter Twenty [vol. 6, p. 195], Maktabat Al-Ilmiya, Beirut.]

<sup>93</sup> If the court records are not clear of forgery or fabrication, then witnesses will be requested to prove its content, and the witnesses will testify on its content. Also: We attended the pleading of such-and-such judge and his ruling, and the aforementioned judge ruled, after the Sharia pleading, in such-and-such manner. [Durar al-Hukam Fi Sharh Majallat al-Ahkam, vol. 4, p 469 Publisher: Dar Al-Kutub Al-Ilmiyah, Lebanon, Beirut]

<sup>94</sup> The bonds that include commitments and contracts are of two types. The first is the bonds that are approved by the officers in places defined for them, and they are called official bonds. Explanation of the Trial Law, p. 272, Article 72.

<sup>95</sup> Article (18), regarding Explanation of the Trial Law, p. 275, states that the papers and bonds that are prepared by the clerk of contracts are sealed and signed by him, the contracting parties, and the witnesses. Without that, the formal document is not considered valid, and the clerk is sentenced to a penalty.

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### **Article 153:**

The documents that have been sealed and signed by the court board should be registered in the court registry office after the necessary approvals, and their registration should also be signed by the board and the contracting parties. <sup>96</sup>

### **Article 154:**

Whenever any mistake is made in the writing of the document mentioned in Article (152), it must be underlined in a way that both the original and the mistaken one can be read, and its correction should be done at the end of the document with the signatures of the contracting parties, witnesses and court officials. <sup>97</sup>

### **Article 155:**

it is necessary to have two qualified witnesses to give testimony in all court documents. <sup>98</sup>

### **Article 156:**

If the contracting parties or their witnesses have legal personality, for example, they are an organization, branch, or office, the presence of their legal and officially

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<sup>96</sup> The papers and documents that are prepared by the clerk of contracts shall be sealed and signed by him, the contracting parties, and the witnesses. Without that, , the formal document is not considered valid, and the clerk is sentenced to a penalty.

<sup>97</sup> Article (1801) of the Majalatul Al-Ahkam.

<sup>98</sup> This is the Sultan's order and is based on precaution. Article 45 of the Trial Law, p. 107: If the plaintiff and the defendant are unknown to the court and do not have any valid documents indicating that the lawsuit being filed is theirs, then it is necessary to get information from the experts of their locality or the expert of their business, or one of their employers or employees, to identify their personality, name, fame, profession, and place of residence.

Salim Baz said in his explanation on this article: It means to prevent trickery and deception, as it happens that the plaintiff deceives and appears with someone other than the defendant, and he confesses what he claims or provide evidence for this, and thus obtains a ruling in the presence of an opponent who did not attend the judicial meeting and did not defend himself. It should be noted that is of great importance, and it is nothing is more important than that. In order to get rid of this problem and similar issues, the law requires anyone who is unknown to the court to prove his identity with a written certificate from the experts of his locality or from the master of his business. It is not sufficient to mention his name, fame, profession, and position in this certificate. Rather, it is necessary to clarify its form in order to avoid confusion. If the court hears the case and decides on it before the identity of the opponent is verified, this does not require annulment or reversal of the ruling. Rather, it creates a problem in the case if the convicted person claims that he definitely did not appear in court and that the one who litigated against the winning party was someone else who decisively entered in the trail meeting. It needs to make research and scrutiny, and the court may not be able to find out the truth except after making effort.



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introduced representative to the court is enough. <sup>99</sup> Of course, the relevant court should prepare a power of attorney for him/her. <sup>100</sup>

### **Article 157:**

Introduction of the representative by an organization and his/her authority to conclude the transaction will be approved through the official letter of that organization. <sup>101</sup>

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<sup>99</sup> If the lawsuit is between the Sunni government and one individual, it is necessary for the government department with which the dispute is taking place to appoint an independent defense lawyer who has knowledge on the case and is aware of the law... In these cases, it is necessary for this defense lawyer to be given a power of attorney stamped with the official's stamp, but it is not necessary that this document must be registered. Explanation of the Trial Law. P 87 Article 41.

