

GLOSSARY OF TECHNICAL AND OTHER TERMS USED  
IN THE TREATISE.

TURKISH—ENGLISH.

*Adi* (عادی)—Customary (Art. 41).

*Ahfad* (احفاد)—Grandchildren (Art. 22).

*Arazi Kharajîé* (اراضی خراجیه)—One sort of Mulk land, being land left at the time of the conquest in the hands of non-Mussulman owners (Land Code, Art. 2). On the death of the owner without heirs it belongs to the Beit-ul-mal and becomes subject to the same Law as Arazi Mirîé.

*Arazi Mevat* (اراضی موات)—One sort of waste land. (See Land Code, Art. 6.)

*Arazi Memluke* (اراضی مملوکه)—Land possessed absolutely, land held in fee simple.

There are four sorts:

1. Building sites within a town or village and places on the borders of towns or villages, considered necessary to complete a habitation, being at most half a donum in extent.

2. Land separated from Arazi Mirîé and made Mulk in the manner hereinafter described.

3. Arazi Ushrie.

4. Arazi Kharajîé.

*Arazi Mirîé* (اراضی میریه)—A class of lands, the reversion (riqbe) of which belongs to the Beit-ul-mal, and of which the transfer and grant of possession is carried out by Turkish Government.

*Arazi Ushrie* (اراضی عشریه)—Land given and distributed at the time of the conquest to those who had seized it.

On the death of the owner without heirs it belongs to the Beit-ul-mal and becomes subject to the same law as Arazi Mirîé.

*Avariz Vaqfi* (عوارض وقتی)—Vaqf for the poor of a neighbourhood (Art. 36).

*Bedeli Firagh* (بدل فراغ)—Money consideration for a sale (Art. 17).

*Beit-ul-mal* (بيت المال)—Government Treasury.

*Berat* (برات)—Commission, Letters Patent.

*Bezestan* (بازستان)—A covered market place for the sale of valuable things.

*Chiftlik* (چفتلك)—A farm.

*Dafter Khaqani* (دفتر خاقانی)—The office where the real estate registers are kept.

*Dhuriyat* (ذريت)—Children and grandchildren (Art. 24).

*Dzihet*—See *Jihet*.

*Ehli Vezaif* (اهل وظائف)—People who receive salary and victuals from a vaqf (Art. 21).

*Evlad Sulbiye* (اولاد صلبیه)—Children (Art. 23).

*Evqaf* (اوقاف)—Plu. of vaqf (Art. 2).

*Evqaf Mazbuta* (اوقاف مضبوطة)—Vaqfs administered directly by the Minister of Evqaf (Art. 33).

*Evqaf Mulhaga* (اوقاف ملحقة)—Vaqfs administered by a special trustee under the supervision of the Minister of Evqaf.

*Evqaf Mustesna* (مستثنى اوقاف)—Vaqfs administered by special trustees without the supervision of the Minister of Evqaf.

*Faqir* (فقير)—Poor.

*Farigh* (فارغ)—The alienor of property (Art. 17).

*Firagh* (فراغ)—Alienation of property (Art. 17).

*Eiragh bedeli* (بدل فراغ)—Money consideration for alienation (Art. 17).

*Eiragh bil vefa* (فراغ بالوفا)—Mortgage (Art. 19).

*Firagh gati* (فراغ قطعی)—Final alienation (Art. 18).

*Gedik* (كدك)—Tools, &c., on vaqfs (Art. 40).

*Ghairi Lazim* (غير لازم)—Revocable (Art. 4).

*Ghalle-i-vaqf* (غله و نف)—The income of a vaqf (Art. 5).

*Hajj* (حج)—A pilgrimage.

*Hanefi* (حنفی)—Of the Hanefi Sect.

*Haremeyn Sherifein* (حرمین شریفین)—The Holy Cities—Mecca, Medina.

*Hujjet* (حجیت)—A title-deed.

*Huquq* (حقوق)—Rights, appurtenances of real property.

*Huquq tessaruf* (حقوق تصرف)—Right of using and disposing.

*Ijare* (اجاره)—Rent.

*Ijare mist* (اجاره مثل)—Equivalent rent, rent equal to the value to let of the property, rack rent, fair rent.

*Ijaretein* (اجارتین)—Two rents (Art. 35).

*Ijareteinlu* (اجار تینلو)—With payment of *Ijaretein* also written *Ijareteinle*.

*Ijare Vahide* (اجاره واحدہ)—One rent (Art. 38).

*Ijare Vahidelu Evqaf* (اجاره واحدلو اوقاف)—*Evqaf* let at a simple rent, Art. 38.

*Ilam* (اعلام)—Judgment of a Sheri' Court.

*Imam* (امام)—A leader in prayer.

*Imarat* (امارات)—Poor houses, soup kitchens.

*Intigal* (انتقال)—Inheritance, succession.

*Istibdal* (استبدال)—Exchange, Art. 31.

*Istighlal* (استغلال)—A mortgage with the condition that the mortgagor should become tenant of the mortgagee, Art. 20.

*Jabi Vaqf* (جابی وقف)—The collector of the income of the *vaqf*, Art. 12.

*Jami* (جامع)—A mosque.

*Jihat* (جہات)—Plu. of *Jihet*, Art. 372.

*Jihet* (جہت)—A *vaqf* appointment, Art. 372.

*Khademe* (خدمہ)—Servant, Officer.

*Khairat* (خیرات)—Pious foundations.

*Kharaj* (خراج)—Tax.

*Kharajî* (خراجیہ)—See *Arazi Kharajî*.

*Lazim* (لازم)—Irrevocable, Art. 4.

*Mahlul* (محلول)—Escheat, lapse.

*Mal Mutqavvim* (مال متقوم)—A thing of which the use is lawful and the possession has been acquired, Art. 46.

*Mazbata* (مضبطہ)—The judgment of a Civil Court.

*Mazbuta* (مضبوطہ)—See *Evqaf Mazbuta*.

*Mefrugh bihi* (مفروغ بہ)—A *vaqf* property alienated, Art. 17.

*Mefrugh lehi* (مفروغ لہ)—The grantee of a *vaqf* property alienated, Art. 17.

*Meremat ghairi Mustehlika* (مرمت غیر مستهلکہ)—Work on a house which can be separated, Art. 30.

*Meremat Mustehlika* (مرمت مستهلکہ)—Work on a house which cannot be separated, e.g. painting, Art. 29.

*Meshrutun lehi* (مشروط لہ)—Beneficiaries, Art. 7.

*Mesjid* (مسجد)—A small mosque.

- Mevat* (موات)—A class of waste land. (Land Code, Art. 6.)
- Mevqaf* (موقوف)—dedicated, Art. 1.
- Mevqafun aleihi* (موقوف عليه)—Beneficiary, Art. 7.
- Mirié* (ميريه)—See *Arazi Mirié*.
- Muajele* (معجله)—Rent in advance, Art. 187.
- Muejele* (مؤجله)—Rent paid afterwards, Art. 187.
- Muessesati Khairiye* (مؤسسات خيرية)—Philanthropic establishments, Charitable institutions, Art. 16.
- Muhassebeji* (محاسبه جی)—Accountant.
- Mulhaqa* (ملحقه)—See *Evqaf Mulhaqa*.
- Mulk* (ملك)—Ownership in fee simple, property owned in fee simple.
- Multezim* (ملتزم)—Revenue or tithe farmer.
- Munqati' el ahir* (منقطع الاخر)—A vaqf the beneficiary of which ceases to exist, Art. 78.
- Munqati' el evael* (منقطع الاول)—A vaqf the beneficiary of which does not exist at the beginning, Art. 77.
- Munqati' el vast* (منقطع الوسط)—A vaqf the beneficiary of which ceases to exist for a time, Art. 79.
- Muqata'a* (مقاطعه)—The annual rent paid for vaqf land on which there are mulk buildings, &c.
- Muqata'alu* (مقاطعه لوه)—With payment of *Muqata'a* rent also written *Muqata'ale*.
- Murtezika* (مرتزه)—Beneficiaries, Art. 21.
- Mussaqaq* (مستقف)—A roofed building from which income is derived, Art. 15.
- Mussaqaqat* (مستقفات)—Plu. of *Mussaqaq* (Art. 15).
- Mustaghil* (مستغل)—Property capable of beneficial possession. Income bearing property (Art. 14) also *Musteghil*.
- Mustaghilat* (مستغلات)—Plu. of *Mustaghil* (Art. 14).
- Mustesna Evqaf* (مستثنى اوقاف)—See *Evqaf Mustesna*.
- Mutehellimun' ala el vaqf* (مشكلم على الوقف)—Means *Muteveli* (Art. 9).
- Muteveli* (متولى)—The trustee of a vaqf (Art. 8.)
- Naqshbendi* (نقشبندی)—An order of Dervishes.
- Nazaret* (نظارت)—The office of *Nazir*.
- Nazir Vaqf* (ناظر وقف)—The person who overlooks the *Muteveli*, Art. 11.
- Nesli* (نسل)—Lawful children and grandchildren, Art. 24.
- Nizamli* (نظامی)—Legal, Art. 41.



- Qaimaqim Muteveli* (قائمقام متولی)—Substitute for Muteveli, Art. 10.
- Qaim-i-Vaqf* (قائم وقف)—Another name for the Muteveli, Art. 9.
- Qayim* (قیم)—Plu. of Qaim-i-Vaqf, Art. 9.
- Raqabc* (رقبه)—The neck, subjection. The thing itself and the ownership (mulkiyet) in fee simple. (Land Code, Art. 2).
- Rashid* (راشد)—A man capable of managing his property, Art. 13.
- Reji'* (رجع)—The produce of vaqf property, Art. 5.
- Riqbc* (رقبه)—Expectation, reversion. The thing itself and the ownership in fee simple (mulkiyet). (Land Code, Art. 2).
- Ruqba* (رقيب)—A freehold property given with a proviso for its return to the donor or his heirs or assigns in certain conditions.
- Rusumat* (رسومات)—Duties, tolls.
- Sahiha Vaqf* (صحيحه وقف)—True vaqf, Art. 124.
- Sened* (سند)—A title-deed.
- Shafi'i* (شافعي)—The Shafi'i school or sect.
- Shazillujye* (شاذله)—Name of the order founded by the Shieykh Shazeli (شيخ هاذلي).
- Sheri'* (شرع)—Sacred Law.
- Sheykh* (شيخ)—An elder, head of a tribe, head of a religious community.
- Ta'ammul* (تداول)—The prevailing use, Art. 27.
- Takhsis* (تخصيص)—The dedication of a vaqf of the Takhsisat category, Art. 138.
- Takhsisat* (تخصیصات)—Property of the Beit-ul-mal specially made vaqf, Art. 3.
- Tapou* (طابو)—The payment made in advance to the Government for the possession of State Land by the person entitled to take the land in making such payment. (Land Code, Section 3.)
- Tassaruf* (تصرف)—Possession. The using and disposing of a thing at ones pleasure. The ownership of the holder of Arazi Miri' is tassaruf (see Land Code, Art. 8), so is the ownership of a tenant in Ijaretein (Art. 437), spelt afterwards tessaruf.
- Teberru'* (تبرع)—Transfer without consideration, Art. 26.
- Teberruat* (تبرعات)—Plu. of Teberru', Art. 26.
- Tekiye* (تكية)—A convent and chapel of Dervishes, &c.
- Temlikname* (تقليکنامه)—A document granting State Lands as mulk, Art. 130.
- Terike* (ترکه)—The estate left by a person at his death.

- Tesjil-i-istibdal* (تسجيل-ا-تبدال)—A decision of the validity of an exchange, Art. 32.
- Tesjil-i-vaqf* (تسجيل وقف)—The deciding that a property is irrevocably dedicated, Art. 6.
- Tessaruf*—See Tassaruf.
- Tevliet* (تولیت)—The office of Muteveli.
- Ulema* (علما)—Men learned in Sheri' Law.
- Ushrie* (عشریه)—See Arazi-Ushrie.
- Vahidele* (واحدلی)
- Vahidelu* (واحدله او)—See Ijare Vahidelu.
- Vaqf* (وقف)—The act of dedicating, Art. 1.  
The thing dedicated, Art. 2.
- Vaqfieh* (وقفیه)—The Sheri' judgment about a vaqf, containing the terms of the dedication and the decision of the judge upon it, Art. 25.
- Vaqif* (واقف)—The dedicator, Art. 1.
- Vazife* (وظیفه)—Salary and food given out of the produce of the Vaqf property, Art. 21.
- Vazâif* (وظائف)—Plu. of Vazife.

<i>Accountant</i> - - - - -	Muhassebeji	محاسبه جی
<i>Alienation</i> - - - - -	Firagh	فراغ
<i>Alienation, final</i> - - - - -	Firagh gati <sup>4</sup>	فراغ قطعی
<i>Alienation with power of redemption</i>	Firagh bil vefa	فراغ بالوفا
<i>Alienation with power of redemption with condition that alienor should hold as tenant of alienee</i> }	Istighlal	استغلال
<i>Alienee of vaqf property</i> - - -	Mefrugh leh	مفروغ له
<i>Alienor</i> - - - - -	Farigh	فارغ
<i>Appointment</i> - - - - -	Jihet	جهت
<i>Beneficiaries-</i> - - - - -	Meshrutun leh	مشروط له
" - - - - -	Mevqfun aleih	موقوف علیه
" - - - - -	Murteziqa	مرتزه
<i>Charitable Institution</i> - - -	Muessesati Khairiye	مؤسسات خیریه
<i>Children</i> - - - - -	Evlad Sulbiye	اولاد صلیبه
<i>Children and grandchildren</i> - -	Zurriyyet, Dhurriyat	ذریه
<i>Collector of vaqf income</i> - - -	Jabi vaqf	جانب وقت
<i>Commission</i> - - - - -	Berat	برات
<i>Customary</i> - - - - -	Adi	عادی
<i>Decision of the validity of an exchange</i> - - - - - }	Tesjil istibdal	تسجیل استبدال
<i>Decision that a property is irrevoc- ably dedicated</i> - - - - - }	Tesjil-i-Vaqf	تسجیل وقت
<i>Dedicated</i> - - - - -	Mevquf	موقوف
<i>Dedicated thing</i> - - - - -	Vaqf	وقت
<i>Dedication</i> - - - - -	Vaqf	وقت
<i>Dedicator</i> - - - - -	Vaqif	واقف
<i>Double rent</i> - - - - -	Ijaretein	اجارتین
<i>Duties</i> - - - - -	Rusumat	رسومات
<i>Equivalent rent</i> - - - - -	Ijare misl	اجاره مثل
<i>Escheat-</i> - - - - -	Mahlul	محلول
<i>Estate of deceased person</i> - - -	Tereke	ترکه
<i>Exchange</i> - - - - -	Istibdal	استبدال
<i>Expectation</i> - - - - -	Riqbe	رقبه

<i>Farm</i> - - - - -	Chiftlik	حفتلك
<i>Final alienation</i> - - - -	Firagh gati'	فراغ قطعی
<i>Freehold property given on condition for reversion</i> - - - -	Ruqba	رقبا or رقبی
<i>Government Treasury</i> - - - -	Beit-ul-mal	بيت المال
<i>Grandchildren</i> - - - -	Ahfad	احفاد
<i>Grant with power of redemption</i> -	Firagh bil vefa	فراغ بالوفا
<i>Income bearing property</i> - - - -	Mustaghil	مستغل
<i>Income of a vaqf</i> - - - -	Ghalle-i-Vaqf	غله و وقف
<i>Inheritance</i> - - - -	Intigal	انتقال
<i>Irrevocable</i> - - - -	Lazim	لازم
<i>Judgment of a Civil Court</i> - - - -	Mazbata	مضبطة
<i>Judgment of a Sheri' Court</i> - - - -	Ilam	اعلام
<i>Land Registry</i> - - - -	Defter Khaqani	دفتر خاقانی
<i>Lapse</i> - - - -	Mahlal	محلول
<i>Lawful children and grandchildren</i>	Nesl	نسل
<i>Legal</i> - - - -	Nizamli	نظامی
<i>Legal appurtenances</i> - - - -	Huquq	حقوق
<i>Letters, patent</i> - - - -	Berat	برات
<i>Man capable of managing his affairs</i>	Reshid	رشید
<i>Money consideration for alienation</i>	Firagh Bedeli	فراغ بدلی
<i>Mortgage</i> - - - -	Firagh bil vefa	فراغ بالوفا
<i>Mortgage with condition that mortgagor shall become tenant to mortgagee</i> - - - -	Istighlal	استغلال
<i>Mosque</i> - - - -	Jami	جامع
<i>Mosque, small</i> - - - -	Mesjid	مسجد
<i>Muteveliship</i> - - - -	Tevliet	تولیت
<i>Official</i> - - - -	Khadim	خادم
<i>People who receive salary and vic-tuals from a vaqf</i> - - - -	Ehli Vezaif	اهل وظائف
<i>Philanthropic Establishments</i> - - - -	Muessesati Khairiye	مؤسسات خیریه
<i>Pious foundations</i> - - - -	Khayrat, Khairat	خیرات
<i>Poor</i> - - - -	Faqir	فقیر

<i>Poor houses</i> - - - - -	Imarat	عمرات
<i>Possession</i> - - - - -	Tessaruf	تصرف
<i>Prevailing use</i> - - - - -	Ta'ammul	تعامل
<i>Produce of vaqf property</i> - -	Reji'	رجع
<i>Property from which income is derived</i> - - - - -	Mustaghil	مستقل
<i>Property owned in fee simple</i> -	Mulk	ملك
<i>Rack rent</i> - - - - -	Ijare misl	اجاره مثل
<i>Rent</i> - - - - -	Ijare	اجاره
<i>Rent equal to the value of the property</i> - - - - -	Ijare misl	اجاره مثل
<i>Rent double</i> - - - - -	Ijaretein	اجاره تین
<i>Rent paid afterwards</i> - - - -	Muejele	موجه
<i>Rent paid in advance</i> - - - -	Muajele	معجله
<i>Rent single</i> - - - - -	Ijare Vahide	اجاره واحده
<i>Revenue farmer</i> - - - - -	Multezim	ملتمزم
<i>Reversion</i> - - - - -	Riqbe	رقبه
<i>Revocable</i> - - - - -	Gairi Lazim	غیر لازم
<i>Rights</i> - - - - -	Huquq	حقوق
<i>Right of possession</i> - - - - -	Huquq tessaruf	حقوق تصرف
<i>Right of using and disposing</i> -	Huquq tessaruf	حقوق تصرف
<i>Roofed building from which income is derived</i> - - - - -	Mussaqaq	مسقف
<i>Sacred Law</i> - - - - -	Sheri'	شرعی
<i>Servant</i> - - - - -	Khademé	خدمه
<i>Simple rent</i> - - - - -	Ijare Vahide	اجاره واحده
<i>Soup kitchens</i> - - - - -	Imarat	عمرات
<i>State Lands</i> - - - - -	Arazi Mirié	اراضی میریه
<i>Subjection</i> - - - - -	Raqabé	رقبه
<i>Substitute for Muteveli</i> - - - -	Qaimaqam Muteveli	قائم مقام متولی
<i>Succession</i> - - - - -	Intigal	انتقال
<i>Tax</i> - - - - -	Kharaj	خراج
<i>Tax</i> - - - - -	Jiziye	جزیه
<i>Tithe farmer-</i> - - - - -	Multezim	ملتمزم
<i>Title-deed</i> - - - - -	Sened	سند
<i>Title-deed</i> - - - - -	Hujjet	حجت

<i>Tolls</i> - - - - -	Rusumat	رسومات
<i>Transfer without consideration</i> -	Teberru'	تبرع
<i>True vaqf</i> - - - - -	Sahiha vaqf	صحيحه وقف
<i>Treasury</i> - - - - -	Beit-ul-mal	بيت المال
<i>Trustee of a vaqf</i> - - - - -	Muteveli	متولى
<i>Two holy cities</i> - - - - -	Haremein Sherifein	حرمين شريفين
<i>Use and disposal of a thing</i> - - -	Tessaruf	تصرف
<i>Vaqf appointment</i> - - - - -	Jihet	جهت
<i>Vaqf for the poor of a neighbour-</i> <i>hood</i> - - - - -	Avariz Vaqfi	عوارض وقفى
<i>Work on a house which can be</i> <i>separated</i> - - - - -	Meremat ghaire	Meremat ghaire Mustehlike مرمت غير مستهلكه
<i>Work on a house which cannot be</i> <i>separated</i> - - - - -	Meremat Mustehlike	مرمت مستهلكه



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## INTRODUCTION BY THE TRANSLATORS.

A.—Vaqf properties are divided into three classes according to the objects for which the property is made vaqf :

1. Properties made vaqf for religious purposes.
2. Properties made vaqf for the public benefit.
3. Customary vaqfs.

1. Religious vaqf properties include establishments for divine worship—such as vaqf mesjids, &c., and immoveable properties of which the income has been directed to be expended on the support of such religious establishments, and which has been made vaqf for that purpose. Also schools and their libraries and religious books, &c., given as vaqf to the different establishments

2. Properties vaqf for the public benefit include hospitals, wells, fountains, bridges, poor-houses, &c.

3. Customary vaqfs consist of immoveable property bought at a low price by some Jami (a consecrated Mosque). By the sale the owner transfers to the Jami his ownership of the immoveable property for the price agreed, but he continues to enjoy the property, paying a yearly rent proportional to the price given (*see* Sakopoulou Mussulmanikon Dikaion, ed. 1871, Vol. II., p. 136, extracted from Belins).

The learned author suggests that the object of owners of land in turning it into customary vaqf land was to escape the liability of its being seized in execution of a judgment.

By the Laws of 21 Ramazan, 1288, and 15 Sheval, 1288, the sale for debt of Mussaqafat and Mustaghilat Mevqufé possessed in Ijaretein was allowed.

And now by the Code of Civil Procedure, 1885, the sale of all immoveable property is permitted in Cyprus.

As to the power of the Muteveli to acquire property by purchase or exchange, *see* Arts. 55, 70, 90, 119, 416, 420.

The Muteveli cannot buy Arazi Mirié or Mevqufé or Ijaretein property (Arts. 330).

B.—Vaqf lands are divided into two sorts according to the way in which the dedication is made :

1. Sahiha vaqf lands.—True vaqf lands.
2. Lands which belong to the Takhsisat category of vaqfs (Art. 124) (*see* Land Code, Art. 4.)



Takhsisat vaqf lands are lands taken from the State lands (Arazi Mirié) and made vaqf by special acts of dedication (Takhsis) by the Sultan or by his permission (Land Code, Sect. 4).

The special act of dedication is a true Takhsis, if it consists of the dedication of part of the income belonging to the Beit-ul-mal for the benefit of some object supported by the Beit-ul-mal.

A special dedication of part of the income belonging to the Beit-ul-mal for the benefit of an object not supported by the Beit-ul-mal is an untrue Takhsis, Art. 138.

An untrue Takhsis can be revoked at the will of the Sultan, Art. 138.

As to what vaqfs are vaqfs of the Takhsisat category *see* Arts. 131, 132, 134 and 137.

Arazi mirié made vaqf of the Takhsisat category is of three kinds :

1. Land of which only the taxes and tithes are dedicated.
2. Land of which only the possession is dedicated.
3. Land of which the possession, taxes and tithes are dedicated (Art. 137).

Sahiha or real vaqfs are vaqfs made by the owners of property in the way described in this law.

The rules contained in Title A. deal with the making of real vaqfs.

As to who can make one, *see* Arts. 43, 51, 53 (2), 55 (2), 56, 57 and 63.

As to how a valid dedication is made, *see* Arts. 44, 45, 47, 48, 49, 54, 65, 66, 67, 68, 69, 70, 86 and 88

As to what may be made vaqf, *see* Arts. 43, 46, 58, 59, 60, 61, 62, 63, 64, 65, 66, 72, 73, 81, 82, 83, 84, 85, 87 and 91.

As to what may be objects of vaqfs, *see* Arts. 71, 74, 75, 76, 77, 78, 79 and 89.

C.—Vaqf lands are again divided into four classes according to the way in which the Muteveli is permitted to deal with them :

1. Lands, which the Muteveli is not required to let and which may be used by the beneficiaries.
2. Lands which are directed to be let at a double rent (Ijaretein).
3. Lands which are to be leased for a fixed term at a single rent (Vahidè).
4. Lands on which there is mulk property belonging to private persons, which are to be let at a single rent (Muqata'a).

I. The most important of the vaqfs of the first class are the Muessasati Khairiye. The law as to them is contained in Arts. 179—186, 343, 344.

If an Ijaretein vaqf is turned into a vaqf of this category it must be turned into a Muqata'alu vaqf (Art. 286).

2. The law as to *Ijareteinle vaqf* is dealt with in Title F.  
 Chaps. I. and II.—Inheritance.  
 Chaps. III., IV., V., VI., VII. and VIII.—Alienation.  
 Chap. IX.—Partition, &c.  
 Chap. X.—Rights of owners in common.  
 Chap. XI.—Mortgage.  
 Chap. XII.—Agents to sell and buy.  
 Chap. XIII.—Miscellaneous.

Most of these provisions deal with the rights of the *Ijaretein* tenant, as owner, to deal with the property.

The relation between the *Ijaretein* tenant and the *vaqf* is also dealt with. See especially Arts. 187, 188, 192, 263—269, 286 and the articles dealing with alienation and mortgage.

3. The law as to *Vahidelu vaqfs* is dealt with in Titles G. and N.

4. The law as to *Muqata'alu vaqfs* is dealt with in Title H.

The law of inheritance depends upon whether it is a real *vaqf* or one of the *Takhsisat* category.

In the former case only, sons and daughters inherit. In the latter case the law dealing with *Arazi miric* applies (Art. 385).

D.—*Vaqfs* are divided into three classes according to the way in which they are administered.

1. *Evqaf Mazbuta*.—*Vaqfs* administered directly by the Minister of *Evqaf*.

They consist of—

- (a.) Properties made *vaqf* by the Sultans and their relations.  
 (b.) *Vaqfs* of which the *Muteveliship* is vacant (Art. 33).

2. *Evqaf Mulhaqa*.—*Vaqfs* administered by special *Mutevelis* under the supervision of the Minister of *Evqaf* (Art. 34).

3. *Mustesna Evqaf*.—*Vaqfs* managed solely by special *Mutevelis* without the interference of the Minister of *Evqaf*. They are dedications made by conquerors and other honourable persons (Art. 35).

The manner of Administration of the *vaqf* depends, in general, upon the terms of the dedication as expressed in the *vaqfieh*.

The interpretation of the terms used by the dedicator and the construction of the *vaqfieh* are treated of in Chaps I. and II. of Title D. and Chap. IV. of Title A. and Arts. 175, 176, 177.

As to when the term of the dedication need not be observed is treated of in Chap. III., Title D.

The *Muteveli* is the principal officer for the administration of the affairs of the *vaqf*.

The appointment of the *Muteveli* is treated of in Chap. I., Title I.

xiv.

His dismissal in Chap. III., Title I.

The appointment of a substitute for the Muteveli in Chap. II., Title I.

The Muteveli may grant his post to another (Art. 306).

The Muteveli can resign his office (Art. 324).

The duties, powers and liabilities of the Muteveli are treated of in Title J.

If there is more than one Muteveli, all must consent to any act which is done, Art. 327.

If there is a Nazir the Muteveli must get his consent, Art. 328.

Where the law requires it, he must apply to the Judge, Art. 326.

The Muteveli may appoint an agent, Art. 329.

He must generally follow the directions of the dedicator, Art. 165.

He must obtain the leave of the Judge if he wish to act otherwise, Art. 165.

When the intention of the dedicator is not known, the Muteveli must follow the custom, Art. 168.

As to where there is no custom (*see* Art. 169).

Sometimes, when the terms of the vaqfiel have not been acted upon from the beginning, they are not to be followed, Art. 170, 171.

As to mistake in the vaqfiel, *see* Art. 172.

The rights of the beneficiaries and the duties of the Mutevelis in respect of them are set out in Titles K. and L.

With reference to these rights it may be pointed out that the Muajele (rent paid in advance) of an Ijaretein vaqf is regarded as income, Art. 269, and that the expenses of repairs take precedence of grants, Art. 411.

That a beneficiary does not lose his right by abandoning it, but he does by refusing to accept it, Art. 174.

As to rights of persons entitled to inhabit vaqf property, Art. 404, 409—412.

The following provisions are also important:

As to alterations in vaqf property, Art. 267.

Building on a vaqf site, Art. 268.

Letting vahidé land at Muqata'a rent, Art. 274.

Letting vahidé land at Ijaretein, Art. 275.

As to the irrevocability of a dedication, *see* Arts. 111, 114, 119 and 120.

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In making this translation the translators have derived great assistance from the Greek translation of Mr. Nicolaidis and from the help of Ismail Hakki Effendi, Turkish Clerk in the District Court of Kyrenia and formerly Clerk in the Daavi Court.



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THE EVQAF LAWS.

This book with a preface contains 21 Chapters.

THE PREFACE

is about the meanings of technical terms used with reference to Vaqf, and it is divided into two parts.

PART I.

is about the meanings of technical terms connected with Vaqf used in the Sheri' Law.

1. "Vaqf" is the tying up of a property itself and the imposition of an interdiction on its transfer in such a way that its benefit is given to men on the condition that the property is to be regarded as the property of God. It is equivalent to "dedication."

Vaqf.

"Vaqif" is the name given to a person who makes a vaqf.

Vaqif.

"Mevquf" and "Mahall Vaqf" (Vaqf place) is what the thing itself which is made Vaqf is called.

Mevquf mahall vaqf

2. "Vaqf," while it used in the signification above mentioned, is used also to denote the thing itself made Vaqf. Such a property is Vaqf they say. "Vaqf" makes "Evqaf" in the plural

Vaqf.

Evqaf.

3. Vaqf Irsady consists in the appointing by the Padishah of the use of a part of the possessions of the Beit-ul-mal to someone having a claim by the Sheri Law, on the Beit-ul-mal and in a special assignment being made by an order of the Government.

Vaqf Irsady.

Evqaf made Vaqf by Vaqf Irsady are called Takhsisat.

Takhsisat.

4. Vaqfs are divided into 2 classes: Lazim and Ghairi Lazim. A Lazim Vaqf is one which cannot be annulled.

Lazim and Ghairi Lazim.

A Vaqf Ghairi Lazim is a Vaqf which can be annulled.

5. Ghalle-i-Vaqf denotes the benefit and produce of the dedicated property, such as the interest of dedicated money, the rent of dedicated property and the fruits of a dedicated garden.

Ghalle-i-Vaqf.

Rejje " Vaqf has the same meaning as Ghalle-i-Vaqf.

Reji' Vaqf.

6. Tesjil-i-Vaqf is the giving of a judgment, to be declared, deciding specially upon the condition of a Vaqf that it is irrevocably dedicated (Art. 111 &c.)

Tesjil-i-Vaqf.

7. The object in favour of which the benefits of a Vaqf have been limited and assigned by the dedicator is called Meshrutun lehi and Mevqfun aleihi and Musarif Vaqf.

Meshrutun lehi Mevqfun aleihi Musarif Vaqf.

Muteveli.

8. A Muteveli is a person appointed to supervise and manage, in accordance with the terms of the dedication, the business and affairs of the Vaqf

Mutevelis are of two kinds

1. A Muteveli according to a stipulation of the Vaqfieh who is required by the terms of the Vaqfieh to be Muteveli.
2. A Muteveli who is appointed by the judge alone, without any direction being given by the dedication for that purpose.

Qaim.

9. Qaim-i-Vaqf is a name given to the Muteveli of a Vaqf. Plural

Qayim.

Qayim.

Mutekellimun-  
ala-el-Vaqf.  
Qaimaqam  
Muteveli.

A Muteveli is also called Mutekellimun-ala-el-Vaqf.

10. Qaimaqam Muteveli is the name given as will hereafter be explained, to the person appointed by the Judge as a substitute for the Muteveli. The person carrying out the duties of the Muteveli (Art. 380, &c.)

Naziri Vaqf.

11. "Naziri Vaqf" is the name given to the person who is appointed to overlook the management of the vaqf property by the Muteveli and to whom the Muteveli will refer for his opinion as to the affairs of the vaqf.

It is equivalent to Overseer.

In some cities, it is the custom to use the word "Nazaret" for "teviet." In those towns, the Muteveli is called also "Naziri Vaqf."

Jabi Vaqf.

12. "Jabi Vaqf" is the name given to the person who collects the revenue of the vaqf.

Rashid.

13. "Rashid" is a man who has knowledge of affairs, who does not waste his property contrary to the sacred law and good sense (Mejellé, Art. 947).

Mustaghbil.

14. "Mustaghbil," plural "Mustaghilat," is the name given to property dedicated for providing the persons who have the management of philanthropic establishments (Muessasati Khäiriye) with the income required. It is equivalent to property capable of beneficial possession (income bearing) such as immoveable property, vineyards, gardens, inns, baths, and moveables, such as money given on the condition that it shall be let out at interest, and the tools of an artificer called "gedik".

Gedik.

Mussaqafat.

15. "Mussaqaq," plural "Mussaqaqat," means a building from which income is derived and which has a roof.

Muessasati  
Khairiye.

16. "Muessasati Khairiye" is the name given to establishments for the public good, built and dedicated by philanthropic persons; such as churches, gymnasiums, schools, places for feeding the poor, reading rooms, chapels, libraries, places for the maintenance of the poor, guest

houses, bridges, hospitals, asylums, fountains, public fountains, tanks, wells and cemeteries.

17. "Firagh" (alienation) with reference to Mustaghilat and Mussaqafat vaqf consists in the abandoning and granting the right of the possession of such properties to another. The person who grants it is called "Farigh." The grantee "Mefrugh Lehi"; the dedicated thing granted, "Mefrugh Bihi"; the money which the grantor receives as consideration for the grant "Bedeli Firagh".

Firagh.

Farigh.

Mefrugh Lehi.

Mefrugh Bihi.

Bedeli Firagh.

Firagh Gati'.

18. "Firagh Gati'" is the grant made without condition.

19. "Firagh bil Vefa." when used with reference to Mussaqafat and Mustaghilat Vaqf, is the name given to a grant made to a creditor, in consideration of a sum borrowed, on the condition that the vaqf granted should be given back into the possession of the grantor as soon as the debt is paid: It is equivalent to a grant with right of redemption (Mejellé, Art. 118.)

Firagh bil Vefa.

20. "Istighlal," with reference to Mussaqafat and Mustaghilat Vaqfs, is the name given to a grant with power of redemption, under the condition that the grantor should hire the thing granted from the grantee, (Mejellé, Art. 119.)

Istighlal.

21. "Vazife" is the name given to the salary and victuals given out of the produce of the vaqf, plural "Vazaif."

Vazife.

The people who receive the salary and the victuals are called "Murteziqa and Ehli Vazaif."

Murteziqa Ehli Vazaif.

22. "Ahfad" means "grandchildren."

Ahfad.

23. "Evlad Sulbieh" is the name given to children, the direct issue of a person. Therefore the grandchildren of a man may be so called.

Evlad Sulbieh.

24. "Nesli" includes lawful children and grandchildren.

Nesli.

Dhurriyat.

"Dhurriyat" has the same meaning as Nesli.

25. "Vaqqiéh" is the Sheri' hujjet about a vaqf, in which is contained the declaration of the dedicator about the dedication, and the judicial declaration of its validity.

Vaqqiéh.

26. "Teberrou'," plural "Teberrou'at," is the transfer of the property in a thing without consideration (Mejellé, Arts. 57 and 833.)

Teberrou'.

27. "Ta'ammul" is the prevailing use.

Ta'ammul.

Thus by the use of two or three persons Ta'ammul is not constituted.

28. "Faqir," poor, is one who has not such property as to be required to pay Zekiat (a payment of alms required by law.)

Faqir.

Therefore, the person who possesses such property is looked upon by the sacred law as a rich person.

- Meremat Mustehlika.** 29. "Meremat Mustehlika" is the name given to the work done upon a house which cannot be separated from it, such as painting and white-washing.
- Meremat ghairi Mustehlika.** 30. "Meremat ghairi Mustehlika" means such things as can be separated from a house, such as newly added buildings.
- Istibdal.** 31. "Istibdal" is the exchange of a vaqf property for a mulk property.
- Tesjile Istibdal.** 32. "Tesjile Istibdal" is the decision as to the validity of the exchange and its ability to be executed, as a consequence of which, it cannot be set aside.

---

## PART II.

### DEFINITIONS OF TERMS CONNECTED WITH VAQFS FOUND IN THE CIVIL LAW.

- Evqaf Mazbuta.** 33. "Evqaf Mazbuta" is the name given to Vaqf properties administered directly by the Minister of Evqaf.  
Evqaf Mazbuta are of two categories :—
1. Evqaf dedicated by Their Majesties the Sultans and their Highnesses their relations. Of the above Vaqfs the condition of the dedication was originally that the Muteveliship should be for the reigning Sultan. The Minister of Evqaf is ordered by the Sultan, as his representative, to carry out the duties of the Muteveliship.
  2. The dedicated properties which are held and administered by the Evqaf Treasury, when the office of Muteveli, which has been limited by the dedicator in favour of his descendants and his relations, is vacant.
- Evqaf Mulhaqa.** 34. "Evqaf Mulhaqa" is the name given to dedicated properties which are administered by special Mutevelis under the supervision of the Minister of Evqaf.

Whilst the superintendence of most vaqfs of this sort was appointed originally by the dedicators in favour of the Prime Ministers, the Sheik-oul-islams, the Chief Eunuchs, the two army Judges, the Fetva Emine, the Judges of Constantinople and the three Cities, and the high officials, and was managed by them ; afterwards, when the Ministry of Evqaf was established, their superintendence was given over to it.

The lawfulness of the superintendence of these dedicated properties by the Ministry of Evqaf depends on the authority given by the persons to whom the superintendence was originally given.

- Mustesna Evqaf.** 35. "Mustesna Evqaf," excepted evqaf, are those which are managed solely by special Mutevelis without the interference of the Minister of

*Evcaf*, *e.g.* dedications made by conquerors and other honourable persons.

