

Effects of Loss of Property Dedicated in Shiite Jurisprudence

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Abstract

Loss means the loss of their property or significant benefits that achieved or caused by an accident or by human agency. However, if the property endowed with the human factor out of it refers to waste. License suspended comes to making money. The property loss caused by, excess or negligence pursuant to rule loss caused liability. The phrase "loss" the rule governs the prodigal waste of the public, including the founder, the beneficiaries of the endowment and the third party. It ruled as to guarantee the realization of wasting money if suspended, each of these, there are some differences. This difference in judgment on liability, the acquisition disagreed on how aware or beneficiaries of the endowment of the property devoted to suspend the entire contract on the one hand and dedicated to) limit or continue) arises.

Keywords: Waste, loss, dedicated, aware, guarantee

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Introduction

Dedicated is one of the legal establishments of Islam in history have material and spiritual benefits for the Muslim community. Dedicated nature, it is appropriate to suspend financial survival benefit over time gradually used. However, it is possible for any reason; the property exposed to injury or loss. However, in the event of injury or loss of dedicated property considered by holy legislator from the early Islamic centuries, since the legislator to avoid deterioration and progressive destruction of property, and the supply of endowment equity and those who benefit from it, to dedicate considered a trustee and observers. This determined the supervisor and trustee, has the preventive aspect, to the extent possible, any financial endowments not dispensed and has cured aspect, if for any reason the dedicated property in whole or in part in ruins, supervisor or trustee, and choose best practices for maintaining interest and dedication of its owners. However if the dedicated property or the interests of its purpose, in whole or in part is destroyed, what works in terms of jurisprudence are applied, questions that this study tries to answer it.

First topic: Wasted Words:

The first speech: wasted in word and phrase:

A. Word:

Waste in the word means destruction and loss. In the Al-Ain book that is most traditional dictionaries is stated: "Wasted: Al-Talaf: (Khalil Ibin Ahmed, 1410, p. 120). This means in other dictionaries have mentioned (R.K. Ibn Manzor, 1410, S 18 and Tarihi, 1409, p. 30) and said Laghavin must agree on the meaning. In some Ma'ajem it is written in connection with the term "corruption and waste in the dictionary sense of the interests of the purpose of the object "(Fatolah, 1415).

B. Idiom:

In the case of this term in law and jurisprudence, certain terms have not been produced, a technician, the literal meaning of the corruption and loss property considered (R. k. Jafari Langroodi, 1999, p. 177 and Bojnordi, Bitu, p. 294). Thus, the term waste said, the loss means loss of property or the rational and legal interest spontaneously, or to cause accidents.

Second speech: waste tool

In a divided, waste divided into two kinds of causes:

A) Spontaneous or in the event for the man that it does not interfere with the passage of time, such as building damage or garden caught fire due to the phenomenon of lightning.

B. The loss of human like cutting trees or destroys buildings.

Sometimes, despite the possible financial and productivity benefits, the legislator, a person or persons of any seizure of property prohibited. In terms of jurisprudence on such a prohibition, waste law applied. Some also have written in this regard: (Abdel Moneim, 1408, pp. 226 and 227)

In addition to funds that are subject to destruction and corruption exposed waste can be twofold, divided:

A. Human waste or a member of the crime called in legal terms and in the amounts of blood money and death discussed.

B. The loss of property

Some have written in connection with the division (ibid., P. 267). It should be noted that both types of waste in the first division and second kind of division it has been a matter of discussion in this study, unless the property devoted, at present, has no realization.

Third speech: the difference waste and loss

Jurists, waste used against waste and sense of the word is eliminate or corruption by establishing the human factor. Therefore, jurists, if someone other than the owner, other financial assets such as a house or garden or interests considered, it deliberately destroyed by excess or negligence to the extent that it applies to non-financial loss, know subject to loss rule.