<sup>100</sup> The representation in a lawsuit is of two types:

1- By registration of the representation: This is done by registering the defense lawyer in the court in which the lawsuit was filed, or by registering in another court, and presenting the legal proof containing a copy of the registration certified by the Fatwa Department to the court.. The form for registering a defense lawyer in lawsuit is explained below. It is: The client comes with the defense lawyer before the judge and says: I appointed this person to represent me in proceeding of lawsuit with so-and-so. So if the opponent is also present in the court, the judge accepts the representation and registers it even if he does not know the name and parentage of the client. But if that opponent is absent, the judge again accepts the representation if he knows the name and parentage of the client. If there is no knowledge of his name and parentage, the client is required to have two witnesses. If he proves it with these two witnesses, he accepts the representation. Otherwise, no, because it is possible for the client to impersonate someone else's name and parentage and take someone else's money.

2- By proving the representation: The defense lawyer claims the property or debt from the opposite party in his/her presence saying: I am defense lawyer for claiming and requesting the property claimed by so-and-so like deposit or usurped thing. He may provide evidence for the representation whether that person denies the representation or acknowledges it (Al-Tahtawi Al-Anqarawi). If the defense lawyer proves the claim in the presence of the opponent for his client, and say that his client has authorized him to claim and seize every right he has, and defends him in this regard and called him as defense lawyer, so the defense lawyer is not forced, when requesting the right of his client from another person, to provide evidence again to prove his representation. However, if the opponent is not present in the aforementioned manner, then evidence of the representation is not accepted, and the representation is not proven by confirmation of the opponent. (Durar Al-Hukam, Fi Sharh Majalat Al-Ahkam - Part 3, p. 649.), Maktabah: Dar Al-Kutub Al-Ilmiyah, Beirut)

<sup>101</sup> If the lawsuit is between the Sunni government and one individual, it is necessary for the government department with which the dispute is taking place to appoint an independent defense lawyer who has knowledge on the case and is aware of the law... In these cases, it is necessary for this defense lawyer to be given a power of attorney stamped with the official's stamp, but it is not necessary that this document must be registered. Explanation of the Trial Law. P 87 Article 41.

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Of course, the relevant court should prepare a power of attorney for him/her. <sup>102</sup>

**Article 158:**

The documents that prove the identity of the legal representative will be kept in the court office. <sup>103</sup>

**Article 159:**

People who are known to the court are not required to prepare their means of identification. <sup>104</sup>

**Article 160:**

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<sup>102</sup> The representation in a lawsuit is of two types:

1- By registration of the representation: This is done by registering the defense lawyer in the court in which the lawsuit was filed, or by registering in another court, and presenting the legal proof containing a copy of the registration certified by the Fatwa Department to the court.. The form for registering a defense lawyer in lawsuit is explained below. It is: The client comes with the defense lawyer before the judge and says: I appointed this person to represent me in proceeding of lawsuit with so-and-so. So if the opponent is also present in the court, the judge accepts the representation and registers it even if he does not know the name and parentage of the client. But if that opponent is absent, the judge again accepts the representation if he knows the name and parentage of the client. If there is no knowledge of his name and parentage, the client is required to have two witnesses. If he proves it with these two witnesses, he accepts the representation. Otherwise, no, because it is possible for the client to impersonate someone else's name and parentage and take someone else's money.

2- By proving the representation: The defense lawyer claims the property or debt from the opposite party in his/her presence saying: I am defense lawyer for claiming and requesting the property claimed by so-and-so like deposit or usurped thing. He may provide evidence for the representation whether that person denies the representation or acknowledges it (Al-Tahtawi Al-Anqarawi). If the defense lawyer proves the claim in the presence of the opponent for his client, and say that his client has authorized him to claim and seize every right he has, and defends him in this regard and called him as defense lawyer, so the defense lawyer is not forced, when requesting the right of his client from another person, to provide evidence again to prove his representation. However, if the opponent is not present in the aforementioned manner, then evidence of the representation is not accepted, and the representation is not proven by confirmation of the opponent. (Durar Al-Hukam, Fi Sharh Majalat Al-Ahkam - Part 3, p. 649.), Maktabah: Dar Al-Kutub Al-Ilmiyah, Beirut)

<sup>103</sup> According to the explanation of Article 1494 of the Majallat Al-Ahkam: His representation must be proven by a Sharia document in accordance with the established principles. This Sharia document is kept with the Property Acquisition Departments. Durar Al-kukam Fi Sharh Majalat Al-Ahkam, vol. 3, p. 608

<sup>104</sup> But if the thing witnessed for is known and the people know it, then there is no need to define it (Lisan Al-Hukam) Durar Al-Hukam Fi Sharh Majallat Al-Ahkam, vol. 4, p. 350.