36. "Avariz Vaqfi" is the name given to a dedication, which is founded to provide assistance for the unfortunate and needy inhabitants of a village or neighbourhood; as, *e.g.* foundations for the burial of the poor who die in some village or quarter, the support of the sick who are unable to earn their livelihood, and for the repair in some village or quarter of the paved aqueducts which need repair. Avariz Vaqfi.

37. "Ijaretein" means the two rents which are paid, the one in advance and the other at the expiration of a term. Ijaretein.

The roofed and income bearing vaqfs which are so rented at double rent are called "Ijareteinle".

38. "Ijare Vahidele Evqaf" is the name given to Mussaqafat and Mustaghilat vaqfs which are let by the Muteveli of the dedication, in the same way as properties are let by their owners, for a term, long or short, such as a month or a year. Ijare Vahidele Evqaf.

39. "Muqata'a" means the annual rent, which is appointed to be paid for land to the vaqfs, by the person in possession of a property of which the ground is vaqf, and the buildings, trees and vines thereon are Mulk. It is also called "Ijare Zemin," "Rent of Land". Muqata'a.  
Ijare Zemin.

40. "Gedik" is the name given to the tools of a special trade guild or art, placed on a property permanently established (see 8 Zilhitsee 1277). Gedik.

41. Some of the dedicated gediks are called "Nizamli" (legal) and some are called "adi" (customary). Nizamli Adl.

42. "Nizamli Gedikiati Mevqufe" are from the sacred vaqfs of the glorious ancestor of the Sultan Mahmoud-Khan and of the two sacred towns.

All the other gediks of vaqfs are called "adi."

Mention will be made of the difference between legal and customary gediks in the chapter on sale with power of redemption of the heading "Ijaretein."

#### TITLE A.

About (1) the completion and motive of the dedication; (2) the conditions of its validity, and (3) certain rules.

Contains 5 Chapters :—

#### CHAPTER I.

##### ABOUT THE COMPLETION AND MOTIVE OF THE DEDICATION.

43. A dedicated thing must consist of a thing capable of the consequences of the dedication and the dedication must be made by a person What may be dedicated.  
Dedicator must have legal capacity.



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*Evcaf*, *e.g.* dedications made by conquerors and other honourable persons.

36. "Avariz Vaqfi" is the name given to a dedication, which is founded to provide assistance for the unfortunate and needy inhabitants of a village or neighbourhood; as, *e.g.* foundations for the burial of the poor who die in some village or quarter, the support of the sick who are unable to earn their livelihood, and for the repair in some village or quarter of the paved aqueducts which need repair. Avariz Vaqfi.

37. "Ijaretein" means the two rents which are paid, the one in advance and the other at the expiration of a term. Ijaretein.

The roofed and income bearing vaqfs which are so rented at double rent are called "Ijareteinle".

38. "Ijare Vahidele Evqaf" is the name given to Mussaqafat and Mustaghilat vaqfs which are let by the Muteveli of the dedication, in the same way as properties are let by their owners, for a term, long or short, such as a month or a year. Ijare Vahidele Evqaf.

39. "Muqata'a" means the annual rent, which is appointed to be paid for land to the vaqfs, by the person in possession of a property of which the ground is vaqf, and the buildings, trees and vines thereon are Mulk. It is also called "Ijare Zemin," "Rent of Land". Muqata'a.  
Ijare Zemin.

40. "Gedik" is the name given to the tools of a special trade guild or art, placed on a property permanently established (see 8 Zilhitsee 1277). Gedik.

41. Some of the dedicated gediks are called "Nizamli" (legal) and some are called "adi" (customary). Nizamli Adl.

42. "Nizamli Gedikiati Mevqufe" are from the sacred vaqfs of the glorious ancestor of the Sultan Mahmoud-Khan and of the two sacred towns.

All the other gediks of vaqfs are called "adi."

Mention will be made of the difference between legal and customary gediks in the chapter on sale with power of redemption of the heading "Ijaretein."

#### TITLE A.

About (1) the completion and motive of the dedication; (2) the conditions of its validity, and (3) certain rules.

Contains 5 Chapters :—

#### CHAPTER I.

##### ABOUT THE COMPLETION AND MOTIVE OF THE DEDICATION.

43. A dedicated thing must consist of a thing capable of the consequences of the dedication and the dedication must be made by a person What may be dedicated.  
Dedicator must have legal capacity.



having legal capability as regards the constituent elements of the dedication (Mejellé, Arts. 361, 363 and 859.)

Words of dedication.

44. A constituent element of the dedication is the expressions which constitute the dedication, such as "I dedicated my property," or "I gave it as permanent charity," (Mejellé, 838,) See Arts. 54, 55.

Dedication by signs.

45. A dedication can also be made by the known signs of a dumb person (Mejellé, Art. 174.)

Thing dedicated must be one of which the use is lawful and of which the property has been acquired.

46. A thing in order that it may be capable of dedication must be "Mal Muteqavvim."

The term "Mal Muteqavvim" is used to denote a thing of which the use is lawful and a thing of which the possession has been acquired.

In the foregoing subject it is taken in both senses (Mejellé, Art. 127.)

Acceptance when necessary.

47. The acceptance of the thing dedicated is not required at the time when the dedication is made if the beneficiaries are undefined persons.

Consequently in such a case the dedication is constituted by the proposal alone of the dedicator, *e.g.* if a person dedicating his property limits the benefit of it in favour of the poor of some city, the completion of the dedication does not depend upon the acceptance of the poor of that city.

But if the persons in whose favour the dedication is made are determined, the completion of the dedication depends on their acceptance.

A man who refuses to accept a dedication made in his favour, prevents the constitution of the dedication only so far as it benefits himself; that is to say, he is deprived of the benefit granted out of the thing dedicated.

He does not prevent the constitution of the dedication in favour of others; *e.g.* when someone has dedicated his property and has limited the income thereof in favour of his son and after him to the poor of some tekiye, this son, if he does not accept the thing dedicated, deprives himself only of the income of the thing dedicated and its income belongs to the poor of that tekiye (Mejellé, Art. 837.)

Silence gives consent.

48. The silence of the person in whose favour the dedication is made is looked upon as an implied consent.

Consequently, if the person in whose favour the dedication is made keeps silent, not saying anything which shews whether he accepts or refuses to accept the dedication, his silence is looked upon as an implied acceptance and he acquires a right to the benefit of the thing dedicated (Mejellé, Art. 67.)

Acceptance or refusal is final.

49. An acceptance made after refusal, and a refusal after acceptance are invalid.

Therefore if a person in whose favour a dedication is made, after having refused it, change his mind and accept the dedication, he does

not acquire a right to the benefit of the thing dedicated. Also if after the acceptance of a dedication, the person in whose favour it is made reject it, his rejection is invalid and he is not deprived of the benefit which belongs to him under the terms expressed by the dedicator.

50. The consequence of a dedication is that the thing dedicated itself is made inalienable and its benefit is given to men.

Consequence of dedication.

51. In order that a person may make a dedication, the law requires that he should be free, of sound mind, and of full age, (Mejellé 859) see Art. 53 (2), 55 (2).

Legal capacity to dedicate.

52. The motive of dedication is the seeking to approach God and worship Him by the gift of property for philanthropic purposes.

Motive of Dedication.

53. The most acceptable of dedications, is the dedication of a thing of which men have the greatest need, *e.g.* the erection and dedication of a school in a place where there are sufficient fountains for the wants of the inhabitants is more acceptable and charitable than the erection of a fountain.

What dedications are the better.

54. If a person buy a thing with the intention of founding a dedication, but say nothing to shew that he dedicated the thing after he bought it, the dedication is not constituted by the mere intention.

An intention to dedicate does not alone effect a dedication.

55. If the Muteveli of a Vaqf buy something on account of the vaqf out of the income of the vaqf, this thing does not become vaqf by the mere fact that it has been purchased out of the income of the vaqf.

Of things purchased with the income or principal of dedicated property.

Therefore the Muteveli can, with the consent of the vendor, annul the sale or sell that thing to another.

But if the Muteveli has, after the purchase, limited the thing, in accordance with the law, by a decree of the Judge, for the benefit of the vaqf, then the thing becomes vaqf.

But if the Muteveli does not buy the said thing with the income of the vaqf, and acquires it by the expenditure of the thing originally dedicated, in such a case that thing becomes vaqf by the mere purchase.

*E.g.* If the Muteveli buy a property with dedicated money appointed to be converted into property, such property becomes vaqf by the mere purchase.

For this, the consecration of the dedication by the decision of the judge is not necessary.

## CHAPTER II.

### CONDITIONS OF THE VALIDITY AND INVALIDITY OF DEDICATIONS.

Validity of dedications.

53. (2). It is necessary that the dedicator should be capable of making a transfer of ownership and of doing acts of charity.

Dedicator must have mental capacity.

Therefore dedications made by infants, lunatics and persons who have arrived at their second childhood are not valid.

The dedication, however, of anything for their benefit is valid.

**Must be free,**

The dedication made by a person who is not free is also invalid.

**Unless with special permission.**

But a slave may validly make a dedication after he has obtained his master's permission to dedicate a defined thing, *Mejellé*, Art. 859.

**Freewill.**

54. (2). The consent of the dedicator is required.

Therefore a dedication, induced by what is force according to law, is not valid, *Mejellé*, Arts. 949 and 1003, 1007, 860.

**Dedicator must not be inhibited.**

55. (2). The dedicator must be a man who has not been inhibited for debt or extravagance.

Therefore the dedication of an extravagant person or debtor, who has been inhibited, made before the inhibition has been removed, is invalid, *Mejellé*, Arts. 990, 998.

**Dedicator need not be a subject of a Mahomedan state.**

56. It is not necessary that the dedicator should be a subject of a Mahomedan country.

Thus a dedication made by a foreigner in a Mahomedan country is valid.

**Dedicator and beneficiary need not be of the same religion.**

57. It is not necessary that the dedicator and the person in whose favour the dedication is made should belong to the same religion.

Therefore if a Mussulman limits the benefit of a thing which he dedicates in favour of non-Mussulman poor or a non-Mussulman limits the benefit of a thing he dedicates in favour of Mussulman poor, the dedication is valid.

**Thing dedicated must be immoveable property.**

58. It is necessary that the thing dedicated be immoveable property.

Therefore the dedication of independent moveable property is not valid.

**Unless custom to dedicate Moveable property.**

But if there is a prevailing custom in a town, that certain moveable properties may be dedicated, the dedication in that town of such moveable property is valid. *E.g.* the dedication of books and works in order that those who wish may read them, of the holy Koran and guides, of money lent at interest in order that the interest thereof may be expended for philanthropic purposes, of furniture and copper utensils to be used in schools, gymnasiums and philanthropic establishments, of clothes and ornaments to be lent for use of brides at weddings, of animals such as sheep, goats and cows, that their produce may belong to some philanthropic object and of seed to be lent to poor farmers who have no seed, is valid.

**Moveable property as subject to immoveable may be dedicated.**

59. The dedication of moveable property subject to immoveable property is valid.

That is to say, where immoveable property is dedicated, the dedication with it of moveable property, subject to it, is valid, whether a custom exists that such moveable property may be dedicated, or not.

*E.g.* where a chiftlik is dedicated, the moveable things found upon the chiftlik and subject to it, such as agricultural implements and seed, can be validly dedicated with the chiftlik as subject to it.

60. The thing dedicated must be the thing itself.

The dedication therefore of a debt owing by someone before payment is not valid.

Thing dedicated must be the thing itself, not a chose in action.

Consequently where someone has dedicated for a defined purpose a sum of money, which he is entitled to receive from another person, he can spend the same, after recovery from the debtor, for his own purposes, he can also give a valid release for the debt, also if he dedicates the same and dies before receiving or acquitting the debt, the heirs can receive the same from the debtor and include it in the inheritance for the purpose of distributing it among themselves.

In such a case, the Muteveli of the dedication cannot bring an action claiming this money by reason of its having been dedicated in the manner mentioned.

But a man can validly bequeath a sum of money due to him for the purpose of its being dedicated to a philanthropic object. In such a case if he dies before receiving the loan from the debtor, it is regarded as already having been dedicated, and belongs to the charity designated, when recovered from the debtor, if it does not exceed a third of the estate.

Exception in case of Bequests.

Also the dedication only of the benefit derived from immoveable property, without the property itself, is not valid.

Not the income alone from property.

*E.g.* If a person dedicates only the income and rent derived from his house to a philanthropic object and reserves for himself the ownership of the house, the dedication is not valid.

But if any one says, that he grants the income of a certain property of his, as alms to be given in perpetuity to the poor, necessarily then it is considered that that property has been dedicated for the benefit of the poor.

Grant of income sometimes construed as grant of corpus.

61. It is not an indispensable condition that there should be no claim by a third person to the thing dedicated.

A thing may be dedicated although others have rights over it.

Consequently an immoveable property mortgaged or let to a third person can be validly dedicated for any object. Nevertheless, the mortgage or lease is not invalidated in consequence of such dedication.

The property belongs to the establishment for the benefit of which it was dedicated, in the second case at the expiration of the term of the

lease, or when it is rescinded by the death of one of the contracting parties or by the consent of the parties, and in the first case when the mortgage is cancelled.

But if the dedicator dies before paying his debt to the mortgagee, the following rules are observed :—

If the dedicator has other property, besides that dedicated, sufficient to pay the debt, the debt to the mortgagee will be paid out of the other property and the property remains as a thing dedicated.

But if the dedicator has no other property, then the dedicated thing is sold, and the mortgagee is paid.

62. It is not an indispensable condition that the dedicated thing should not be occupied.

Therefore the dedication of a property occupied by a thing belonging to the dedicator or a third person is valid.

*E.g.* If some one dedicates a house in which there are things belonging to himself or a stranger without clearing it, the dedication is valid.

63. It is necessary that the thing dedicated should be the property of the dedicator at the time of the dedication.

Therefore an arbitrary dedication of a thing belonging to another person, made without the authority of the owner is not valid.

But if, after the thing has been so dedicated, the owner approves of the dedication, the dedication becomes valid.

A thing is not considered as *vaqf* if some one has dedicated it arbitrarily without the approval of the owner, even if the dedicator subsequently become the owner of it.

*E.g.* If some one has arbitrarily dedicated a thing belonging to a relation of his, who subsequently dies without approving the dedication, the inheritance belongs exclusively to the person who has arbitrarily dedicated the thing.

Or, if a man has wrongfully appropriated a thing and dedicated it and afterwards buys it from the person who suffered from the wrongful appropriation, the thing so dedicated without the authority of the owner is not looked upon as dedicated by reason of the unauthorised dedication.

Also, if a person, who holds *vaqf* property by *Ijareteun*, dedicate it in favour of some philanthropic establishment, the dedication is invalid.

In the same way if the heirs of a deceased person, whose debts exceed the property left by him, dedicate to some establishment immoveable property, forming part of the estate, without making themselves owners of it by releasing it and paying its value to the creditors, the dedication is not valid.

A property may be dedicated although occupied.

The thing dedicated must be the property of the dedicator when dedicated

Unless owner ratifies.

Subsequent ownership not sufficient.

*Ijaretein vaqf* cannot be dedicated.

Heirs cannot dedicate when debts exceed estate.

For which reason the creditors not consenting to the dedication made in the way described, are entitled to include the property in the division to be made.

Unless creditors consent.

64. The thing dedicated is not required to be a thing separated.

For which reason the fact that a share dedicated is undivided either originally or by virtue of facts subsequently ascertained, does not invalidate the dedication.

An undivided share may be dedicated.

*E.g.* If one dedicates an undivided share in a property such as a half or a quarter—the dedication is valid whether the property is capable of division or not.

Also if, after a person has dedicated the whole of a property as his, another person comes forward and claims and recovers an undivided share as his, such as a half or a third of that estate, and after it has been decided on proof and oath that this share belongs to him, the dedication of the rest of the estate, after the deduction of the said share, being valid, is not rescinded.

But the dedication of an undivided part of a property for the purpose of its being turned into a Mesjid or cemetery is not valid whether the thing is capable of division or not.

Except for a Mesjid or Cemetery.

65. The thing dedicated must be a defined and known thing.

Consequently, the dedication is not valid if one says, indefinitely, that he dedicates something out of his estate, or one of two workshops, or ten olive trees, indefinitely, out of those he has in his olive grove, or, indefinitely, so many pics out of his building site.

The thing dedicated must be defined and known.

But the dedication is valid if one dedicates the undivided share in an estate of which he is part owner with another, without defining the quantity of his undivided share.

66. In order that a dedication may be valid, it is not required that the boundaries of the dedicated property should be declared.

Not necessary to declare the boundaries.

Consequently, the dedication of a property, which happens to be known by a mark or by description, is valid although the boundaries are not declared.

67. It is necessary that the dedication should be complete.

The dedication.

Whence a dedication is not valid which depends on something which is uncertain and does not exist at the time of dedication.

Must not depend on an uncertain condition.

*E.g.* If one says "let such a thing of mine be dedicated, if my son, who is in another town comes," or "if I recover from the illness into which I have fallen," and, subsequently, if, in the first case, the son comes from that city, and in the second case, he recovers from his illness, the dedication is not valid .

68. When a dedication depends on a thing which exists and is certain, it is considered complete.

Consequently a dedication dependent on a thing which exists and is certain at the time of the dedication is valid.

*E.g.* If one showing a thing of which he is owner say: "let this be dedicated if it is my property," the dedication is valid.

Dedication must not take effect in the future.

Again a dedication is not valid which is referred to future time.

*E.g.* If one say that he dedicates some property of his from a future time, the dedication is not valid, although that time elapse.

In the same way, if one say "let such a property of mine be dedicated after my death," the property is not forthwith vaqf.

Dedication to take effect on death looked on as a bequest, see Art. 86.

But since, in such a case, the dedication of that property is looked upon as a bequest, if this person die persisting in such a bequest, the whole of that estate is considered, as validly dedicated, if it does not exceed a third of his estate, or the heirs assent to it.

About this point, mention will be made in full in Chapter I, Title B.

Dedication invalid if option reserved.

69. In dedication there must be no condition giving the dedicator an option.

Consequently, a dedication made with an option reserved is invalid.

*E.g.* If one dedicates something having the option to invalidate or complete the dedication within a time, the dedication is in general invalid, whether that time is known or unknown.

Where Mesjid dedicated option invalid.

But if the dedicator, having the option, dedicate the property that it may become a Mesjid, the dedication is valid and the option invalid.

Temporary dedication is invalid.

70. The dedication must be perpetual, consequently a temporary dedication is invalid.

*E.g.* Dedication is not valid, if one dedicates his estate upon the condition that it should be dedicated property for ten years, and after that return to his ownership.

Again dedication is not valid if the dedicator impose a condition opposed to the perpetual existence of the dedicated property.

*E.g.* Dedication is not valid if any one dedicating his immoveable property put as a condition that he can, in case of need, sell it and spend the price for his own purposes.

A power to sell and buy other property is good, see Art. 90.

But if he put as a condition, that the dedicated property may be sold in the future, and other more beneficial property bought with the price thereof, in such a case the dedication is valid and the condition is of force.

Nevertheless the opinion of the Judge is to be taken when the property is to be sold under the said condition.

71. The thing in favour of which the dedication is made must be finally determined.

The beneficiary must not be doubtful, see Art. 76.

Consequently, a dedication is invalid if the beneficiary is doubtful or ambiguous.

*E.g.* If any one dedicating his property say that he dedicates the thing to such a place of worship or such a school, without fixing finally the one of the two, but doubtfully and ambiguously, the dedication is invalid.

The validity of the dedication is not prejudiced if the option is left to the Muteveli to spend the produce of the thing dedicated between certain establishments.

Option may be left to Muteveli

*E.g.* The dedication is valid if the dedicator insert a term that the Muteveli of the vaqf may spend the income from it, if he wish, for the requirements of such a school, or, if he wish, for the needs of such a hospital.

The dedication is valid, if the dedicator put as a condition that the Muteveli may spend the profits for the benefit of a subject which he considers as a philanthropic object.

72. Buildings and trees which it is proposed to dedicate must not be liable to be pulled down.

Buildings and trees liable to be pulled down cannot be dedicated.

Consequently, the dedication of a building or tree liable to be pulled down is invalid.

*E.g.* If one make a building for himself on land which he has wrongfully appropriated and afterwards dedicate that building for the benefit of some establishment, the dedication is void.

Again, if one erect buildings or plant trees on Arazi-mirié without the leave of the owner of the land, who possesses it by Tapou, and afterwards dedicates the buildings or trees, the dedication is void (Land Code, s. 35.)

In the same way, if one raise buildings or plant trees for himself, without the leave of the Muteveli, on a vaqf site, which he possesses by rent, and afterwards dedicate the buildings or trees for the benefit of some establishment, the dedication is not valid, Mejellé, Art. 906.

See Sec. 85.

But the dedication is valid if the building has been erected or the trees planted with the consent of the owner of the land or, in the case of vaqf land, with the consent of the Muteveli.

73. If one plants trees on Arazi-mirié which he holds by Tapou, without the permission of the owner and three years have elapsed and the trees have so far developed that he enjoys the fruit of them, they can be validly dedicated, Land Law, s. 25.

74. The object in favour of which the dedication is made must be, in itself and in the conscience of the dedicator, of a kind that is the subject of reverence and worship.

The object of the dedication must be a subject of reverence.



Consequently, a dedication for the advancement of an object, which is neither in itself nor in the conscience of the dedicator, an object of reverence and worship, is invalid.

Again, a dedication is not valid if it is for the advancement of an object, which is in itself an object of reverence and worship, but not in the conscience of the dedicator, or which is, in the conscience of the dedicator an object of reverence and worship, but not in itself.

75. It is not required that the object for the benefit of which the dedication is made should be declared and fixed.

Consequently, the dedication of a thing is valid even if the object for the benefit of which it is made is not declared.

In such a case the income from the dedicated property is spent absolutely for the benefit of the poor.

76. It is not required that the object for which the dedication is made should be fixed and limited.

*E.g.* A dedication of a property in order that the income may go to the poor in general is good.

77. It is not required that the object for the benefit of which the dedication is made should exist at the time of the dedication.

*E.g.* The dedication is valid if one who has no children dedicate his estate limiting the income for the benefit of his children.

In such a case, the children of the dedicator born after the dedication have a right to the income by virtue of the limitation.

Also the dedication is valid, if one has prepared a place for the erection of a philanthropic establishment such as a temple or school, and before the establishment is built, dedicates some of his properties for its benefit and limits the income for its advancement. After the establishment is raised, the income of the dedicated property belongs to it.

Until the birth of the child in the first case and until the erection of the building in the second case, the income is spent for the benefit of the poor.

Such a dedication in which the object of the trust did not exist at the beginning is called "Munqati'-el-evvel."

78. If the object for the benefit of which the dedication is made exists at the beginning, but afterwards is wanting and is discontinued, it is called "Munqati'-el-akhir."

*E.g.* If the dedicator limit the income of the dedicated property to the benefit of his family, and after the family has enjoyed the income for some time it becomes extinct, the dedication is called "Munqati'-el-akhir."

Beneficiary need not be declared and fixed.

Beneficiary may be a class of persons generally.

Beneficiary may be non-existent at time of dedication.

Endowment spent on poor until beneficiary comes into existence.

Munqati'-el-evvel.

Munqati'-el-akhir.

79. If the beneficiary under the dedication exist at the beginning, ceases for a time and afterwards comes into existence again, the dedication is called "Munqati'-el-wast."

Munqati'-el-wast.

*E.g.* If the dedicator has limited the income of the dedicated property to the benefit of the males of his family, and after the males have enjoyed the fruit for a time they die leaving daughters only, and after a time male children are born of the daughters, such a dedication is called "Munqati'-el-wast."

In all sorts of vacant vaqfs where there is no existing beneficiary, the income appointed for the beneficiary is spent on the poor.

80. If the beneficiary, in whose favour a dedication is made is likely to fail, the dedicator ought to declare and add some lasting object.

There should be a limitation over in case of failure of beneficiary.

*E.g.* When one dedicates the income of a vaqf to the poor of his family, he ought to declare and add also some lasting object, saying: "If my family fails and this limitation becomes incapable of execution, let the income of the dedicated property be applied for the benefit of the poor."

### CHAPTER III.

#### VALID AND INVALID DEDICATIONS.

81. If anyone dedicate a thing which he has bought from some one else before it is received, the following rules are observed :

Dedication of purchase before and after price paid.

If he dedicate it after the payment of the price to the seller, the dedication is valid.

If he dedicate it before the payment of the price, the dedication is dependent. When he pays the price, the dedication becomes valid and final.

82. The purchaser can dedicate a thing which he has purchased by a defective sale after its receipt.

Dedication of purchase by defective sale before and after receipt.

After such a dedication, the vendor has no longer the right to rescind the sale.

The dedicator, however, must indemnify the vendor for the value of the thing dedicated.

But the buyer cannot, before receipt, dedicate a thing which he has purchased by a defective sale.

A defective gift is looked upon with reference to this subject as a defective sale (Mejellé Art. 109, 371-373).

83. The dedication of a thing bought by an invalid sale is invalid, even if the purchaser dedicate it after delivery.

A thing bought by an invalid sale cannot be dedicated.

*E.g.* If one has bought the property of an orphan from the trustee for a price excessively below its valuation and afterwards dedicate it to some object, the dedication is invalid.

Consequently, the infant after he comes of age takes back that property from the Muteveli of the charity in possession.

Also if he buys a thing dedicated by irrevocable dedication and dedicates it again to some object, the second dedication is bad.

In the same way, if someone has bought an estate belonging to the Beit-ul-nal for a sum excessively below its estimated value and dedicates it to some object, the dedication is invalid.

84. If one buy and receive a thing on the condition that he is to have an option to rescind the contract within a fixed time and dedicates it before the term has elapsed, the dedication is valid and the option is of no force.

Again, if one sell something under the condition that he is to have an option to rescind within a fixed time, and dedicates the thing before that time expires, the sale is of no effect and the dedication is valid.

85. If one build, with the permission of the Muteveli, on a vaqf site dedicated to the support of some object, and afterwards dedicate the building to another object, the dedication is valid.

But if one, being the owner of a property, of which both the site and the building are Mulk, dedicate the building alone to some object, retaining his ownership in the site, the dedication is not valid.

Trees and vines, in reference to this matter, are considered as buildings.

86. If one dedicate a property of his, upon the condition that he shall himself possess it for life as he wishes, and that after his death the property shall be sold and the purchase money expended on philanthropic objects, the dedication is not valid.

But as in this dedication it is considered that he makes a will that the property is to be sold and the price expended for the benefit of the poor, the rules about wills are conformed with.

87. The person who dedicates something which he has by will left to another is considered as revoking the will.

Consequently the dedication is valid and the will of no force.

*E.g.* If one, after he has left by will his mulk house, dedicate it to a philanthropic object and the dedication is decided to be irrevocable, the dedication is valid and the will invalid.

In such a case, when the dedicator dies, the person in whose favour the will is made cannot contend that he is entitled to take the house by virtue of the will, on the ground that the dedicator, before the dedication, had willed the house to him and that the third of his property is sufficient for the bequest.

Dedication of a thing bought or sold, with an option to rescind.

Building on Vaqf site, see Art. 72.

Dedication of property to be sold subject to life interest, see Art. 82.

Revocation of will by dedication.

88. Dedication by writing alone is not valid.

It must be made known and attested.

Writing alone  
not a sufficient  
dedication.

Consequently, if one write and compose a document of dedication for the establishment of some vaqf, but does not read that document before witnesses and make known the contents, himself calling upon them to attest it, the dedication is not valid.

89. The fact that the dedicator limits the benefit of the dedicated thing in favour of himself or his children does not prejudice the validity of the dedication.

Dedication in  
favour of self or  
children valid.

*E.g.* If one dedicate a house and limit the income to be derived from it, or the right of occupying it, in favour of himself, while he lives, and in favour of his children or posterity after his death, the dedication is valid and the limitation of force.

Again, if one dedicates his property and direct that his debt which shall arise in the future shall be paid out of the income of the dedicated thing, the dedication is valid and the direction of force.

90. A dedication made with a power of exchange is valid.

*E.g.* If one dedicate an inn which he holds as mulk and make it a term of the dedication that that inn may afterwards in case of need be exchanged for other property, the dedication is valid.

Dedication, with  
power of  
exchange, is  
valid see Art. 70.

But if the dedicator insert a term in the dedication that the property which he dedicates may be sold and the price given as alms to the poor, the dedication under this condition is not valid.

91. The dedication of the right of taking water as attached to the land and the dedication of water as attached to the water channels is valid.

Dedication of  
water and water  
rights.

92. If a man build a place in his house in order that he may use it as a Mesjid, but does not separate it and open a road that the people may come in from outside, the place is not considered as a Mesjid.

Place of  
Worship.

Consequently, that place is looked upon as a dependency of the house and may be possessed by the different sorts of ownership.

93. It is allowed to build a Mesjid on the upper story and to construct buildings in the lower story for the needs of the Mesjid and to dedicate them.

Place of  
Worship.

But it is not allowed to pull down a Mesjid built on the lower story and erect buildings in its place and a Mesjid above it.

#### CHAPTER IV.

##### CONCERNING THINGS WHICH ARE INCLUDED IN A DEDICATION WITHOUT BEING MENTIONED, MEJELLE, ARTS. 230, 236.

94. If one dedicates a property and does not record that he dedicates also the rights attached to it, such as the private way of the property,

Dedication of  
property includes  
rights attached  
to it.

the right of taking water and of outflow, these rights, as attached to that property, are included in the dedication also.

Building site includes buildings, trees and vines.

95. When a building site is dedicated, there is included in the dedication, without being mentioned, the buildings, trees and vines which are on it at the time of the dedication.

Not fruit appearing at time of dedication.

96. The fruit, which at the time of the dedication appears on the tree is not included in the dedication, but remains the property of the dedicator. Consequently, when a vegetable plantation is made *vaqf*, the vegetables found therein are not included in the dedication, but remain the property of the dedicator.

If boundaries are declared, all things included in them are dedicated, imperfect declaration.

97. If a property is dedicated, and its bounds and the things which go with it are declared, and at the time of the dedication the said things are imperfectly declared, all the things which go with the property and exist within the boundaries, are considered as included in the dedication, because according to the Sacred Law the boundaries are considered.

*E.g.* If when a hotel containing 24 rooms is dedicated and it is described as containing 15 rooms and its boundaries are recorded, there is included in the dedication also the 24 rooms exactly found within the recorded boundaries.

Unless there is an express exception.

But if, after the boundaries are recorded, he dedicate the property, excepting from the dedication certain things which go with the property, and retaining them in his ownership, in such a case the things which he has excepted are not included in the dedication.

*E.g.* When one declares the boundaries of a house containing men's apartments and women's apartments and wishes to dedicate it, if he keeps the ownership of the men's apartments and says that he dedicates only the women's apartments, the men's apartments are considered to be excluded from the dedication.

Dedication of owner's share—false description.

98. If, after a person has made a declaration as to a fixed share in a property, which he owns jointly with another, and has dedicated it defining the amount of his share, it is shewn that his undivided share is greater than he declared, the dedication is valid and the excess is included in it.

*E.g.* If after a man has declared that his share in a common property is composed of one-fourth and dedicated it, it is shewn that a share in that estate up to half belongs to him, the dedication is valid and the surplus is included in it.

## CHAPTER V.

## OF DEDICATIONS MADE BY PERSONS WHO ARE ILL.

99. The exercise of authority made by a debtor at a time of mortal sickness and which deprives his creditors of their rights, is not to be carried out.

Dedication by debtor in time of mortal sickness.

Consequently, if some one, whose debts are in excess of his property, at a time of mortal sickness dedicate some of his property and die, the creditors can refuse assent to the dedication and include the dedicated thing in the division, *Mejellé*, Art. 800.

100. The benefactions made by a person who has no heirs, at a time of mortal sickness, are valid up to the whole of his property.

Benefactions by person who has no heirs—in time of mortal sickness valid.

Consequently, if one who has no heirs dedicate the whole of his property, at a time of mortal sickness to some object of common benefit, the dedication is valid and must be carried out.

In such a case, after the death of the benefactor, the director of the *Beit-ul-mal* cannot interfere with the property, *Mejellé*, Art. 877.

101. The benefactions, made at a time of mortal sickness by one who has heirs, are of force up to one-third only of his estate, unless the heirs approve of the portion given in excess of a third.

Where there are heirs, valid to one-third of estate only, unless heirs approve.

Consequently, if some one, at the time of his illness of which he dies, dedicate something, and the dedication is decided to be irrevocable and after this the dedicator die, the following rules are observed:—

If the third of his estate is not less than the property dedicated, the dedication is valid in every case whether the heirs approve of it or not.

If the third of his estate is less than the property dedicated, the whole of that property is considered as dedicated if the heirs approve of it. If the heirs do not approve, the third of the property becomes *vaqf* and the heirs take the rest of the inheritance. If some of the heirs approve and some do not, in addition to the third of the estate, the shares of the heirs who approve constitute part of the dedication.

In such a case, if after an heir who disapproves has taken his share from the dedicated property and sold it to another, other property of the dedicator is found and it is proved that the third of his estate is not less than the dedicated property, the sale is not dissolved and remains in force.

But that heir makes indemnity for the portion sold. And for the amount received by way of indemnity another thing is bought, in order that it may be dedicated in substitution for the portion sold, *Mejellé*, Art. 879.

102. The consent of the heirs with regard to the amount in excess of one-third must be given after the death of the dedicator.

Consent of heirs must be given after death of dedicator.

Consequently, the consent or refusal of the heirs before the death of the dedicator is not taken into consideration.

Assent of heir does not apply to property inherited from dissenting heir.

103. When some one, after he has dedicated some property of his, during the illness of which he dies, leaves two heirs, and the third of the property of the deceased is less than the thing dedicated, and one of the heirs assents to the dedication of the property in excess of the third of the estate, and the other heir dies, not having assented to it, even if the estate of the latter pass to the heir who previously assented, it is none the less required that he, who accepted the validity of the dedication, should assent again to the validity of the dedication of the excess of the third of the estate, as regards the share of the deceased heir, the former assent is not sufficient.

When dedicator, in mortal sickness, has no heirs but wife.

104. If any one, having no heir except his wife dedicate, while in his last illness, the whole of his estate and die after the dedication has been decided to be irrevocable, all the estate of the deceased becomes vaqf if the wife assents to the dedication.

But if the wife do not consent, the sixth of the inheritance belongs to the wife and the remainder becomes vaqf.

Or, no heir but husband.

105. If a woman, having no heir, except her husband, dedicate the whole of her estate, and after the act of dedication has been decided to be irrevocable die, all the estate of the deceased is constituted a vaqf if the husband assent to the act of dedication.

If the husband do not consent, the third of the inheritance is given to him and the remainder is looked upon as vaqf.

Sickness from which dedicator recovers.

106. A state of sickness which is cured is looked upon as a state of health.

Consequently, if one, being sick and confined to his bed, dedicate some of his property, and the dedication is decided to be irrevocable, and afterwards the sick person recover from his sickness, and after he has been well for some time, die, his heirs cannot refuse to agree to the dedication, in so far as it exceeds the third of his estate, on the ground that the dedicator made the dedication while he was ill, Mejellé, Art. 595.

Protracted illness.

107. A person who has a protracted illness extending over more than a year is considered as a person in health, so long as his condition does not change.

Consequently, if one, who is fallen into protracted illness, lasting more than a year, dedicate some of his property, and the dedication is judicially decided to be irrevocable without his condition being changed, and after the lapse of some days, his condition is changed, and the illness becomes bad and he dies, the dedication is of force for the whole estate of the deceased.

In such a case the heirs of the deceased cannot contend that they do not accept the dedication, so far as relates to the excess over a third of his estate.

But if the person proceeds to the dedication after his condition is changed, then that dedication is valid up to the third.

Consequently the heirs can refuse their assent to the dedication of the part of the estate in excess of one-third.

108. If a person, at the time of his fatal illness, dedicate something of his, limiting its benefit in favour of one of his heirs, and, after the death of the heir, to some philanthropic object, and afterwards die, that dedication is valid if a third of the estate is not less than the thing dedicated.

Dedication in favour of an heir, with or without limitation over

In such a case if the other heirs assent to the act of dedication, the heir in whose favour the limitation is made, enjoys the benefit of the dedicated property alone.

If the other heirs do not assent, the heir in whose favour the benefit is limited, does not enjoy the benefit of the dedicated property alone, but while he lives the other heirs enjoy the benefit with him, according to the share to which they are entitled by inheritance.

If while the heir, in whose favour the dedication is made, is alive, one of the other heirs die, the heirs of the deceased stand in his place as regards the right to enjoy the benefit.

If the heir, in whose favour the act of dedication is made dies, the benefit of the thing dedicated belongs entirely to the philanthropic object to which it was limited on the death of the heir. No right remains any more to the other heirs to benefit from it.

But if one, in his last sickness, dedicate something of his, limiting its benefit in favour of some of his heirs and do not declare another philanthropic object, in such a case, when the other heirs do not assent to the act of dedication, it is invalid, although the third of the estate is not less than it, and all the heirs inherit the thing.

109. If someone dedicate, at the time of his last illness, an estate of his in order that a Mesjid may be built, and die, and the third of his estate is less than the thing dedicated, the dedication of the whole of that property is invalid if the heirs do not assent to the dedication of the part exceeding one-third the value of the estate.

Dedication for place of Worship.

Consequently the heirs inherit that estate altogether.

110. If the act of dedication is made in a state of sound health, and is judicially declared irrevocable when the dedicator is in a state of mortal sickness, the condition at the time of the dedication, and not that at the time of the judicial decision governs the matter.

Dedication in health and judicial sanction during mortal illness.



Consequently, if one dedicates his estate, at a time when he is in health, without a judicial decision of the irrevocability of the act of dedication, and after this at the time of his mortal sickness, causes the dedication to be judicially declared irrevocable and dies, that dedication is valid for the whole of his estate and not up to the third of it.