According to above, it must be said that in legal sources what has been considered liability tool, is loss not waste and squandered by itself, does not guarantee a situational judgment (R. K. Heli, 1410, p. 444 and Najafi, 1988, pp. 437- and Ameli 432, 1413, p. 160)

The second topic: the legal impact of waste on dedicated property

The first speech: Types of waste

In general, waste in the dedicated property divided into two categories wasted exact and lose interest because interest is also one of the examples of property. This argument also extracted from the words of Sheikh Azam Ansari. He also said the definition of sale (Ansari, 1415, p. 7). As can be seen, Sheikh Ansari nature swap sale and the properties own business and on the other hand, believe in change, but change can be profitable and do not have to be exact.

The realized loss exact on the dedicated property imagine two ways

A. General waste: it means dedicated property devoted generally, such as building destroyed by an earthquake or fire caused by lightning or dry garden subterranean water due to drought. While what has been dedicated to the trees or buildings or subterranean water is inside and the earth not dedicated to waste assumption of course is where things left endowments or in the case of survival, the potential profit is not high to dedicate or sale and waste partial considered.

B. Partial waste: If overall financial position to lose, but to lose competency-profit dedicated to the building of the house such as endowment over time and even part of it is damaged or worn endowed trees in the garden and but drought dry wood or building materials available. In this case, they wasted is partial waste.

Second speech: Research in the words of scholars associated with waste sentence:

A. The expression of votes

If the dedicated property general expired, devotion and dedication contract ends because it canceled such as land dedicated to construction without destruction it. Saheb Javaher intercepts in this regard says: (Najafi, 1988, p. 110). However, the endowment partially dispensed, if the sentence on devotion and dedication to the survival of the dialogue between scholars located. In this case, some scholars devote the rest of your knowledge and a sense of lost property do not cease. Research solution approach in this connection says (Mohaghegh Heli, 1408, p. 174) martyr Thani intercepted in Masalek, damage due cause for invalidity dedicated unknowingly and exposition word of Mohaghegh says (martyr Thani, 1413, p. 398). Some jurists considers in detail and have made clear if the conditions explicitly or implicitly understood endowed with a partial loss dedicated to disappear. Such a case is within the waste of property endowment such as the home for living or for the use of the fruit of the tree, which dedicated to the destruction of home or drying tree, dedicated to disappear.

However, if the benefits not known, and it remains dedicated to its own home field and tree trunks had consecrated remains dry. In this connection Saheb Arveh says: (Yazdi, 1928, p. 246)

B. Express arguments of the parties

1. Because the believers to survival devotion

Believers of survival to devoted on the assumption that the waste in question is part of the property cease with the loss of interests or the interests of the temperate to understand, to the loss of important interests into consideration, the reason for the permit is not for sale. Costs and other benefits shall cease considered as property. Therefore, you still have the same survival endowments; along with the gradual exploitation of the benefits of the concept and spirit constitute an endowment contract. In addition to this, the narrative because (Ameli, 1408, p. 185 and Kleini, 1986, p. 37) is common and says buying and selling endowment is not allowed, the interests temperate and that it shot down or not, and out of the common and need for a specific purpose. In this position, there is no particular reason.

2. Because the believers in detail

Believers in detail the problem for his theory have a basis and that basis is to consider undertaking aware of the direction in which the property is devoted to the case. Because these groups are aware of the requirement to base the intention of the benefit for a while suspended and lack of it noted and the dedication of those traditions established dedicated circuit dedicated people know good like Imam Hasan Askari (as) in the letter was in Safar (Tusi, 1407, p. 129). According to the grounds is whether aware, when a dedicated, suppressors also observed a particular interest or not. In the case of the loss of this particular benefit from the same endowments, devoted to the same subject matter and subject to the benefit is suspended and is considered destroyed ruled out due to the dedication and contract, the revoked. If he was not aware of the specific, interest of the contract will be rest devoted. According to believers in detail if it had recognized the special interests, subject, dedication, total suspended while the benefit is taken into account and when it is desired for lost profit, dedicated to the subject, has vanished; because of the loss, the destruction of total devotion is considered null and over. On the contrary, special interests are not aware that in this case although the lost interest temperate because of the interest in the subject matter of the contract, not if it has not committed and take advantage of the wealth in other cases there are suspended and not allowed to sell its mandate dedicated to survival. Third speech: Review: In examining the words of scholars associated with the loss of part of the property suspended sentence, it may initially seem that scholars in this field are two different ratings, but with precision and accuracy of the results obtained that believers are more detailed, in fact, assumed the founder's tradition in the dialogue have in place. In other words, those who believe in the presumption referred dedicated to survival and aware of tradition, such promises have opted for

