

13718 - Rulings on missing persons

the question

What should a person do if he finds a lost child?

Detailed answer

Praise be to Allaah.

Rulings on missing or lost persons are connected to a large extent to the rulings on lost property, because (in Arabic) *luqtah* (lost property) refers to property that is lost, and *laqet* (lost person) refers to a person who is lost. This indicates how the rulings of Islam cover all aspects of life in a way that is far superior to what is known in the modern world where orphanages and refuges are set up to take care of orphans and old people. An example of this is how Islam takes care of the *laqet* (lost person), i.e., the child who is found cast out or having wandered away from his family, and his lineage is unknown in either case. The person who finds him in this case is obliged to take him in, as this is *fard kifaayah* – if some Muslims do it then the rest will not be counted as having sinned, but if none of them do it then they will all be sinners, if they could have taken him in, because Allaah says (interpretation of the meaning):

“Help you one another in Al-Birr and At-Taqwa (virtue, righteousness and piety)”

[al-Maa'idah 5:2]

The general meaning of the aayah indicates that the lost child should be taken in, because this is part of cooperating in righteousness and piety, and because taking him in is saving his life, so it is obligatory, like feeding him if he is in need and saving him if he is drowning.

The lost child is free in all aspects, because the basic principle is that people are free, and slavery

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is the exception; if a person is not known to be a slave then the basic principle is that he is not a slave.

Whatever money is found on him or around him belongs to him, based on what appears to be the case, because he has it in his possession. The one who found him should spend on him from this money, within reason, because he is his guardian. If he did not find any money with him then his keep should be paid for from Bayt al-Maal (the treasury of the Muslims), because 'Umar (may Allaah be pleased with him) said to the one who took in a lost child when he found him, "Go, he is free and you are his guardian, and we will spend on him" - i.e., from the Bayt al-Maal of the Muslims.

According to another version, 'Umar (may Allaah be pleased with him) said: "And we will pay for his breastfeeding," i.e., from the Bayt al-Maal. So the one who finds a lost child does not have to spend on him or on his breastfeeding; that is an obligation on the Bayt al-Maal. If that is not possible, then those Muslims who know about him have to spend on him, because Allaah says (interpretation of the meaning):

"Help you one another in Al-Birr and At-Taqwa (virtue, righteousness and piety)"

[al-Maa'idah 5:2]

And because not spending on him will lead to his death, and because spending on him is like supporting him or offering hospitality to a guest.

The ruling with regard to his religion is that if he is found in a Muslim country or in a kaafir country in which there are many Muslims, then he is a Muslim, because the Prophet (peace and blessings of Allaah be upon him) said: "Every child is born in a state of fitrah (the natural state of man, i.e., Islam)." If he is found in a country which is completely kaafir, or where there are very few Muslims, then he is a kaafir, following the (religion of) that country. Custody of him belongs to the one who

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found him, if he is trustworthy, because 'Umar (may Allaah be pleased with him) approved of Abu Jameelah keeping the lost child when he found out that he was a righteous man, and he said, "You are his guardian," i.e., he had guardianship of him because he found him first and thus was more entitled to that.

The one who finds him should spend on him from what he found with him of money or other things, because he is his guardian, so he should spend on him in a reasonable manner.

If the one who found him is not fit to take him into his care, because he is immoral or a kaafir, and the lost child is a Muslim, then he should not be left in his care, because the immoral person has no right of guardianship and the kaafir has no right of guardianship over a Muslim; and because he will tempt him away from his religion. Similarly the child should not be left in the care of his finder if the latter is a Bedouin (nomad) who travels from place to place, because that is tiring for the child. So he should be taken from him and given to one who is settled in one place, because placing the child in a settled environment is better for his worldly and religious interests, and it provides a better chance for him to find his family and know where he comes from.

In the case where a lost person dies or is killed and diyah (blood money) is to be paid, whatever wealth he leaves behind and the diyah, if applicable, are to be given to the Bayt al-Maal, if he has no heirs to inherit from him such as his own children. If he has a wife, she gets one-quarter of the inheritance.

In the case of murder and aggression, his wali (next of kin) is the ruler, because the Muslims will inherit from him, and the ruler is their deputy. So he may choose between qasaas (retaliation in kind) or diyah (blood money) to be given to Bayt al-Maal, because the ruler is the next of kin of the one who has no next of kin.

If (a lost child) is deliberately injured, but not killed, he should wait until he reaches maturity, then he may retaliate in kind or forgive. If a man or woman claims that the lost child is his or her child,

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he should be regarded as such, because that is in his best interests, as it connects him to his lineage and no harm is caused to anyone by doing so. This is subject to the conditions that only one such claim is made and that it is possible that the child belongs to him. But if more than one person claims him, then priority should be given to one who has evidence. If none of them have evidence, or they have conflicting evidence, then he and they should be shown to people who have experience in detecting family resemblances, and whoever they decide he most closely resembles is the one to whom he should be given, because 'Umar (may Allaah be pleased with him) passed a judgement to that effect in the presence of the Sahaabah (may Allaah be pleased with them). Those who have experience in detecting family resemblances can tell lineage by resemblance, and the word of one such person is sufficient; this is subject to the condition that he be male, of good character and with a good track record.