Consequently, in such a case, the heirs of the dedicator cannot contend that, since the judicial decision took place at the time of mortal sickness, the dedication is valid to the third of the estate and not to an amount exceeding one-third.

## TITLE B.

### ABOUT IRREVOCABLE AND REVOCABLE ACTS OF DEDICATION.

#### CHAPTER I.

##### ABOUT IRREVOCABLE ACTS OF DEDICATION.

Dedication  
irrevocable.

111. After the completion of the dedication, its irrevocability depends on the formalities described below :—

After judicial  
decision that it  
is so.

The first formality consists in the decision of a judge in favour of its irrevocability after trial.

Thus if someone, after he has dedicated, in the manner prescribed by Chapter II. of Title A., some specific thing of which he is the owner, and given it to the Muteveli appointed by him to have it declared irrevocable by the Court, wishes to recall the act of dedication, and to take back from the Muteveli that thing, in order that it may be his own property as before, but the Muteveli does not agree to the giving back of the thing, and so, when a dispute and difference of opinion has sprung up between the dedicator and the Muteveli, if the case is tried before some judge having knowledge of the different opinions of the commentators about the irrevocability or otherwise of a dedication, and the judge decides in favour of the irrevocability of the dedication according to the opinion of an exponent of the law allowing the validity of the dedication, in such a case the dedication is irrevocable.

If without such trial being gone through, the judge in compliance merely with the demand of the dedicator or the Muteveli, decide in favour of the irrevocability of the act of dedication, its irrevocability does not result from the judge having so said.

Decision of ar-  
bitrator not  
sufficient.

112. By the decision of an arbitrator the act of dedication is not rendered irrevocable.

Thus if the dedicator and the Muteveli appointed by him to have the dedication judicially declared irrevocable, appoint an arbitrator, and he decides in favour of its irrevocability, the dedication is not established as irrevocable.



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Consequently, if one dedicates his estate, at a time when he is in health, without a judicial decision of the irrevocability of the act of dedication, and after this at the time of his mortal sickness, causes the dedication to be judicially declared irrevocable and dies, that dedication is valid for the whole of his estate and not up to the third of it.

Consequently, in such a case, the heirs of the dedicator cannot contend that, since the judicial decision took place at the time of mortal sickness, the dedication is valid to the third of the estate and not to an amount exceeding one-third.

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111. After the completion of the dedication, its irrevocability depends on the formalities described below :—

After judicial  
decision that it  
is so.

The first formality consists in the decision of a judge in favour of its irrevocability after trial.

Thus if someone, after he has dedicated, in the manner prescribed by Chapter II. of Title A., some specific thing of which he is the owner, and given it to the Muteveli appointed by him to have it declared irrevocable by the Court, wishes to recall the act of dedication, and to take back from the Muteveli that thing, in order that it may be his own property as before, but the Muteveli does not agree to the giving back of the thing, and so, when a dispute and difference of opinion has sprung up between the dedicator and the Muteveli, if the case is tried before some judge having knowledge of the different opinions of the commentators about the irrevocability or otherwise of a dedication, and the judge decides in favour of the irrevocability of the dedication according to the opinion of an exponent of the law allowing the validity of the dedication, in such a case the dedication is irrevocable.

If without such trial being gone through, the judge in compliance merely with the demand of the dedicator or the Muteveli, decide in favour of the irrevocability of the act of dedication, its irrevocability does not result from the judge having so said.

Decision of ar-  
bitrator not  
sufficient.

112. By the decision of an arbitrator the act of dedication is not rendered irrevocable.

Thus if the dedicator and the Muteveli appointed by him to have the dedication judicially declared irrevocable, appoint an arbitrator, and he decides in favour of its irrevocability, the dedication is not established as irrevocable.

The dedication is made irrevocable by the decision of a judge appointed by the Sultan.

When the dedicator dies before the judicial decision of the irrevocability of the dedication and the heirs demand before the judge from the Muteveli that they may include the dedicated thing in the inheritance and divide it, but the Muteveli refuses to give it up, the dedication is decided to be irrevocable if the judge decide in favour of the irrevocability of the dedication and restrain the heirs from annoying the Muteveli.

Judicial decision after death of dedicator.

Again, when one, having no debts and being in health, dedicate some things of his, without a judicial decision in favour of the dedication, and, after the lapse of some time, dies, leaving debts greater than his estate, and the creditors bring an action against the Muteveli before the judge, seeking to include the dedicated things in the division for the body of the creditors, and the Muteveli refuses to give it up, a judicial decision of the irrevocability of the dedication is considered as having been made if the judge decide in favour of the irrevocability of the dedication and restrain the creditors from annoying the Muteveli.

113. The second formality consists in the establishment of the dedication by will.

Irrevocable, if made by will, up to the amount disposable.

Thus if one make a will saying "when I die, let such a thing of mine be dedicated to such a philanthropic object" and afterwards dies without changing his will, that thing becomes vaqf by irrevocable dedication, if the third of his estate is not less than the property so left.

But if the third of the estate is less than the property willed, in such a case only a sum equal to one-third of his estate becomes vaqf by irrevocable dedication. The part in excess of that amount is inherited by the heirs.

But if the heirs assent to the will as regards the surplus over the third, in such a case the whole sum bequeathed becomes vaqf by an irrevocable act of dedication.

In the case in which the person so making a will has no heir, there also the whole thing bequeathed becomes vaqf by an irrevocable act of dedication.

Arts. 101, 103, 104 and 105 are applicable as regards this matter.

114. If neither of the above-mentioned two forms exist, the dedication is not made irrevocable.

Dedication not irrevocable unless there is judicial decision, or it is made by will.

There are excepted however the two cases below, for the irrevocability of the dedication of which neither of the two above-mentioned formalities is required.

Exception Place  
of Worship.

(a). If one separate from his property a Mesjid with the building and a way to it, and give leave to the people to worship in it and the people assemble there and worship aloud, that Mesjid becomes vaqf by an irrevocable dedication.

Exception  
Cemetery.

(b). If one having dedicated his building site to be used as a cemetery, give permission to bury the dead there, and a dead person is buried in it, that building site becomes vaqf by irrevocable dedication.

Additions to  
dedicated prop-  
erty are not  
*ipso facto* ir-  
revocable de-  
dications.  
Compare  
Art. 123.

115. The fact that dedicated property is added to property formerly dedicated does not make the dedication irrevocable.

Thus when one dedicates some of his property, and the dedication is judicially declared irrevocable and afterwards he dedicates certain other of his properties without the dedication being judicially declared irrevocable, saying that he adds these last properties to those dedicated by him at first through the judicial declaration of the validity of the act dedicating those properties, merely by his saying so, the things subsequently dedicated are not made vaqf by irrevocable dedication.

Special decision  
of Judge  
required.

In order that they should be made irrevocably vaqf, there is required another special decision of the Court in favour of their irrevocability.

Revocation be-  
fore decision of  
Judge.

116. If one dedicates his property to one object, but before he deliver it to the Muteveli and the dedication is decided to be irrevocable in accordance with the Sacred Law, he recall the dedication and dedicate the property to another object and gets a judicial decision of the irrevocability of the dedication to be made, the first act of dedication is invalid and the second act of dedication valid and irrevocable.

Dedication of  
debtor's property  
not valid, al-  
though judicial  
sanction given.

117. It is forbidden to the judges by Imperial Order to pronounce irrevocable the dedications of debtors.

Consequently if a debtor, even if he continues in good health, dedicate his property and afterwards die, not leaving sufficient other property to pay his debt, the creditors can annul the dedication on application to the judge and receive their claims from that property.

In such a case if the judge does not annul the dedication and decides in favour of its irrevocability and validity, neither is the judgment to be executed nor is the decision of the Court in favour of the irrevocability of the dedication of any force.

But if someone, at a time when he does not owe anything and continues in good health, dedicate properties of his and obtain the judicial sanction, and afterwards the dedicator dies in debt, leaving no estate, his creditors cannot interfere with the dedicated properties. See Cyprus Law, VII. of 1886.

Dedication of  
Gedik not valid.

118. It is forbidden to the judges to declare in favour of the validity of an act dedicating a gedik.

For which reason when one dedicates gedik, which he possesses, if the judge decides in favour of the irrevocability of the dedication and confirms it, neither is his decision nor the confirmation of force.

## CHAPTER II.

Concerning some rules and questions relating to the irrevocability or otherwise of the act of dedication.

119. If one dedicates a thing by an irrevocable act of dedication, he cannot any more have the ownership of it and exercise dominion over it. Dedicator cannot deal with dedicated property.

Every act of dominion over it is invalid.

*E.g.* If one sell, or give, or pledge a thing which he has dedicated by an irrevocable dedication, these agreements are invalid.

Again a thing dedicated by irrevocable dedication does not pass by inheritance to the heirs.

But if the thing dedicated by an irrevocable dedication is exchanged, in conformity with the rules laid down in a special chapter, for another thing, the thing taken in exchange becomes vaqf in the place of the thing first dedicated and the latter reverts into mulk property and is governed by the laws concerning it. Dedicated thing given in exchange treated as mulk.

Again when it is shewn that a third person has a legal right of pre-emption over a property, which someone has bought from another, even if the purchaser has dedicated that property and obtained a judicial decision of the irrevocability of the dedication, the act of dedication is annulled on the demand and action of the person having the right of pre-emption and that property is given as pure mulk to the person who has the right of pre-emption. Where person with right of pre-emption recovers.

Likewise, if the building of a roofed property dedicated by irrevocable dedication is destroyed entirely, and, the vaqf not being rich, it is impossible to rebuild the property and to use the material remaining for building, the Muteveli is allowed to sell that material at its estimated value for the good of the dedication. Materials of building destroyed.

Again the Muteveli of a garden dedicated by an irrevocable dedication may root out dead trees and sell them at the estimated value for the good of the dedication. Dead trees in garden.

120. If after someone has dedicated a thing which he has bought from another and the dedication has been judicially declared irrevocable, someone appears who claims it, and brings an action claiming that the thing dedicated is his property, and prove his contention according to the Sacred Law, and the thing is adjudged to be the property of the claimant, after he has taken an oath, the dedication is annulled and the claimant takes that thing. Stranger proving claim to property.

In such a case the buyer can bring an action and recover from the seller the price received, and become owner of it, with no obligation to buy another thing for that price and dedicate it, in the place of the thing which has been recovered and taken from him.

Revocation by judge.

121. The dedication of a thing, not irrevocably dedicated, when dissolved by the judge, is of no force. The thing is possessed as mulk.

*E.g.* If a person dedicate his workshop which he owns as mulk, but before he hands it over to the Muteveli and gets a decision in favour of the dedication according to the Sheri Law, he becomes insolvent and in misfortune in such a way, that, being compelled to deal with that workshop as his mulk property, he wishes to recall the dedication, he applies at first to the judge to dissolve the dedication.

When the judge dissolves the dedication, the dedicator possesses the thing dedicated as his mulk property.

The same thing also happens if the heirs of the dedicator dissolve the dedication through the medium of the judge.

If a thing, which is not irrevocably dedicated be sold to another, without its dedication having been dissolved by the judge, and the judge after trial decide in favour of the validity of the sale, the dedication is not valid, Mejellé 864.

Revocation by revocation of will.

122. If one dedicates property of his by a will, on the condition that it is to be in force as a dedication after his death, that thing is not taken from the ownership of the dedicator before he dies, without revoking the will.

Consequently, the dedicator possesses that thing as his pure mulk as long as he lives, being able even at the time of his mortal sickness to recall that will of his by words and acts.

Of will by words.

The person, who revokes a will by words, must use words declaring the revocation of his will—such as “I revoke my will” or “I give it up.”

By act.

The person, who revokes his will by act, must exercise his power over the thing which he dedicated in such a way as to change the name of the thing, or extinguish his ownership in it.

*E.g.* If anyone has made a bequest by the words “let such a mulk building site of mine be dedicated after my death, and afterwards build on that site a house or workshop or plant in it vines and trees and change the building site into a vineyard or garden, or put an end to his ownership in it by sale, or gift and delivery, since thus, by act, he has revoked the bequest, it is no longer of force.

For the making of such a revocation, an application to the judge is not required.

Expenditure incurred for a dedication cannot be revoked. Compare Art. 115.

123. The revocation of a thing done for the benefit of a vaqf has no force.

*E.g.* A man cannot, after he has built on a dedicated building site at his own expense and given the building for the benefit of the vaqf, revoke the gift and take the building as his own private property.

Again, after a person has given a sum of money to the Muteveli to spend for the affairs of the vaqf and the Muteveli has spent and laid out the money for those affairs he cannot revoke the gift and seek indemnification from the Muteveli for this sum.

TITLE C.

CONCERNING LANDS DEDICATED.

124. Dedicated lands are of two sorts ;—

(a). Dedicated lands which belong to true (sahihe) vaqfs.

(b). Lands which do not belong to true vaqfs.

Dedicated lands of two sorts. True dedicated lands and Takhsisat.

That is to say dedicated lands which belong to the category of Takhsisat, (Land Law, Sec., 4).

125. Arazi Ushrie and Arazi Kharajie dedicated in the manner provided by the Sacred Law, by the owner, are true vaqfs, (Land Law, Sec. 2).

True dedicated land Ushrie and Kharajie.

126. If one cultivate mevat land, with the leave of the Sultan, in order that he may make it his own mulk property and afterwards dedicate that land to some philanthropic object, such a vaqf is a true vaqf (Mejellé, Arts. 1270, 1280).

Mevat acquired as mulk.

127. If a piece of Arazi-mirie is given by the Sultan into the ownership of some one as his mulk and this person dedicates that piece to some philanthropic object, such a vaqf is true vaqf.

Arazi-mirie acquired as mulk.

128. In order that a grant of land as mulk may be valid, the person obtaining the grant must acquire it by a valid purchase.

Arazi-mirié must be acquired by purchase.

Thus when the mulk ownership of Arazi-mirie is granted by the Sultan, the following things are required from the person who seeks it :

If when the mulk ownership is granted, the Beit-ul-mal is pressed by want, in order that the grant may be valid, the person who acquires the mulk ownership must buy the land from the Beit-ul-mal at a valuation and pay the sum.

In such a case, if it was purchased for a price excessively below the valuation, the mulk ownership is not validly granted.

But if at the time of the grant of the mulk ownership the Beit-ul-mal is not pressed by want, then the person who acquires the mulk ownership must purchase the piece of land for double the value.

In such a case, if it is purchased for a price excessively below the double of its value, the MulK ownership is not validly granted.





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*E.g.* A man cannot, after he has built on a dedicated building site at his own expense and given the building for the benefit of the vaqf, revoke the gift and take the building as his own private property.

Again, after a person has given a sum of money to the Muteveli to spend for the affairs of the vaqf and the Muteveli has spent and laid out the money for those affairs he cannot revoke the gift and seek indemnification from the Muteveli for this sum.

### TITLE C.

#### CONCERNING LANDS DEDICATED.

124. Dedicated lands are of two sorts ;—

(a). Dedicated lands which belong to true (sahihe) vaqfs.

(b). Lands which do not belong to true vaqfs.

Dedicated lands of two sorts. True dedicated lands and Takhsisat.

That is to say dedicated lands which belong to the category of Takhsisat, (Land Law, Sec., 4).

125. Arazi Ushrie and Arazi Kharajie dedicated in the manner provided by the Sacred Law, by the owner, are true vaqfs, (Land Law, Sec. 2).

True dedicated land Ushrie and Kharajie.

126. If one cultivate mevat land, with the leave of the Sultan, in order that he may make it his own mulk property and afterwards dedicate that land to some philanthropic object, such a vaqf is a true vaqf (Mejellé, Arts. 1270, 1280).

Mevat acquired as mulk.

127. If a piece of Arazi-mirie is given by the Sultan into the ownership of some one as his mulk and this person dedicates that piece to some philanthropic object, such a vaqf is true vaqf.

Arazi-mirie acquired as mulk.

128. In order that a grant of land as mulk may be valid, the person obtaining the grant must acquire it by a valid purchase.

Arazi-mirié must be acquired by purchase.

Thus when the mulk ownership of Arazi-mirie is granted by the Sultan, the following things are required from the person who seeks it :

If when the mulk ownership is granted, the Beit-ul-mal is pressed by want, in order that the grant may be valid, the person who acquires the mulk ownership must buy the land from the Beit-ul-mal at a valuation and pay the sum.

In such a case, if it was purchased for a price excessively below the valuation, the mulk ownership is not validly granted.

But if at the time of the grant of the mulk ownership the Beit-ul-mal is not pressed by want, then the person who acquires the mulk ownership must purchase the piece of land for double the value.

In such a case, if it is purchased for a price excessively below the double of its value, the MulK ownership is not validly granted.

Sale of Arazi Mirie must be for public benefit.

129. The grant of the mulk ownership of Arazi-mirie depends on the public benefit.

Consequently if the grant of the mulk ownership of Arazi-mirie is injurious to the common weal, the grant is never allowed nor is it lawful.

Grant of Arazi Mirie without sale-invalid.

130. By a document of grant of ownership (temlikname) alone, the grant is not validly completed.

Thus, if one does not buy by a valid purchase (as mentioned in the proceeding articles) a piece of Arazi Mirie from the Beit-ul-mal, and the mulk ownership is given to him as a gift, and a document of grant given to him, such grant of ownership is not validly effected.

Takhsisat lands. Public land dedicated by Sultan without ownership.

131. Places dedicated, without their mulk ownership, by the Sultans out of Arazi-mirie, for philanthropic objects of which the expence is borne by the Beit-ul-mal, belong to the Takhsisat category.

Dedication of public land, of which ownership is not acquired by the Sultan's leave for public objects.

132. If some one, without having obtained the valid mulk ownership of Arazi-mirie, dedicate the land with the permission of the Sultan, in favour of philanthropic objects of which the expence is borne by the Beit-ul-mal, the vaqf is considered as one of the Takhsisat category.

Public land of which ownership is not acquired, dedicated without Sultan's leave not vaqf.

133. If someone, without having obtained a valid mulk ownership of a field being Arazi-mirie, which he possesses by Tapou, or without receiving the leave of the Sultan, dedicate it in favour of some object, the thing so dedicated is not regarded as true vaqf or as a Takhsisat vaqf, but as before it is regarded as simple Arazi Mirie.

Consequently that person possesses that field in the same way as he did before and pays a tenth to the public when he wishes to grant it to another, by the leave of the owner. After his death that field belongs to his heirs, if there are any persons entitled to inherit according to the Land Law, if there are not, it belongs to the public as being without owner and is granted for the Tapou value to the person claiming it.

The dedication made in the manner described has no force.

Takhsisat-Tithe and Kharaj.

134. If the tithe and the Kharaj, which belongs to the public out of the Ushrié and Kharajie lands which are under the mulk ownership of someone, is dedicated and specially assigned by His Majesty the Sultan to some object supported by the Beit-ul-mal, such a vaqf is of the Takhsisat category.

Proof of public lands being dedicated-knowledge of purchase.

135. If it is known that a dedicator before its dedication, bought from the Beit-ul-mal a field originally Arazi-mirie, but from time immemorial dedicated, that field is considered a true vaqf, whether it is known that that purchase was made in conformity with the legal manner described in Art. 125 or not.

But if it is not known at all that the dedicator purchased that field from the public before the dedication, that field can no longer be considered a true vaqf.

136. No consideration is given to the probability of the thing which is not based on proof.

Proof required that ownership lapsed before dedication.

Whence, the probability that perhaps the owner of a field which is situated in a place of which the lands pay tithe or kharaj, and which is dedicated from time immemorial, died without heirs, and that perhaps this field reverted to the ownership of the State, and to the class of Arazi Mirie, and was dedicated afterwards, without a grant of ownership, does not make it possible that it should be regarded as not true vaqf, on account of the mere probability which is not based on proof.

137. Arazi Mirie, which has been made vaqf of the Takhsisat category by a dedication which is not a true (sahiha) dedication, is of three kinds :—

Takhsisat dedications of public lands three kinds.

(a). Lands of which only the tithes and taxes (rusumat) have been dedicated and consecrated by the Sultan, while the right of possession (hukuk tessaruf) over them, such as, the ownership (raqabe) belong as before to the Beit-ul-mal.

(b). Lands of which the tithes and taxes belong as before to the Beit-ul-mal and only the right to their possession (hukuk tessaruf) has been dedicated and assigned to some object by the Sultan.

(c). Lands of which both the right of possession (hukuk tessaruf) as well as the tithes and taxes have been dedicated and assigned to some object by the Sultan.

The tithes and such taxes, as the tax on grant or inheritance and the price of unowned land, belong to the dedication of the first kind.

Right of beneficiary in first kind.

Since the rights over the lands of this sort belong to the State, they are granted as other Arazi Mirie by the State for cultivation.

The lands of the second and third sort are possessed by the vaqf, whether sown, cultivated or rented to others or given on an agreement to be cultivated in partnership.

Right of dedication in second and third sorts.

But the tithes of the second sort are paid to the State, while the tithes of the third sort are not paid.

Of these three sorts, only the first is regulated by the rules of the Land Law.

Since the right of the possession of the other two sorts does not belong to the State, the rules of the Land Law are not applied to them.

Takhsisat  
dedications  
true and untrue.

138. The special acts of dedication (Takhsis) are of two sorts :—

(a). A true Takhsis, which consists in the special dedication of part of the income belonging to the Beit-ul-mal to some object supported by the Beit-ul-mal.

(b). An untrue Takhsis, which consists in the special dedication of part of the income of the Beit-ul-Mal to some object not supported at the expense of the Beit-ul-mal.

True Takhsisat  
dedication  
irrevocable.

The income of the first sort, being specially dedicated, is spent on the object for which it is dedicated and does not admit of revocation or being made invalid.

Untrue  
revocable.

The second sort can be revoked and made invalid at the will of the Sultan.

When titheable  
and Kharajie  
lands dedicated,  
tithe and  
Kharajie still  
payable.

139. When someone dedicates a place out of Ushrié and Kharajie lands, his tithe and Kharaj is not abolished but the payment of them is due to the Beit-ul-mal, as before.

Again if, when a field is granted to someone by the Sultan out of Arazi Mirie to be held as mulk, the person again dedicate that field by a deed of dedication judicially sanctioned, the lawful tithes ought to be paid as before to the Beit-ul-mal

Consequently in one and the same subject there may co-exist both a true vaqf and an untrue vaqf of the Takhsisat sort.

Thus after some land out of the above mentioned mulk lands has been dedicated by its owner by a true dedication, if the income belonging to the Beit-ul-mal is dedicated and consecrated by the Sultan to some object, there thus co-exist in the same subject a true dedication and an untrue dedication of the Takhsisat sort.

#### TITLE D.

##### ABOUT THE TERMS USUALLY EMPLOYED BY DEDICATORS.

See also Art. 371.

About the terms of acts of dedication in favour of children, relations and neighbours.

Children.

140. By the word "children" said once only, "legitimate children" is meant.

Consequently grandchildren are not included.

*E.g.* If the dedicator make mention of the word "children" once only, without repeating it and say "the income of the vaqf I limit in favour of my children," the vaqf is limited in favour of his legitimate children alone and not in favour of his grandchildren.



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Takhsisat  
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#### TITLE D.

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140. By the word "children" said once only, "legitimate children" is meant.

Consequently grandchildren are not included.

*E.g.* If the dedicator make mention of the word "children" once only, without repeating it and say "the income of the vaqf I limit in favour of my children," the vaqf is limited in favour of his legitimate children alone and not in favour of his grandchildren.

But in the case in which, in the expression of the dedicator, there is an indication that by the word "children" grandchildren are also intended, then the word "children" includes also grandchildren.

*E.g.* If the dedicator say that he limits the income from the dedicated property to his children, from generation to generation, grandchildren are also included and both the lawful children and posterity of the dedicator have rights over the income of the waqf.

141. The word "children" repeated twice includes all generations, whether near or remote. It is not limited to the first and second generation alone. Children twice.

Consequently if, while the existing issues of the first and second generations enjoy the income of the dedicated property, which was appointed by the dedicator in favour of his children and their descendants, some children of the third generation of the dedicator are born, such children participate in the income of the dedicated property together with the issue of the first and second generations.

The children, therefore, of the first and second generations cannot bar the participation of the children of the third generation on the ground that, as the dedicator made mention of the word "children" only twice, the children of the third generation are not included.

Also if the dedicator limit the occupation of a house, which he dedicated, to his children and the children of his children and when they become extinct, to the Imam of a certain Mesjid, the turn of the Imam does not come before the descendants of the dedicator are entirely extinct. The Imam does not acquire a right to live in that house after the children of the first and second generation are extinct.

142. If the dedicator of a thing dedicated by him and limited to his children and the children of his children, makes use of any word indicating the order in which the generations are to take, in such a case if the first generation exists, the second does not participate in the income of the dedicated thing. Children, grandchildren and their descendants.

If the dedicator say that he limits the income of the dedicated property to his children, from generation to generation, and to the children of his children, if there are legitimate children of the first generation, the children of the second generation do not participate in the income of the dedicated property.

In the same way, if there are children of the second generation, those of the third do not participate.

The same rule applies by analogy to the other generations as well.

143. In interpreting the expressions of the dedicator the words of description are to be given effect to. If, therefore, the dedicator, by Words of description.



some description, designate the persons in whose favour the dedication is made, such description becomes the means by which the right is acquired, and a person not designated by such a description, does not acquire any right in the benefit so appointed.

*E.g.* When the dedicator limits the income of the dedicated property to his offspring, saying: "Let such of my children and their descendants as are residing in such a town, enjoy the income of the property I dedicate," any children or descendants of his not residing in that town do not acquire any right in such benefit.

Also, if he say "Let such of my children and grandchildren as are learned (Oulema) enjoy the income of the dedicated property," then do not all the children and grandchildren of the dedicator acquire any right in such income of the dedicated property. In the same way, if he say: "Let my poor children and grandchildren enjoy the income of the dedicated property," the rich children and grandchildren of the dedicator do not acquire any right in such income.

The same rule applies by analogy to other descriptions as well.

144. The wife of a rich man, although she has no property whatever, is considered rich.

Poor.

Consequently the wife of a rich man does not participate in the income of the dedicated property, which is limited to the poor.

In opposition to this, the husband of a rich woman who has no property, is not considered rich.

Consequently a husband of a rich woman who has no property, participates in the income of the dedicated property which is appointed for the poor.

Children from generation to generation.

145. When the dedicator appoints the income of the dedicated property to his children from generation to generation, if a child of the first generation dies, having said in his lifetime that the share belonging to him out of the income should be given to his children, and if afterwards, while some children of the first generation of the dedicator are enjoying the income of the dedicated property, one of them die leaving children, then the deceased being regarded as living, the income of the dedication, is divided between the deceased child of the first generation and the other living children in equal proportions. And the share allotted to the deceased is given to his children.

The same rule applies when another child of the first generation dies leaving children, until the first generation is extinct.

When the first generation is entirely extinct, this division is annulled and the income of the dedicated property is equally divided among the existing children of the second generation.

146. The word "children" by custom includes one child.

Children includes child.

Consequently if the dedicator limit the income of the dedicated property to his children, while he has only one child, such child acquires a right to the whole.

147. Sometimes the word "children," metaphorically means "grandchildren."

Children may mean grandchildren.

When all the legitimate children of a woman, who has arrived at an age at which she cannot naturally conceive, die, and if such woman while only her grandchildren are living, dedicates something, saying that she limits the income thereof to her children, as it is not possible that the word "children," should have its literal meaning "legitimate children," a metaphorical meaning is given to this word and the income is considered as having been appointed in favour of the grandchildren.

148. In the absence of anything shewing that the pronoun refers to a preceding word, it refers to the nearest noun.

Pronoun refers to nearest noun generally.

*E.g.* If the dedicator write, in the deed of dedication by which he dedicates some property and which is written in Arabic "The dedicator limits the office of Muteveli to himself, and, after his death, to his son Yahia and, afterwards to his children," the pronoun "his" in the phrase "afterwards to his children," refers to Yahia and not to the preceding word "himself."

Therefore, if in such a case the dedicator and his son Yahia die and the office of Muteveli is taken up by the children of Yahia, the children of another son of the dedicator cannot contend that they are entitled to participate in the office of Muteveli together with Yahia's children on the ground that the pronoun in the proposition aforesaid refers to the dedicator.

If in the deed of dedication, which is written in Turkish, it is expressed that the dedicator limits the office of Muteveli, first to his son Souleiman and, after his death, to his children, the construction is the same.

149. If there be no term in the deed of dedication providing for an unequal division, the implied condition is considered to be a division in equal shares.

Division is to be in equal shares unless the contrary is expressed.

Consequently the income of a dedicated property, which is limited generally to the children of the dedicator, is divided equally among the male and female children of the dedicator.

No greater share is given to the male children than to the female.

Unless the dedicator directs that the income is to be divided according to the right of inheritance. In such a case the income of the

dedicated property is divided among the children and his male children receive twice as much as the female.

Male children of children includes male children of females.

150. If the dedicator say: "I limit the income of the property I dedicated to my male children and to the male children of my children," in this term the male children of his daughters are included.

Children includes children born after the dedication.

151. When the word "children" is used without restriction in the phrase used by the dedicator, the children born after the dedication are also included.

Consequently, if the dedicator say: "I limit the income of the property I dedicate, to my children," all the children existing at the time of the dedication and those born after are included in the term.

But if the dedicator designate the children by the adjective "existing," or enumerate their names and fix them in this way, in such a case the children born after the dedication is made, are not included.

*E.g.* If the dedicator say "I limit the income of the property I dedicate to those of my children who are existing this day," or if he say, I limit the office of Muteveli of the property I dedicate to such and such of my children, the children born after the dedication is made are not included in the terms.

On this subject, the same rule applies to the grandchildren as well.

Children of children includes children of female children.

152. The word children of children does not only mean the children of the male children but those of the female too.

Consequently, the income of the dedicated property, which is limited to the children of the dedicator's children, is divided among the children of the dedicator's son and the children of his daughter.

The particulars aforesaid are also applied to the office of Muteveli.

Relations does not include children and parents.

153. The legitimate children and the parents of a person are not included where the dedication is in favour of his relations.

Consequently, the legitimate children and the parents of the dedicator are not included in the dedication, the benefit of which is limited by the dedicator in favour of his relations.

Relations includes Mussulman and non-Mussulman.

154. If a Mussulman dedicator limits the benefit of the property dedicated by him to his relations without qualification, the non-Mussulman relations of the dedicator are included.

Also, if a non-Mussulman dedicator limit the benefit of the property dedicated by him to his relations without qualification, his Mussulman relations are also included in this term.

But if the dedicator limits the benefit of the property dedicated to his relations who belong to the same religion, in such a case his relations, who have a different creed, are not included in the term.

155. When a man, after he has made a will that the third of his property is to be dedicated, after his death, to some philanthropic purpose, giving a power to the guardian, whom he appointed by his will, to fix his terms of the dedication, and die without revoking his will, if the guardian takes possession of the third part of the inheritance, and dedicates it to that purpose, and limits the office of Muteveli to himself, his children and his descendants, such dedication and the terms fixed by the guardian are valid and effect is given to them accordingly.

Power given to guardian.

156. In the dedication, which the dedicator makes in favour of his nearest relations, the word "nearest" means the nearest relation of the dedicator both by consanguinity and degree.

Nearest.

It does not mean the nearest relation entitled to inherit or the male offspring.

Consequently, if one of the relations of the dedicator is nearer to him by consanguinity and degree than another, who is related according to the law of inheritance and as male offspring, the one nearest by consanguinity and degree is preferred.

*E.g.* When the granddaughter by a daughter and the great grandson by a son co-exist, the granddaughter is preferred.

The great grandson by the son is not preferred. Because the granddaughter by the daughter is nearer by consanguinity and degree than the great grandson of the man by a son, notwithstanding that the great grandson by a son is an heir and a relative through a male offspring, and that the granddaughter by a daughter is not heiress.

But when a grandson by a son and a granddaughter by a daughter co-exist, they both participate in the dedicated property because they are relations of the same degree.

The same rule applies in the case of an uncle on the mother's side and an uncle on the father's side.

157. In relationship the nearness of degree is of force and not the strength of the relationship.

Consequently, if a dedicated property is limited in favour of the nearest relations, and there are two relations of the dedicator of the same degree, and of the one of them the relationship is strong and of the other the relationship is weak, they both participate in the dedicated property and the relation more strongly related is not preferred nor is the other precluded.

*E.g.* If a full blood brother of the dedicator and a half blood brother by the same mother co-exist, they both participate in the benefit of the dedicated property.

A full blood brother is not preferred to a half blood brother by the same mother by virtue of the full blood relationship.

Dedication in favour of wife while she remains unmarried.

158. If anyone die, after he has limited the occupation of a house, which he dedicated to his wife on the condition that she is not to get married after his death, the occupation of the said house by his wife is interrupted if she afterwards gets married.

In such a case the right to occupy the house does not revert to her by the death of her husband or by divorce.

Unless the dedicator explicitly direct that the right shall revert to his wife after the death of her husband or after divorce. In such a case such right reverts to her.

Poor neighbours.

159. If the dedicator limits the income of the property he dedicated, in favour of his poor neighbours, such income is spent for the poor neighbours of the quarter in which the dedicator is residing when the income is produced.

It does not particularly belong to the neighbours of the quarter in which he was residing when he made the dedication.

But they are spent for ever for the poor neighbours who belong to the quarter in which the dedicator was residing at his death.

*E.g.* If any one dedicates a thing of his, and limits the income thereof to his poor neighbours, while residing in one quarter of Constantinople, and afterwards he changes his residence to another quarter, and while he is there the income is produced, such income is expended for his poor neighbours residing in the second quarter and not for those residing in the first quarter.

The same rule is applied also when he leaves the second quarter and changes his residence to another quarter.

But if the dedicator say anything when making the dedication, by which he limits the income to the poor neighbours residing in the quarter in which he resides, then the dedicated thing is limited solely in favour of the poor neighbours residing in the first quarter.

*E.g.* If the dedicator say at the time of making the dedication, that he limits the income of the property he dedicates to the poor neighbours of the quarter in which he resides at the time being, the income of the dedicated thing is expended for his poor neighbours residing in the first quarter, although the dedicator may have changed his residence to another quarter.

Freed slaves.

160. Of the dedicated thing, which is limited to the freed slaves and their children, the freed female slaves and their children participate as well.

## CHAPTER II.

## ABOUT CHANGING THE TERMS OF THE DEDICATION.

161. Even the dedicator himself cannot change the terms made in conformity with the Sacred Law of a valid and irrevocable act of dedication, and, if he does so, the change is not valid and of force.

Change of terms of dedication not allowed (subject to 162).

But if the dedicator at the time of the dedication reserve to himself the right to change afterwards the terms of the dedication, in such a case he can change the terms.

Unless dedicator reserve power for himself to change once.

But when once the change is made this right ceases, and he cannot any more for the future change the terms.

Unless the dedicator insert as a condition at the time of the act of dedication that he shall have the right to change the terms many times, in such a case, by one change the right does not cease, and it is applied many times.

Or more than once.

If the dedicator make a condition at the time of the dedication that after him the Mutevelis of the dedication shall have this right, even these also may in the prescribed manner change the terms.

Or for Muteveli

162. If the dedicator who has reserved for himself at the time of dedication, the right to change the terms of the dedication, change the terms of the dedication during his last illness, the change is valid and of force.

Where power reserved change during last illness good.

163. The dedicator can change the terms about the office of Muteveli, even if he did not reserve for himself at the time of dedication the right to change them, but it is necessary that the judge should give his approval.

Dedicator can always change Muteveli

*E.g.* If the dedicator, after he has appointed some stranger to the office of Muteveli of the vaqf revoke, with the approval of the judge, this appointment, and limit the office of Muteveli in favour of his children, the second limitation is carried out.

164. If a person who dedicates a property say: "Let the change of the vaqf depend on me," the expression is applied to a change of the terms of the vaqf.

Construction.

It is never applied to the change of the vaqf property itself.

## CHAPTER III.

ABOUT MATTERS IN WHICH THE BREACH OF THE CONDITIONS  
IMPOSED BY THE DEDICATOR IS ALLOWED

Breach of condition in accordance with Sacred Law not allowed except with the approval of the Judge, for the benefit of dedication.

165. In true dedications the breach of a condition imposed by the dedicator which is in conformity with the Sacred Law is not allowed.

But in cases of the greater benefit of the dedicated property, or of necessity, the breach of the condition of the dedicator is permitted with the approval of the judge.

*E.g.* If the dedicator make a term that the money of the dedicated property may be lent at 10%, the Muteveli may, with the consent of the judge, lend the money at 15%, thus transgressing the condition made by the dedicator.

Again if a dedicator make a condition that some *Ijare Vahide vaqf* may not be let for a term exceeding one year, but a tenant is not found to take it for one year, and a three years lease is asked for, the Muteveli can, with the approval of the Judge, let it for two or three years, and thus transgress the condition of the dedicator.

In general, the authority of the Judge in respect of dedicated property depends on its usefulness.

Consequently, the direction of the Judge which is beneficial under the circumstances, even if it is opposed to the condition of the dedicator, is valid and must be carried out.

But the direction of the Judge, which is opposed to what is required by the circumstances, and hurtful, is not valid and not to be carried out.

*E.g.* When a tenant is found to take a dedicated property, which is directed not to be let for a longer term than one year, and no benefit can accrue to the *vaqf* by letting it for a longer period, if the Judge decide that it should be let for longer than a year, this decision is not valid and is not to be carried out.

Conditions of untrue Takhsisat dedications need not be kept, see Articles 137, 138.

166. The conditions of dedicators in the case of untrue dedications of the Takhsisat category need not be kept.

The Chief of the Mussulmans, taking care for the common benefit, if he thinks just, can alter the conditions of such dedications.

Unless object is a public one.

But if the objects, in favour of which these dedications exist, are of the sort which are supported by the *Beit-ul-mal*, then it is not allowed to abolish and annul them.

*E.g.* If the objects, in favour of which some dedication, specially dedicated is made, are the poor students in some school, and they are limited to the learning of useful sciences, since the said scholars study at the expense of the Beit-ul-mal, the abolition and annulling of that dedication cannot be allowed.