such a hypothetical accepted by the believers in more detail as well. In other words, believer's detailed narrative that does not conflict with tradition and the second version considered as a special carrying case that condition not known or understood the direction in which it will cease the use of the property. In support of this argument, according to explanation of Sheikh Tusi and Ibn Idris said solution is useful: Sheikh Tusi says: (Tusi, 1417, p. 552) means that when the palm tree of the garden endowed, is uprooted or broken trees, the tree is allowed to sell it is because we permit sales the removal of the tree, but to sell it will not be possible. Because it is aware of the condition has sharply subsided and it means there is no hope of return and restitution. Response of Ibn Idris Hilli (Ibn Idris Hilli, 1410, p. 167) allows removal of the tree without selling it. Like the tree, bridge construction and other use as it can be tree while the tree remains the same and everyone that he dedicated the tree to sell it can be no used it. As can be seen above problem and response application forms and answers are devoted to the possibility of using financial criteria. These criteria cease as possible are aware of the benefit. In this connection in the example, different ways of aware portrayed:

The third topic: wasting dedicated property:

As mentioned, the word "loss" versus "waste" and the loss of property where the work is done by the human factor. Property loss from two directions discussed:

- A. From the deterioration and destruction of property donated
- B. Liability or non-liability for spendthrift

The first speech: exact destruction or loss of endowment property interests:

- A. All the same loss or suspend financial interests:

It is obvious that in case of loss while suspended entirely devoted to the acceptance and effectiveness of invalidity dedicated. Because as mentioned in the word of Saheb Javaher, with the loss of wealth wed in general, subject to the conclusion of such act dedicated, separate identity of the property does not cease, and in the meantime, without any distinction between special devotion and dedication general sequence effect would be invalid. Saheb Javaher in the book invaluable, themselves about endowments committed a crime, and as his retribution, it written: (Najafi, 1988, p. 96). However, according to this it is necessary apparently the word Kalam refers to a case where a person the endowment is relevant, with his death, otherwise if it is dedicated to the rule as consecrated, without defining the general, the case of the general waste is not the same. However, with the loss of other alternative is the same price. The general loss of interest in suspense for two: First, the loss of all benefits resulting from the loss of all but the property is suspended. As well as general waste, general waste, but also the benefits will follow. The effect is the same, as the effect of general waste dedicated to the end of the nullity of marriage.

Second, a general loss of interest, but suspended that part of the phone how to achieve this and the work associated with it while suspended in case of partial loss will be expressed.

- B. The loss of the exact component or property interests:

Suppressors as discussed above, the same general waste, general waste, but also will have its benefits but sometimes suppress the partial loss, the conventional will disproof of the general interests like animals that cease slaughtered. In this case, according to the same dedicated, property loss, partial loss with interest is the total loss of common interests. In addition, sometimes wasted little while suspended, lost profits committed, and sometimes loss of benefits will follow. (R.K. Ameli, 1412, p. 265) in the case of loss of property cease detail, while returning it to the first dedicate possible, restore it and turn to the first case it is necessary to permit or not permit the conversion of endowment does not, in other words the permit or not permit conversion, the impossibility of restoring the accessories. Some have written about it, "In the sense of devotion, especially destroyed or damaged and as it disappears with such as the endowment of trees and roots become dry, and as disappears with it. It cease to ground home becomes, in this case if the civil state and the building and restore it to the first case may be, cannot be sold, but if such action is not possible, the sale and exchange, the two sides, but there are two words. In addition, promise is preferable not to permit conversion" (Kebisi, 1987, p. 35) Conversion of devotion, related to the specific break and accessories of the impossibility of restoration. Therefore, only in this kind of delay discussed. In addition, Article 88 of the Civil Code states that in this connection: "If the endowment sale is damaged or fear that it will lead to failure, so that it may be beneficial if it is allowed that development is impossible, or who are not present for the development" (Imami, Bita- p90). However, the assumption that the loss, allowing partial restoration is not possible to devote the first case, the permissibility or impermissibility of sales and convert it happens for scholars in the "dedicated sale" debated. (R.K. Mofid, 1413, p. 653 and Tusi, 2008, p. 300 and Tusi, 1417, p. 551, Tusi, 1400, p. 599 and Yahya bin Saeed, 1405, p. 372 and Seyed Morteza, 1415, pp. 468 and Halebi, 1409, p. 325, Ibn Hamza, 1408, p. 370 and Sallar, 1404, p. 197 and Helli, 1403, p. 11) It should be noted that the permit or not to permit the sale in this case, the break is special, but interruption general convertible sale, as they devote no one does not hold public property or property of interest for those who may not be achieved. Sheikh Ali Khomeini says in this regard: (Ansari, 1415, p. 54)