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If the contracting parties or their witnesses are illiterate and do not have a seal as well, in this case, the court will use their fingerprints approved by their reference persons and write down their illiteracy status in the document. <sup>105</sup>

**Article 161:**

Official documents are valid in favor of the confessor and his/her heirs. <sup>106</sup>

**Article 162:**

Persons who are mentioned as witnesses in official documents and claim ownership of that property at any other time, then the said official document or bond is sufficient for their obligation. <sup>107</sup>

**Article 163:**

Private agreements and secret contracts that were made during the preparation of official (Sharia) documents or after that by some parties regarding the cancellation of all or some of the contents of the Sharia documents can be observed as valid with regard to their own right and have no effect in terms of other parties included. <sup>108</sup>

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<sup>105</sup> If the two contracting parties are illiterate in a way that they cannot write their signatures or are unable to write their signatures, their signatures should be drawn and it should be mentioned at the bottom of the document, and the contract clerk is obligated to stamp each page of the contract document, p. (275) Sharh Qanoon Al- Muhakamat Al- Huqooqia.

<sup>106</sup> If someone writes a document or write it by a clerk and gives it to another while signed or sealed by him, then if it has been written as usual, means, written in accordance with the formality and custom, it is considered a written acknowledgment and will be valid and enforceable as his verbal statement.

If someone gives a debt instrument while it is written in the manner indicated above and then dies, his heirs are required to pay it from his/her bequest if they acknowledge that the instrument is from the deceased. However, if they deny it, then that instrument shall be valid if the handwriting and seal of the deceased are well-known and familiar for them. Majalat Al Ahkam, Article 1611.

The official documents are considered valid for the two parties, their heirs, and representatives such as the legatee, but it does not prove things that are not related to this issue such as the soundness and physical integrity of the contracting parties, article 74 (Sharh Qanoon Al- Muhakamat Al- Huqooqia., p. 275).

<sup>107</sup> Whoever wants to violate what has done on his part, his effort will be rejected. Durar al-Hukam Fi Sharh Majallat al-Ahkam (1/87), Article (100). And whoever confesses a property for someone else, he does not have the right to claim it for himself or for anyone else. (Tanqih Al-Hamidiyah, 32/2)

<sup>108</sup> If after preparing and sharing an official document between several persons in the manner mentioned above, or during the preparation of this document, some of them agree secretly to conclude a contract intended to nullify all or some of the provisions of the aforementioned official document, then that contract will be

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**Article 164:**

The documents that have no required terms and conditions regarding their preparation are considered as usual documents. <sup>109</sup>

**Article 165:**

Lawsuits against Shariah documents are also based on the Shariah document or the defendant's confession. <sup>110</sup>

**Article 166:**

The judge of the court cannot prepare a document for his father, grandfather, children, brothers, sisters, and workers in the relevant court or accept them as witnesses, experts, witnesses of accident, translators, or editors. <sup>111</sup>

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enforceable only with regard to them, means, the persons signed it not anyone else other than them. Sharh Qanoon Al- Muhakamat Al- Huqooqia, Article 75, Salim Baz, p. 276

Because if it they are considered valid in the favor of persons other than them, the law would have paved the way for deception and forgery. This article continues that if a man buys goods from another one and the sale document is approved by a special officer, then they agree secretly that this sale be in fact a fulfillment sale. in the meantime the buyer buys this goods from another person, the document that the contracting parties concluded secretly is not effective against the second buyer, and the first seller is not entitled to claim sale of the item on the basis of this bond.

<sup>109</sup> The document approved by an official whose duty is not approving, or the responsible official makes negligence in approving, this will be considered an ordinary document if it is signed by both parties or stamped with their seals. Article 73 of Sharh Qanoon Al- Muhakamat Al- Huqooqia.

<sup>110</sup> Article 80 of the Trial Law, p. 284: The lawsuit filed against a document related to the aforementioned disputes must be proven by providing document, the defendant's acknowledgement, or his writing. Salim Baz said in his explanation of this article: and the same is if he claims a debt on some other person due to having a document that includes the debtor's acknowledgment and receipt of the amount of the debt in cash, then the debtor acknowledges the document and states that he did not receive the amount in cash, but rather it is for an invalid rent contract, and that he did not benefit from the rent, then his claim will not be heard except with a document. Or by the plaintiff's acknowledgement or his writing, but if he is unable to prove it, the plaintiff may be asked to swear that he is not lying in his confession based on Article 1589 of the Majalah.