167. Any term of a dedication which is not in conformity with the Sacred Law ceases to have force and is not to be carried out.

Terms not in accordance with the Sacred Law need not be carried out.

*E.g.* If the dedicator make a condition that the accounts of the vaqf are not to be examined by the judges, even if abuse of his trust on the part of the Muteveli in the matters of the vaqf is shewn, and that the Mutevelis who are proved to have committed abuses in contravention of the terms of the dedication are not to be dismissed, this condition is not to be carried out.

Therefore, in case of necessity, the judges examine the accounts of that vaqf.

When abuse of his trust in the matters of the vaqf on the part of the Muteveli is shewn, the judge dismisses him from his office.

168. In matters in which the expressed intention of the dedicator is not known, ancient custom is to be followed.

Where intention of dedicator is unknown custom is followed.

Thus, in a case, in which it is not possible to know in a matter relating to a vaqf the provision made by the dedicator, it is necessary that that should be done in relation to that matter, which, from the beginning, preceding Mutevelis of that vaqf did.

Consequently, it is not allowed in such a case to act contrary to the ancient custom.

*E.g.* When a dispute and contention have arisen about the office of Muteveli or the expenses of a vaqf, and there is no executory deed of dedication recognised by the disputants, and it is not possible to shew by witnesses, what condition about the Muteveliship and the expenses the dedicator made, it is necessary that that should be done which was done and decided upon in the ancient custom.

169. If it is impossible to find out the terms or the ancient custom concerning the object for which the income of an ancient dedication is to be expended, and for this reason the subject for which it is to be expended is not known, the income of that dedication, on the decision of the Judge, is to be spent for the benefit of the poor and those without means.

Where beneficiary not known benefit is, by direction of the Judge, given to the poor.

170. The contents of a vaqfié are not to be carried out if they are not proved and they have not been acted on from the beginning.

Deed, not proved and acted on is not carried out.

171. If there are found in the Defter Khaqani written conditions opposed to a vaqfié which has been acted upon, that is to say, opposed

Deed of dedication differing from conditions in Defter Khaqani



to the terms of the vaqfié in accordance with which, from the beginning, the dedication has been conducted, it is necessary that the said vaqfié be carried out as before.

*E.g.* When in the vaqfié of the dedicator which has been acted upon, it is clearly shewn that the income of the vaqf is limited in favour of the descendants of the dedicator from generation to generation, if in the Defter Khaqani there is no registered term "from generation to generation," but the dedication is limited absolutely in favour of his children and grandchildren, the writing in the Defter Khaqani is not to be carried out but the vaqfié must be carried out as before.

Consequently, the income of that dedicated property is spent according to the vaqfié for the benefit of all the offspring of the dedicator of whatever generation they may be, and not according to the document in the Defter Khaqani in favour of the children of the dedicator of the earlier generation.

In the contrary case, if a vaqfié is produced which has not been acted upon and of which the contents have not been known, but, on the contrary, the Mutevelis have been used from the beginning to act according to the document in the Defter Khaqani, then it is necessary that they should continue to act in conformity with the document in the Defter Khaqani.

In one word, when in a matter relating to a vaqf, the vaqfié and the document in the Defter Khaqani are opposed, in that matter, the document which is in accordance with ancient use is to be acted upon and not the other.

Mistake in deed.

172. The authority of the terms of an act of dedication lies in the statement of the dedicator and not in the writing of the scribe.

Consequently, when it is shewn in the way prescribed by the Sacred Law, that the conditions which the scribe wrote in the vaqfié as the declaration of the dedicator are not in accordance with the terms which the dedicator stated and declared at the time of the dedication, the trust is carried out in conformity with the declaration of the dedicator and not according to what the scribe wrote.

*E.g.* When the dedicator at the time of the dedication declares that he limits the income of the vaqf in favour of his children and grandchildren, if the scribe by mistake write children instead of children and grandchildren, the dedicator's grandchildren share in accordance with his declaration.

The income is not limited in accordance with the writing of the scribe to his lawful children.

Again if the dedicator at the time of the dedication impose the condition that the change of the terms of the dedication depends upon

himself, if the scribe did not write this condition in the vaqfié, the declaration of the dedicatör is carried out and he is empowered to change the terms of the dedication.

173. If the dedicatör records in the vaqfié two inconsistent terms, which cannot be carried out together, the second term invalidates the first.

Where terms are inconsistent, the later one prevails.

Consequently, the things required by the second term are carried out and not the things required by the first term.

*E.g.* If the dedicatör put as a term in his vaqfié that nothing is to be given out of the income of the property dedicated by him to his children and relations, and afterwards when fixing certain payments direct that a fixed sum of money is to be given to his children who have need and his relations, in the way of a grant for the recipient to offer up prayers in his behalf: since these two directions are opposed and the first is invalidated by the second, what is required by the second direction is carried out, and it is required that the payment fixed for his children who have need and his relations be given.

Again if the dedicatör direct that the income of the vaqf is to be given to his children and grandchildren, but that no share shall be given to the second generation until the first is exhausted, and afterwards direct, that when a child of the first generation dies, his share shall be given to his children, the second direction is carried out.

Consequently, when one of the dedicatör's children of the first generation dies, leaving children, and the child who died had a right to share in the income, his share is given to his children. It is not given according to the first direction in the vaqfié to those of the first generation who together share the income.

174. The possession of a right in respect of the dedicated property does not cease by its abandonment.

Right to benefit does not cease on abandonment.

Thus a person who has according to the terms used by the dedicatör a right out of the dedicated property does not lose that right by saying that he abandons it.

Consequently, he is entitled, after his abandonment, to demand that right.

*E.g.* If a person in whose favour the income of a dedicated property is limited, say that he abandons his right in respect of the income of that property, he can afterwards demand the income from it.

As regards the office of Muteveli and the right of inhabiting a place, the rules above about income apply.

But if, at the time of the making by the dedicatör of the dedication, the person in which favour it is made, be present and reject the thing

Cesses if rejected at the time of dedication.

dedicated, he is deprived of the appointed benefit from the vaqf, because in this case there was no assent made on his behalf.

In such a case, after the rejection, he cannot demand the appointed benefit.

Mention of this is made in Art. 47.

Person, not entitled by the terms of the dedication, cannot share the benefit.

175. In the case of a valid dedication of a benefit limited in favour of some object, another person outside the limitation of the dedicator cannot share.

*E.g.* When the dedicator dedicates a house, of which he limits the occupation in favour of a schoolmaster who according to the direction of the dedicator is the only one existing in a dedicated school, if another, contrary to the direction of the dedicator is appointed to the school, as second master, and take the Berat, he cannot share the occupation of that house with the first master.

A dedication without restriction confers the income and not the right to inhabit.

176. An absolute dedication relates to the income and not to the right to inhabit.

Consequently, when a house is dedicated, if the dedicator at the time of the dedication use unqualified words and does not say whether the beneficiary shall take the income or inhabit it, that house is let. The beneficiary enjoys the income and not the right to inhabit.

*E.g.* When one says that he dedicates his house to the master of such a school, but does not say anything to shew that it is directed that the schoolmaster should live in that house, or that it should be let and the income given to the schoolmaster, the Muteveli lets the house and gives the income to the schoolmaster.

In such a case, the schoolmaster cannot, by reason that it was not made clear that the house should be let, prevent the letting of the house by the Muteveli, and live in it.

If no direction, the division is equal. (see Art. 149.)

177. If one limit the income of a property dedicated by him in favour of the servants of one of the holy institutions, such as a school and house of worship, but does not declare in what way the income shall be divided among the servants, it is divided amongst the servants equally.

There is not given to the higher servants a greater share than is given to the others.



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## TITLE E.

THE DIFFERENT SORTS OF VAQF LANDS AND CERTAIN RULES  
RELATING TO PIOUS ESTABLISHMENTS.

178. Land made vaqf is of two categories :—

(a). Dedicated properties which are dedicated upon the condition that their benefit is to be enjoyed without the necessity to make income out of them or to let them. Non-income-bearing.

These are called pious establishments (Muessasati Khairiye) (see Art. 16).

(b). Dedicated properties which are let out and delivered for the purpose of getting benefit from them, the rent and profit arising therefrom being limited for the benefit of some good object. Income bearing.

This second category is subdivided into three sorts :

1. Into double rent vaqfs, Ijareteinle Mevquf properties (see Art. 37).
2. Into single rent vaqfs Ijare Vahidelee Mevquf properties (Art. 38)
3. Into vaqfs called Muqata'alee (Art. 39).

179. Pious establishments are of two sorts :—

(a). Pious establishments which are not limited only for the benefit of the poor, but it is allowed for the rich and poor to enjoy the benefit of them. Such as a house of worship, library, guest-chamber, fountain, well, bridge and common cemetery. Pious Establishments.  
Two sorts.  
Where rich participate.

(b). Pious establishments which are limited for the benefit of the poor alone and it is not allowed that the rich should enjoy their benefit. Where rich do not participate.

*E.g.* a poor house and vaqf hospitals for which it is directed that necessary things, such as food and drugs, should be given to the sick, and vaqf schools for which it is directed that the things required by the pupils are to be given from the income of the vaqf.

And in respect of such establishments, even if it is not declared by the dedicator that they are specially appointed for the benefit of the poor and this is not inserted in the vaqfie, these belong only to the poor.

But if it is appointed and declared by the dedicator that the rich shall enjoy the benefit of such establishments with the poor, then the rich shall enjoy their benefit with the poor.

The dedication is not valid if it directs that the rich alone shall enjoy their benefits.

Descendants of  
dedicator  
preferred.

180. In the case of the income of dedicated property which is limited absolutely in favour of the poor, the poor descendants of the dedicator are preferred to the poor children of others.

Again in the case of the occupation of a house limited in favour of the poor, the children and the descendants of the dedicator, who have need of it, are preferred to strangers who are poor.

Mussulman and  
non-Mussulman  
share equally.

181. The income of dedicated property limited to supply the misfortunes and necessities of quarters and villages occupied by a mixed population of Mussulman and non-Mussulman, is expended towards the misfortunes and necessities of all the inhabitants, Mussulman and otherwise.

And this, whether the dedicator is Mussulman or not.

The same rule is applied also to the case of a dedicated property limited towards the misfortunes and needs of artificers, Mussulman and non-Mussulman.

Repair of pious  
foundation by  
stranger.

182. A person is not prevented, who wishes, out of his beneficence, to repair at his own expense a ruined pious foundation, although the dedication is wealthy.

Division of  
dedicated house  
not allowed.

183. The persons having a right over a house which is dedicated to them for their occupation cannot divide it among themselves even if it is capable of division.

Division of  
house by turns.

184. If the persons having a right over a house of which the occupation is dedicated to them are many, and the house is not adapted for occupation by all of them, they dwell in that house by turn.

Rebuilding.

185. When the Mesjid in a community or village is found small and not able to hold the people, it is allowed to the inhabitants to pull it down and build in place of it, at their own expense, a large and firmer building than the first.

Adding to

186. If a Mesjid is small and not able to hold the people, it is allowed to enlarge it by the addition of an income-bearing property dedicated to this Mesjid and adjacent to it.



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## TITLE F.

ABOUT MUSSAQAFAT AND MUSTAGHILAT VAQF PROPERTIES HELD  
AT DOUBLE RENT (IJARETEINLE).

## CHAPTER I.

ABOUT THE GRANT OF MUSSAQAFAT AND MUSTAGHILAT VAQF  
PROPERTIES HELD AT DOUBLE RENT, AND THE RULES OF IN-  
HERITANCE WITH RESPECT TO THEM.

187. When there is a question of letting and granting dedicated properties at a double rent by the vaqf for the first time, to a person asking for it, a sum is taken in advance from that person on behalf of the vaqf, a rent payable in advance, called "Ijare Muajelé" approximate to the value of that property, and the property is handed to him on the condition that he shall pay at the expiration of each year a small sum called "Ijare Muejelé."

Letting of  
Ijareteinle.

188. The reversion (riqbe) of Ijaretein Vaqf properties and the property itself belong to the vaqf, and the right of using and disposing of them to the lessees at double rent.

Ownership  
belongs to  
dedication.

They possess such Ijaretein vaqfs as long as they live.

Right of use to  
lessee.

When they die, they are transferred to their male and female children equally, and without payment of the equivalent value. (See Law about inheritance of Ijaretein vaqfs, 4 Rejeb, 1292, and 15 Zilkade, 1292).

Inheritance  
when right not  
extended.

If they die without children, they belong to the vaqf, by reason of their being left without owner as they are transmissible only to the children.

But if the dedicator directs in the vaqfié made by him, that Mussaqafat and Mustaghilat Ijaretein properties should be transferred to the heirs of the persons possessing them, in the same way as pure mulk properties are transferred, in such a case such properties are transferred, after the death of the person possessing them, to his heirs in proportion to the hereditary share each is entitled to.

Inheritance  
when dedicator  
directs that  
they should be  
inherited like  
Mulk.

Also, in accordance with the Imperial Law issued and published on the second of Zilkade, 1285, the Mussaqafat and Mustaghilat Ijaretein properties, of which the hereditary right is extended at the request

Inheritance  
when right  
extended.



and wish of their owner, are transferred first, to his male and female children in equal shares, as formerly, and second, to the grandchildren, namely, to the male and female children of the male and female children of the deceased owner.

That is to say, when a person, being the tenant of an ijaretein property, of which the hereditary right has been extended, dies without leaving any children, but leaving only grandchildren, notwithstanding that such grandchildren were the issue of different children of his, such properties are transferred to all of them equally.

*E.g.* If the tenant of an ijaretein property, of which the hereditary right has been extended dies without children but leaving five children of a predeceased son and a child of a predeceased daughter, such property is regarded as consisting of six shares, five of which are transferred to the five children of the deceased son, and one to the only child of the deceased daughter.

Or if he leaves two children of a predeceased son, three children of another predeceased son and four children of a predeceased daughter, such property is considered as consisting of nine shares and one share is transferred to each of them.

When extended great grand-children do not inherit.

189. Ijaretein properties, of which the hereditary right is extended, pass only to the grandchildren and not to more remote descendants.

Consequently the great grandchildren are not entitled to inherit any ijaretein properties of their great grandfather.

*E.g.* If the son and the son of the son of the tenant of an ijaretein property, of which the hereditary right is extended, die, and afterwards the owner dies leaving a great grandson, such property is not transferred to the great grandson.

Children of deceased children take the share of their parents.

190. The children of male and female children, who die while their father and mother are living, are looked upon as children and the share which would pass to their parents if they were living, from their grandfather and grandmother is transferred to them.

That is to say, if the tenant of an ijaretein property, of which the hereditary right is extended, die leaving children and grandchildren, the issue of a predeceased child, then the predeceased children are supposed to be living and the shares which would have passed to them, if alive, on the division of the property, pass to their children.

*E.g.* If the tenant of an Ijaretein property, of which the hereditary, right is extended, dies leaving two sons, one daughter and three children of another son who is dead, the three shares of this property pass to the two sons and the daughter and the other share passes in equal proportions to the three children of the pre-deceased son.

Or, if he dies leaving a son and a son of a pre-deceased daughter, half of that property is transferred to the son and the other half to the son of his daughter. Or, if he dies leaving three sons, one daughter, three children of another predeceased son and two children of another predeceased daughter, in such a case the property is looked upon as consisting of six shares, of which four are transferred to the three sons and the son of the daughter,—each taking one share—one share to the three children of the deceased son and one share to the two children of the deceased daughter.

(b). When the person possessing an Ijaretein property of which the hereditary right is extended, dies leaving children or grandchildren, the surviving husband or wife is not entitled to have the property transferred to him or her.

Children and grandchildren inherit to exclusion of husband or wife.

(c). It passes to the parents.

Parents when entitled to inherit.

That is to say, when the owner of an Ijaretein property, of which the hereditary right is extended, dies without leaving children or grandchildren, but leaving father and mother, then that property passes in equal shares to his father and mother.

If he only has a father, the whole property is transferred to him, or if he only has a mother, it is all transferred to her.

If besides the father and mother, or either of them, a husband or wife co-exist, then one-fourth of the property is transferred to the husband or wife, as the case may be.

*E.g.* When the owner of an Ijaretein property, of which the hereditary right is extended, dies without leaving children and grandchildren, but leaving wife, father and mother, then one-fourth of that property is transferred to the wife and three-fourths equally to the parents. Or, if he leaves wife and father, then one-fourth is transferred to the wife, and three-fourths to his father. Or, if he leaves wife and mother, one-fourth is transferred to the wife and three-fourths to his mother.

Or, when a wife, while in possession of an Ijaretein property, of which the hereditary right is extended dies, without leaving children or grandchildren, but leaving husband, father and mother, then one-fourth of that property is transferred to the husband and three-fourths to her parents equally. Or, if she leaves husband and father, then one-fourth of it is transferred to the husband and three-fourths to her father. Or, if she leaves husband and mother, then one-fourth is transferred to the husband and the residue to her mother.

(d). It is transferred to brother and sister of the full blood.

Brother and sister when entitled to inherit.

That is to say, if the owner of an Ijaretein property of which the hereditary right is extended, dies without leaving children, grandchildren or parents, but leaving a full blood brother and a full blood sister, then that property is transferred to them equally.

If he leaves only a full blood brother, then all that property is transferred to him.

Or, if he leaves a full blood sister, then that property is all transferred to her. The transfer is carried out equally, whatever may be the number of the full blood brothers and sisters.

Half brother and sister by the same father, when entitled to inherit.

(e). It is transferred to a brother and sister having the same father.

When the owner of an Ijaretein property of which the hereditary right is extended, dies without leaving any children, grandchildren, father, mother and brother of the full blood, but leaving only brothers and sisters having the same father, then the property is transferred to them equally.

In such a case, when there is a husband or wife, one-fourth is transferred to them and the residue to the brother having the same father.

The details set out in respect of full blood brothers are applied to those having the same father as well.

Half brothers and sisters by the same mother when entitled to inherit.

(f). It passes to the brothers and sisters having the same mother.

That is to say, if the owner of an Ijaretein property of which the hereditary right is extended, dies without leaving children, grandchildren, parents, brothers of full blood and brothers having the same father only, but leaving brothers and sisters having the same mother, then that property is transferred to them equally.

In such a case, the husband or wife receives one-fourth share.

The details aforesaid also apply to brothers having the same mother.

When husband and wife may inherit.

(g). It passes from husband to wife and *vice versa*.

That is to say, if the owner of an Ijaretein property, of which the hereditary right is extended, dies without leaving any heir of any of the above-mentioned degrees entitled to inherit, but leaving only a wife, then that property all passes to her.

In case there are many wives, the property passes to all of them equally.

Or, if a woman, being the possessor of an Ijaretein property, of which the hereditary right is extended, dies without leaving any heir, within the degrees of relationship above-mentioned, entitled to inherit that property, but leaving a husband only, then that property passes to her husband.

In order that a husband or wife, should be entitled to inherit, as above stated, it must be proved, that he or she, is entitled to do so.

That is to say, a husband or wife, who is an heir or heiress, is entitled to inherit and he or she, who is not an heir or heiress, is not.

Consequently, if after a marriage is contracted, either of the spouses dies before the consummation of the marriage, the surviving spouse is entitled to inherit.

Also, if after a person has divorced his wife by a revocable divorce, either of the spouses dies within the time during which it is not allowed for them to marry again, (iddet, 130 days), the surviving spouse is entitled to inherit.

But if either of the spouses die after the expiration of iddet, (130 days), the surviving spouse is not entitled to inherit.

In case the divorce is final, notwithstanding that either of the spouses dies within the time of iddet, (130 days), the surviving spouse is not entitled to inherit. But if a person during an illness, which proves fatal, divorces a wife by a final divorce without application having been made by her, and dies before the iddet of his wife expires, the wife is entitled to inherit.

191. The Ijaretein properties of a person, as to whom it is not known whether he is alive or dead or where he is are not transferred to his heirs unless his death is either in fact or legally proved.

Proof of death necessary.

192. If the dead bodies of any two relations are discovered in a wrecked ship, drowned, or buried under the ruins of a building which has fallen down, or in a building which has been burnt and it is not known which of the two died first, such relations, inasmuch as they cannot inherit the one from the other, are not entitled to inherit Ijaretein properties one from the other, but such properties pass to their living heirs.

Simultaneous death of relations.

*E.g.* If the owner of an Ijaretein property dies together with his son by being drowned, buried alive, or burnt as aforesaid, and it is not known which of the two died first and the remaining living children of the person, so dying with his son, take possession of that property by virtue of inheritance, the children of the son, who died at the same time as his father, cannot take any share out of that property, alleging as a reason that the said share passed to his father from his grandfather.

If the owner of an Ijaretein property, of which the hereditary right is extended, dies without leaving anybody entitled to any inheritance, that property belongs to the vaqf as unoccupied.

Mahlouli.

But if a person has agreed that an Ijaretein property should be granted to him, on the condition that he is to maintain the person so granting it during his lifetime and such a condition is inserted on the Land Registry title by leave of the Muteveli and the grantee afterwards

dies, while the grantor is still living, leaving no heir entitled to inherit, then that property is not looked upon as unoccupied, but by the consent of the Muteveli is given to the grantor.

N.B. In the case of non-Mussulman tenants of Ijaretein vaqfs, where the property does not escheat to the vaqf, the Law of Inheritance in Cyprus is amended by the Act. XX. of 1895.

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## CHAPTER II.

### ABOUT OBSTACLES TO INHERITANCE.

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Difference of  
religion.

193. The difference of religion which exists between a Mussulman and a non-Mussulman prevents the transmission by inheritance.

Consequently, at the death of a Mussulman, his Ijaretein Mussaqafat and Mustaghilat vaqfs do not pass to his non-Mussulman children and relations.

Also, at the death of a non-Mussulman, his Ijaretein Mussaqafat and Mustaghilat vaqfs do not pass to his Mussulman children and relations.

But the difference of religion, which exists between two non-Mussulmans does not prevent the property passing.

*E.g.* The Ijaretein Mussaqafat and Mustaghilat vaqfs pass from a Christian to a Jew and *vice versa*.

Consequently, when a Jew being an Ottoman subject while he is the owner of an Ijaretein property, dies leaving two children, who are Ottoman subjects of whom one is Christian and the other a Jew and the Christian wishes to take possession of half of that property by right of inheritance, the Jew cannot contend that he is entitled to possess that property exclusively for the reason that their father was a Jew and his brother is a Christian and that, therefore, he is not entitled to inherit that property. The same rule is applied when the person who dies is a Christian.

Also, when a Jew, being an Ottoman subject, while he is the owner of an Ijaretein property, dies leaving a Christian child who is an Ottoman subject, and that child wishes to take possession of the property by right of inheritance the Muteveli cannot prevent such child from inheriting for the reason that the father was a Jew and the child a Christian and that the property does not pass to the child and is unoccupied.

The same rules apply also in case the deceased is a Christian and the child a Jew.

194. The fact that people are subjects of different Governments, that is to say, difference of nationality, prevents inheritance. Difference of Nationality.

That is to say, when a Mussulman, who is an Ottoman subject, dies his Ijaretein property does not pass to his children and relations who have a foreign nationality.

Also, when a Mussulman, who is a foreign subject, dies while in possession of an Ijaretein property, in conformity with the Law, by which right of ownership is granted to foreigners, that property does not pass to the heirs who are Ottoman subjects.

If an Ottoman subject, being the owner of an Ijaretein property acquires a foreign nationality, without obtaining an official permission, the properties in his name, being unoccupied, belong to the vaqf and do not pass to his children and relations who would otherwise be entitled to inherit.

But if he acquires a foreign nationality after he has received an official permission, then the following rules are to be observed:—

If the State of which he acquires the nationality, has agreed and signed the protocol dealing with the rights of ownership of foreign subjects, his Ijaretein properties are not looked upon as unoccupied, but they belong to him as formerly.

But if the State, of which he acquires the nationality, has not agreed to and signed the protocol dealing with the rights of ownership of foreign subjects, in such a case the property is looked upon as unoccupied.

195. Homicide is a bar to inheritance.

Homicide when a bar.

*E.g.* A person, who has killed his own father is barred from inheriting Ijaretein Mussaqafat and Mustaghilat vaqfs which his father possessed in his lifetime.

Upon this matter, the word "homicide" means and includes a homicide, the consequence of which is deprivation of inheritance.

A homicide, the consequence of which is not the deprivation of inheritance, is not a bar to the right of inheritance, (compare Land Law, Art. 108).

196. Slavery is a bar to inheritance.

Slavery.

*E.g.* If a person, while owner of an Ijaretein property, die leaving children, who are slaves, that property does not pass to them.

197. If anyone being entitled to inherit is deprived of the inheritance by reason of any of the above causes, the share which he would have Shares which have lapsed through disability.

inherited but for that obstacle is not looked upon as unoccupied and it passes to the other heirs.

*E.g.* If a non-Mussulman, who is an Ottoman subject, being the owner of an Ijaretein property, die leaving two non-Mussulman sons, of whom one is an Ottoman subject and the other a foreigner, in such a case the property passes to his son who is an Ottoman subject exclusively.

The half share of that property is not considered as unoccupied because the other son is a foreigner.

Also, if, for example, one of the three children of someone, who possesses an Ijaretein property kills him in a way which results in the deprivation of inheritance, his other two children take possession of that property by inheritance.

The third of his property is not looked upon as unoccupied for the reason that one of his children is his murderer.

N.B. In the case of non-Mussulman tenants of Ijaretein vaqfs in Cyprus, when the property has not escheated to the vaqf, the Law as to disabilities of heirs is amended by the Act. XX. of 1895. See Sections, 12, 13, 15, 16 and 17.

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### CHAPTER III.

#### FINAL ALIENATION (FIRAGH GATI').

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Power to  
alienate.

198. The Ijaretein tenants of Mussaqafat and Mustaghilat vaqfs may alienate them to another either on payment of an equivalent value or gratis.

N.B. As to power to alienate part of an Ijaretein vaqf. See Art. 238, as to alienation by joint owners, see Art. 240.

Alienation how  
made.  
Permission of  
Muteveli  
necessary.

199. An alienation is made by a proposal and acceptance.

But the permission of the Muteveli of the vaqf to which the property alienated belongs is required, in order that the alienation may be valid. Any alienation made without permission of the Muteveli is not valid or of force.

Consequently, the alienor and alienee can, if either of them wish, revoke an alienation which is made without the permission of the Muteveli.

And if the alienee dies, the alienor is owner of the property alienated.

And if the alienor die, the property passes to his heirs who are entitled to inherit.

But if he has no heirs entitled to inherit, the property belongs to the vaqf as an unoccupied property would.

In one word, an alienation made between the alienor and the alienee without the permission of the Muteveli is invalid.

200. If the Ijaretein tenant of Mussaqafat and Mustaghilat vaqf property finally alienates it to another, with the permission of the Muteveli, and the title is not prepared, the alienor cannot revoke the alienation for the reason that the title has not yet been prepared.

Alienation complete though title not prepared.

201. A subsequent condition does not affect a previous transaction.

Consequently, when a person alienates his Ijaretein property to another with the permission of the Muteveli, finally and unconditionally, for a fixed sum of money paid, if after some time the alienee promise to the alienor that he will give back and convey that property to him as soon as the value thereof is repaid to him, and if he gives him even a document to that effect, the person making such promise is not bound to carry it out.

Conditions subsequently made and contemporary conditions.

That is to say, if the alienee do give and alienate back to him that property according to his promise, the transaction is good, otherwise no judge can force him to do so.

But if such an agreement was made between the alienor and the alienee before the alienation, which was made in consequence of that agreement, in such a case the alienee is bound to give and alienate back to the alienor the property alienated, according to the agreement.

202. If a person, after he alienate his Ijaretein property to another gratis and unconditionally, with the permission of the Muteveli, repents, he is not entitled to demand the price from the alienee or to ask the alienee to return that property to him.

Gift with permission of Muteveli final.

Also, if anyone, while in good health, alienates his Ijaretein property to another gratis, with the permission of the Muteveli, and afterwards dies without leaving anybody entitled to inherit, the Muteveli is not entitled to interfere with the property alienated, or ask for a Mnajele rent from the alienee.

203. The alienor must be of full age and of sound mind.

Alienor must be of full age and sound mind.

Consequently, an alienation made by an infant, lunatic or a person who has reached his second childhood is not valid or of force.

204. In alienating a property, the consent of the alienor is required.

Force.

Consequently, an alienation made under the influence of force is not valid.

205. The alienation of Ijaretein Mussaqafat and Mustaghilat vaqfs by exchange for another is allowed.

Alienation by exchange.



*E.g.* If anyone alienate his Ijaretein house taking in exchange another Ijaretein house held by another, such an alienation is allowed. But if the houses exchanged belong to different vaqfs, in order that the exchange be valid, it is required that the Muteveli of both the vaqfs should give permission for that purpose.

Alienation  
before the  
Judge.

206. If anyone alienates his Ijaretein property to another before a Judge and the Judge reduce the agreement made for such alienation into writing, the alienation is not valid or of force unless the Muteveli of that vaqf property grant permission to alienate.

But in a case in which, after the completion of a trial, it becomes necessary that the Ijaretein property of one of the litigants should be alienated to another, if the Judge, in accordance with the articles contained in a special chapter, appoint temporarily an agent of the Muteveli for that proceeding and the alienation is carried out with his permission, then such an alienation is valid and of force.

Revocation of  
agreement to  
alienate.

207. If a person agree to alienate his Ijaretein property to another and afterwards repent of the agreement and decline to confirm the alienation in the presence of the Muteveli, he is not forced to carry out the alienation.

Penalty on  
rescission not  
enforceable.

208. If a person agree to alienate his Ijaretein property to another and it is agreed between the contracting parties that the party revoking the agreement is to pay to the other a fixed sum of money in case he repents of the bargain, such an undertaking is of no value whatever.

Consequently, if one of the contracting parties revokes that agreement, he cannot be adjudged to pay to the other that sum of money.

#### CHAPTER IV.

##### ALIENATION MADE BY A SICK PERSON.

Alienation  
during last  
illness.

209. If a person, during the illness of which he dies, alienates vaqf Mustaghilat held in Ijaretein with the permission of the Muteveli and afterwards he dies, the following rules are to be observed :—

If there exist any heirs of the alienor entitled to inherit, the alienation is valid and of force. But if such heirs do not exist, then the alienation is not valid and of force, and the alienated Mustaghilat belongs to the vaqf as unoccupied, (compare Mejellé, Arts. 394 and 877).

210. If a person suffering from a chronic disease, which lasts for over a year, after his condition changes and his disease becomes worse, sells his Ijaretein property to another, by leave of the Muteveli, and after a few days dies without leaving any heir entitled to inherit, such an alienation is not valid.

Sale by chronic invalid.

Consequently, that property belongs to the dedication, as unoccupied. But if he alienates that property before his condition is changed and his disease gets worse, in such a case the alienation is valid, (Art. 1595, Mejellé).

211. If a person during his illness of which he dies alienate by leave of the Muteveli his vaqf Mustaghil, held by Ijaretein, to one of his heirs entitled to inherit, such an alienation is valid and of force, (compare Art. 393, Mejellé).

Alienation during last illness to heir.

Consequently, in such a case, the other heirs entitled to inherit, cannot interfere with the property alienated, alleging that they do not approve of the alienation, on the ground that it was made in the course of an illness of which the alienor died.

*E.g.* If a person having three children die after he has alienated to one of them, by leave of the Muteveli, his vaqf Mustaghil, held by Ijaretein, during the illness of which he died, his other two children cannot interfere with that property.

212. When a sick person wishes to alienate his Ijaretein property to another, his heirs, who are entitled to inherit, cannot prevent him from making the alienation.

Alienation by invalid.

213. When a sick person, who has no heir, desires to alienate his Ijaretein property to another, the Muteveli cannot refuse him the leave required for that purpose, saying "his illness may prove fatal and I don't grant leave for the alienation before he recovers."

Alienation by invalid who has no heir.

Because the disease is proved to be fatal by the death of the sick person and it cannot be proved before his death.

But if the sick person die after the alienation is made without recovering from the illness from which he was suffering, and the disease is thus ascertained to have been fatal, it is proved that the alienation is invalid, and then, even if the Muteveli had granted leave for the alienation in writing, such Muteveli takes the property alienated from the hands of the alienee in order that it should be converted into *Mahloul* (unoccupied). In such a case, if the alienee had paid the price of the alienated property to the alienor, he takes the same out of the property left by the alienor.

## CHAPTER V.

GUARDIANS AND ALIENATIONS BY AND TO THE GUARDIANS OF  
PERSONS UNDER DISABILITY.

Alienation by  
next of kin or  
guardian.

214. The next of kin of an infant, being in good credit, or other voluntary guardian or a guardian who has been appointed, can, by leave of a Judge and the permission of the Muteveli, sell the vaqf property of an infant to another for its value, if the circumstances are such as are required by the Sheri Law for the permission of such sale (*e.g.* if the property is in a state of ruin and the income is not equal to the expenses, or if there is necessity to raise money for the maintenance of the infant), provided that it is made clear, by the evidence of persons possessing competent knowledge, to the satisfaction of a Judge, that the sale of the property to another will be for good reason and for the benefit of the infant and for its value.

In such a case, after the property has been so alienated, when the infant comes of age, he cannot claim that property back.

But if there is no lawful reason, the next of kin and guardian cannot alienate that property to another and if he do so the alienation is not legal or of force.

In such a case, therefore, an infant, after he becomes of age, can, by leave of the Muteveli, demand and take back that property from the alienee.

The same rule applies in the case of a lunatic or a man who has reached his second childhood.

Purchase for  
infant.

215. The next of kin or guardian can agree to buy an Ijaretein property on behalf of an infant by leave of a Judge and the consent of the Muteveli for its value, if it is proved that such a purchase is beneficial to the infant.

The same rule applies in the case of a lunatic or a person who has reached his second childhood.

Guardian cannot  
buy infant's  
property.

216. A guardian cannot buy for himself an Ijaretein property which belongs to an infant of whom he is the guardian.

But a guardian, after he alienates that property to another for reasons recognised by the Sheri Law and by the approval of a Judge and the consent of the Muteveli, at a price equal to its value, can buy it for himself from the person who first bought it.

Upon this subject, the same rule applies to the next of kin as well.

217. When it is necessary to repair an Ijaretein property belonging to an infant, if it is proved that that property will be entirely ruined and the infant damaged, if it is left in the condition in which it is then, and not repaired, and that the repairs to be made out of the estate of the infant will be beneficial to him, the next of kin or guardian can repair the same by leave of a Judge out of the estate of the infant.

Repairs by guardian for infant.

In such a case, if the infant die, the heirs cannot disapprove of the expenditure caused to be made by the next of kin or guardian in the manner aforesaid.

The same rule applies in the case of a lunatic and of a person who has reached his second childhood.

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## CHAPTER VI.

### CONDITIONAL ALIENATION.

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218. The conditions which render an act of sale defective, also render defective an agreement for alienation.

Defective alienation.

That is to say, when a person wants to alienate his Ijaretein property in the presence of the Muteveli, if he alienates it under a defective condition which is agreed to by the alienee, and the Muteveli grants leave under this condition, such an alienation is defective. But if the alienation is agreed upon between the alienor and the alienee under a defective condition, and afterwards, without the said condition being mentioned before the Muteveli, the alienor alienates that property by a final alienation, and the Muteveli grant his permission for the alienation as final, such an alienation is not defective.

The agreement entered into between the alienor and the alienee is looked upon as invalid.

219. A condition providing for the maintenance of the alienor up to his death does not render an alienation, made gratis, defective.

Condition to maintain alienor does not render alienation defective.

That is to say, if a person alienates his Ijaretein property on the condition that he is to be maintained up to his death, and the alienee receive the property under the said condition, and the Muteveli grants leave for the alienation upon these terms, such an alienation is valid and the condition of force.

Consequently, in such a case the alienor cannot revoke the alienation, and claim and recover the alienated property from the alienee, as long as he is willing to maintain the alienor.

But if the alienee does not carry out the said condition by maintaining the alienor, then such alienor is entitled to revoke the alienation and seek and recover from the alienee, with the approval of the Muteveli, the property alienated.

## CHAPTER VII.

### OPTION TO RESCIND FOR DEFECT, ON SIGHT, FOR EXCESSIVE DAMAGE AND FRAUD.

Option to  
to rescind for  
defect.

220. In the alienation of an Ijaretein property the right of option for defect and option on sight are of force.

That is to say, if anyone, upon dedicated property which is alienated to him by another, observe an old defect, which would, according to the Sacred Law, cause the rejection thereof, he can return the same to the alienor, with the consent of the Muteveli, by virtue of his right of option from defect.

Until a person has received the dedicated property, which is alienated to him by another, without his seeing it, he is entitled to the right of option.

When he sees it he can, if he likes, rescind the sale with the consent of the Muteveli, or accept it, (Arts. 320 and 336, Mejellé).

Option-excessive  
injury without  
fraud.

221. If at the alienation of vaqf Mussaqafat and Mustaghilat held by Ijaretein excessive damage occurs without fraud, the person who sustains the loss, whether he is the alienor or the alienee, cannot rescind the alienation. (Compare Art. 356, Mejellé).

But if the trustee or guardian of infants alienate such a dedicated property at a price excessively low, even if there is no fraud, the alienation is not valid. (Art. 356, Mejellé).

Consequently, an infant, when he becomes of age, can claim and recover that property.

The same rules apply also in the case of a lunatic and of a person who has reached his second childhood.

Also if such a dedicated property is alienated by the Muteveli at a price excessively low, even if there is no fraud, such an alienation is not valid. (Mejellé, Art. 356).

Also if a mandatory to effect an alienation alienate the property at an excessively low price, even if there be no fraud, the alienation is not valid as will be explained in a special chapter. (See Chapter, XII).

222. If it is proved that the alienor, in alienating a property, defrauded the alienee or *vice versa*, and that there is excessive damage, the person who sustains the damage can dissolve the alienation.

Excessive loss  
by fraud.