Second speech: the liability of property loss cease

Before engaging in this discussion is to be noted that in destroying another person's property that will guarantee the realization of the subject and as a verdict that the resulting's property, will cease, and is no difference between is the property. In these cases, the liability tool must assume for damages and losses realized cope. Allameh Helli says about liability tool (Heli, Tazkereh, vol. 2, p. 374). The phrase "waste" at the base of the prodigal waste oversees the public, including the founder, the beneficiaries of the endowment and the third party. As the phrase, "other assets" such as property and other assets suspended. Of course, it ruled as to guarantee the realization of property loss or suspended because of extreme negligence, in relation to each mentioned, there are some differences. This difference in judgment on liability, the acquisition disagreed on how aware or beneficiaries of the endowment of the property devoted to suspend the entire contract on the one hand and dedicated (or continued

limited availability) arises. It explains that: a person other than the prodigal third party is aware, or suspended against. Since this is such a person generally alien to the endowment, certainly guarantee property or benefit from dedicated wasted, i.e., if the property cease to be waste as a result of extreme negligence or if the property is fungible and if the property like it is, it's cost toggle. But if they cease, loss of property, be aware of the sponsor to discuss whether he has dedicated owners, it should be clear that with dedication, the property is generally aware of the property dedicated to the exits, or after the property is still aware? In examining this should be no doubt that the same endowments, to dedicate the property is aware, because this devotion, to a property, only the owner being aware of property is possible (Khoei, 1413, p. 182) but must examine the integrity of dedicated, conscious connection with what is consecrated property. In this connection also be said, know how to communicate with the property dedicated to the three ways imaginable:

A. It remains suspended on the property known as Maslob profit, this means that although suspended while the property is aware of his right to enjoy suppress symptoms but it will not be the same. As property that leased, the lessor is the owner of the property leased, but it does not have the right to enjoy the benefits. It seems, then, to the extent assumed, remain among the jurists are not allowed.

Also dedicated to the beneficiaries of the endowment property, it knows to be a foreign property.

It seems property deterioration aware of the endowment, believed jurists.

Saheb Javaher on decision of Shi'a jurists said: (Najafi, 1988, p. 88 and Iravani, 1427, p. 554)

C. The same dedication, without the jurists of this situation remains the owner of the property view.

Some jurists in this regard followed in detail the way, thus the general endowment, such as mosques, schools, etc. are special devotion dedicated to the difference between it and only break of the first considered property and endowment. The second type is those believe, while aware of the suppression of the property transferred to the beneficiaries of the endowment property (R.K. Mughniyeh, 2006, p. 558 and Ameli, 1410, p. 186)