<sup>111</sup> Article (1808) - (It is a condition that the person against whom the ruling is issued must not be one of the ascendants or descendants of the judge and that he must not be his wife or partner in the property on which the ruling will be issued or his employee and the one whose alimony is provided by him. So, the judge does not have the right to hear the lawsuit of any of these people and issue ruling for him). The judge cannot issue a ruling for himself or for someone whose testimony is not permissible in favor of him. If he issues the ruling, his ruling will not be applicable because that would entail an accusation (Durar al-Hukam 4/614)

If the bond is approved by the contract writing clerk who has the authority to approve it, but he approves it in a way that violates the law such as the case when one of the document holders be a relative of types mentioned

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**Article 167:**

The documents of the relatives of a judge should be prepared in the neighboring court. <sup>112</sup>

**Article 168:**

Written documents, such as Official remittances and decrees of the government that have a protected record, and announcements and decisions of the courts that are free of fraud and forgery and are registered in the judicial registry office and given to them by the court or emirate departments are considered as proving documents and are sufficient to prove the claim. <sup>113</sup>

**Article 169:**

Customary documents that have been written and sealed between the parties are valid, like Sharia documents, provided that the parties confirm and acknowledge their seals and signatures. <sup>114</sup>

**Article 170:**

The persons whose customary documents are presented with their seal and signature are obliged to acknowledge their seal and signature or to deny it. Their case will dealt as a case of denier in case of keeping silent. <sup>115</sup>

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in Article 62 of this law, it is not considered an official document (Sharh Qanoon Al- Muhakamat Al- Huqooqia by Salim Bazej, page 274)

<sup>112</sup> Because the draft of the document is a judicial issue, and the judge cannot issue the ruling for himself or for his specific relatives, but rather their disputes and disputes of his relatives should be resolved in the neighboring court, as stated in the explanation of article 67.

<sup>113</sup> Article 90: The written documents are considered as evidence, as said in Anfad that the Sultan's patents, the entries in the Khaqani book, and the notices free of fabrication and forgery that are given definitively by a Sharia and government court after the trial of defendant are all considered sufficient to prove the claim. Sharh Qanoon Usul Al- Muhakamat Al- Huqooqia, Salim Bazej (304).

<sup>114</sup> Ordinary documents between two contracting parties that contain their signatures and seals are officially valid If both parties approve that they have signed and sealed them, or the are proved by the court while having their signatures and seals, then those bonds are considered official bonds. Article 76, p. 277, Sharh Qanoon Al- Muhakamat Al- Huqooqia.

<sup>115</sup> The person who writes an ordinary document while having it sealed or signed is considered obligatory if he/she acknowledges the seal, signature, and handwriting or denies it when the aforementioned document is sent to him/her. If no one does so and remains silent, it is considered a denier. 12 p. (278) Qanoon Al- Muhakamat.

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### **Article 171:**

The heirs of the above persons are not forced to confirm or deny the seal and signature of their heirs, but they have the right to confirm or deny and to have no expression. <sup>116</sup>

Note: Of course, if the handwriting and seal of the deceased were well known, it would be considered valid. <sup>117</sup>

### **The Rulings of Possession (Zulyadi)**

#### **Article 21:**

Long-term possession and undisputed ownership of land that is not part of the abandoned land is the proof of ownership. <sup>118</sup>

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Article (1610): - If someone denies a debt document that wrote it or made it written by someone else in the manner indicating the above writing and gives it to another person in a signed or sealed form while acknowledging that the document is his own document, his denial is not considered valid and he must pay that debt. However, if he denies the existence of the document, his denial is not considered valid, and as the result the document is enforceable if free of any suspicion of forgery or fabrication. However, if the document is not free from suspicion and the debtor denies that the bond is his own one and denies the debt from the root, he shall swear at the plaintiff's request that he is not indebted to the plaintiff and that the bond is not his own one. P. (148) V (4) Durar al-Hukam.

<sup>116</sup> (1) When these seals and signatures are appeared to be of the heirs of the one who issued them and who written the document or their representatives (such as the guardian), they will not be forced to confess or deny. Rather, if they wish, they will acknowledge it, and if they wish, they can deny it, or they will say that they are ignorant of the validity of the signature and seal or their no existence (Qanoon Al- Muhakamat Al- Huqooqia., Article (77).

(2) But if they deny it, then the document is enforceable if the handwriting and seal of the deceased are famous and well-known, meaning that it is proven with fame and frequency that the handwriting and seal are the handwriting and seal of the deceased person. Their denial is not considered valid (Durar Al-Hukam 165/4).

It is mentioned in Atasi 4/665 that: It should be enforceable even if the heir is young or insane, because in that case it is a binding proof, as presented before.