*E.g.* If a person say to another "my Ijaretein workshop, which is situated at such a place, is let at a monthly rent of 500 c.p. and the price thereof fixed by valuation is 100,000 c.p. and I give it you for that sum," and the other having trusted his words take it, with the Muteveli's consent, at the price of 100,000, if it is afterwards proved that that workshop is let for 300 c.p. per month and the price thereof is hardly 70,000 c.p., the person receiving the same, with the Muteveli's consent, rescinds the alienation and takes back from the alienor the price which he paid.

Also when a person, addressing himself to an unskilled man, who is the possessor of an Ijaretein property say that that property is hardly worth 50,000 c.p. and no more, and thus persuade him to alienate it to him at that price, and such unskilled man alienate the said property to the person who persuaded him, with the consent of the Muteveli; if it is afterwards proved by the evidence of trustworthy and impartial experts that the value of that property is 80,000 c.p. and that there was fraud and excessive damage in the alienation, the alienor can, with the consent of the Muteveli, rescind the alienation and return the price to the alienee and take the property back.

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## CHAPTER VIII.

### ABOUT PRICE OF ALIENATION AND RIGHT OF RECOVERY.

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223. If a person alienates and delivers vaqf Mussaqafat or Mustaghilat held by Ijaretein to another, by leave of the Muteveli, on the condition that a fixed sum of money be paid, and the purchaser does not pay the money, the alienor can demand the purchase money from the alienee and bring an action.

Recovery of  
price.

In such a case, if the person, who bought the property die before paying the purchase money, the alienor can claim and recover the purchase money from the estate of the alienee.

224. The purchase money is inherited in the same way as other things are.

Price—  
Inheritance of.

That is to say, if a person alienate and deliver his Ijaretein property at a fixed price and he die before receiving from the alienee the price

thereof, such purchase money is taken from the alienee and, being added to the estate of the deceased, is divided among the heirs in proportion to the hereditary share of each.

Consequently, the heirs of the alienor, who are entitled to inherit, cannot contend that the purchase money of such dedicated properties goes to them only, as those properties would have gone, and preclude the heirs not entitled to inherit such properties from receiving their lawful share out of the purchase money.

In general, the purchase money is looked upon as part of the estate of the deceased and is governed by the rules of the Sheri Law, which apply to the rest of the estate.

225. If anybody appears and claims part of an Ijaretein property which another person has bought, for which he has paid the purchase money, and, after proving his right he recovers such part and a judgment is given for that, the alienee returns the property to the alienor, with the consent of the Muteveli, and takes back from him the purchase money.

226. If, after a Muteveli of a vaqf has alienated to some person a property, as part of the Mustaghilat of the vaqf of which he is Muteveli for a sum paid as Muajele and a sum to be paid as Muejele, a third person come forward alleging that that property is his and proves his action, and after taking an oath himself, recovers the property and a judgment is given then the alienee takes back from the Muteveli the Muajele rent.

## CHAPTER IX.

### PARTITION, DIVISION AND DISTRIBUTION OF BENEFIT DERIVED FROM A DEDICATED PROPERTY.

227. The partition of an Ijaretein property held in common among the joint owners is allowed, subject to two conditions (1131 and 1139 Mej., Art. 183.)

(a) that the property should be divisible, that is to say, each joint owner to be able to enjoy the benefit belonging to him after division.

(b) The division should be more beneficial to the dedication.

Consequently, the partition of Ijaretein properties which are indivisible or of which the division is injurious to the dedication, is not valid.

After these conditions have been ascertained and proved, it is also an indispensable condition that the partition be made by leave of the Muteveli.

Return of price where ouster

Where Muteveli grants and a third party recovers the property.

Partition allowed, when property is divisible and beneficial to dedication.

Consequently, the partition of Ijaretein properties made without the leave of the Muteveli, is not valid or of force.

228. It is looked upon as damage to the dedicated property caused by the division, if after the division a part of a dedicated building site remains without a way to it, or after the division of a large dedicated site into small parts, the value of the property is extinguished and the former income diminished.

When division not beneficial.

229. In case of Ijaretein properties held in common and capable of division and of which the division is beneficial to the dedication, the division is carried out compulsorily,

Partition may be enforced.

That is to say, if some of the joint owners of such property apply for its division, and some of them do not consent, the Judge orders that the building and building site of that property be locally inspected, and valued by persons who have full knowledge of buildings, in the presence of the parties interested and of the Muteveli. If after such inspection it is proved by the evidence of experts that that property is capable of division amongst the joint owners, in a way beneficial to the dedication, then the Judge, without taking into consideration the consent of the persons not consenting to the division, divides that property, with the approval of the Muteveli, amongst the joint owners, by lot, in proportion to their shares, and fixes and separates them by placing distinctive marks on each share.

230. If some of the joint owners of Ijaretein properties, held in common, are infants, lunatic or persons who have reached their second childhood, the partition is carried out through their trustees, guardians or representatives. (Art. 1128, Mejjellé).

Partition may be made by guardian when beneficial to infant, &c.

But it is required that such partition should be beneficial to the dedication and still more beneficial to the infant, lunatic or person who has reached his second childhood.

231. Dedicated gediks held in common and possessed in Ijaretein are not capable of partition according to the Civil Law.

When there are gediks.

Also when, within Ijaretein properties, there are gediks dedicated by a final dedication, the partition of such Ijaretein properties, within which such gediks are found is prohibited, unless such gediks are abolished by an Imperial decree and through the Muteveli, or, unless they are included in the portion taken of one of the joint owners, by their consent.

232. A compulsory partition in respect of a number of Ijaretein properties held in common, by joining them together for the purpose of division, is not enforced.

Properties cannot be joined for partition.



*E.g.* While two persons hold some Ijaretein properties in common and in equal shares, if one of the joint owners ask that such properties might be partitioned by joining them together for the purposes of division and giving one property to one and the other to the other joint owner, and the other joint owner refuses to agree to such partition, the Judge cannot compel the dissenting joint owner to agree to such partition.

Partition rescinded if excessive damage.

233. The partition must be just. (Mejellé, 1127).

That is to say, the share to be allotted to each of the joint owners, whether in a voluntary partition or partition under the order of a Judge, must be equal to the right which each joint owner has upon the property to be partitioned, and not excessively deficient.

Consequently, after the joint owners have divided their Ijaretein properties, which are held in common, either under the decision of the Judge or by their mutual consent, and leave of the Muteveli, if one of them allege and prove that there is excessive damage done to him by the share allotted him, the division is rescinded.

But if after the division is made the joint owners release each other from the effect of an action respecting the division, in such a case an action about damage is not heard. Nevertheless, when there are persons under disability amongst the joint owners such as infants, lunatics or persons who have reached their second childhood, and a partition is made by their representatives, guardians or protectors, actions in respect of damage existing in the share of persons under disability are heard, even if their representatives, guardians or protectors have given a release in the manner aforesaid. Because the release given by the representatives, guardians or protectors of persons under disability is not valid.

Equalization of shares by payment allowed if both parties consent.

234. Although the partition amongst the joint owners of an Ijaretein property held in common, of which the division is impossible without the addition of a sum of money, is allowed by the consent of the joint owners and by leave of the Muteveli, yet one cannot be forced if he does not consent. Thus; when there is a dissent, the property cannot be divided compulsorily.

When, at the division of an Ijaretein house owned by two persons in common in undivided and equal shares, the value of one of the shares of the building is higher than the other, if one of the joint owners, wishing to take the share having the higher value, propose to the other to have that house divided and offer a fixed sum of money in order to make up for the deficiency on the other share, and the other joint owner agree to it, and the division is beneficial to the dedication, in such a

case such joint owners can divide that house with the consent of the Muteveli.

But if one of the joint owners refuses, the Judge cannot force him to agree to such division.

235. When amongst the joint owners of Ijaretein income-bearing properties which are incapable of division, or of which the division is injurious to the dedication, a litigation or dispute arises as to the possession of the said properties, while in an undivided condition, and some of the joint owners claim the division of the benefit derived from the property and some refuse it, the Judge, without taking into consideration the dissent of the person refusing, with the Muteveli's consent, decides that the property should be possessed by a division of the benefit.

Division of profits when property is indivisible.

(See circular 10 Shaban 1296, after the occupation of Cyprus, I. Nicolaides, 1241).

236. The time elapsed, before the division of the benefit, cannot be set off against the turn for enjoying it.

Time of occupation before division cannot be taken into account.

*E.g.* When one of the two joint owners of an Ijaretein house has lived in it exclusively for a time before the division of the benefit, and afterwards, with their mutual consent, or by the decision of the Judge and the consent of the Muteveli, they agree to divide the benefit, and the turn of the one who has lived in it exclusively, as aforesaid, comes, the other cannot count, against his turn, the time for which he occupied it before the division of the benefit, and prevent him from possessing it during his turn.

237. In order that the division of the benefits may be irrevocable, it is required that the consent of the Muteveli should be given.

Division of benefit not irrevocable unless trustee consents.

Therefore a partition of the benefits agreed between the joint owners by mutual consent, without the leave of the Muteveli, is not irrevocable, that is to say, whichever of the joint owners wishes can annul this division of the benefit at his will, without the consent of the other joint owner.

238. The separation of Ijaretein vaqf properties is allowed.

That is to say, one can separate part of an Ijaretein vaqf property and keep it in his possession and grant the rest to another.

Power to alienate part.

The validity of the separation depends on the existence of the two conditions following:

(a). the possibility of enjoying separately the benefit of each part separated.

(b). the fact that the separation is more beneficial to the dedication.

And in separation also the leave of the Muteveli is required. Consequently, a separation made without the leave of the Muteveli is invalid and of no force.

Grant of  
unowned part  
by Muteveli.

239. When a joint owner refuses to take, at its assessed Muajele, a Mahloul share in an Ijaretein vaqf property, and at the same time does not ask to take it in common with the other owners for the assessed Muajele, and if the grant to another is beneficial to the dedication, and the unowned part can be separated, or is separated, in such a case the Muteveli can separate the unowned part and grant it to another for the assessed Muajele.

## CHAPTER X.

### CERTAIN QUESTIONS RELATING TO IJARETEIN VAQF PROPERTIES POSSESSED IN COMMON.

Alienation by  
joint owners.

240. If two persons have joint and undivided possession of Ijaretein vaqf property, one cannot compel the other to grant him his share in the property or to take from him his own share in the property.

But whichever of them wishes can grant his share to anyone he likes.

The grant made by one joint owner cannot be prevented.

The same rule is applied when there are more than two joint owners.

No pre-emption  
by Sacred Law.

241. In respect of Ijaretein vaqf properties, there is no right of pre-emption.

Consequently, one joint owner of Ijaretein vaqf properties can grant his share to another person without the permission of the other joint owner.

After the grant, the other joint owner cannot, on payment to the grantee of the price which he has paid, take that share, without the consent of the grantee, on the ground that he is joint owner of the property.

Again if two possess in common and in undivided shares an Ijaretein vaqf property, and one of them dies, leaving no one having the right to inherit, and the Muteveli grant his share, which became mahloul by his death to another for the Muajele assessed, the other co-owners cannot, on payment of the said Muajele to the person who took that share, take the share from him without his consent.

Right of  
pre-emption,  
over unowned  
share by Civil  
Law.

By the Civil Law however it is required with reference to Ijaretein vaqf dwellings and houses, which belong to the sort which does not produce income, that they should not be granted to another when a co-owner

seeks an unowned share, and that there should be a reduction for the benefit of the co-owners.

242. If one of the co-owners of an Ijaretein vaqf property voluntarily repairs it at his own expense, he cannot seek from his co-owner a proportional part of the expence.

No right of contribution for repairs.

But if he repair it by the order of the co-owner under the condition that he should have a right of bringing it into account, then he can demand from him a sum proportional to his share.

243. If an Ijaretein vaqf property held in common which is not capable of division, or of which the division will cause damage to the dedication, is destroyed, and one of the co-owners wishes to repair it at his own expense, setting off the expense against the Muajele, but the rest do not agree to such repair, the co-owner, seeking to make the repair, applies to the Judge, who, if the Muteveli approve, gives him leave to repair that property, on condition that he repair it as aforesaid and take the part of the expenses, falling proportionally on the co-owners, out of the rent of that property.

Recovery of repair of ruined vaqf when made by order of Judge.

The co-owner having repaired as aforesaid that property and having expended a reasonable sum out of his own estate, after leave given, lets that property and takes the rent, until he has received a sum equal to the amount of the expenses, which should be paid by the other co-owners.

## CHAPTER XI.

### ABOUT FIRAGH BIL VEFA, (ART. 19) AND ISTIGLAL, (ART. 20).

244. The owner of an Ijaretein vaqf property can sell it, with power of redemption, for a debt due from him. (See Mejellé, Art. 396).

Sale with power of redemption.

For such a sale the leave of the Muteveli is required, and if it is made without the leave of the Muteveli it has no validity or force.

245. Firagh bil vefa, or istiglal of an undivided part of an Ijaretein property is allowed, whether the property is susceptible of division or no.

Mortgage of part.

Consequently, a man is allowed to grant to his creditor by firagh bil vefa or istiglal, a known undivided part, such as a half or a third of an Ijaretein property.

Also it is allowed for one to grant to his creditor, by firagh bil vefa or istiglal, his undivided share in a property which he possesses in Ijaretein in common with another.

Mortgage of leased property.

246. A person, who has let his Ijaretein vaqf property to another and given possession, may grant it to his creditor, with power of redemption, by leave of the Muteveli.

On payment grant annulled by leave of Muteveli.

247. When one pays his debt to the person who took his property under a grant with power of redemption, he takes back the property from the grantee, the grant being annulled by leave of the Muteveli.

Mortgagee can hold against heir until payment.

If the grantor, before his debt is paid to the grantee, dies leaving heirs entitled to inherit, the grantee can retain and hold the property until he receives his debt.

Consequently, the heirs, having the right to inherit, cannot interfere with the property granted, before the debt of the deceased is paid to the grantee.

Where property becomes Mahloul, the security ceases.

248. If the grantor, leaving no one entitled to inherit, die before he has paid his debt to the grantee, his debt is not secured by the property granted. The property belonging as mahlul to the vaqf. (23 Ramazan, 1286).

When debt payable out of the Muajele.

But if the property granted is a lawful vaqf gedik held in Ijaretein, or vaqf Mussaqafat or Mustaghilat, in respect of which the extension of the right of inheritance has been effected according to the law, then, if the grantor die, leaving no one entitled to inherit, and there is not sufficient estate to pay his debt, the person who has taken the grant, subject to a power of redemption, when the property has been let by the vaqf for a rent payable in advance (muajele) and possession delivered, may take out of this rent payable in advance (muajele) the sum he is entitled to claim from the deceased.

Destruction of mortgaged property does not extinguish debt.

249. If Ijaretein mussaqafat mevqufé granted by firagh bil vefa or istiglal are burnt in a conflagration, the debt of the grantee is not extinguished, even if he was in possession.

In such a case the grantee can demand his debt from the grantor. (Compare Mejelé, 399).

Stipulation against power of redemption invalid (see Art. 261)

250. If someone grant his Ijaretein vaqf property to his creditor for his debt, subject to a power of redemption, and say that the sale shall be changed into a final sale if he do not pay the debt within a fixed time, and afterwards, when the time passes, the grantor cannot pay the debt, in such a case that grant is not considered to be turned into a final grant by reason only of what was said by the grantor.

In such a case, the grantor, if he pays his debt to the grantee, can take back from him that property if the Muteveli think fit.

Mortgagor pays the Muejele.

251. The deferred rent (muejele) for Ijaretein vaqf property, granted, subject to a power of redemption, to a creditor, is payable, as before, by the grantor and not by the grantee.

The same rule applies to grants by istiglal.

252. The benefits of Ijaretein vaqf property, granted by firagh bil vefa, belong to the grantor and not to the grantee.

Mortgagor has the benefit derived from the property mortgaged.

Consequently, if one grant to his creditor his Ijaretein vaqf property by firagh bil vefa, he can let the property to another, taking the rent for himself.

The person taking the property by firagh bil vefa, has no right to interfere in respect of the rent.

253. By the death of the person, to whom an estate is granted by firagh bil vefa, the property granted does not become ownerless (mahlul).

Death of mortgagor does not render the property Mahlul.

That is to say, if someone has, with the leave of the Muteveli, conveyed his Ijaretein vaqf property to his creditor by firagh bil vefa, and afterwards the creditor dies without children, the property does not become mahlul.

But if the grantor pays his debt to the heirs of the deceased creditor, he rescinds, if the Muteveli approve, the grant by firagh bil vefa and possesses that property as before.

The grant by istiglal is similar to the grant by firagh bil vefa.

254. The lease of Ijaretein vaqf property, granted by istiglal, made by the grantee to the grantor, is not valid unless the property has been previously quitted by the grantor and delivered to the grantee.

Lease by grantee to grantor of property granted by Istiglal is invalid unless grantor first quit the property.

Consequently, the letting of the property is invalid if the grantee let it to the grantor before the quitting and delivery has been effected as above-mentioned.

In such a case, if the grantee by virtue of such letting receive any money as rent from the grantor, the grantee can set this sum off against the debt of the grantor.

N.B. As to powers of sale in mortgages, See Art. 261.

## CHAPTER XII.

### QUESTIONS RELATING TO A MANDATE TO MAKE AND A MANDATE TO ACCEPT A GRANT.

255. A person who has a mandate to sell Ijaretein vaqf property cannot sell it at a price excessively less than its value. (Compare Mejellé Art. 1494).

Agent cannot sell for excessively low price.

If he do so, the grant of the property is subject to the approval of the person who gave the mandate.

Consequently, if the person who gave the mandate approves of the sale, it is valid.

In case the mandator reject the grant, it is invalid, and the mandator takes back the property granted from the grantee with the approval of the Muteveli.

Agent to sell cannot buy.

256. A mandatary to convey Ijaretein vaqf property cannot take the property for himself.

Agent to sell cannot sell to his relations.

257. A mandatary to convey Ijaretein vaqf property cannot grant it to persons whose evidence is not admissible on his behalf, such as his children, relatives and wife.

But if the mandator appoint a mandatary to convey the property to one of those persons, or make general the mandate by saying, "grant it to whomsoever you wish," in such a case the mandatary can convey the property to such relations of his. (See Mejellé Art. 1497).

Agent cannot buy for an excessively high price.

258. If a mandatary to accept a grant of Ijaretein vaqf property, no price being fixed by the mandator, take the property for the mandator at a price excessively above its value, the conveyance is not to be carried out as regards the mandator.

Revocation of authority by principal—notice necessary.

259. In case of dismissal by the act of the mandator, it is required that the mandatary should have knowledge of the dismissal. (Mejellé Art. 1523).

Consequently, if the mandator dismiss a mandatary appointed to sell Ijaretein vaqf property, and the latter sell the property with the leave of the Muteveli before notice of his dismissal has reached him, the sale is valid and of force.

But if he grant it after notice of his dismissal has reached him, the sale has no force or validity.

Revocation of authority by law, no notice necessary.

260. In the case of dismissal by act of law, that is to say where it arises in consequence of the death of the mandator, it is not required that the mandatary should have knowledge of it. (See Mejellé, Art. 1527).

Consequently, if the mandator die before the mandatary grant the Ijaretein vaqf property, which he has a mandate to grant, and afterwards the mandatary grant it to another, in every case the grant has no force and is not to be carried out, whether at the time of the grant notice of the death of the mandator had reached the mandatary or not.

In such a case, if the mandator has left heirs with the right to inherit, they can disapprove of the grant and take back the property from the grantee, by virtue of their succession to the property alone.

If the grantor leave no heirs having the right to inherit, that property belongs to the vaqf as *Mahlul*, and the grantee takes back the price if he has paid it.

261. When a man grants his *Ijaretein vaqf* property to his creditor by *firagh bil vefa*, and gives a mandate to the creditor to sell the property at its value and take his debt out of the price, if he cannot pay the debt within a fixed period, and the debtor cannot pay his debt within the time fixed, the creditor by virtue of the mandate can convey the property, so mortgaged, to another and take his debt out of the price. (*Mejellé*, Art. 760).

Mandate to sell for benefit of creditor.

Again, when one grants to his creditor *Ijaretein vaqf* property by *firagh bil vefa*, if he give a mandate to a third person to sell this property for its value, and pay his creditor out of the price in case he cannot discharge his debt within a fixed time, and he is not able to discharged his debt at the expiration of the time fixed. In such a case the mandatary sells this property for its value, pays the debt out of the price, and returns to the mandator any surplus which may remain after payment of the debt.

In such a case, if, at the expiration of the period, the mandatary refuses to sell the property and pay the debt, the judge orders him to execute the transfer and pay the debt.

262. If someone has appointed another his mandatary to purchase a specified *Ijaretein vaqf* property for a certain price, and the mandatary purchase that property for himself for the said price, and take out a title deed in his own name, by the permission of the *Muteveli*, the mandator can, with the approval of the *Muteveli*, take that property from the mandatary, cause the title deed to be set aside, and take a title deed in his own name (see *Mejellé*, Arts. 1485, 1486).

Agent to purchase buying for himself.

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### CHAPTER XIII.

#### MISCELLANEOUS QUESTIONS.

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263. The possessor of *Ijaretein vaqf* property is the owner of the benefits derived from the property, but is not the owner of the property.

Trustee can recover for waste.

Consequently, if one pulls down a building on a *Mussaqaqat Ijaretein vaqf* property and sell and deliver the materials to another, and consume them, the *Muteveli* demands and recovers from him, as damages, the worth of the property as it stood.



Lessee not liable for Muejele.

264. When the possessor of Ijaretein vaqf property lets it to another and puts him in possession, and goes to another country, the jabi vaqf (collector of the rents of the vaqf) has no right to demand from the lessee the Muejele which is in arrear.

Grant of property as Mahlul by mistake.

265. When it is published that the possessor of Ijaretein vaqf property has died in a foreign country where he has gone, and the Muteveli, there being no person who has a right to inherit, thinking that the property has become Mahlul, grants it to another for a Muajele fixed by valuation, if afterwards the possessor, being alive, appears, he takes from the grantee the property, and the grantee takes back from the Muteveli the Muajele.

But he, whose death was given out, can approve of the grant made by the Muteveli and take from the Muteveli for himself the Muajele.

266. If, when the possessor of Ijaretein vaqf property dies, the Muteveli, thinking that he has left no heirs to inherit, grant the property to another and afterwards heirs of the dead man, having a right to inherit, appear, the provisions of the preceding article are applied.

Change of condition of roofed vaqfs by permission of Judge.

267. It is not allowed to change the ancient state of Mussaqafat vaqf.

But when the necessity for a change, and, that it will be beneficial to the vaqf, is shewn, then a change is allowed with the approval of the Judge and the permission of the Muteveli.

*E.g.* When there is an Ijaretein vaqf bath, and it is shewn that on account of its size it costs a large expenditure to warm it, and benefit is not derived from it, because the inhabitants in the neighbourhood are few, and it is shewn that if it is preserved in its existing state it will remain useless, and from this the dedication will sustain great loss, and it is at the same time shewn that the separation of a part of the bath and the building on that part of another small bath, and on the remaining portion, a property such as a workshop or inn on account of the vaqf will be beneficial to the vaqf; if the Muteveli with the approval of the Judge give leave to the possessor of the said bath, to build in the manner above stated, this permission is lawful and of force.

Building on Ijaretein vaqf land.

268. If the owner of an Ijaretein vaqf site wish to erect a building on it, with the intention that it shall be his own property, the Muteveli can prevent him.

In such a case, if the possessor without the leave of the Muteveli, erect a building on the site, in order that it may be his own property, the following rules are observed :

If the pulling down of that building will not damage the site, it is pulled down.

If the pulling down is hurtful, the value of the building and materials is given to the person who built it, from the vaqf, and by his consent it is bought for the vaqf.

In such a case, the Muteveli of that site, cannot contend that that building is the property of the vaqf by reason only that in the title deed of the land a condition is inserted that whatever the possessor builds on it should be given to the vaqf.

269. The rent taken from the lessee, on account of the vaqf, under the name "Muajele," at the granting of the lease, is not considered as belonging to the corpus but to the income of the vaqf.

Muajele is income not corpus.

Therefore, the Muajele is expended for the needs of the dedication in accordance with the direction of the dedicator.

## TITLE G.

### ABOUT IJARE VAHIDE VAQF PROPERTIES.

270. Ijare Vahide vaqfs are those let by their Mutevelis, at a rack rent, to those who propose to take them for a time, such as a month or a year, the rents being expended for the purposes appointed by the dedicator.

Vahide vaqfs, what they are.

In such Vahide vaqfs, the rules, such as those which deal with the possession for life and transmission to the children have no force, but immediately on the expiration of the term of the letting, the Muteveli of the vaqf can let them to another.

271. It is necessary to observe the condition, which the dedicator should have imposed, about the term for which the Vahide vaqf may be let.

The term for which the Muteveli may let.

*E.g.* If the dedicator impose a condition that the property which he dedicated is to be let for 8 or 5 years, the letting is to be carried out in accordance with this condition.

272. If the dedicator has not made mention of any condition about the time of letting, if the thing let is a chiftlik, or lands, it cannot be let for more than three years, or if it be other property, for more than one year.

Where the dedicator has given no directions.

But when by a lease for a longer term than the said periods, there arises benefit and use to the dedication, the letting of the dedicated property for a longer period may be allowed with the consent of the Judge.



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If the pulling down is hurtful, the value of the building and materials is given to the person who built it, from the vaqf, and by his consent it is bought for the vaqf.

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The term for which the Muteveli may let.

*E.g.* If the dedicator impose a condition that the property which he dedicated is to be let for 8 or 5 years, the letting is to be carried out in accordance with this condition.

272. If the dedicator has not made mention of any condition about the time of letting, if the thing let is a chiftlik, or lands, it cannot be let for more than three years, or if it be other property, for more than one year.

Where the dedicator has given no directions.

But when by a lease for a longer term than the said periods, there arises benefit and use to the dedication, the letting of the dedicated property for a longer period may be allowed with the consent of the Judge.

Lessee has no  
right to renewal.

273. When the Muteveli of the dedication has let and delivered a vahide vaqf until the completion of the period fixed, and after the expiration of the term of the lease, having received the property from the lessee, wishes to let it to another, the lessee cannot oppose the Muteveli and refuse to deliver up that property on the ground that he has a prior right over the other to a lease, and that if he offers the same rent it ought to be let again to him.

As to letting  
vahidele at  
Muqata'a rent.

274. The Muteveli cannot let and deliver a vahide vaqf property at a Muqata'a (Art. 39) rent. If he does so, the letting is not valid and of force.

But when the building of a vahide Mussaqafat vaqf is burnt or falls into decay and thus a bare building site remains, if there is no one willing to rent it at a vahide rent, on the condition that he shall set off the expenses against the rent, and there is not sufficient income from the dedicated property to rebuild, in such a case the Muteveli can let the land at a Muqata'a rent.

This must be done by the permission of the Judge and the leave of the Sultan.

Consequently, if the Muteveli let that land at a Muqata'a rent of his own motion and without the permission of the Judge and the leave of the Sultan, the lease is of no force or validity.

When vahidele  
may be let as  
Ijareteinle  
(Art. 37).

275. The Muteveli cannot, contrary to the condition of the dedicator, let property as Ijaretein which has been dedicated under the condition that it shall be let at a vahide rent.

But in case Mussaqafat vaqf property, directed to be let at a vahide rent, falls down, and the property of the dedication has not sufficient income to repair it, and no one can be found to rent it at a vahide rent and repair it, setting off the expenses against the rent, then the Muteveli may, with the approval of the Judge and the permission of the Sultan, let that Mussaqafat as Ijaretein.

But if the Muteveli of his own motion let it as Ijaretein without the decision of the Judge and the leave of the Sultan, such letting has no force or validity.

If the Muteveli letting it of his own motion as Ijaretein deliver to the lessee a title to say that he possesses it as such, then that title has no force and is not to be given effect to.

The other laws and questions relating to vahide vaqfs are set out in the Chapter about letting vaqfs. (See Arts. 383, 401).



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TITLE H.

ABOUT THE LAWS RELATING TO MUQATA'ALU VAQFS.

276. The land of vaqfs let at Muqata'ata rent is vaqf, but buildings on them or trees or vines are the pure mulk property of the person possessing them.

In Muqata'alu lands are vaqf houses, &c., Mulk.

Sometimes, however, when these buildings or trees or vines are dedicated by their owner to a vaqf, the land is attached to one vaqf, and the buildings, trees or vines upon it to another, so therefore the Muqata'a rent ought to be given by the vaqf in favour of which the buildings, trees or vines are dedicated, to the vaqf in whose favour the land is dedicated.

Sometimes houses, &c., are dedicated separately.

277. The land of vaqfs let at a Muqata'a rent is subject to the buildings, trees or vines upon it.

Land subject to building, &c.

Consequently, into whosoever's ownership the buildings, trees or vines may come, the vaqf land in subjection to them comes also into his possession.

*E.g.* If someone sell to another a house, of which the site is Muqata'alu vaqf and the buldings pure mulk, or trees of which the site is Muqata'alu vaqf but the trees mulk, or vines of which the site is Muqata'alu vaqf but the vines are mulk, the site also comes into the possession of the buyer.

Consequently, there is no necessity for a special grant of the site with the permission of the Muteveli of the vaqf.

However if the seller declare clearly at the time of the sale that he keeps possession of the site, the site does not come into the possession of the purchaser.

House, &c., may be sold and site kept.

But if he grant, by leave of the Muteveli, the land to another, he does not include in the sale the mulk property upon it, buildings, trees or vines, since he grants only the site, it is not considered that he has sold to the person, to whom he made the grant, the buildings, trees and vines upon it.

Land may be sold and house, &c., kept.

Again, when the owner of mulk buildings, trees or vines, situated on a Muqata'alu vaqf site dies and either the persons entitled to a share of his property or the heirs in the male and female line inherit the buildings, treef or vines, the land also comes into the possession of the said heirs gratis, without payment, as subject to the buildings, trees and vines.

When owner dies, the land follows the buildings.

When owner dies, buildings, &c., do not belong to the dedication.

278. When one is owner of buildings on a Muqata'alu vaqf site and of trees and vines planted on it, and possesses the site at a Muqata'a rent, and dies without children, and his heirs wish to take the buildings, trees and vines by virtue of their right of inheritance, and the site as subject to them, without payment, the Muteveli cannot prevent the heirs occupying it, on the ground that, since the site is vaqf, the buildings, trees and vines on it also belong to the dedication

Leave of Muteveli required for grant of site.

279. When one possesses Muqata'alu vaqf which has no buildings, trees or vines upon it, and grants it to another, in order that the grant may be valid the leave of the Muteveli is required.

Consequently, in such a case, if he grant the site without the leave of the Muteveli, the grant has no force or validity.

Whence if one possesses the Muqata'alu vaqf site of a property, and another owns the buildings, trees or vines, when the person in possession grants that site, he must obtain the leave of the Muteveli.

In the same way, if there are mulk buildings, trees or vines on a Muqata'alu site, but their owner grants only the site, not selling the buildings, trees or vines, in order that the grant may be valid, the leave of the Muteveli is required.

Gift of Mulk property on Muqata'alu.

280. If one wish to give to another the buildings, trees and vines of an estate of which the land is Muqata'alu vaqf, but the appurtenances, such as the house, workshop, vineyard and garden are mulk, in order that the gift may be valid, it is necessary that before the gift, the site should be granted to the donee, by leave of the Muteveli.

Consequently the gift is not valid, unless the grant of the site of the mulk property is made to the donee, with the leave of the Muteveli.

Nevertheless, however, where the donee is an infant, and the donor is his guardian, then it is not necessary that the site should be granted in order that the gift may be valid.

Partition of Muqata'alu vaqfa.

281. When joint owners divide the buildings, trees and vines, being mulk, but situated on a Muqata'alu vaqf site, then the site also is considered as divided, in subjection to them.

Consequently, the division does not require the leave of the Muteveli in order that it may be valid.

But if Muqata'alu vaqf land, having no buildings, trees or vines upon it, is divided between the joint owners, then the leave of the Muteveli is required.



282. As long as there are traces of buildings, trees or vines on a Muqata'alu vaqf site, the owner of the buildings, trees or vines keeps possession of the site.

Owner entitled to site as long as buildings, &c., exist, or he pays rent.

But if, when no traces of buildings, trees or vines exist, the possessor of the site does not re-erect buildings, or plant anew trees or vines, and does not pay to the vaqf the original Muqata'a rent, then the Muteveli puts a stop to the rent, takes the site out of the hands of the person who possesses it and grants it to another.

But as long as the person who possesses the site duly pays the rent at the right time, the Muteveli cannot cancel this rent and take the site out of the hands of the possessor, even if no trace of buildings, trees or vines remain.

283. If the Muqata'a rent originally fixed in respect of a property of which the site is Muqata'alu vaqf but the buildings, trees or vines mulk, is below the rent of the site valued according to the time and the condition of the property, this rent is raised so as to be equal to the rent at a valuation. (See also 3 Zilkade, 1295, after the occupation of Cyprus).

If assessed value rises, the rent is raised.

284. Since the buildings, trees and vines situated on a Muqata'alu vaqf site are looked upon as moveables, with regard to them the regulations about moveables are of force.

Buildings, &c., on Muqata'alu looked on as "moveable."

Consequently, in respect of these, no right of pre-emption exists, that is to say, these things cannot be property over which a person has a right of pre-emption, or property by virtue of the possession of which a person has a right of pre-emption. (See Mejellé, 952, 953 and 1008).

No right of pre-emption.

285. If a person, possessing at a Muqata'a rent, a plot of land out of real vaqf lands, which has no buildings, trees or vines upon it, dies, that piece of land passes by inheritance in equal shares to the sons and daughters only of the dead man and not to his other heirs.

Inheritance—sons and daughters only entitled if real vaqf.

But if the Muqata'alu vaqf plot is of the unreal vaqfs which are of the Takhsisat category, then, since, in regard to it, the rules of the law of public lands is applied, it passes, like Arazi-mirie to eight degrees of relations.

If Takhsisat, Land-Law applies.

286. When a place dedicated originally as Ijaretein is converted into a public establishment, such as a hospital and school, whether by Ottoman subjects or foreigners, then that place ought with the consent of the Muteveli and the permission of the Sultan to be turned into Muqata'alu vaqf, (as to compensation to the vaqf 16 Ramazan, 1299, after the occupation of Cyprus).

When Ijaretein vaqf is turned into a public establishment, the place ought to be turned into Muqata'alu vaqf.



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## TITLE I.

## ABOUT MATTERS RELATING TO THE OFFICE OF THE MUTEVELI.

## CHAPTER I.

## ABOUT THE APPOINTMENT OF THE MUTEVELI.

Who may be Muteveli.

287. The Muteveli must be of sound mind, of age, trustworthy and able to direct the affairs of the vaqf.

Consequently, a person who combines all these qualities can be appointed Muteveli.

Substitute during minority, Qaimaqam Muteveli, Art. 10.

288. If the person, in whose favour the office of Muteveli is created, is a minor, a substitute is appointed by the Judge to manage the affairs of the Muteveliship until the Muteveli is of age and able to direct them.

When afterwards the minor becomes of age and competent to discharge the duties of the Muteveliship, he takes upon himself its direction, and the substitute is withdrawn.

A woman may be Muteveli.

289. It is not required that the Muteveli should be a male. Therefore a woman can be Muteveli.

Pluralities—joint Mutevelis.

290. One and the same person can be Muteveli of many vaqfs. So also many persons can be Muteveli of one vaqf.

Appointee of dedicator alone can demand Muteveliship.

291. The office of Muteveli is not given to the person applying for it. Unless the Muteveliship was appointed to him by the dedicator, in that case it is given to him.

On cessation, Judge to appoint new Muteveli.

292. When the Muteveli of a vaqf dies or is dismissed, it is required that a Muteveli be immediately appointed by the Judge, in order that the affairs of the vaqf may not remain without direction.

The Judge cannot refuse to appoint a Muteveli until the accounts of the preceding Muteveli have been examined.

If no Muteveli appointed, dedicator is Muteveli for life.

293. The dedicator himself directs the affairs of a vaqf of which the Muteveliship is not appointed in favour of anyone.

After death of dedicator, a Muteveli is appointed by Judge.

When the dedicator dies, the office of Muteveli must be conferred by the Judge.

Consequently, the children of the dedicator, even if there are any capable of acting, cannot of their own will without an appointment by the Judge, become Mutevelis of a vaqf of which no Muteveli has been appointed.

But the vacant office of Muteveli not appointed to anyone as above stated, is given to the children and family of the dedicator in preference to strangers.

Family of dedicator preferred.

Consequently, when there are children and relations capable of directing the business of the Muteveliship and entitled to it, the Judge cannot grant it to a stranger.

If he do so, the Muteveliship is given to one of the children or family, and the stranger is dispensed with.

But by law, it is not allowed to interfere with the management of the Muteveliship which is appointed by the dedicator to a stranger, and give it to one of the children or family of the dedicator. (See Art. 165).

294. The duties of the Muteveli, appointed by the dedicator to obtain the judicial declaration of irrevocability alone terminate from the time of the completion of that declaration.

Muteveli appointed to obtain judicial sanction (see Arts. 111 and 121).

Consequently, that Muteveli has no authority, after the judicial decision has been given, to mix himself up in the affairs of the Muteveliship.

*E.g.* Suppose one dedicates certain things, and, having obtained the judicial decision, die after he has directed for some time the affairs of the dedication, without appointing the Muteveliship in favour of anyone, in such a case, the Muteveli previously appointed by the dedicator for the purposes of the judicial decision cannot, solely on the ground that he was so appointed, contend that he is Muteveli of that vaqf and dispute the lawfulness of the appointment of the Muteveli appointed to that vaqf by the Judge.

295. When someone, after he has dedicated a property and appointed a Muteveli to it founds another vaqf and does not appoint a Muteveli to it, the Muteveli appointed for the administration of the first vaqf is not looked upon as the Muteveli of the second vaqf by reason only of his appointment to the first vaqf.

Muteveli of one foundation not *ipso facto* Muteveli of another made by the same dedicator.

As regards the Muteveliship of the second vaqf, the rules contained in the preceding article are complied with.

