

288543 - She visited a garden in a foreign country, and took some cuttings from a tree to plant them in her country; is this regarded as stealing?

the question

I travelled to a non-Muslim country, and I took some cuttings from a tree in a garden that we paid to visit, so that I could plant it in my country and I did plant it. Now, approximately two years later, I feel guilty and regret it very much, and all my affairs have become difficult in all aspects of my life. It is possible that what I did may come under the ruling on stealing, but I do not know. What is the ruling? What should I do? Should I carry on taking care of it, or should I destroy it, or plant it in a public place? What is the expiation?

Detailed answer

The basic principle is that one should not transgress against property or wealth, either public or private, except with the permission of the owner or caretaker, so long as it is not something small or insignificant that people customarily overlook, because what is customary ('urf) carries weight in sharee'ah, and customary permission is like verbal permission.

Ibn Qudaamah (may Allah have mercy on him) said regarding a wife giving something small from her husband's wealth in charity without his permission: Customary permission takes the place of actual permission, so it is as if he said to her that she may do this. But if he told her not to do that, and said: Do not give anything in charity, and do not donate anything, small or great, from my wealth, then it is not permissible for her to do that, because clearly prohibiting something overrides customary permission.

End quote from al-Mughni (4/350).

In this context, we may note the view of the fuqaha' regarding the permissibility of doing tayammum ("dry ablution") using earth that belongs to someone else, because according to custom that is overlooked.

Ibn Muflih (may Allah have mercy on him) said: If someone does tayammum using earth that belongs to someone else, that is permissible according to the apparent meaning of their words, because permission to do that is something that is usually and customarily given, like praying on (another person's) land. Hence Ahmad said to the one who asked him for permission to write using his ink: This is foolish piety. But he himself asked permission in another instance, so al-Qaadi and Ibn 'Aqeel understood this as referring to him wanting to write a great deal. And the Prophet (blessings and peace of Allah be upon him) did tayammum by first placing his hands on a wall, which was interpreted in the commentary on Saheeh Muslim as meaning that the wall belonged to someone who knew him and would give him permission to do that. Or it may be understood as meaning that if the earth (soil) belongs to someone else, the owner would customarily give permission.

End quote from al-Furoo' (1/296).

But if these cutting are of value, and people's taking them is not something that people would usually overlook, or if taking them would cause damage to the place, or could cause obvious damage to the tree, or would impact the purpose of beautification for which the tree was planted, or people would keep taking cutting until the tree was damaged, then based on what is mentioned above it is not permissible to transgress against it in any way.

Based on that, you should apologise to the caretakers of the garden and offer to pay them back for the value of the cuttings, if that is possible.

If you are afraid that telling them would lead to negative consequences, then you must give them the value of the cuttings even if you do that without their knowledge. You can do this by buying something that the garden needs, or by putting the money in the garden's account, or by giving the money to someone who can make sure it reaches them without exposing you.

See the answer to question no. [47086](#).

Dr. Ahmad al-Hajji al-Kurdi was asked: Near my house there is a place where soil belonging to the city is dumped, and they use it for planting flowers and gardens near my house. I took a small amount of it for my house, three flowerpots' worth, which is equivalent to five liters; it is a

mixture taken from separate piles of soil and fertiliser, when I then mixed and put in the flowerpots. I do not know whether that is halaal or haraam. I decided to return the soil, because I felt uncomfortable about what I had done. I returned what I took, but it was originally separate, and I put back what I had mixed from the two piles. Is what I did acceptable?

He replied:

You have to return what you took, or something of equivalent value. I ask Allah to guide you.

End quote.

And Allah knows best.