<sup>117</sup> The famousness of the handwriting and seal is sufficient evidence to judge against a person, whether he is alive or dead (Article 101, p. 320, Explanation of the Trial Law)

<sup>118</sup> It is done by placing the hand and is not obligated to show a book of respect and permission. Our Muslim scholars have said that the possession (Zulyadi) is the ultimate evidence for the ownership. Most of the Muslim scholars said in Al-Siraj Al-Hanouti, that it is not permissible for the Sultan to force people to prove what they have in their possession by the evidence, and if he obliges them to do that, there would not be any property left

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## **Referring to administrative and legal procedures of judicial courts**

### **Article 22:**

In cases where there is no ruling on them in this law, proceedings should be carried out according to the administrative and legal procedures of judicial courts.

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in anyone's possession. They also said: the hand and possession for long periods are considered apparently a clear evidence of entitlement. Tanqeh Al-Fatawa Al-Hamidiyah: v: 2, p. 8, Dar Al-Ma'rifa, Beirut]

- The hand (possession), which is the evidence of ownership, see Article (67) and its explanation, which means that someone makes use of the property in his possession without any dispute or opposition from any one. Dorr Al Hukam Fi Sharh Majallat Al-Ahkam, vol. 4, p. 339, Publisher: Dar Al-Jeel]

- The person who is aware of these circumstances and is confident that the aforementioned property is the property of its possessor (zulyad) must testify that it is the property of that person, and this testimony is permissible for him (Al-Shibli); Because placing the hand on the property in this way is the evidence of ownership, and the hand (possession) is the utmost and ultimate evidence that indicates ownership. Because the ownership is not known by the real evidence. For example, if someone saw another person buying something, then by seeing him buying, he would not know the real evidence. [Durar Al-Hukam Fi Sharh Majalat Al-Ahkam: v 4, p. 339].

- There is no doubt that having hand on something is considered as evidence of ownership with no need to provide evidence. Tanqih Al- Fatawa Al-Hamidia: [v: 2, p. 21].

- One of the judicial evidence is issuing the ruling on something that is in the possession of a person, because the having hand (possession) on something is considered apparently as evidence of ownership. Islamic jurisprudence and its evidence [vol. 8, p. 6128], Maktabat Rashidiyeh Quetta. The Muslim scholars agreed in general that the having hand (possession) on something is the evidence of ownership (3). After that, they have detailed that: The Hanafi School of Thought said: the possession and exploitation are among the strongest evidence of ownership, and therefore giving testimony that it is his/her ownership is considered valid. Ibn Abidin said: If the possessor (zulyad) of a land, who received it through purchase, inheritance, or other means of ownership, claims that it is his property and that he pays the tax on it, his/her statement is considered valid and the opposite party should provide proof if his/her claim is valid according to Sharia and the conditions for the claim are sufficient. Then he says: They said that the possession and exploitation are among the strongest evidence of ownership, and therefore the giving testimony on the ownership is valid. Al-Masmauat Al-Feqhiat Al-Kuwaitiya: vol. 43, p. 302.)

The article continues: (625) No one is required to provide evidence for proving what he has in his possession. And Article (498) say:(The possession (zulyadi) is apparently the evidence of ownership.) The possession is apparently the ultimate evidence of ownership. So whoever has the possession is not required to provide evidence on the ownership, nor can be deprived of the ownership except by a established right (Qanoon Al-Adl Wa Al-Ensaf)

Article (1675) There is no consideration with regard to the lapse of time in claims related issues that their benefits are for the public people such as a public road, a river, or pasture. For example: If a Someone possesses a pasture designated for a village and use it for fifty years without dispute, then the people of the village make claim against him/her, their claim would be heard(on 9 Jumada al-Akhirah, year 1293 AH) (Majalatul Ahkam Al-Adliya)

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## **Enforcement**

### **Article 23:**

This law shall be effective from the date of endorsement and should be published in the official gazette, and all laws that have not been endorsed or approved by His Highness Amir al-Mu'minin, may Allah Almighty protect him, are canceled.



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**ISLAMIC EMIRATE OF AFGHANISTAN**  
**MINISTRY OF JUSTICE**  
**OFFICIAL GAZETTE**

- The Decrees of His Excellency Amir al- Mu'minin "The supreme Leader (May Allah Almighty Protect Him)
- Law on the Prevention of Usurpation of Lands and Restitution of the Usurped Lands
- Sharia Principles of the Special Court Dealing with the Cases of Usurped Sultani (Emirati), Public Pastures and Endowment Lands

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