296. If someone, not having appointed a Muteveli to a vaqf which he has consecrated, die leaving a will in force by which he had appointed a guardian for the execution of the will, this guardian is looked upon as Muteveli of the dedication.

If no Muteveli is appointed, executor of dedicator is Muteveli.

297. The grant of the Muteveliship made on a false representation is not valid, even if the grant of a Berat has been obtained.

Appointment obtained by false representation is invalid.

*E.g.* If, while there are children of the testator living, in favour of whom it is directed that they should manage the affairs of the Muteveliship, the person in whose favour the Muteveliship is appointed on failure

of the children of the testator, by means of untrue representations, obtain his own appointment by the Judge to the Muteveliship, his appointment is invalid and of no force.

Again, the appointment of a Muteveli is invalid, if he asserts before the Judge, contrary to the truth, that the office of Muteveli to a vaqf is vacant, and so is appointed Muteveli while a Muteveli exists and is alive.

The more orthodox of dedicator's children.

298. In the case of a Muteveliship granted to the more orthodox of the children of the dedicator, the son or daughter who is more orthodox acquires the right and it is limited in favour of him or her.

If several of the children of the dedicator claim the Muteveliship, each seeking that it should be granted to him, it is granted to the one shewing himself to be the more orthodox; when it is shewn that some of the children of the dedicator are equal as regards being orthodox, it is granted to them equally.

Males are not preferred to females.

Elder child of dedicator.

299. If the office of Muteveli, limited in favour of the elder child of the dedicator, is vacant, and there are two elder children of the same age, the office is given to the one best acquainted with the affairs of the dedication.

If both have the same knowledge, the Muteveliship is given equally to both.

Muteveli must not be overseer.

300. It is not allowed for one and the same person to be Muteveli and overseer (Naziri vaqf).

Consequently, if the Muteveli of a vaqf is appointed also to the overseership (Nazaret) or the overseer to the Muteveliship and the Berat is given, he is removed from the Muteveliship or overseership, as the case may be and it is given to the person who has a right to it.

Successor under trust deed, when doubt, Judge decides.

301. If the person to fill a vacant Muteveliship is defined so that there is no difficulty in knowing him, he becomes Muteveli of the vaqf without being appointed by the Judge.

*E.g.* If the Muteveliship of a vaqf situated in Constantinople, is limited in favour of the person holding the office of Fetva Emani (keeper of fetvas), the latter is Muteveli of that vaqf without any judicial appointment and he manages its affairs.

Again, when the Muteveliship of a vaqf limited in favour of the elder son of the dedicator becomes vacant, the elder in age becomes Muteveli without judicial appointment.

But if the person to be Muteveli is not defined so as to be easily known, the appointment of the Muteveli depends on the decision of the Judge.

*E.g.* If the vacant post is given to the more orthodox of the children of the dedicator, and there are several of them, each asserting that he is the more orthodox, none of them can take up the duties of the Muteveliship, until, first, it has been shewn, in the way required by law, that he is more orthodox than the rest, and his appointment has been decided on by the judge.

302. If a dedicator, who dwells in a city, where the word "inspectorship (Nazaret)," is customarily used instead of "Muteveliship," appoint for his dedicated property a Nazir alone, he is also looked upon as Muteveli. There is no necessity for the appointment of another.

When Muteveli called Inspector (See Art. 11.)

## CHAPTER II.

### ABOUT THE APPOINTMENT OF A QAIMAQAM MUTEVELI AND THE GRANT OF THE MUTEVELISHIP BY THE MUTEVELLI.

303. The Judge cannot appoint a Qaimaqam Muteveli to a vaqf, which has its Muteveli, where there is no necessity for it.

If he does so, the appointment has no validity or force. That is to say, the management of the affairs of the vaqf by the substitute appointed, is not executory or of force.

When, however, there is necessity for it, the Judge can appoint a Qaimaqam Muteveli.

*E.g.* The Judge appoints temporarily a Qaimaqam Muteveli to carry on the affairs of the dedication in order to prevent their remaining unexecuted, if, after the Muteveli has been looked for, he cannot be found, or if without appointing someone with the necessary powers, he has gone away to another city situated at a year's distance away, or if the Muteveli appointed by the dedicator is a minor.

Again if, although there is a Muteveli of a vaqf the appointment of a Qaimaqam is required for a law suit, or some act requiring a Qaimaqam, then a Qaimaqam is appointed by the Judge.

*E.g.* If those possessing two adjacent Ijaretein properties, each of which depends on its own dedication, bring a lawsuit against each other and the Muteveli of the two vaqfs is one and the same person, then the Judge appoints a Qaimaqam Muteveli to one of the vaqfs for the purposes of the lawsuit.

Again, if when the office of Muteveli appointed by the dedicator is vacant before the person in whose favour the Muteveliship is limited

When Judge can appoint a person to act as Muteveli.

is determined, there are persons who assert that each of them is the appointed Muteveli, the Judge appoints a Qaimaqam Muteveli until the end of the law suit, that he may be useful to him as a suitor, and he hears the action of the contending parties in his presence and gives judgment.

Whenever a Muteveli is accused of bad faith or abuse of trust, a Qaimaqam is appointed by the Judge to bring an action against the Muteveli.

Again if a person possessing an Ijaretein vaqf property is appointed Muteveli of that vaqf, and afterwards wishes to grant that property to another, or if a Muteveli out of the estate, of which he is Muteveli, wishes to take an Ijaretein vaqf from the person who possesses it for the equivalent value, a Muteveli can be appointed to give permission for the transfer.

Also if a Muteveli of dedicated money, who wishes to borrow money out of it, applies to the Judge, the Judge appoints temporarily a Qaimaqam Muteveli to that vaqf in order that he may lend to the Muteveli.

**Incapable  
Muteveli.**

304. If it is shewn that a Muteveli, although he is honest, is unable to manage the affairs of the vaqf, the Judge can appoint a Qaimaqam to help him.

**Judge must  
have authority  
from the Sultan.**

305. In the above articles, the Judge is required to have authority from the Sultan to appoint Qaimaqam Mutevelis.

Consequently, a Judge who has no authority from the Sultan to appoint Qaimaqam Mutevelis, cannot appoint a Muteveli. If he do so, the appointment is invalid and of no force,

**Grant of office to  
another, see  
Art. 376, 380.**

306. The Muteveli appointed by the dedicator can grant his Muteveliship to another during the time of his administration.

But this grant is not an irrevocable agreement, but a commission given by the Muteveli to another for the discharge of the Muteveli's duties. For this reason, the grantor can revoke his grant when he wishes.

When the grantor dies, the grant, being looked upon as a commission, ceases to have any force.

The Muteveliship belongs to the person in whose favour it is limited.

The person, to whom the grant was made, has no longer any right as regards the management of the affairs of the vaqf.

These rules also are complied with in respect of other posts appointed by the dedicator.

307. If a person occupying a Muteveli's post, not limited by the dedicator in favour of anyone, grant it to another in the presence of the Judge, and the Judge, by the reason of his fitness shewn, bestow the Muteveliship on the person in whose favour the grant is made, the grantor can no longer revoke the grant.

Irrevocable grant.

### CHAPTER III.

#### ABOUT QUESTIONS RELATING TO THE ACCOUNTS OF THE MUTEVELI.

308. When there is a Muteveli of a vaqf, the Judge cannot interfere in the management of that vaqf.

Right of Judge to examine accounts.

But the Judges are entitled to watch over and examine the vaqf properties.

That is to say, when the Judge from certain evidence suspects bad faith or abuse of trust by the Muteveli, he immediately examines the acts of the Muteveli in respect of the vaqf and looks into his accounts.

If at the examination, bad faith calling for the dismissal of the Muteveli is shewn, the Judge dismisses him, even if he be the dedicator himself.

Dismissal of Muteveli for bad faith.

309. The Muteveli cannot refuse to submit his accounts to the Judge, when, in case of need, he wishes to see them.

Muteveli must submit his accounts to the Judge.

If he refuses, he is compelled to submit his accounts.

310. The accounts of any years of a Muteveli which have been examined, cannot be re-examined if there is no cause at all for suspicion. But if there is any suspicion in the matter of the accounts, the Muteveli is interrogated and in case of necessity the accounts are again examined to clear away the suspicion.

Re-opening accounts.

311. When the Muteveli of a vaqf submits his accounts for the time of his administration, the Judge, if he is not satisfied with them, cannot demand from the Muteveli the accounts of the preceding Muteveli.

Accounts of preceding Muteveli.

If the preceding Muteveli is alive, the accounts must be gone into with him himself. If he is dead, with his heirs. The successor is not responsible for the accounts of his predecessor.

312. If the dedicator direct that the accounts of the Muteveli are to be examined, if the vaqf officials think fit, the Judge cannot of his own motion, without taking the opinion of the officials, look into the accounts of the Muteveli. If he do so, it has no effect, and the accounts of the Muteveli are again examined if the officials think fit.

Where dedicator directs that the accounts are to be examined, if the officials think fit, Judge cannot examine of his own motion.



## CHAPTER IV.

## FOR WHAT CAUSES A MUTEVELI MAY BE DISMISSED.

No dismissal  
without fault,  
see Art. 373.

313. A Muteveli, who has committed no fault, and who is legally appointed, cannot be dismissed even by the Judge who appointed him. If the Judge do so, the Muteveli is not considered as dismissed.

Dismissal for  
bad faith.  
See 330, 308.

Nevertheless when bad faith on the part of the Muteveli, in the management of the vaqf, is proved according to law in his presence, he must be dismissed from the Muteveliship even if he be the dedicator himself.

An act contrary  
to the Sacred  
Law is a breach  
of trust.

314. It is looked upon as a breach of trust against the dedication if the Muteveli proceed intentionally to an act relating to the management of the dedicated property which is not allowed by the Sacred Law.

*E.g.* It is looked upon as an act of bad faith against the vaqf, if the Muteveli knowingly and without inevitable necessity let the property for a rent excessively less than the estimated rent, or if he sell the vaqf property to another as his own, or if he spend and lay out the income derived from the vaqf property on his own wants, contrary to the condition of the dedicator.

Unsuccessful  
action against  
the dedication.

315. It is considered a breach of trust on the part of the Muteveli if he brings an action about the ownership of the property against the vaqf.

That is to say, if the Muteveli of a vaqf property brings an action, contending that certain property of that vaqf belongs to him, and he is not able to prove his contention, he is discharged from the Muteveliship of that vaqf.

But if he proves his assertion he is not discharged from his Muteveliship.

Wrongful  
claim to property  
of dedication.

316. The denial by the Muteveli that property belongs to the vaqf is considered a breach of trust.

That is to say, when an action is brought about a property found in the possession of the Muteveli of a vaqf, on the ground that it belongs to the vaqf, if the Muteveli declare that that property is his own private property, and denies the ownership of the vaqf, he is discharged from his Muteveliship when it is legally proved and adjudged that that property belongs to the vaqf. If this is not shewn, he is not discharged from the Muteveliship.

## 317. Breach of trust is indivisible.

Consequently, when a breach of trust against one vaqf is legally proved against a Muteveli, who is Muteveli of many vaqfs, he is discharged from the Muteveliship of all the vaqfs. He is not discharged from the Muteveliship of that vaqf alone against which he is shewn to have been guilty of breach of trust.

Muteveli dismissed from one dedication is dismissed from all.

318. The Muteveli is not discharged from the Muteveliship, *ipso facto*, by the breach of trust and fault, but he is rendered liable to be dismissed.

Acts of Muteveli before dismissal by Judge are valid.

Consequently, if the Muteveli perpetrate a breach of trust and fault against the vaqf, but, before he is dismissed by the Judge, direct its affairs and effect during that time certain lawful acts of the vaqf, those acts are to be carried out and are of force.

## 319. A Muteveli is not discharged upon an accusation only.

That is to say, if the officials and beneficiaries of a vaqf denounce the Muteveli to the Judge, but do not declare any lawful ground for his dismissal, or if they state that there is lawful ground for his dismissal but are not able to prove it, the Judge cannot dismiss the Muteveli, acting on the accusation alone.

Muteveli not dismissed on mere accusation.

320. The Muteveli's being given up to wickedness and extravagance results in his dismissal.

Dismissal for depravity and extravagance.

Consequently, even if breach of trust is not shewn, if the Muteveli leads a life of depravity and extravagance the Judge can dismiss him from his office.

321. Idleness and carelessness of a Muteveli in the affairs of the trust are cause for his dismissal.

Idleness and carelessness. See Art. 321, 322.

322. A Muteveli is discharged from his office, who is struck by mental derangement lasting more than a year.

Mental derangement.

If in such a case, after he is discharged, he gets well, the following rules are observed :—

If he is a Muteveli appointed by the dedicator, he takes up his duties again, otherwise not.

323. The Muteveli who becomes blind, is not discharged from his duties.

Blindness.

324. The Muteveli can resign his office by himself.

But he is not discharged from his Muteveliship until he has made known his renunciation to the Judge or the dedicator.

Muteveli can resign.

Consequently, until his resignation is known to the Judge or the dedicator, he preserves his office and his acts are to be carried out and are valid.

Re-installment of  
depraved  
Muteveli.

325. After a Muteveli has been dismissed for depravity and extravagance or for breach of trust, it is not allowed that the Muteveliship should be given to him again before a long time has elapsed, and it is shewn that he is improved.

But when, his improvement is shewn he can be appointed to the Muteveliship.

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## TITLE J.

### THE DUTIES, POWERS AND RIGHTS OF MUTEVELI.

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#### CHAPTER I.

##### ABOUT ACTS FOR WHICH THE MUTEVELI IS LIABLE TO MAKE INDEMNITY.

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When he must  
consult judge.

326. The Muteveli transacts by himself the affairs which are within his jurisdiction and authority.

But he addresses himself to the Judge for matters which are not within his jurisdiction and authority and of which the validity at law depends on the Judge. If he manages such things by himself, his acts are of no force or validity.

If more than one,  
all must consent.

327. If there are two Mutevelis, one of them cannot transact business alone without the consent of the other

If he do so and the other Muteveli does not approve of the action and refuses to ratify it, the action is invalid.

The same rule applies when there are more than two Mutevelis.

Muteveli must  
get the consent  
of the overseer.

328. The Muteveli cannot transact alone the affairs of the trust, if there is an overseer (Nazir) as well as a Muteveli, unless he gets the consent of the overseer. If he do so, his action is not to be carried out.

Muteveli may  
appoint agent.

329. The Muteveli is allowed in case of necessity to appoint an agent to transact the business of the trust.

Consequently, the Muteveli is not liable to make good any loss which shall have resulted on account of his having appointed an agent to transact the affairs of the vaqf.

Because a man is not responsible for doing what is allowed by law, (Mejellé, 91).

*E.g.* If the Muteveli of a vaqf give a commission to a person, whom he thinks trustworthy, to collect from the debtors the amount due to the vaqf, and the agent collect the debts but spend what he collects on his own needs, the Muteveli is not liable to make compensation.



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Re-installment of  
depraved  
Muteveli.

325. After a Muteveli has been dismissed for depravity and extravagance or for breach of trust, it is not allowed that the Muteveliship should be given to him again before a long time has elapsed, and it is shewn that he is improved.

But when, his improvement is shewn he can be appointed to the Muteveliship.

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## TITLE J.

### THE DUTIES, POWERS AND RIGHTS OF MUTEVELI.

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#### CHAPTER I.

##### ABOUT ACTS FOR WHICH THE MUTEVELI IS LIABLE TO MAKE INDEMNITY.

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When he must  
consult judge.

326. The Muteveli transacts by himself the affairs which are within his jurisdiction and authority.

But he addresses himself to the Judge for matters which are not within his jurisdiction and authority and of which the validity at law depends on the Judge. If he manages such things by himself, his acts are of no force or validity.

If more than one,  
all must consent.

327. If there are two Mutevelis, one of them cannot transact business alone without the consent of the other

If he do so and the other Muteveli does not approve of the action and refuses to ratify it, the action is invalid.

The same rule applies when there are more than two Mutevelis.

Muteveli must  
get the consent  
of the overseer.

328. The Muteveli cannot transact alone the affairs of the trust, if there is an overseer (Nazir) as well as a Muteveli, unless he gets the consent of the overseer. If he do so, his action is not to be carried out.

Muteveli may  
appoint agent.

329. The Muteveli is allowed in case of necessity to appoint an agent to transact the business of the trust.

Consequently, the Muteveli is not liable to make good any loss which shall have resulted on account of his having appointed an agent to transact the affairs of the vaqf.

Because a man is not responsible for doing what is allowed by law, (Mejellé, 91).

*E.g.* If the Muteveli of a vaqf give a commission to a person, whom he thinks trustworthy, to collect from the debtors the amount due to the vaqf, and the agent collect the debts but spend what he collects on his own needs, the Muteveli is not liable to make compensation.

But if the Muteveli deposit and give the substance of the dedication to a person whom he does not trust and this person consume it, the Muteveli must make compensation.

Liability of Muteveli appointing improper agent.

330. The Muteveli of a vaqf, cannot by use of the property of the vaqf acquire Arazi-mirie, or a part of vaqf properties, or an Ijaretein property in order that revenues may be obtained for the vaqf.

Muteveli cannot acquire for the dedication Arazi-mirie, &c.

If he do so, he makes compensation for the property of the dedication, which he gave for the thing acquired and is liable to be dismissed.

331. The Muteveli is bound to make compensation for any loss, which he has occasioned to the vaqf through his acting beyond the powers given by the vaqfié, in a case in which the Sacred Law does not sanction it.

For acting beyond powers.

*E.g.* If a Muteveli has dedicated money which the dedicator has directed to be let at interest on pledges or security by surety, and lets it without pledge or security, and afterwards the debtor becomes bankrupt and the money cannot be recovered, the Muteveli is bound to make indemnity.

Again, if the Muteveli has money which the dedicator directed should be lent at interest on the security of a surety of credit:—That is to say a rich man—And contrary to the conditions lend it to another on the security of a surety unworthy of credit and afterwards cannot collect the money from the principal debtor or surety, he is liable to make good the loss.

But if at the time of the lending the surety was worthy of credit and afterwards failed, then the Muteveli is not liable to make good any loss.

Again, if a Muteveli is authorized, by the conditions of the dedicator, to lend dedicated money on the security of a pledge greater in value than the loan, and take as security things of a less value, and the debtor die before he pay his debt, leaving no property except the things pledged. If when the pledge is sold the price is not sufficient to pay the debt, the Muteveli makes good the loss by payment of the remainder of the debt.

But if at the time the loan is made, the value of the pledge is equal to the amount advanced and afterwards falls, then the Muteveli is not bound to make good the loss.

In the same way if a Muteveli lend dedicated money, which the dedicator has directed to be lent on a hujjet being drawn up, contrary to the direction of the dedicator, without applying to the Court, when the debt is not proved, and the debtor denies it on oath, and dedicated money is lost, the Muteveli is liable to make good the loss.

So, if the Muteveli keep money, which the dedicator has directed should be kept in a safe place, such as the bezestan, in his own house, and it is stolen therefrom, the Muteveli is liable to make good the loss.

For expenditure not sanctioned by the dedicator.

332. Expenses incurred by the Muteveli not sanctioned by the conditions imposed by the dedicator are not allowed.

*E.g.* If grants from the income of a true Mustaghilat vaqf, contrary to the conditions of the dedicator are introduced and a Berat is obtained, and the Muteveli by virtue of that Berat, pay money out of the income of the vaqf towards those grants, those expenses are not allowed, the Muteveli is liable to make compensation for the money given by him.

For unusual expenditure.

333. The expenditure of the Muteveli which is above the customary sum is not allowed.

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## CHAPTER II.

### ABOUT COMPROMISE AND RELEASE OF DEBT BY A MUTEVELI.

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Compromise of action, when allowed.

334. If after diligent enquiry it is shewn, that in an action about a thing belonging to the vaqf it is impossible to bring proofs and the defendant is willing to take an oath, a compromise for the benefit of the vaqf is allowed.

*E.g.* If a Muteveli of a vaqf bring an action about a property held by someone, asserting that it belongs to the vaqf, and, when the defendant denies is not able to bring proofs, but it is certain that the defendant will take an oath, the compromise made by the Muteveli with the defendant, whether for a small or large sum is valid. After the agreement of compromise, the Muteveli can no longer impose an oath on the defendant.

Nevertheless, if a Muteveli after the compromise find proofs supporting his action and produce them, then the compromise is set aside.

Compromise by payment.

335. If it is certain that one, who is bringing an action about property against the vaqf has proofs, and that judgment will be given against the vaqf, a compromise made by the Muteveli by payment of a sum out of the property of the vaqf is valid.

Release of part of a debt.

336. If the Muteveli of a vaqf agree with its debtor for a part of the debt by a release of the balance, the following conditions are observed :

If the debt has its origin in an agreement made by the Muteveli himself, the agreement and release of debt are valid. But for the balance of the sum due under the agreement the Muteveli must indemnify the dedication.

If the debt did not arise from an agreement made by the Muteveli himself, then the agreement and release of debt are invalid.

Consequently, in the case of such an agreement and release of debt as aforesaid, the Muteveli recovers from the debtor the whole of the debt fully.

A compromise is looked upon as invalid, if the debtor confesses his debt, or if, although the debtor denies it, the Muteveli has proofs.

In default however of confession and proofs, the validity of the compromise is determined as above stated.

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### CHAPTER III.

#### LIABILITY OF A MUTEVELI FOR THINGS IN HIS POSSESSION AND ABOUT MATTERS CONFIRMED BY THE OATH OF THE MUTEVELI.

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337. The Muteveli holds as a bailee and not as an insurer. Consequently, if property of the dedication in his possession is damaged or destroyed, without fault or neglect on his part, he is not liable to make compensation, (Mejellé 768, 777, 813).

Muteveli a bailee.

338. When, on the death of a Muteveli of dedicated money, the money, which as principal he received in his lifetime in his character of Muteveli, is found existing in the estate he leaves, it is handed to his successor. In the case, in which, this money is not found in the estate he leaves, the following rules are observed :

Recovery from estate (terike) of Muteveli after death.

If the dead Muteveli, while he was alive, said that with that money he had bought such an estate for the vaqf or that he had lent such monies to such a person, or that they were lost in his hands without any fault of his, and so it is shewn in some way that he declared something about the fate of that money, indemnification is not due from his estate.

But if he did not declare anything about the fate of that money but died concealing it, then indemnification must be made from his estate.

But if the money which the Muteveli received when he was alive was not the principal money of the dedication, but interest and income, and he died concealing them, his estate is not bound to make indemnification.

339. The Muteveli of a vaqf authenticates by his oath the fact that he spent out of the income of the dedication a customary sum. He has no need of proof.

Proof of accounts.



Proof of claim.

But when it is a question of paying back money out of dedicated property, his oath is not received, and proofs are required.

*E.g.* When a Muteveli of a vaqf is discharged and another is appointed in his place, if the former Muteveli assert that during his Muteveliship he spent out of his own property, for the affairs of the vaqf, a fixed customary sum of money, on the condition that the same should be returned to him, and with the advice of the Judge, and bring an action against the Muteveli then acting, his word does not authenticate his statement. Proof is required from him.

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#### CHAPTER IV.

ABOUT WHEN THE MONEY OF ONE VAQF MAY BE EXPENDED ON ANOTHER.

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Expenditure on other foundation not allowed.

340. It is not lawful, nor is it allowed, that the income of one vaqf, which is limited to a certain object, should be spent for the expenses of another vaqf limited to another object, even if the dedicator should be one and the same person. If the Muteveli so spend it, he is liable to make good the amount.

*E.g.* If a man build two schools and dedicate them, and assign to each of them its own properties, it is not permitted to expend money out of the income of the properties of one of the schools on the expenses of the other school.

When surplus monies may be spent.

341. It is allowed by the Sacred Law to spend money out of the surplus of the profits of one vaqf for the necessities of another if both the founder of the two vaqfs is one person and the objects of the vaqfs are the same, and the income of one of the vaqfs has diminished.

*E.g.* If a man dedicates a property and directs that its income is to be spent on the repairs of a school which he has built and dedicated, and dedicates another property appointing that its income should be spent on the pay of the schoolmasters of that school, after a time when the income of the property appointed for the payment of the schoolmasters diminishes, and is not sufficient for their pay, it is allowed to expend on their pay a sum out of the property limited to the repairs of the school.

Income of ruined foundation spent on another by leave of the Judge.

342. It is allowed, with the permission of the Judge, that the income of a ruined and useless vaqf should be spent on another vaqf, whether the dedicators are the same or different. (See next Chapter).

## CHAPTER V.

## ABOUT CHARITABLE INSTITUTIONS WHICH HAVE BECOME USELESS.

343. When a vaqf which is a charitable establishment is ruined and rendered useless, it is allowed by the law that its income may, with the leave of the Judge, be expended on the expenses of another vaqf of the same sort, nearer in locality and having small income.

Income of ruined foundation spent on another, of same sort, near and poor.

*E.g.* If a school built in a place and dedicated by irrevocable dedication is wholly destroyed by the lapse of time, and the inhabitants of that place are scattered and so the school is rendered useless, its income can be spent, with the leave of the Judge, on the necessary expenses of another dedicated school near to it, having small income.

It is not allowed however to spend the income of a vaqf which has become useless on another vaqf of a different sort.

*E.g.* It is not permitted to spend the income of a hospital which has become useless on schools, or the income of a school which has been destroyed and rendered useless on a hospital.

344. If the inhabitants of a village are entirely dispersed and thus the Mesjid in that village is rendered useless, the inhabitants of another village, in which there is no Mesjid and which is near the first, can pull down the Mesjid in the first village, take its material and re-erect it in their own village, and furnish a Mesjid there.

Removal of Mesjid.

In such a case, the income of the Mesjid pulled down is spent, with the leave of the Judge, on the necessities of the Mesjid in the second village.

In the above case, the heirs of the dedicator cannot contend that, since the Mesjid was pulled down, its income belongs to them, and that consequently they can take its income and not expend it for the benefit of the Mesjid erected in the other village.

Again, if a Mesjid is dedicated by someone, and another person dedicates a sum of money for its wants, and after a lapse of time all the inhabitants of the village are entirely dispersed and the Mesjid falls down, but the Muteveli wishes to expend the interest of this money, with the leave of the Judge, on another Mesjid, in a near village, and having small income, the heirs of the person who dedicated the money, cannot, by reason that the Mesjid, for the benefit of which the money was dedicated, has been destroyed and rendered useless, and that consequently the money is come to them as inheritance, interfere with the Muteveli.

## CHAPTER VI.

## BORROWING POWERS OF MUTEVELI.

**Borrowing,  
what is.**

345. Borrowing is effected either by the receipt of a loan or the purchase of a thing on credit.

**Rules as to  
borrowing.**

346. If the property of a vaqf has need of repair and the vaqf has no income, the following rules are observed:—

If the dedicator put a term in the deed of dedication that, in necessity, the Muteveli might borrow for the vaqf, then the Muteveli of his own motion may borrow to spend on the repairs.

If the dedicator has not inserted such a term, the taking of a loan for the vaqf is dependent on the leave of the Judge, consequently in such a case, the Muteveli cannot of his own motion without the leave of the Judge, borrow for the vaqf.

**Borrowing at  
interest.**

347. If, when repairs are necessary for the property of a vaqf which has no income to expend, it is not possible to borrow without paying interest, the Muteveli, by order of the Judge, borrows the money at interest in a lawful way, and spends the reasonable sum on the repairs.

In such a case the Muteveli receives both the principal and interest out of the income of the dedication.

**Advances by  
Muteveli.**

348. If a Muteveli, with the leave of the Judge, for the repair of a vaqf property, spend a reasonable sum out of his own money, upon the condition that he is to take again from the vaqf, he takes his expenses from the income of the vaqf.

If he die before he receives it, his heirs take the money expended, on production of proof, from the income of the vaqf and from the Muteveli appointed in the place of the dead man.

**Loans and  
advances for  
salaries.**

349. It is not allowed to take a loan to be used in grants to the officials and beneficiaries.

Consequently, if the Muteveli borrow money and spend it on grants for the beneficiaries, he ought to repay the creditor the sum which he borrowed out of his own money, he cannot take it from the income of the vaqf.

But if the Muteveli spend out of his own money sums for grants to the beneficiaries, upon the condition that he was to receive it from the vaqf by the order of the Judge, then he can receive his money so expended from the vaqf,

## CHAPTER VII.

## ABOUT DEDICATED MONEY.

350. If money is dedicated on the condition that it is to be lent to those in need, without interest being charged, the Muteveli cannot lend it out at interest.

Muteveli cannot lend at interest money dedicated to be lent to needy without interest.

351. If the Muteveli lend money, dedicated with the condition that it shall be let out at interest, and does not stipulate for interest, he cannot take anything as interest from the person to whom it is lent. If in such a case the debtor gives a sum to the Muteveli as interest, he may calculate it as payment of the principal.

If Muteveli lend money without interest, debtor need not pay interest.

But nevertheless, if the debtor give a sum of money to the Muteveli and tell him that it is the produce of the money. and that he can spend it for the needs of the dedication, and the Muteveli expend it for that purpose, then the debtor cannot calculate that money towards payment of the principal.

352. Interest runs as long as the debt is unpaid.

Interest runs while the debt is unpaid.

Therefore as long as the debtor owes the debt, interest also is due.

*E.g.* If the Muteveli of dedicated money lend a certain sum of money and agree for interest for five years and after one year the debtor dies, and two years pass without the principal sum being paid to the Muteveli out of the estate of the debtor, when the Muteveli takes the said sum from the estate, he is entitled to take in addition to the principal the interest earned for the time past up to the time of payment.

In such a case, the heirs of the deceased cannot contend, that by the death of the debtor the interest ceased, and that consequently they are not bound to pay interest for the time which has elapsed after the death of the person from whom they inherit.

353. If the Muteveli of money dedicated to be let out at interest, lend some of it, and, before he receives the money from the debtor, is discharged or dies, when another person is appointed in his place, the Muteveli, for the time being, can take the said money from the debtors.

Succeeding Muteveli can sue.

354. The debt due to a vaqf from a deceased person, who leaves debts in excess of his estate, cannot be preferred to the rest of the debts.

Dedication has no preference over other creditors.

The Muteveli of the vaqf ranks as other creditors towards the body of creditors.

355. Debts are paid by money similar to that which is lent.

Payment of debts.

Consequently if a man is lent a fixed sum of Turkish pounds out of dedicated money, and expends and consumes them on his necessities, when the Muteveli of the vaqf claims for the debtor similar pounds, the latter cannot say that he does not give pounds and offer silver Mejidies or metaliqs of equal worth with the pounds.

And on the other hand, if the debtor is lent silver Mejidies or metaliqs, the trustee cannot claim Turkish pounds of equal value with the sum lent.

Nevertheless, in such a case, after the debtor has voluntarily paid his debt to the Muteveli in Turkish pounds, he cannot change his mind and demand the return of the Turkish pounds and pay the debt in coins like those lent to him.

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TITLE K.

ABOUT GRANTS (VAZAIIF, SEE ART. 21.)

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Grants, two  
sorts.

356. Grants made as directed by the dedicator out of the income of the dedicated property are divided into two categories :

(a) grants made for work done.

(b) grants made not for work done.

Grant for work  
done.

357. A grant made for work done is looked upon as a wage.

Consequently, if the person, entitled to a grant out of the dedication for work done, forsake that work without lawful reason for a time, he is not entitled to take the grant for that time.

Again, if after the person, entitled to a grant for work of some office connected with the dedication, has performed for some years the duties of that office, and taken from the income of the dedication the grant to which he was entitled, another person appears, who asserts that that office was appointed for his benefit, and brings an action and proves his contention, and consequently the office is given to him, the latter cannot recover back the grant for the years during which he did not discharge the duties, which the preceding occupier of the office took, on the ground only that the office belongs to him.

Grant not for  
work.

358. For the grant given not against work, the circumstances of the person, in whose favour it was limited, are considered.

Gift or alms.

If he is rich, the grant is looked upon as a gift.

If he is poor, the grant is looked upon as alms.

Arrears not  
payable out of  
subsequent year.

359. The grants of each year are paid out of the income of that year.

The grants of one year cannot be paid out of the income of another year.



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Arrears not  
payable out of  
subsequent year.

359. The grants of each year are paid out of the income of that year.

The grants of one year cannot be paid out of the income of another year.

That is to say, if no income is derived from the dedicated property for one year and for this reason the grants of that year are not paid, but the second year abundant income is derived, the beneficiaries, after taking the grant for the second year, cannot demand out of the surplus the grant also for the first year.

If in such a case the Muteveli, thinking that payment of the grant for the first year ought to be made out of the income of the second year, pay a sum to the beneficiaries out of the income of the second year on account of the grants of the first year, he takes it back from the beneficiaries.

But if the dedicator insert a stipulation that the grants of one year are to be paid out of the income of another year, it is allowed to pay the grants out of the income of another year.

360. The Muteveli pays away the income of the dedication in the same way as he receives it.

Payments made at the same rate as the money was received.

*E.g.* If the Muteveli collect the rents of dedicated houses, at the current rate in the city of the Turkish pounds at 108 piastres, he will pay to the beneficiaries at the same rate, the beneficiaries cannot demand payment of their grants at the rate of 100 piastres the pound.

And, on the other hand, in this case, the Muteveli cannot give the beneficiaries the Turkish pound at 110 or 120 piastres.

361. If the dedicator of money impose as a condition that in case the dedicated money diminishes, the grants are not to be given to the beneficiaries until the principal is raised by the accumulation of interest, if the principal becomes diminished, the Muteveli cannot give the grant to the beneficiaries, until the full principal is raised by the interest. If he do so, he is liable to make good the amount.

Condition to maintain principal sum.

362. If the Muteveli of a vaqf do not lend the money at interest, and expend on grants to the beneficiaries a sum out of the principal, he is liable to make good the amount.

Muteveli to make good payment out of principal.

In such a case, the Muteveli after payment of the indemnification cannot make a demand upon the beneficiaries for the monies which he paid.

363. If the income of the vaqf does not cover the expenses, the economies possible are practised by the leave of the Judge.

Where income does not cover expenses.

That is to say, if the income of the dedication is much reduced and is not sufficient for its expenses, the Muteveli applies to the Judge.

The Judge abolishes altogether out of the grants of the dedication those which are not important, and diminishes those which are important as far as they admit of it.



In such a case, the Muteveli acts according to the decision of the Judge until the pecuniary condition of the dedication is bettered, and after that he pays the grants strictly according to the conditions made by the dedicator.

Additions to wages when necessary.

364. If the grant, limited originally by the dedicator, for the servants of the dedication, is not sufficient, according to the circumstances of the time, for their support, and they are of good conduct and apply themselves to their work, and it is clear that if their pay is not increased they will resign, and that if these resign others will not be found to do their work for the same pay, and that so the work of the vaqf will remain undone, with the leave of the Judge a sufficient sum is added to the grant of the servant out of the surplus. (Art. 165).

Dismissed person entitled to grant until notice.

365. A person dismissed from his place but performing the duties of the place until his dismissal is made known to him, is entitled to take the grant for that place until the time when his dismissal is made known to him.

From surplus, a sum is set aside for repairs.

366. From the surplus which is directed to be given to any persons, certain sums are kept as a reserve for the repair of the dedicated property.

*E.g.* Even if the property of the vaqf has no need of repair at present, and the surplus of dedication, beyond the fixed expenses, is limited in favour of the children of the dedicator, the Muteveli keeps out of the surplus a suitable sum as a reserve, that, in case of necessity, he may expend it on the repair of the dedicated property, and gives the rest according to the conditions made by the dedicator to his children.

Muteveli cannot recover back money paid to beneficiaries.

367. After the Muteveli of a vaqf, of which the surplus is limited in favour of the children of the dedicator, has paid to the children a sum of money as surplus of the dedication, he cannot afterwards, on the allegation that he paid that sum out of his own money, with the intention of taking it out of the surplus, and that no surplus income was derived, take back those monies from the children.

Year, how calculated.

368. The beginning of the year, as regards dedications whose profits are annual, is calculated from the ripening of the fruits, and the first day of the second year from the end of the first year.

Grants accrue daily.

369. If the possessor of a grant out of a dedication whose profits are annual, die in the middle of a year, the time elapsed from the beginning of the year till the date of his death is calculated and there is given to his heirs a proportional grant.

Right of children born subsequently.

370. The children of the dedicator, born after half the year is past, and in favour of whom there is limited the profits of a dedication producing annual profits, have no right to the profits of that year.

But the children of a dedicator born before the lapse of the half year are entitled to take a proportional part of the profits from the day of their birth.

The same rule applies to grandchildren

371. If the dedicator limit the income of his dedicated property in favour of his poor descendants or his relations, it is paid to those who happen to be poor when the income arises, whether they were poor before it was made or not.

Poor, means poor when income is made.

Consequently, if one of the descendants or relations of the dedicator happens, to be poor as aforesaid before the income arises, and is in good circumstances at the time when the income is made, he takes no share out of the income of the dedication.

On the other hand, a share of the income is given to one who is rich before the income arises, if he has become poor at the time when it is made.

If, however, for some reason the income is not divided for a year, and is going to be divided afterwards, it is expended for those remaining poor at the time of division. Whether they were poor at the time when the income of those years was made or not.

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### ABOUT APPOINTMENTS (DZIHET).

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#### CHAPTER I.

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Dzihet.

373. It is not allowed to appoint an unfit person to a post.

Consequently, if a person is unfit to discharge the duties of a post, he is dismissed from the post and it is granted to a fit person.

Appointee must be a fit person.

374. It is not allowed that a post, limited for the benefit of men who belong to one class, should be granted to men of another class.

Must be granted to person of the class directed.



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Must be granted to person of the class directed.

*E.g.* A place, appointed to be granted to the Ulemas of the Hanefi doctrine, cannot be given to one of the Shafi'i, nor can a place appointed for the Shafi'i be given to a Hanefi.

Again a place, limited to a Sheykh of the class Naqshbendi, cannot be given to a Sheykh of the class Shazilliyye, and on the other hand, a place limited to one of the class Shazilliyye cannot be given to one of the class Naqshbendi.