Due to this, in connection with the sentence said: if the first payment selected in the property knows, it said that, although aware of the principle of financial sponsor because his wealth wasted, but the warranty aware than the benefits that it was not in doubt. In addition, if the latter allowed accepting that we realize after finishing the endowment contract, such as alien property is suspended, and ordered him to guarantee the same manner as the third party. But in the third aspect, if possible accurate picture of the special endowment said that in this hypothesis, it is aware of the financial interests of the owners dedicate to strengthen the guarantee because the interests of the property. Regardless of the property: someone inside or not allocated to specific individuals and as mentioned, one of the examples of property is profit. Therefore, rule Atalaf flows. The book titles Faqih in this regard says: (Hosseini Maraghi, Bita, p. 438). This means that waste only on the Lords and the principle of money now but in the interests both dissipation is true. Then it is true that the interests of bodies and the property person might strengthen it in the context of interests or the interests of efficiency it is waste. Finally, the property loss consecrated by the suspended or the dedicated owners carried out in different forms. We also need your opinion in relation to the acquisition of the property owner or owners of the endowment are clear. However, it given the benefit of a person of dedication and devotion limited to the same person, although the extremes of waste and the use of donated property held accountable. However, he did not guarantee that in this case the difference between dedicated the title to the property owner or hide it, because ultimately if there is no transfer of property to him, the benefits of dedicated property bequeathed to him. Yes, it is possible to guarantee the welfare Maslob property and owner is responsible, but as stated then, a mere assumption and not discriminate among jurists. But if the endowment is limited and wasteful, benefiting devote only limited time devote to the person's life or in the life and the people he needs to reach the next generation, wasteful, or just interest is the guarantor of the principal and interest by excess or negligence destroyed). According to the owner of the conflict in the Holy cease mentioned (because the waste provisions of the rule non-financial loss (including the same and interest) had met in this case. The sentence is to guarantee that the effect of the loss associated with the rule applied. In addition, it noted that no matter who is in another, person's property intentionally wastes and loss from the extremes, otherwise if there is no excess or negligence, not wasteful guarantee noticed this matter, by the principle "no liability". It was about the discriminations against and threatened in this way is that if the person who destroyed property other than the property is honest of the owner and founder of the other person that is honest, not a spendthrift permitted. The property considered waste and waste provisions treated.

Conclusion

Loss meant the waste of the property or its significant benefits, one of the states that suspended on the property, which is devoted to the subject of the contract. Wasted in the sense that it can be spontaneous or caused by an accident or by humanizing factor. However, if the property endowed with the human factor out of it refers to waste. Realization of waste on the property, both major and minor suspended imaginable. If the property is of suspended general contract expired devotion and dedication devoted contract ends because it canceled. However, the endowment partially dispensed with, if the verdict on the state of conservation of the property and lack of dedication among jurists is under discussion. Dedicated to the lost and wasted in discussing such a case the dedicated property. However, if the benefits not realized, we remain dedicated. With precision and accuracy of the words and arguments of these two groups of scholars obtained the conclusion that the believers in detail, in fact, aware of tradition assumed to have the dialogue in place. In other words, those who believe in the presumption referred dedicated to survival and aware of tradition, such a promise has chosen and believers in detail accept this assumption as well. The effect expressed in the loss of property dedicated to the discussion of waste from two directions discussed: a. Dedicated to the destruction of property. B The issue of liability. First mentioned in the discussion of ways: in the case of loss while suspended entirely devoted to the acceptance and effectiveness of invalidity will be dedicated. And if the financial loss is partially suspended, if returning it possible to devote the

first case, the restoration is necessary, but the assumption that waste, details and possible restitution is not possible to devote the first case, the permissibility or impermissibility of sales and conversion it happens that scholars dedicated to the "dedicated sale" debated. In the case of liability was told to suspend financial loss (waste) can be suppressed by the Holy or third party is aware, or if they deliberately waste and excess or negligence of the prodigal done, to guarantee the sentence. A person other than the prodigal third party is aware, or suspended against because such a person is very alien to the dedication. It certainly guarantee that property or benefit that is dedicated to waste and a waste of the property when endowments, be aware, to guarantee sentence he stopped on his relationship with the property endowment, the endowment is conceivable that was expressed in this connection in three ways: (1) utility property as Maslob your property rent. 2. The property deterioration 3- jaw-owned property does not recognize the holy suspended. The first aspect selected if the property appreciates the founder of the original financial sponsor because their property has destroyed, but the warranty aware of the benefits that was not in doubt. If you accept the second case, aware of all the endowment contracts, such as alien property is suspended, and ordered him to guarantee the same manner as the third party and if possible a good idea third special endowment said that in this case also aware of to strengthen the financial interests of the owners of the endowment is toggled. Finally, if the property loss consecrated by the Holy suspended or done the same dedicated owners, different forms. In addition, your comment in connection with the acquisition of the owner property or endowment of owners is clear.

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