10323 - Rulings on seizing things wrongfully

the question

What is the ruling on taking another person’s property wrongfully (ghasb)?

Detailed answer

Praise be to Allah.

Ghasb in Arabic means to seize something wrongfully. In Fiqh terminology, it means taking the property of others wrongfully, by force.

Ghasb is haraam according to the consensus of the Muslims, because Allaah says (interpretation of the meaning):

“And eat up not one another’s property unjustly (in any illegal way, e.g. stealing, robbing, deceiving”

[al-Baqarah 2:188]

Ghasb is one of the worst kinds of eating up another person’s property unjustly, because the Prophet (peace and blessings of Allaah be upon him) said: “Your blood, your property and your honour are sacred to you.” And he (peace and blessings of Allaah be upon him) said: “The property of a Muslim is not permissible unless he gives his consent.”

The property that is seized by force may be real estate or it may be moveable goods, because the Prophet (peace and blessings of Allaah be upon him) said: “Whoever seizes a handspan of land unlawfully, will surround him to the depth of seven earths.”

The one who has seized anything unlawfully must repent to Allaah and return the seized property to its owner and ask him for forgiveness. The Prophet (peace and blessings of Allaah be upon him) said: “Whoever has done any wrong to his brother, let him seek his forgiveness today, before

there will be no dinar and no dirham [i.e., the Day of Resurrection], when if he has any hasanaat (good deeds), some of his hasanaat will be taken and given to the one who was wronged, and if he does not have any hasanaat, some of the sayi'aat (bad deeds) of the one who was wronged will be taken and thrown onto him, and he will be thrown into Hell," or as he (peace and blessings of Allaah be upon him) said it. If the seized property is still there, it should be returned as it is, and if it is not there, then he must replace it.

Imaam al-Muwaffaq said: "The scholars agreed that it is obligatory to return the seized property if it is still in its original condition and has not changed."

Similarly, he is obliged to return the seized property along with any increase, whether it is connected to it or separate, because that is the growth of the seized property, so it also belongs to the original owner.

If the one who seized the property has built anything or planted crops on the seized land, he has to remove the buildings or crops if the owner asks him to, because the Prophet (peace and blessings of Allaah be upon him) said, "The sweat of the evildoer counts for nothing." (Narrated by al-Tirmidhi and others; classed as hasan). If that has caused any damage to the land, he is to be penalized for that damage. He also has to erase any traces of building or planting that remain, so that the land may be given back to its owner in good condition.

He also has to pay rent covering the period from the time when he seized the land to the time when he gave it back, - i.e., the rent for a similar piece of land – because he unlawfully prevented its owner from benefiting from it during this time.

If he seized something and kept it until the price dropped, he has to make it up to the proper price, according to the correct opinion.

If he mixed the seized property with something else that can be told apart from it – like mixing wheat with barley – the one who seized it has separate it and return it . If he mixed it with something that cannot be told apart from it – such as mixing wheat with wheat – then he has to give back the equivalent, by volume or weight, without mixing it. If he mixed it with something the

same or better, or he mixed it with something different that cannot be told apart from it, then the mixture should be sold and each of them should take his share of the price, in proportion. If the value of the seized goods is reduced in this fashion, and it sells for less than what it would be sold for if sold on its own, then the one who seized it has to make up the loss.

The scholars also mentioned regarding this topic that “all hands involved in seizing property by force are responsible and must guarantee its return.” This means that all hands which received the seized property from the one who seized it must all guarantee to replace the property if it is damaged or destroyed. These hands number ten: the hand of the one who buys it etc.; the hand of the one who rents it; the hand of the one who takes it in order to possess it without paying anything in return, such as one who receives it as a gift; the hand of the one who obtains it to serve the interests of one who is paying him, such as an agent; the hand of the one who borrows it; the hand of the one who seizes it by force unlawfully; the hand of the one who has it under his control such as one who seeks to use it for trade; the hand of the one who marries a woman who was seized by force ; the hand of the one who takes it in return for something without any financial transaction being involved; and the hand of the one who destroys the seized property on behalf of the one who seized it.

In each of these cases, if the second person knows the truth of the matter, and that the one who is giving it to him is the one who seized it unlawfully, then he is also responsible for replacing it, because he transgressed when he knew that there was no permission from the owner of the property. If he did not know the truth of the matter, then only one who seized it in the first place is responsible for replacing it.

If the seized property is of a type that is usually rented out, then the one who seized it has to pay rent for property of that type for the period during which he kept it, because the benefit is something that is to be measured in monetary terms, so he has to repay that as well as returning the property itself.

All of the ways in which the one who seized the property has disposed of it are null and void, because he did not have the permission of the owner.

If something is seized and the owner is not known, and it cannot be returned to him, then he should hand it over to the governor who can restore it to its rightful place, or he can give it in charity on behalf of its owner; if he gives it in charity then the reward for that will go to the owner. In this manner the one who seized it wrongfully may be absolved.

Wrongful seizure of property is not restricted only to taking it by force; it may also include taking it by way of false dispute or false oaths. Allaah says (interpretation of the meaning):

“And eat up not one another’s property unjustly (in any illegal way, e.g. stealing, robbing, deceiving), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully”

[al-Baqarah 2:188]

The matter is serious and the reckoning will be severe.

The Prophet (peace and blessings of Allaah be upon him) said: “Whoever seizes a handspan of land unlawfully, will surround him to the depth of seven earths.”

And he (peace and blessings of Allaah be upon him) said:

“If I decide in a person’s favour mistakenly concerning that which is his brother’s right, let him not take it, for I am giving him a piece of fire.”