If such an appointment is made by any chance, it is revoked and the place is granted according to the condition of the dedicator.

Death of  
appointee.

375. If the occupier of a place die, leaving a child of full age and able to discharge the duties of the post, this child is appointed to it and not another.

But if the child of the dead man is not competent to discharge the duties of that post, and his unfitness is proved before the Judge in his presence, then this post is not given to him, but to another, who is competent.

In such a case, the incompetent child of the dead man cannot interfere with this post by reason that it is his paternal bread.

Transfer of  
appointment.

376. The transfer of posts is allowed, but their grant must be made by the Judge.

See Art.  
376, 377.

That is to say, if the ability of the man to whom the transfer is made, is proved, and it is not granted to him by the Judge at the time of the transfer, the transfer has no force.

A person cannot  
hold two posts  
of which the  
duties are to be  
performed at the  
same time

377. It is not allowed for one person to hold two places the duties of which have to be performed at the same time.

Consequently if two places are granted to one person which according to the above rule cannot be held together, that person keeps at his will one of the places and he is made to resign the other.

Where Muteveli  
has power to  
appoint and  
dismiss.

378. If the dedicator direct that the Muteveli shall appoint and dismiss the officials of the dedication, the Judge cannot interfere in the grant of the offices of that dedication, unless the Muteveli proceed to do some act contrary to law, such as the appointment of an incompetent person, or the dismissal of a person from his office without lawful cause.

In such a case, the Judge interferes.

Second appoint-  
ment.

379. If after the grant of an office to one person, it is granted to another, without there being any reason for the dismissal of the first, the office belongs to the person first appointed and not to the second.

But if when there is cause to dismiss the first person appointed, he is dismissed from the office and another person is appointed, then the second appointment is good.

## CHAPTER II.

ABOUT THE DEPUTATION OF THE OFFICE AND DISCONTINUANCE  
FROM ACTING.

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380. In respect to a vaqf office, it is allowed to depute the office and appoint a proxy.

Power of office holder to appoint a proxy.

But it must be done with the approval of the Judge.

Consequently one is able, without justifying cause, to appoint, with the sanction of the Judge, a proxy competent to carry out the duties of the office which he holds.

The person, who appoints a proxy, acquires a right in respect of the pay, as long as the proxy receives pay from him during the time of his appointment.

But if it is directed by the dedicator or by the Judge at the time of the appointment to an office, that its possessor should discharge its duties personally, then he cannot appoint a proxy unless there is a justifying cause.

If he does so, he cannot acquire a right to the pay during the time the appointment lasts.

381. Those who, without reason, forsake or neglect vaqf offices to which they are appointed, are dismissed.

Neglect of office see Art. 331.

382 If the occupier of an appointment go away to another country and thus interrupt his service for more than three months, the following rules are observed.

Absence of appointee.

If his journey to the other place is with the object of performing a duty incumbent on him, such as a Hajj and the return to his country, he does not lose his post, but the pay during the time of his business is deducted.

But if his going away is not for a necessary journey then he is dismissed.

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## TITLE M.

## ABOUT THE RENTING OF VAQFS

Property may be let to beneficiary under the trust.

383. The letting of a vaqf at a rent to a beneficiary under the dedication is valid.

*E.g.* If the Muteveli let a house or workshop, the income derived from which is settled in favour of the children of the dedicator, to one of the dedicator's children, the letting is valid.

Muteveli cannot let to himself without the leave of the Judge.

384. It is not allowed for the Muteveli of a vaqf to let it, of his own motion, to himself, even for a rent equal to the value.

But if the Muteveli obtain leave from the Judge, and the Judge let him that property for a rent equal to the value, then the letting is valid.

Muteveli cannot let to a relation.

385. If the Muteveli let a property of which he is Muteveli to relations of his of so near a degree that their evidence would not be admissible in his behalf, even if the letting is for a rent equal to the value, the letting is not valid.

Consequently, if the Muteveli let the property of such vaqf to one of his or her relations, ascending or descending, or to her husband or his wife, the letting is not valid.

Lease not dissolved by death of Muteveli.

386. The contract of letting is not dissolved by the death of the Muteveli who agreed to it.

*E.g.* If the Muteveli let, at a rack rent, for one year, property of the vaqf for which he is Muteveli and give possession, and die in the middle of the year, the contract of letting is not dissolved.

On change of Muteveli during a lease, the new Muteveli, entitled to take the rent.

387. If the Muteveli of a vaqf let and give possession of properties of the vaqf for which he is Muteveli, but is dismissed or dies before he receives the rents due from the lessees, and another is appointed in his place, the right of recovery of the rents belongs to the Muteveli then acting.

It does not belong to the Muteveli who has ceased to act, nor to the heirs of the deceased Muteveli.

If rent prepaid, new Muteveli cannot demand any.

388. If the Muteveli let the property of the vaqf until the expiration of a fixed term and take the whole rent from the lessee, and afterwards is dismissed or dies before the expiration of the term, and another Muteveli is appointed to his post, the Muteveli for the time being, when it is



proved that the preceding Muteveli received the whole rent as aforesaid, is not able to demand again rent from the lessor for the time falling within the period of his Muteveliship.

Because by the receipt of the former Muteveli, the lessee is released from the obligation to pay.

389. The dedicated property must be let at a rent equal to its value. Rent must be a rack rent.

If the Muteveli let it at a rent less than the value, the following rules are observed :—

If the deficiency is excessive, the lease is invalid.

If the deficiency is small, the lease is valid.

390. In the letting, the deficiency of the rent is considered excessive if it is one fifth or more less than the value, it is small if it is less than one fifth below the value. When deficiency of rent excessive.

391. When there is necessity to hire something on account of the vaqf it must be hired at the rent equal to the value. Muteveli must hire at fair rent.

Consequently, if the Muteveli hires something on account of the vaqf, for a rent excessively above the value, the hiring is not valid.

But the validity of the hiring is not prejudiced by a small excess.

In hiring a rent which is one fifth or more above the value is considered excessive.

The excess is considered small which is less than one fifth above the value.

392. If the Muteveli let the dedicated property for a rent excessively below the value, it is required that the value be made good. How the difference between the agreed rent and value is recovered.

If the lessee refuse to make it good, then the Muteveli dissolves the lease and lets the property to another for the rent according to its value. If the lessee has possessed the property for some time before the lease has been put an end to, the rent according to its value is taken from him for that time.

393. If the Muteveli of a vaqf let it for a fixed time for a rent equal to its value, and, afterwards, third persons, for some object offer a sum above that rent and seek to hire it, their offer is not taken into consideration. After lease granted higher offer not to be accepted. If rent increases 50 per cent. rent to be raised.

But if in the course of the term, by common demand, the value of that property to let has increased to an excessive extent, the hirer is bound to pay the additional rent for the remainder of the term.

With reference to the above matter, an increase of the sum up to the half of the agreed rent is considered an excessive increase.

If in the manner prescribed, the lessee does not consent to pay the additional rent, the Muteveli dissolves the contract of letting, takes the property out of the hands of the lessee and lets it to the person offering to take it at that rent.

In such a case, if the Muteveli does not dissolve the contract, and the lessee keeps possession of the property until the expiration of his term, the lessee must pay the rent named for the whole time of the letting.

The Muteveli cannot ask more from him.

Property in trust for habitation cannot be let.

394. Neither the Muteveli nor the beneficiary can let to a third party a property the right to inhabit which is dedicated.

Unless necessity.

The cases are excepted in which there is absolute necessity for the vaqf.

Where income dedicated, beneficiary has no right to occupy.

395. When there is a question of a property being let by the Muteveli to a third person for an equivalent rent, and the income from that property is dedicated, the persons, in whose favour the income is settled, cannot stop the Muteveli from letting that property, relying on the argument that its income is settled on them and that consequently they can possess and prevent the letting of it to a third person.

Repairs by lessee when recoverable.

396. If the lessee of a dedicated property, which has need of repair in any part, and of which the Muteveli is abroad, repair by the order of the Judge the part having need of repair, expending out of his own money a reasonable sum, on the condition of taking it back from the vaqf, he can set off those expenses against the rent.

Where lease defective assessed rent to be paid.

397. In every case, whether the letting of dedicated property is defective by reason that the rent is unknown, or it is defective because the other conditions constituting a valid letting do not exist, the lessee must pay a sum equal to the equivalent rent.

There is no indispensable condition (as there is in the case of properties of pure ownership) in the second case, that the rent must not exceed the rent agreed upon (Mej. 462).

Where lease invalid, rack rent to be paid.

398. The equivalent rent is due, if the lessee possess the dedicated property, even if the property is let under a letting which is invalid. (Mej. 459).

Muteveli can let for rack rent although dedicatior direct a different rent.

399. If a person dedicating a property direct that it shall not be let for a sum exceeding a fixed sum, the Muteveli can let it for the equivalent rent even if this is greater than the fixed sum.

400. If a person, who dedicates houses, direct that the poor shall live in them without paying rent, the Muteveli cannot, contrary to the direction of the dedicator, demand rent from the poor living in those houses by the direction of the Judge.

If dedicator direct that the poor are to inhabit without paying, the Muteveli cannot demand rent.

In such a case, if the Muteveli demand rent from the poor living in those houses, and they pay it to the Muteveli for any time, thinking that they are bound to do this, they can demand and take it back from the Muteveli.

401. After the Muteveli has let dedicated property, he cannot dissolve and upset the letting, if the dissolution of the contract is not more beneficial to the dedication.

Muteveli cannot revoke lease.

If he do so, the dissolution of the contract is not valid.

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## TITLE N.

### ABOUT WRONGFUL APPROPRIATION OF DEDICATED PROPERTY.

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402. The benefits derived from dedicated property must be refunded.

Trespasser to make good loss to true vaqf.

Consequently, if one by force seize and for a time take possession of a dedicated property, whether it is dedicated to be let at rent or not, in every case he must pay to the vaqf the equivalent rent for the time he possesses it.

*E.g.* If one wrongfully appropriates or take possession for a time of a dedicated school or college not dedicated to be let at rent, he must pay the equivalent rent of that school or college for that time.

But if a man wrongfully appropriates and seizes for a time land which is true vaqf and cultivates it and diminishes the productiveness of the field, then the following rules are observed :—

True vaqf land.

If the diminution in the productiveness of the field is greater than the equivalent rent, the wrongful appropriator is condemned to pay the diminution in productiveness.

If the equivalent rent is greater than the diminution in productiveness, then he is condemned to pay the equivalent rent.

But since vaqf lands of the Takhsisat category are looked upon as State Lands, and as the wrongful appropriator of State Lands, is not compelled to pay an equivalent rent, and loss of productiveness.

Takhsisat vaqf land.



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But since vaqf lands of the Takhsisat category are looked upon as State Lands, and as the wrongful appropriator of State Lands, is not compelled to pay an equivalent rent, and loss of productiveness.

Takhsisat vaqf land.

So also in respect of vaqf lands of this category he is not compelled to pay them. (Land Law, Art. 21).

**Borrower of vaqf properties is a trespasser.**

403. It is not allowed to give income bearing vaqf properties as a loan for use.

Consequently, if the Muteveli give to another as a loan for use anything out of the Mustaghilat of a vaqf, and the person to whom it is lent uses it for a time, the latter is looked upon as a wrongful appropriator and is bound to pay to the vaqf rent for that time.

**Person entitled to occupy may let.**

404. If the person, in whose favour a right to dwell in a dedicated house is exclusively given, let that house to another, the rent belongs to him and not to the vaqf.

Consequently, the Muteveli cannot demand the rent as belonging to the vaqf.

**Person ejected must pay rent for time of occupation.**

405. If one possess a dedicated thing wrongfully, although he claims such possession under an agreement or as owner, he must pay the equivalent rent.

*E.g.* If one buy from another for a known price a property and take and possess it for a time, and afterwards the Muteveli of some vaqf bring an action and prove that the property belongs to the vaqf of which he is Muteveli, and, according to the Sacred Law, judgment is given in favour of the vaqf, the purchaser must pay the equivalent rent for the time he possessed the property,

In such a case, the purchaser cannot refuse payment of the equivalent rent, for the reason that he possessed that property under a claim of ownership, because he had bought it.

Also, if a person take exclusive possession of a property by force, for a time, and half of it belongs to him and the other half to the vaqf, he must pay an equivalent rent for the half share belonging to the vaqf during the time he possessed it.

**Rent to be paid though no profit derived.**

406. The wrongful appropriator must pay the equivalent rent, even if he did not enjoy the benefits of the thing appropriated.

*E.g.* If a man wrongfully appropriates, for a time, dedicated land, but gets no profit from it, leaving it unemployed, he must pay the equivalent rent for that land to the vaqf for the time he held it as a wrongful appropriator.

Again if one get no benefit from a dedicated house or workshop which he has appropriated, leaving them closed, he must pay to the vaqf the equivalent rent of the house or workshop for as long as the appropriation lasted.

407. If one without right and by force destroy a property constituting a charitable establishment, such as a school or place of worship, he must rebuild it as before.

Destruction of  
vaqf property.

But if he forcibly pull down a building of vaqf Mustaghilat, he is condemned to make compensation according to its value when standing. He is not compelled to build the house as before.

408. If one of those to whom the right of occupying dedicated property is given, by force and to the exclusion of others dwell in it for a time without the leave of the others, the latter take from the person, exclusively occupying the house, rent according to their shares.

Trespass by  
joint beneficiary.

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## TITLE O.

### OF REPAIRS AND BUILDINGS IN RELATION TO DEDICATED PROPERTY.

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#### CHAPTER I.

##### OF THE REPAIRS OF DEDICATED PROPERTY MADE BY THE BENEFICIARY WHEN THE RIGHT TO INHABIT THE PROPERTY IS SETTLED ON HIM.

409. If the person, in whose favour the occupation of a dedicated house is limited, execute at his own expense such works as can be separated from the house (see Art. 30) without giving them to the dedication, these are looked upon as his property.

Additions by  
persons entitled  
to occupy not  
given to  
dedication.

Consequently, if in the case of a dedicated house the occupation of which is limited in favour of the Ulema, the person, who by judicial grant dwells in it, builds and at his own expense adds certain buildings for himself, and after this dies, the building belongs to his heirs.

In such a case, if this house is granted to another of the Ulema, he becomes owner of that building and pays its value to the heirs of the deceased.

In the case in which he refuses to pay the value of that building, the Judge lets the house to another until its value is derived from the rent.

As soon as its value is fully and completely made from the rent, the house belongs to the person to whom the house was granted.



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vaqf property.

But if he forcibly pull down a building of vaqf Mustaghilat, he is condemned to make compensation according to its value when standing. He is not compelled to build the house as before.

408. If one of those to whom the right of occupying dedicated property is given, by force and to the exclusion of others dwell in it for a time without the leave of the others, the latter take from the person, exclusively occupying the house, rent according to their shares.

Trespass by  
joint beneficiary.

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## TITLE O.

### OF REPAIRS AND BUILDINGS IN RELATION TO DEDICATED PROPERTY.

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#### CHAPTER I.

##### OF THE REPAIRS OF DEDICATED PROPERTY MADE BY THE BENEFICIARY WHEN THE RIGHT TO INHABIT THE PROPERTY IS SETTLED ON HIM.

409. If the person, in whose favour the occupation of a dedicated house is limited, execute at his own expense such works as can be separated from the house (see Art. 30) without giving them to the dedication, these are looked upon as his property.

Additions by  
persons entitled  
to occupy not  
given to  
dedication.

Consequently, if in the case of a dedicated house the occupation of which is limited in favour of the Ulema, the person, who by judicial grant dwells in it, builds and at his own expense adds certain buildings for himself, and after this dies, the building belongs to his heirs.

In such a case, if this house is granted to another of the Ulema, he becomes owner of that building and pays its value to the heirs of the deceased.

In the case in which he refuses to pay the value of that building, the Judge lets the house to another until its value is derived from the rent.

As soon as its value is fully and completely made from the rent, the house belongs to the person to whom the house was granted.

**Additions given to the vaqf.**

410. If the person, in whose favour the occupation of a dedicated house is limited while he is in a state of good health, erect buildings at his own expense in addition to that house, and it is attested by witnesses that he builds it as a gift for the vaqf and he afterwards dies, his heirs cannot claim those buildings on the alleged reason that they passed to them by inheritance.

**Person entitled to occupy.**

If the person in whose favour the occupation of a house is limited effect in respect of it certain work of the sort which cannot be separated (see Art. 29), at his own expense, in every case he is considered to have given it to the vaqf.

**Repairs take precedence of grants.**

411. The expenses of repairs take precedence of grants (see Title K).

Consequently, when there is need to repair a dedicated property, the income which there is cannot be spent on grants.

In such a case, if the Muteveli spent what income there is on grants and nothing remains for repairs, he is liable to make good the sum which he expended on grants.

**House dedicated to be occupied, ruined.**

412. If a house, the right of occupying which is dedicated, is ruined, the following rules are observed :

If the dedicator has imposed a term, that the house is to be repaired out of the income of the vaqf, then it is repaired, in accordance with that term, out of such income of the vaqf as there is.

But if the dedicator has not imposed any such term, or if he has imposed such a term, but there is no income, then the beneficiary repairs the house at his own expense.

But if the beneficiary cannot pay the cost of the repair, or refuses to pay it, although he is able, the house, with the approval of the Judge, is let by the Muteveli to another, in order that it may be repaired out of the rents received.

**Repair of building of which the income is dedicated.**

413. If a vaqf building, of which the income is settled on the children of the dedicator, fall into ruin and have need of repair, the Muteveli will spend the income derived on the repairs. The children cannot refuse their assent to this and demand the division of the income among themselves.

## CHAPTER II.

## ABOUT BUILDINGS ERECTED ON DEDICATED LAND.

414. If the Muteveli erect a building on the land of the vaqf, the following rules are observed :—

Building by  
Muteveli.

If the money spent on the building belongs to the vaqf, the building in every case belongs to the vaqf, whether the Muteveli has declared and had it witnessed when the building was erected that he built for himself or for the vaqf or not.

If the money expended does not belong to the vaqf but to the Muteveli, then, if at the time of the erection, he has declared and it has been witnessed that it is built for himself, the building belongs to the Muteveli.

But if when the building is being erected, the Muteveli does not declare and cause it to be witnessed that he is building for himself, and keeps silence, then the building belongs to the vaqf.

But when the Muteveli who has raised a building at his own expense is himself the dedicator, even if, while it was being built, he did not declare and cause it to be witnessed that he built it for himself and kept silence, that building becomes his property.

415. If a person, not being the Muteveli, erect a building on vaqf land at his own expense, in every case the building is his property, whether he declares and causes it to be witnessed at the time of the building that he was building for himself or keep silence.

Building by  
person other  
than the  
Muteveli.

## TITLE P.

## EXCHANGE OF DEDICATED PROPERTY.

416. The exchange of a vaqf property is not allowed if the dedicator has not inserted a term authorising its exchange.

Exchange when  
allowed.

But if that property does not produce any income for the vaqf, or its income does not cover its expenses, and so it is shewn that a change will benefit the vaqf, then, even, if the dedicator has expressly forbidden a change, the change is allowed with the approval of the Judge and the leave of the Sultan.



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Property taken in exchange must have a situation of equal reputation.

417. The mulk property taken as the price, must not be inferior to the vaqf property as regards situation and reputation.

Consequently, the situation of the mulk property must, as regards reputation, be equal to or better than that of the vaqf property.

If it is worse, the exchange is not valid.

*E.g.* An exchange of vaqf property situated in Diwan Yol for mulk property situated in Qasm Pasha or in Yene Baghcha is invalid even if the latter be greater in extent and produces a greater income than the vaqf property.

Need not be in the same city.

418. In order that an exchange may be valid, it is not an indispensable condition, that the mulk property taken in exchange and the vaqf property should be situated in the same city.

Consequently, the exchange of vaqf property situated in one city for mulk property in another is valid.

*E.g.* A valid exchange can be made of vaqf property situated in Constantinople for mulk property in Smyrna, which has a better reputation and greater value.

Exchange for cash.

419. It is allowed to change dedicated property for cash.

Exchange when irrevocable.

420. It is not allowed to retract from an exchange judicially declared valid.

That is to say, if a vaqf property is exchanged by the leave of the Judge and by the order of the Sultan, the conditions required for an exchange being in existence, and after the Judge has decided after a hearing about the validity and irrevocability of the exchange, it is not allowed to retract from this exchange.

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## TITLE Q.

ABOUT ACTIONS RELATING TO VAQFS CONTAINS TWO CHAPTERS.

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### CHAPTER I.

WHEN AN ACTION WILL LIE.

---

An action will lie for the price of Ijareteinle.

421. An action will lie for the price of the grant of vaqf property held in Ijaretein.

A person claiming as descendant from a dedicator must set out his descent from the dedicator.

422. If a person brings an action claiming to be a descendant or relation of the dedicator, he must set out the ties of relationship between himself and the dedicator. If he is unable to do so, his action is dismissed.



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422. If a person brings an action claiming to be a descendant or relation of the dedicator, he must set out the ties of relationship between himself and the dedicator. If he is unable to do so, his action is dismissed.



423. If a Muteveliship, limited in favour of the descendants of a dedicator, becomes vacant, and someone appears and claims that he is a descendant of the dedicator, and consequently brings an action about the Muteveliship, his action is dismissed, unless he can shew the ties of relationship between himself and the dedicator.

That is to say, his action is dismissed if he do not say, "such a one is my father, and such a one his father, and such a dedicator his father," and so trace the genealogical relationship which he holds to the dedicator, shewing and enumerating the names of the persons intervening between himself and the dedicator, and allege that he belongs to the family of the dedicator.

When however an action is brought about the descent from a relationship to a person, who is clearly proved to be a descendant of the dedicator, it is not necessary to prove his ties of relationship to the dedicator.

Or from some-  
one clearly  
proved to be a  
descendant of  
the dedicator.

*E.g.* When the Muteveliship of an ancient vaqf is limited in favour of the descendants of the dedicator, and on their failure, in favour of the Masters of some school, and the person in possession of the Muteveliship dies, he being clearly proved to be a descendant of the dedicator, and the Master aforesaid, thinking that the heirs of the dedicator have failed, take the office of Muteveli of this vaqf, and afterwards another person appears alleging that he is a son of the deceased Muteveli, and so bring an action and offers to prove that he is a son of the deceased, wishing to take this Muteveliship, the Master of the school cannot refuse to retire from the Muteveliship until the plaintiff has declared and proved the ties of relationship subsisting between himself and the dedicator.

Again, if one person, proved to be the child of the dedicator, holds a post of Muteveli, which is limited in favour of children of children, and another person appears asserting that he is a son of his full blood brother (nephew) and consequently a descendant of the dedicator, and bring an action and prove it in the manner prescribed by law and desire on this account to share the post of Muteveli, the defendant cannot refuse to allow him to share on the ground that it is necessary for the plaintiff to declare and prove the ties of relationships between himself and the dedicator.

Again, if one proved to be, *e.g.* a descendant of the fifth generation, holds the post of Muteveli of a vaqf of which the Muteveliship and income are limited in favour of the descendants of the dedicator, and another person appears asserting that he is his cousin, and

consequently a descendant of the dedicator of the same generation and in the same degree, and he brings an action and proves that he is cousin of the defendant, he shares the Muteveliship and the income.

In such a case he is not required to declare and prove the bonds of relationship subsisting between the dedicator and himself.

It is not necessary that the name of the dedicator should be known.

424. In an action about a vaqf it is not necessary to make mention of the name of the dedicator.

That is to say, when an action is brought about a place as vaqf property, the action lies, even if the name of the dedicator is no longer remembered.

Grant-collateral document.

425. If someone grant finally to another, by the leave of the Muteveli, a vaqf property held in Ijaretein, and it is agreed between the grantor and the grantee that the grant is fictitious and to be looked upon as istiglal (Art. 20) and afterwards the grantor sues the grantee, who denies that the grant was fictitious and asserts that in the presence of the Muteveli the grantor had made a final grant of the property, the action is heard, if the plaintiff produce a document bearing the signature or seal of the grantee, shewing that the grant was fictitious.

But if he cannot produce such a writing, the Judges are forbidden by Imperial Order to hear such action.

Consequently if a Judge hear such an action, when no document exists, and receive the plaintiff's witnesses to prove that the grant was istiglal (Art. 20) and decide that the grant was istiglal (Art. 20) his decision is not to be executed.

Parol evidence inadmissible to contradict writing.

426. When a person has, by leave of the Muteveli, finally sold a vaqf property which he held in Ijaretein, and the grant has been put into writing, if he afterwards assert that he conveyed it gratis upon the condition that the grantee should support him until his death, and demand the return of the property on the ground that the condition of maintenance has not been performed, and when the grantee refuses, brings an action, it is forbidden to the Judges by Imperial decree to hear such actions.

Consequently, if the Judge hear the action and give judgment that the property is to be returned to the plaintiff, his decision is not to be carried out.

(The Imperial Order cited in this article was issued on the 28 Rejeb, 1296, and is after the date of the occupation of Cyprus.)

Admission of grantor estoppel.

427. If one grant to another, by the leave of the Muteveli, his property held in Ijaretein, and afterwards admit before the Judge that

he validly granted that property by the leave of the Muteveli, and the Judge give to the grantee a valid title of grant, the action of the grantor will not be heard, if he subsequently repent and sue the grantee on the ground that he conveyed the property upon a defective condition.

428. If one grant to another, by the leave of the Muteveli, his property held in Ijarstein, and afterwards assert that the grant was fictitious, and when the grantee denies this, the grantor brings an action and produces a written document, admissible in evidence, bearing the signature or seal of the grantee and showing that the grant is fictitious, the action is heard.

Collateral document.

If after the death of the grantor, his heirs having the right of inheritance in the way above mentioned bring an action and produce a document, their action is heard.

Again, if after the death of the grantee, his heirs having the right of inheritance, take possession of the property, the action of the grantor against the heirs of the grantee is heard, if he produce a document bearing the signature or seal of the grantee.

If both, the grantor and grantee die, leaving heirs having the right or inheritance, the action of the heirs of the grantor against the heirs of the grantee is heard, if they bring an action and produce such a document.

But if the grantee die and leave no heirs with the right of inheritance and the property belongs, as being without owner, to the vaqf, an action to prove that the grant was fictitious is not heard, even if the grantor produce such a document.

429. If one rent and receive from the Muteveli vaqf property held in Ijaretein, and afterwards bring an action alleging that the property was his own property prior to the letting, his action is not heard.

Estoppel of lessee.

430. If a person after he has paid rent for a time to a Muteveli for a property in his possession, on the ground that it belongs to some vaqf, brings an action asserting that the property is his own, his action is not heard.

Estoppel by payment of rent.

431. If one grant a vaqf property held in Ijaretein, for a fixed price, by leave of the Muteveli, to another and confess that he received that price in full, his action brought after this to recover the price is not heard.

Estoppel by admission.

432. If the children of a dead person sell for a known price and deliver to another a property as being their mulk property coming to them from their father's inheritance, and afterwards bring an action, alleging that that property is part of the Mustaghilat of a certain vaqf, that their

Estoppel of vendor.

father during his lifetime possessed it in Ijaretein, that after his death it simply passed to them as inheritance, and that consequently the sale of that property as mulk was not lawful, their action is not heard.

Estoppel by admission.

433. When a man appointed Muteveli confesses that he has received a certain sum of money from the vaqf property, and afterwards after the lapse of some time, when the accounts are examined, asserts that he did not receive such money, and that his previous confession is false, if he bring an action about this it is not heard.

Release a bar.

434. After one has granted to another vaqf property held in Ijaretein, by the leave of the Muteveli, and has by release freed the grantee from all actions relating to that property if he afterwards allege that he granted that property with power of redemption and bring an action for this against the grantee, his action is not heard.

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## CHAPTER II.

### ABOUT PRESCRIPTION.

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In actions relating to original dedication.

435. The time of prescription in actions relating to the original dedication of property is 36 years (Mejellé, 1661).

Consequently an action relating to the original dedication is not heard, if it has been omitted to be brought for 36 years.

*E.g.* If one possess a property for 36 years as his mulk property, with the knowledge of the Muteveli of a vaqf, and the Muteveli has kept silence during that time, without any reason recognised by the law, the action of the Muteveli is not heard, if he allege that that property is part of the Mustaghilat of the vaqf of which he was Muteveli during those years.

Again, if the Muteveli of one vaqf let for 36 years, with the knowledge of the Muteveli of another vaqf, a property as belonging to the Mustaghilat of his vaqf, and the Muteveli of the second vaqf was silent, without an excuse recognised by the law during that time, the action of the Muteveli of the second vaqf is not heard, if he afterwards brings one against the Muteveli of the first vaqf alleging that that property is part of the Mustaghilat of the vaqf of which he has been Muteveli for more than 36 years.

Again, if someone possess for 36 years a field as Arazi-mirié, with the knowledge of the Muteveli of a vaqf, who, without excuse recognised by law, kept silence during this time, the action of the Muteveli against the owner of the land by which the Muteveli claims that the field is part of the Mustaghilat of the vaqf of which he has been Muteveli for those years is not heard.

Likewise, if the Muteveli of dedicated monies, who lives in one and the same city with another person for 35 years, and keeps silence without excuse during that time and brings no action against him, afterwards brings an action alleging that he has to receive a fixed sum of the monies of the vaqf due before those years, and the person sued defends the action, this action is not heard.

436. The prescription in respect of property dedicated in favour of children from generation to generation commences from the time when the first generation fails.

Where property dedicated in favour of children from generation to generation.

*E.g.* If a property of which the Muteveliship and the income is dedicated in favour of the children of the dedicator from generation to generation, is sold by a child of the first generation and delivered to another, and the purchaser receive and possess it for 35 years, and afterwards when the first generation is wholly extinct, the children of the second generation are appointed Mutevelis, and after the lapse of a year they bring an action against the purchaser, alleging that the property is vaqf, this action is heard.

Because one year scarcely has passed since the first generation became extinct.

The time passed before this epoch is not counted in the time of prescription.

Again, if, with the knowledge of the children of the first generation, a stranger take for 14 years the Muteveliship, which the dedicator limited to his children and descendants from generation to generation, and afterwards, when the first generation is extinct, the children of the second generation after the lapse of one year bring an action against the stranger claiming the Muteveliship, the stranger cannot demand the dismissal of the action on the ground that it is not heard after the lapse of 15 years.

437. The time of prescription for actions relating to the possession (tessaruf) of vaqf properties extends to 15 years (Mejellé, 1660).

Possession of vaqf properties.

Consequently, actions about possession are dismissed if they are omitted to be brought without reason for 15 years.

*E.g.* If someone possesses for 15 years an Ijaretein vaqf property with the knowledge of another person, who keeps silence during the said time

without legal excuse, when the latter person brings an action, alleging that he possessed that property in Ijaretein before that time, his action is dismissed.

Again, if two persons possess in common for 15 years Ijaretein vaqf property and during this period neither of them has brought an action against the other, if at any time afterwards one of them brings an action alleging that before that time he possessed the property in Ijaretein as sole owner, his action is dismissed.

Likewise when someone has taken and possessed, with the knowledge of the Muteveli, as Ijaretein a vaqf property for 15 years, and the Muteveli during this period has kept silence without legal excuse, if afterwards he brings an action, alleging, that that property was not rented to this man and that he seized it without authority, the action of the Muteveli is dismissed (Mejellé, 1660).

**Vaqf money.**

438. The time of prescription for actions relating to the corpus of monies made vaqf extends to 36 years (Mejellé, 1661).

But the time of prescription in actions relating to the interest of such monies extends to 15 years (Mejellé, 1660).

**Possession by different persons, grantor and grantee.**

439. The time of possession of the grantor and that of the grantee are added together and calculated together.

That is to say, if the grantor possess Mustaghilat vaqf property for a time, and the grantee possesses it for a time, and the sum of the two times completes the period of prescription, the action of a plaintiff who has omitted to bring it during those times without legal excuse is dismissed.

*E.g.* When someone has seized vaqf Mustaghilat and held it as Ijaretein tenant for 15 years with the knowledge of a second person, and afterwards has conveyed it to another, who again has possessed it for 5 years with the knowledge of the person aforesaid, and that person has kept silence during both these periods without legal excuse, if afterwards that person brings an action asserting that he possessed that property before those times as Ijaretein tenant, his action is dismissed because there is prescription.

**Ancestor and heir.**

440. The times of possession of the heir and the person from whom he inherits are added together and calculated together (Mejellé, 1670).

That is to say, if someone die after he has possessed vaqf property by Ijaretein for a certain time, and his heirs having the right of inheritance, take and possess that property in Ijaretein relying simply on their rights of succession, and the aggregate of these two periods completes the time of prescription, the action of the plaintiff is dismissed, if he has kept silence during those times without legal excuse.

441. The fact that the defendant proceeds to other defences does not interfere with the objection of prescription to the action of the plaintiff.

Prescriptions may be relied on although other defences raised.

*E.g.* When someone has possessed property on an Ijaretein tenure without dispute for 15 years to the knowledge of another person, and afterwards that person brings an action, asserting that he possessed that property before those years and that the possessor has taken it by wrongful appropriation, the objection of the defendant on account of prescription is not rejected if he say that in fact that property was possessed formerly by the plaintiff, on an Ijaretein tenure, but that 15 years before with the leave of the Muteveli, he made a final conveyance of the property to him.

Consequently, proof of the defence of the defendant is not required but the property is preserved in his possession.

442. When someone, after he has possessed property for 36 years and more, is sued by the Muteveli of a vaqf who asserts that that property is part of the Mustaghilat of the vaqf of which he is Muteveli and that he let it to the defendant during that time. And if the defendant deny the action of the Muteveli and assert that that property is his own mulk property, the following rules are observed :

Where Muteveli asserts owner is lessee.

If it is known to the world that the vaqf had leased that property during that time, the action of the Muteveli is heard.

If it is not known, then the action is dismissed.

443. The time of prescription, to cause the dismissal of actions, must pass without action brought (Mejellé, 1666).

Prescription runs to time of action brought.

Consequently, if one sue another, for a certain matter, before the Judge, but the action is not decided and so the time of prescription is completed, this prescription does not prevent the action being heard.

It is required, nevertheless, that the time intervening between the two actions should not complete the time of prescription.

If the intervening time completes the time of prescription, the action is dismissed.

*E.g.* If one sue another before the Judge, alleging that the defendant a year before granted him a certain vaqf property, which he before owned as Ijaretein, by the leave of the Muteveli, and claim the delivery of the property, and the defendant disputes the claim, but when the action is not adjudicated upon, afterwards after the lapse of 10 years, he bring another action before the Judge for the same matter, and again it is not adjudicated upon as also before, and then 7 other years pass, an action brought after this for the same matter is heard.

But if, in the first case, he bring an action after the lapse of 15 years from the first action, the action is dismissed, because the time elapsed between the two actions, completes the time of prescription.

Ignorance of title no excuse.

444. In prescription, ignorance is not looked upon as a valid justification for silence.

*E.g.* If one hold the Muteveliship of a vaqf for 15 years, with the knowledge of another, who keeps silence without legal excuse during that time, and the latter person afterwards brings an action alleging that before those years the post of Muteveli according to the direction of the dedicator belonged to him, but that he was not able to bring his action for this, because he did not know the direction of the dedicator and that now he proceeds to the action, this action is dismissed.

A Muteveli cannot make an admission against the vaqf.

445. The admission of the Muteveli of a vaqf against that vaqf is not valid and no effect is to be given to it.

Consequently, prescription is not prevented by the admission of the Muteveli against the vaqf.

That is to say, if the Muteveli of a vaqf take and possess a property, as Mustaghilat of the vaqf for 15 years, with the knowledge of another person, who keeps silence during this time without legal excuse, and, when that person afterwards brings an action, asserting that that property was before those years his mulk property, the Muteveli admits the contention of the plaintiff, the prescription in respect of that action is not prevented. Consequently the action of the plaintiff is dismissed.

Again, if the Muteveli of a vaqf take and possess for 36 years a property as part of the Mustaghilat of the vaqf, with the knowledge of the Muteveli of another vaqf, who keeps silence during that time, without legal excuse, when afterwards the latter brings an action against the Muteveli of the first vaqf, alleging that that property is part of the Mustaghilat of the vaqf of which he is Muteveli, if the Muteveli of the first vaqf admit that the property, the subject of the litigation, belongs to the Mustaghilat of the second vaqf, this does not prevent the action of the Muteveli of the second vaqf being barred by prescription.

Consequently, the action of the Muteveli of the second vaqf is dismissed.

Prescription in action for interest or income.

446. The time of the prescription of actions for interest and income is 15 years.

Consequently an action for interest or income, which, without legal excuse, the Muteveli has omitted to bring for 15 years, is dismissed.

Possession of vaqf land of Tahksisat category (tesaruf).

447. The time of prescription in action relating to the possession of vaqf lands of the Tahksisat category is 10 years.



But the time in actions relating to the reversion in them is 36 years.

Reversion  
(riqbe).

448. In prescription the lunar year is in force, and not the solar year.

Lunar year.

Consequently the time of prescription ought to be calculated according to the lunar year.

449. In actions about philanthropic establishments appointed for the common benefit, there is no prescription (Mej. 1675).

Common  
establishments  
no prescription.

N.B.—As to prescription in actions to recover immoveable property in Cyprus see Acts IV. of 1886, and V. of 1887.

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## TITLE R.

### ABOUT PARTIES TO ACTIONS.

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450. In every action relating to the ownership (riqbe) or to the possession (tessaruf) of Ijaretein vaqf properties, the presence of the Muteveli is required. Whether the lessee of the estate is plaintiff or defendant.

When presence  
of Muteveli  
required.

But in the case of wrongful appropriation of Ijaretein vaqf property, the lessee can bring an action against the wrongful appropriator, without the presence of the Muteveli being required.

*E.g.* If one bring an action against another, alleging that he is entitled to the possession (tessaruf) as tenant by Ijaretein of certain vaqf property, part of the Mustaghilat of a vaqf, which is in the possession of the other person, in order that the action may be valid, the presence of the Muteveli of the vaqf is required.

Again, if one bring an action about a property, held by another on an Ijaretein tenure as Mussaqafat of some vaqf, alleging that that property is his own mulk property, or, that he is Ijaretein tenant, such action is invalid, if the Muteveli is not present.

Consequently, if the Judge hear this action, contrary to the above prohibition, in the absence of the Muteveli, and give a decision about it his judgment is not to be carried out.

But if someone bring an action about Ijaretein vaqf property held by another, alleging that the defendant wrongfully appropriated and took it, whilst he, the plaintiff, was Ijaretein tenant, the action coming on in the absense of the Muteveli, is heard.



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But if someone bring an action about Ijaretein vaqf property held by another, alleging that the defendant wrongfully appropriated and took it, whilst he, the plaintiff, was Ijaretein tenant, the action coming on in the absence of the Muteveli, is heard.

Where more than the vaqf concerned.

451. If the vaqf property, the subject matter of the action, is mixed with other vaqfs, the presence of all the Mutevelis of those vaqfs is required. The presence of some only of them is not sufficient.

Muqata'a vaqf.

452. The presence of the Muteveli of the vaqf is not required in actions about the buildings and trees comprised in properties of which the land is Muqata'a vaqf and the buildings and trees upon it pure mulk.

But the presence of the Muteveli is required in an action relating to the land of the vaqf.

Lessee of Ijaretein vaqf. can sue without Muteveli.

453. If one lets to another his Ijaretein vaqf property and sue the lessee for arrears of rent the presence of the Muteveli of the vaqf is not required in action.

Actions for price

454. The presence of the Muteveli is not required in actions to recover the price on alienation.

That is to say, if someone bring an action against another alleging that he has to recover from him a fixed sum of money, as the price of such a property, which he has granted to him by the leave of the Muteveli and which is a Mustaghilat vaqf possessed in Ijaretein, the presence of the Muteveli is not required in the action.

Action to settle boundaries between two vaqfs.

455. When one of the holders of two adjacent Ijaretein properties, which belong to different vaqf, brings an action against the other owner for trespassing beyond the boundaries of the property held by him, the presence of the Mutevelis of both vaqfs is required.

Action for damages against wrongful appropriator.

456. In an action to recover payment of the equivalent rent due by a wrongful appropriator, who has taken possession by force, of a land held in Ijaretein, the litigant is the Muteveli of the vaqf and not the Ijaretein tenant.

Unless the Muteveli has appointed the Ijaretein tenant to represent him in this action.

Action about benefit

457. In actions about the benefit of a dedication brought by those in whose favour the dedication was made, one of these can be a litigant.

Claim to Muteveliship.

458. If someone claims that he also by the terms used by the dedicator has a right to the office of Muteveli held by certain persons as joint owners, one only of those who possess the Muteveliship is made defendant, the presence of the rest is not required.

Consequently, the judgment given against one of them is of force against the rest.

But in order that the judgment given should bind the rest of the heirs, it is necessary that the claim of the plaintiff should be proved.

*E.g.* If while certain of the descendants of the dedicator are in possession of the Muteveliship of a vaqf limited in favour of the children of the dedicator, someone appears and brings an action, in the presence of one only of the possessors of the office, and alleges that he also is a descendant of the dedicator, and proves his claim by evidence, and judgment is given accordingly, this judgment binds also the rest of those who hold the office.

Again, if while certain descendants of the dedicator of the second generation hold the Muteveliship of the vaqf, limited in favour of the descendants of the dedicator from generation to generation, someone appears and brings an action in the presence of one only of those who hold the office and asserts that he is a child of the dedicator of the first generation and proves his claim in the manner required by law, the judgment given in his favour binds also the rest of those who hold the office.

Consequently, in such a case, all those who hold the Muteveliship are dismissed and it is awarded to the plaintiff.

459. If two persons claim a Muteveliship which is vacant, while the person in whose favour it is given by the terms used by the dedicator is not yet fixed, the claim cannot be tried in an action between these two persons.

Opposing claim to Muteveliship.

Consequently, a representative of the vaqf is appointed by the Judge in whose presence action is brought.

460. In action about vaqf properties of which the rent or right of occupation is dedicated, the Muteveli of the vaqf must be a party to the action and not the person in whose favour the rent or benefit is limited.

Muteveli to sue not beneficiary.

*E.g.* If one bring an action alleging that the rent or profit of a certain house tenanted by another is limited in his favour, this action is not heard merely on the ground that the vaqf is limited in favour of that person if the Muteveli of the vaqf is not the plaintiff.

But if the Judge give leave to the beneficiary to sue and permit his suit, then the beneficiary also may bring or defend an action.

Unless judge gives leave.

461. In actions about philanthropic establishments limited and belonging to the public benefit, one of the public can sue (Mejellé, 1644).

One of the public may be a litigant in case of public vaqf.



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## TITLE S.

## ABOUT EVIDENCE RELATING TO VAQFS.

## CHAPTER I.

## WHAT EVIDENCE IS ADMISSIBLE.

Evidence of beneficiary in favour of vaqf admissible, in an action about the vaqf property.

462. The evidence of a beneficiary in favour of a vaqf is admissible in a matter relating to the dedicated property itself.

*E.g.* If the Muteveli of money made vaqf brings an action against someone who owes a fixed sum of money out of the capital monies of the vaqf, the evidence of the beneficiaries of that vaqf in favour of the Muteveli is admissible.

Again if the Muteveli of a vaqf bring an action against the possessor of a property, alleging that it is part of the Mustaghilat of the vaqf, but the possessor of the property defends the action and alleges that the property is his private property, the evidence of the beneficiaries of the vaqf in favour of the Muteveli is admissible.

463. If in a case in which in an action about a vaqf the Muteveli is required to produce witnesses, he says he has no witnesses and afterwards produces some, these are received.

Evidence of beneficiary not admissible in action for income.

464. The evidence of a beneficiary in favour of the vaqf when it is a question about the interest or income due to the vaqf is not admissible.

*E.g.* If the Muteveli of vaqf money bring an action against someone, alleging that he has to receive a fixed sum of money as interest of money which he lent to him out of the vaqf monies, and the defendant disputes the claim, the evidence of the beneficiaries of the dedication in favour of the Muteveli is not admissible.

Again, if the Muteveli of a vaqf brings an action against someone, alleging that he had let to him such a property out of the vaqf properties, and that he has to receive from him on account of deferred rent (Muejele) a fixed sum of money, and the person sued disputes the claim, the evidence of the beneficiaries of that vaqf in favour of the Muteveli is not admissible.

As to ancient vaqf.

465. The evidence of witnesses that a place is ancient vaqf is admissible, although they do not mention the name of the dedicator.

466. Witnesses deposing that a person is a descendant of the dedicator ought to declare the bonds of relationship existing between him and the dedicator.

Evidence of descent.

Consequently, the evidence of witnesses declaring absolutely that someone is a descendant of the dedicator is not admissible if they do not declare the ties of relationship between them.

But when the plaintiff asserts that he is the descendant or relation of someone, who is proved to be a descendant of the dedicator and witnesses depose agreeably to this allegation, this evidence is considered sufficient, and there is no need to prove the ties of relationship between the plaintiff and the dedicator.

467. The decision of a Judge in favour of himself about vaqf property or its income of which the benefit is appointed for himself is not to be executed.

Beneficiary cannot be judge.

*E.g.* If the Muteveli of a vaqf, the income of which is dedicated for the benefit of the Judge of a certain city, bring an action before the Judge, alleging that a property possessed by someone as pure mulk and situated in that city is part of the Mustaghilat of that vaqf, and when the person sued denies the truth of his allegation, proves his claim by witnesses, the decision in respect of this given by that Judge is not to be into execution.

The trial of such cases is taken before another Judge to whom is committed the trial in that city of such vaqf cases, if there is such a Judge, but if there is no such Judge, the procedure required by Art. 1809 of the Mejjellé is followed.

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N.B. Many of these sections would not now be in force in Cyprus Courts other than the Sheri' Court.

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## CHAPTER II.

## ABOUT HEARSAY EVIDENCE.

**About original  
vaqf.**

468. Hearsay evidence about "original dedication" (asl vaqf) is admissible, if the ownership of the possessor is not based on some ground regarded by law as a means of ownership,

In this matter, by "asl vaqf" is meant the things relating to the dedication, on which the validity of the dedication depends.

*E.g.* If the Muteveli of a vaqf brings an action about a property possessed by someone, alleging that it is the property of the vaqf, and the person sued alleges that that property is his absolute mulk without shewing the reason of his ownership and so disputes the claim of the Muteveli, without declaring any reason regarded as a means of acquiring ownership, the hearsay evidence of persons deposing in favour of the claim of the Muteveli is admissible.

But if the ownership of the possessor is based on a ground regarded in law as a means of acquiring ownership, such as purchase, gift and inheritance, then hearsay evidence about the original dedication is not admissible, but the proof of the judicial sanction (tesjil vaqf) is required and, in respect of that, hearsay evidence is not admissible.

*E.g.* If someone has bought a property from another and possesses it as pure mulk, and the Muteveli of a vaqf brings an action, alleging that that property belongs to the Mustaghilat of that vaqf, hearsay evidence in support of the Muteveli's claim is not admissible.

**Terms of the  
dedication.**

469. Hearsay evidence which relates only to the terms of the dedication is not admissible.

*E.g.* If one of the descendants of the dedicator bring an action, alleging that the dedicator directed that the income of a property, held as dedicated for the benefit of a certain object, should be applied for the benefit of his children and their descendants, hearsay evidence in support of the plaintiff's claim is not admissible.

Hearsay evidence about the terms of the dedication is admissible however, when on the defendant denying that a place is original vaqf, the witnesses who give hearsay evidence about its being original vaqf give evidence also about its terms.

## CHAPTER III.

## AS TO BURDEN OF PROOF (MEJ. 1756).

470. Evidence of health is preferred to that of mortal sickness.

Evidence of health.

*E.g.* If, after someone has dedicated a mulk property of his, and put the Muteveli in possession, and obtained the judicial decision that the property is irrevocably dedicated, he dies, and his heirs bring an action alleging that he dedicated that property when he was in a state of mortal sickness, but the Muteveli defends the action and says that the act of dedication was made when the dedicator was in good health, and both the litigants bring evidence of their allegations, the evidence of the Muteveli is preferred.

Again, if someone has no heirs at all entitled to inherit, and after he has granted to another, with the leave of the Muteveli, an Ijaretein vaqf in his possession, he dies, and the Muteveli brings an action, alleging that the grantor made a grant of that property during the time of his mortal illness, and that on this account the grant is invalid, and that the property as Mahloul belongs to the vaqf but the grantee alleges that the grant was made when the grantor was in a state of health, and that consequently it is valid, the evidence of the grantee is preferred, if both the litigants are willing to bring evidence in support of their allegation.

471. If, after someone has erected at his own expense a building on a vaqf site possessed by him at a rent, the Muteveli brings an action alleging that the defendant erected the building by his order on the condition that he should bring the expense into account against the rent, but the defendant asserts that he erected it for himself, if both parties are willing to call evidence, the evidence of the Muteveli is preferred.

Building on vaqf land.

472. The proof a particular thing is preferred to proof of a general thing (Mej. Art. 64).

General and particular propositions.

That is to say, when the children of the first generation of the dedicator are the possessors of the income of a vaqf, if the children of the second generation of the dedicator bring an action alleging that the income of that vaqf had been appointed in favour of the descendants of the dedicator generally, and the children of the first generation of the

dedicator allege that the income was dedicated in favour of the children and descendants of the dedicator from generation to generation, if both parties are willing to bring evidence in support of their contention the evidence of the children of the first generation is preferred.

The same thing applies to the Muteveliship.

Common  
repute.

473. If the Muteveli of a vaqf contends that certain lands, situated at a place belong to the vaqf, whilst the owner of the land alleges that they are Arazi-Mirie, if they both wish to prove their contention, the evidence of the person who relies on common talk is preferred.

That is to say, if there is a common talk that the lands are vaqf, the evidence of the Muteveli is preferred.

On the other hand if the common talk is that the lands are Arazi Mirie then the evidence of the owners of the land, is preferred.

There being no common talk in favour of anyone the following rules will be observed.

If the lands are in the possession of the vaqf the evidence of the owner of the land is preferred because he is not the possessor. (Mej. Art. 1757).

But if they are possessed by the Beit-ul-mal then the evidence of the Muteveli who is not the possessor is preferred.

Action for  
vaqf property.

474. An action, the subject matter of which is a vaqf property, is looked upon as an action for unconditional ownership,

Consequently if each of the Mutevelis of two vaqfs alleges that a certain place belongs to the vaqf of which he is the Muteveli and one of them is in possession of it, the evidence of the one who is not in possession is preferred (Mej. Art. 1757).

Also if someone claims the unconditional ownership of a place, without fixing the time when his right first arose, and the Muteveli of a vaqf alleges that such place is vaqf, the evidence of the person not in possession is preferred, if one is in possession and the other is not.

That is to say, if such place is in possession of the person claiming the unconditional ownership, the evidence of the Muteveli is preferred.

But if it is in possession of the Muteveli the evidence of the person claiming the unconditional ownership, is preferred.

Ownership from  
fixed date.

475. In an action about ownership acquired at a fixed date, the evidence of the person claiming the ownership from the earlier date is preferred (Mejellé, Art. 1760).

That is to say, if each of the Muteveli's of two vaqfs alleges that a certain place belong to the vaqf for which he is Muteveli and they both fix the date when the right of ownership first arose and the date fixed by one of them is prior to that fixed by the other, the evidence of the Muteveli relying on the earlier date is preferred.

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TITLE T.

CIRCUMSTANCES UNDER WHICH THE MUTEVELI IS REQUIRED TO  
TAKE AN OATH AND *VICE VERSA*.

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476. In an action regarding a vaqf, the Muteveli of such vaqf is not called upon to take an oath unless he be a party to the contract sued upon (Mejellé, Art. 1748). When Muteveli called in to take an oath.

*E.g.* If a person brings an action and alleges that a vaqf property in the possession of the Muteveli is his mulk property and fails to prove his contention he is not entitled to call upon the Muteveli to take an oath.

Also, if the Muteveli of vaqf money brings an action against someone claiming a fixed sum of money due for money lent by his predecessor, and the defendant denies the claim setting up as a defence that he paid the amount in full to the predecessor while he was in office, and fails to prove his allegation, he cannot call upon the Muteveli at the time being to deny it on oath.

Also, if, after someone has admitted that he owes a fixed sum of money to such a vaqf, he afterwards retracts his admission and alleges that he does not owe so much and that his admission was false, he cannot call upon the Muteveli to swear that his admission was not false.

But a Muteveli who is a party to a contract is liable to take an oath.

*E.g.* If someone alleges that he has let to the Muteveli for a limited term, a Mustaghilat vaqf, which is in the possession of the Muteveli, and the Muteveli denies; if such person brings an action claiming delivery of the property, he can, in case he fails to prove his contention, call upon the Muteveli to state on oath that he did not let such property to him.

In the same way, if someone alleges that the Muteveli of a vaqf has bought from him and receive delivery of certain things for the necessities of the vaqf, and brings an action claiming the purchase money,



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That is to say, if each of the Muteveli's of two vaqfs alleges that a certain place belong to the vaqf for which he is Muteveli and they both fix the date when the right of ownership first arose and the date fixed by one of them is prior to that fixed by the other, the evidence of the Muteveli relying on the earlier date is preferred.

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TITLE T.

CIRCUMSTANCES UNDER WHICH THE MUTEVELI IS REQUIRED TO  
TAKE AN OATH AND *VICE VERSA*.

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476. In an action regarding a vaqf, the Muteveli of such vaqf is not called upon to take an oath unless he be a party to the contract sued upon (Mejellé, Art. 1748). When Muteveli called in to take an oath.

*E.g.* If a person brings an action and alleges that a vaqf property in the possession of the Muteveli is his mulk property and fails to prove his contention he is not entitled to call upon the Muteveli to take an oath.

Also, if the Muteveli of vaqf money brings an action against someone claiming a fixed sum of money due for money lent by his predecessor, and the defendant denies the claim setting up as a defence that he paid the amount in full to the predecessor while he was in office, and fails to prove his allegation, he cannot call upon the Muteveli at the time being to deny it on oath.

Also, if, after someone has admitted that he owes a fixed sum of money to such a vaqf, he afterwards retracts his admission and alleges that he does not owe so much and that his admission was false, he cannot call upon the Muteveli to swear that his admission was not false.

But a Muteveli who is a party to a contract is liable to take an oath.

*E.g.* If someone alleges that he has let to the Muteveli for a limited term, a Mustaghilat vaqf, which is in the possession of the Muteveli, and the Muteveli denies; if such person brings an action claiming delivery of the property, he can, in case he fails to prove his contention, call upon the Muteveli to state on oath that he did not let such property to him.

In the same way, if someone alleges that the Muteveli of a vaqf has bought from him and receive delivery of certain things for the necessities of the vaqf, and brings an action claiming the purchase money,

and the Muteveli denies the claim, and the claimant fails to prove his contention, in such a case he can call upon the Muteveli to deny it on oath.

Also when a Muteveli brings an action against the lessee of a vaqf property claiming rent, due in arrears, and the lessee alleges that he has paid in full and delivered such rent to the Muteveli and that he owes nothing, and the Muteveli denies that he has received the money, and denies the truth of the defence, and the lessee fails to prove his contention, such lessee is entitled to call upon the Muteveli to take an oath.

477. A Judge can call upon a Muteveli who is guilty to take an oath as to whether he has committed any breach of trust against the vaqf without referring to a specific instance.

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TITLE U.

ADMISSION.

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Admission of Muteveli does not bind the vaqf.

478. No admission of a Muteveli against a vaqf is allowed.

*E.g.* If someone brings an action in respect of vaqf property possessed by a Muteveli alleging that it is his mulk property and the Muteveli admits and acknowledges the plaintiff's claim, the admission of the Muteveli is not binding on the vaqf.

Consequently, an admission of this nature is not a ground for a decision against the vaqf.

That property is vaqf.

479. If someone says that a property possessed by him is vaqf, his word is taken to refer to an admission that such property had previously been made vaqf, and not as a dedication made at the time. Consequently the terms of dedication need not be included in the admission (Mejellé, 1628).

Admission of beneficiary.

480. If someone, in whose favour the income, occupation or Muteveliship of a vaqf is limited, admits that someone else, who is not proved to be one of the beneficiaries, is also one of the beneficiaries, his admission is given effect to so far as he is concerned, but not as regards his co-beneficiaries, if any. (Mejellé, Art. 78).

Consequently, the person in whose favour the admission is made becomes a co-beneficiary so far as regards the share of the person making the admission and not as regards the shares of the others if any. After the death of a person having so made an admission, his admission ceases to be in force.

Consequently, his children are not bound by the admission of the deceased.

481. An admission made by an Ijaretein tenant against a vaqf in respect of the ownership (tessaruf) of an Ijaretein property is not valid.

*E.g.* If someone brings an action claiming the ownership of an Ijaretein Mustaghilat vaqf held by another, and the defendant admits that that property belongs to the plaintiff his admission is not given effect to or binding on the vaqf.

Consequently, if a Judge decides that that property is the plaintiff's, basing his decision upon an admission of this kind, his decision is not valid.

Also if the Muteveli of a vaqf bring an action alleging that an Ijaretein Mustaghilat property of another vaqf belongs to the vaqf for which he is Muteveli and the defendant admits the action, his admission is not valid nor is effect given to it.

482. If the Muteveli of dedicated money bring an action against someone, claiming a sum of money, which he alleges had been lent to him by his predecessor out of the estate of the vaqf for which he is Muteveli, and the defendant denies the claim, but promises at the same time to pay the amount claimed if the former Muteveli appears and states that he lent him the money, if afterwards the ex-Muteveli appears and states that he lent him so many piastres, and the defendant does not admit that statement, he is not looked upon as having admitted that the amount is due by his mere promise.

Admission by  
debtor.

In such a case if a Judge, basing his decision on the mere promise, adjudge the defendant to pay the amount claimed, his decision is invalid.

But if the defendant admits the statement of the ex-Muteveli, then he is adjudged to pay the sum claimed on the ground that he has admitted the same.

In the year of Egira 1307.







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A TREATISE  
ON THE  
LAWS OF EVQAF

BY  
Omer Hilmi Efendi,

TRANSLATED BY  
C. R. Tyser, B.A.L.,  
PRESIDENT, DISTRICT COURT OF KYRENIA,

AND  
D. G. Demetriades,  
REGISTRAR, DISTRICT COURT OF KYRENIA.

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GLOSSARY OF TECHNICAL AND OTHER TERMS USED  
IN THE TREATISE.

TURKISH—ENGLISH.

*Adi* (عادی)—Customary (Art. 41).

*Ahfad* (احفاد)—Grandchildren (Art. 22).

*Arazi Kharajîé* (اراضی خراجیه)—One sort of Mulk land, being land left at the time of the conquest in the hands of non-Mussulman owners (Land Code, Art. 2). On the death of the owner without heirs it belongs to the Beit-ul-mal and becomes subject to the same Law as Arazi Mirié.

*Arazi Mevat* (اراضی موات)—One sort of waste land. (See Land Code, Art. 6.)

*Arazi Memluke* (اراضی مملوکه)—Land possessed absolutely, land held in fee simple.

There are four sorts:

1. Building sites within a town or village and places on the borders of towns or villages, considered necessary to complete a habitation, being at most half a donum in extent.

2. Land separated from Arazi Mirié and made Mulk in the manner hereinafter described.

3. Arazi Ushrie.

4. Arazi Kharajîé.

*Arazi Mirié* (اراضی میریه)—A class of lands, the reversion (riqbe) of which belongs to the Beit-ul-mal, and of which the transfer and grant of possession is carried out by Turkish Government.

*Arazi Ushrie* (اراضی عشریه)—Land given and distributed at the time of the conquest to those who had seized it.

On the death of the owner without heirs it belongs to the Beit-ul-mal and becomes subject to the same law as Arazi Mirié.

*Avariz Vaqfi* (عوارض وقتی)—Vaqf for the poor of a neighbourhood (Art. 36).

*Bedeli Firagh* (بدل فراغ)—Money consideration for a sale (Art. 17).

*Beit-ul-mal* (بيت المال)—Government Treasury.

*Berat* (برات)—Commission, Letters Patent.

*Bezestan* (بازستان)—A covered market place for the sale of valuable things.

*Chiftlik* (چفتلك)—A farm.

*Dafter Khaqani* (دفتر خاقانی)—The office where the real estate registers are kept.

*Dhuriyat* (ذريت)—Children and grandchildren (Art. 24).

*Dzihet*—See *Jihet*.

*Ehli Vezaif* (اهل وظائف)—People who receive salary and victuals from a vaqf (Art. 21).

*Evlad Sullie* (اولاد صلبیه)—Children (Art. 23).

*Evqaf* (اوقاف)—Plu. of vaqf (Art. 2).

*Evqaf Mazbuta* (اوقاف مضبوطة)—Vaqfs administered directly by the Minister of Evqaf (Art. 33).

*Evqaf Mulhaga* (اوقاف ملحقة)—Vaqfs administered by a special trustee under the supervision of the Minister of Evqaf.

*Evqaf Mustesna* (مستثنى اوقاف)—Vaqfs administered by special trustees without the supervision of the Minister of Evqaf.

*Faqir* (فقير)—Poor.

*Farigh* (فارغ)—The alienor of property (Art. 17).

*Firagh* (فراغ)—Alienation of property (Art. 17).

*Eiragh bedeli* (بدل فراغ)—Money consideration for alienation (Art. 17).

*Eiragh bil vefa* (فراغ بالوفا)—Mortgage (Art. 19).

*Firagh gati* (فراغ قطعی)—Final alienation (Art. 18).

*Gedik* (كدك)—Tools, &c., on vaqfs (Art. 40).

*Ghairi Lazim* (غیر لازم)—Revocable (Art. 4).

*Ghalle-i-vaqf* (غله و نف)—The income of a vaqf (Art. 5).

*Hajj* (حج)—A pilgrimage.

*Hanefi* (حنفی)—Of the Hanefi Sect.

*Haremein Sherifein* (حریمین شریفین)—The Holy Cities—Mecca, Medina.

*Hujjet* (حجیت)—A title-deed.

*Huquq* (حقوق)—Rights, appurtenances of real property.

*Huquq tessaruf* (حقوق تصرف)—Right of using and disposing.

*Ijare* (اجاره)—Rent.

*Ijare mist* (اجاره مثل)—Equivalent rent, rent equal to the value to let of the property, rack rent, fair rent.

*Ijaretein* (اجارتین)—Two rents (Art. 35).

*Ijareteinlu* (اجار تینلو)—With payment of *Ijaretein* also written *Ijareteinle*.

*Ijare Vahide* (اجاره واحدہ)—One rent (Art. 38).

*Ijare Vahidelu Evqaf* (اجاره واحدلو اوقاف)—*Evqaf* let at a simple rent, Art. 38.

*Ilam* (اعلام)—Judgment of a Sheri' Court.

*Imam* (امام)—A leader in prayer.

*Imarat* (امارات)—Poor houses, soup kitchens.

*Intigal* (انتقال)—Inheritance, succession.

*Istibdal* (استبدال)—Exchange, Art. 31.

*Istighlal* (استغلال)—A mortgage with the condition that the mortgagor should become tenant of the mortgagee, Art. 20.

*Jabi Vaqf* (جابی و نف)—The collector of the income of the *vaqf*, Art. 12.

*Jami* (جامع)—A mosque.

*Jihat* (جہات)—Plu. of *Jihet*, Art. 372.

*Jihet* (جہت)—A *vaqf* appointment, Art. 372.

*Khademe* (خدمہ)—Servant, Officer.

*Khairat* (خیرات)—Pious foundations.

*Kharaj* (خراج)—Tax.

*Kharajî* (خراجیہ)—See *Arazi Kharajî*.

*Lazim* (لازم)—Irrevocable, Art. 4.

*Mahlul* (محلول)—Escheat, lapse.

*Mal Mutqavvim* (مال متقوم)—A thing of which the use is lawful and the possession has been acquired, Art. 46.

*Mazbata* (مضبطہ)—The judgment of a Civil Court.

*Mazbuta* (مضبوطہ)—See *Evqaf Mazbuta*.

*Mefrugh bihi* (مفروغ بہ)—A *vaqf* property alienated, Art. 17.

*Mefrugh lehi* (مفروغ لہ)—The grantee of a *vaqf* property alienated, Art. 17.

*Meremat ghairi Mustehlika* (مرمت غیر مستهلکہ)—Work on a house which can be separated, Art. 30.

*Meremat Mustehlika* (مرمت مستهلکہ)—Work on a house which cannot be separated, e.g. painting, Art. 29.

*Meshrutun lehi* (مشروط لہ)—Beneficiaries, Art. 7.

*Mesjid* (مسجد)—A small mosque.

- Mevat* (موات)—A class of waste land. (Land Code, Art. 6.)
- Mevqaf* (موقوف)—dedicated, Art. 1.
- Mevqafun aleihi* (موقوف عليه)—Beneficiary, Art. 7.
- Mirié* (ميريه)—See *Arazi Mirié*.
- Muajele* (معجله)—Rent in advance, Art. 187.
- Muejele* (مؤجله)—Rent paid afterwards, Art. 187.
- Muessesati Khairiye* (مؤسسات خيرية)—Philanthropic establishments, Charitable institutions, Art. 16.
- Muhassebeji* (محاسبه جی)—Accountant.
- Mulhaqa* (ملحقه)—See *Evqaf Mulhaqa*.
- Mulk* (ملك)—Ownership in fee simple, property owned in fee simple.
- Multezim* (ملتزم)—Revenue or tithe farmer.
- Munqati' el akhîr* (منقطع الآخر)—A vaqf the beneficiary of which ceases to exist, Art. 78.
- Munqati' el evvel* (منقطع الاول)—A vaqf the beneficiary of which does not exist at the beginning, Art. 77.
- Munqati' el vâst* (منقطع الوسط)—A vaqf the beneficiary of which ceases to exist for a time, Art. 79.
- Muqata'a* (مقاطعه)—The annual rent paid for vaqf land on which there are mulk buildings, &c.
- Muqata'alu* (مقاطعه لہو)—With payment of *Muqata'a* rent also written *Muqata'ale*.
- Murtezika* (مرتزه)—Beneficiaries, Art. 21.
- Mussaqaq* (مصطف)—A roofed building from which income is derived, Art. 15.
- Mussaqaqat* (مصطفات)—Plu. of *Mussaqaq* (Art. 15).
- Mustaghil* (مستغل)—Property capable of beneficial possession. Income bearing property (Art. 14) also *Musteghil*.
- Mustaghilat* (مصغلات)—Plu. of *Mustaghil* (Art. 14).
- Mustesna Evqaf* (مصثنى اوقاف)—See *Evqaf Mustesna*.
- Mutehellimun' ala el vaqf* (مشكلم على الوقف)—Means *Muteveli* (Art. 9).
- Muteveli* (متولى)—The trustee of a vaqf (Art. 8.)
- Naqshbendi* (نقشبندی)—An order of Dervishes.
- Nazaret* (نظارت)—The office of *Nazir*.
- Nazir Vaqf* (ناظر وقف)—The person who overlooks the *Muteveli*, Art. 11.
- Nesli* (نسل)—Lawful children and grandchildren, Art. 24.
- Nizamli* (نظامی)—Legal, Art. 41.



- Qaimaqim Muteveli* (قائمقام متولی)—Substitute for Muteveli, Art. 10.
- Qaim-i-Vaqf* (قائم وقف)—Another name for the Muteveli, Art. 9.
- Qayim* (قیم)—Plu. of Qaim-i-Vaqf, Art. 9.
- Raqabc* (رقبه)—The neck, subjection. The thing itself and the ownership (mulkiyet) in fee simple. (Land Code, Art. 2).
- Rashid* (راشد)—A man capable of managing his property, Art. 13.
- Reji'* (رجع)—The produce of vaqf property, Art. 5.
- Riqbc* (رقبه)—Expectation, reversion. The thing itself and the ownership in fee simple (mulkiyet). (Land Code, Art. 2).
- Ruqba* (رقبة)—A freehold property given with a proviso for its return to the donor or his heirs or assigns in certain conditions.
- Rusumat* (رسومات)—Duties, tolls.
- Sahiha Vaqf* (صحيحه وقف)—True vaqf, Art. 124.
- Sened* (سند)—A title-deed.
- Shafi'i* (شافعي)—The Shafi'i school or sect.
- Shazillujje* (شاذله)—Name of the order founded by the Shieykh Shazeli (شيخ هاذلي).
- Sheri'* (شرع)—Sacred Law.
- Sheykh* (شيخ)—An elder, head of a tribe, head of a religious community.
- Ta'ammul* (تداول)—The prevailing use, Art. 27.
- Takhsis* (تخصيص)—The dedication of a vaqf of the Takhsisat category, Art. 138.
- Takhsisat* (تخصیصات)—Property of the Beit-ul-mal specially made vaqf, Art. 3.
- Tapou* (طابو)—The payment made in advance to the Government for the possession of State Land by the person entitled to take the land in making such payment. (Land Code, Section 3.)
- Tassaruf* (تصرف)—Possession. The using and disposing of a thing at ones pleasure. The ownership of the holder of Arazi Mirié is tassaruf (see Land Code, Art. 8), so is the ownership of a tenant in Ijaretein (Art. 437), spelt afterwards tessaruf.
- Teberru'* (تبرع)—Transfer without consideration, Art. 26.
- Teberruat* (تبرعات)—Plu. of Teberru', Art. 26.
- Tekiye* (تكية)—A convent and chapel of Dervishes, &c.
- Temlikname* (تقليکنامه)—A document granting State Lands as mulk, Art. 130.
- Terike* (ترکه)—The estate left by a person at his death.

*Tesjil-i-istibdal* (تسجيل-ا-تبدال)—A decision of the validity of an exchange, Art. 32.

*Tesjil-i-vaqf* (تسجيل وقف)—The deciding that a property is irrevocably dedicated, Art. 6.

*Tessaruf*—See Tassaruf.

*Tevliet* (تولیت)—The office of Muteveli.

*Ulema* (علما)—Men learned in Sheri' Law.

*Ushrie* (عشریه)—See Arazi-Ushrie.

*Vahidele* (واحدلی)

*Vahidelu* (واحدله او)—See Ijare Vahidelu.

*Vaqf* (وقف)—The act of dedicating, Art. 1.

The thing dedicated, Art. 2.

*Vaqfieh* (وقفیه)—The Sheri' judgment about a vaqf, containing the terms of the dedication and the decision of the judge upon it, Art. 25.

*Vaqif* (واقف)—The dedicator, Art. 1.

*Vazife* (وظیفه)—Salary and food given out of the produce of the Vaqf property, Art. 21.

*Vazائف* (وظائف)—Plu. of Vazife.

<i>Accountant</i> - - - - -	Muhassebeji	محاسبه جی
<i>Alienation</i> - - - - -	Firagh	فراغ
<i>Alienation, final</i> - - - - -	Firagh gati <sup>4</sup>	فراغ قطعی
<i>Alienation with power of redemption</i>	Firagh bil vefa	فراغ بالوفا
<i>Alienation with power of redemption with condition that alienor should hold as tenant of alienee</i> }	Istighlal	استغلال
<i>Alienee of vaqf property</i> - - -	Mefrugh leh	مفروغ له
<i>Alienor</i> - - - - -	Farigh	فارغ
<i>Appointment</i> - - - - -	Jihet	جهت
<i>Beneficiaries-</i> - - - - -	Meshrutun leh	مشروط له
" - - - - -	Mevqfun aleih	موقوف علیه
" - - - - -	Murteziqa	مرتزقه
<i>Charitable Institution</i> - - -	Muessesati Khairiye	مؤسسات خیریه
<i>Children</i> - - - - -	Evlad Sulbiye	اولاد صلیبیه
<i>Children and grandchildren</i> - -	Zurriyyet, Dhurriyat	ذریب
<i>Collector of vaqf income</i> - - -	Jabi vaqf	جانب وقت
<i>Commission</i> - - - - -	Berat	برات
<i>Customary</i> - - - - -	Adi	عادی
<i>Decision of the validity of an exchange</i> - - - - -	Tesjil istibdal	تسجیل استبدال
<i>Decision that a property is irrevoc- ably dedicated</i> - - - - -	Tesjil-i-Vaqf	تسجیل وقت
<i>Dedicated</i> - - - - -	Mevquf	موقوف
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<i>Dedicator</i> - - - - -	Vaqif	واقف
<i>Double rent</i> - - - - -	Ijaretein	اجارتین
<i>Duties</i> - - - - -	Rusumat	رسومات
<i>Equivalent rent</i> - - - - -	Ijare misl	اجاره مثل
<i>Escheat-</i> - - - - -	Mahlul	محلول
<i>Estate of deceased person</i> - - -	Tereke	ترکه
<i>Exchange</i> - - - - -	Istibdal	استبدال
<i>Expectation</i> - - - - -	Riqbe	رقبه

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## INTRODUCTION BY THE TRANSLATORS.

A.—Vaqf properties are divided into three classes according to the objects for which the property is made vaqf :

1. Properties made vaqf for religious purposes.
2. Properties made vaqf for the public benefit.
3. Customary vaqfs.

1. Religious vaqf properties include establishments for divine worship—such as vaqf mesjids, &c., and immoveable properties of which the income has been directed to be expended on the support of such religious establishments, and which has been made vaqf for that purpose. Also schools and their libraries and religious books, &c., given as vaqf to the different establishments

2. Properties vaqf for the public benefit include hospitals, wells, fountains, bridges, poor-houses, &c.

3. Customary vaqfs consist of immoveable property bought at a low price by some Jami (a consecrated Mosque). By the sale the owner transfers to the Jami his ownership of the immoveable property for the price agreed, but he continues to enjoy the property, paying a yearly rent proportional to the price given (*see* Sakopoulou Mussulmanikon Dikaion, ed. 1871, Vol. II., p. 136, extracted from Belins).

The learned author suggests that the object of owners of land in turning it into customary vaqf land was to escape the liability of its being seized in execution of a judgment.

By the Laws of 21 Ramazan, 1288, and 15 Sheval, 1288, the sale for debt of Mussaqafat and Mustaghilat Mevqufé possessed in Ijaretein was allowed.

And now by the Code of Civil Procedure, 1885, the sale of all immoveable property is permitted in Cyprus.

As to the power of the Muteveli to acquire property by purchase or exchange, *see* Arts. 55, 70, 90, 119, 416, 420.

The Muteveli cannot buy Arazi Mirié or Mevqufé or Ijaretein property (Arts. 330).

B.—Vaqf lands are divided into two sorts according to the way in which the dedication is made :

1. Sahiha vaqf lands.—True vaqf lands.
2. Lands which belong to the Takhsisat category of vaqfs (Art. 124) (*see* Land Code, Art. 4.)



Takhsisat vaqf lands are lands taken from the State lands (Arazi Mirié) and made vaqf by special acts of dedication (Takhsis) by the Sultan or by his permission (Land Code, Sect. 4).

The special act of dedication is a true Takhsis, if it consists of the dedication of part of the income belonging to the Beit-ul-mal for the benefit of some object supported by the Beit-ul-mal.

A special dedication of part of the income belonging to the Beit-ul-mal for the benefit of an object not supported by the Beit-ul-mal is an untrue Takhsis, Art. 138.

An untrue Takhsis can be revoked at the will of the Sultan, Art. 138.

As to what vaqfs are vaqfs of the Takhsisat category *see* Arts. 131, 132, 134 and 137.

Arazi mirié made vaqf of the Takhsisat category is of three kinds :

1. Land of which only the taxes and tithes are dedicated.
2. Land of which only the possession is dedicated.
3. Land of which the possession, taxes and tithes are dedicated (Art. 137).

Sahiha or real vaqfs are vaqfs made by the owners of property in the way described in this law.

The rules contained in Title A. deal with the making of real vaqfs.

As to who can make one, *see* Arts. 43, 51, 53 (2), 55 (2), 56, 57 and 63.

As to how a valid dedication is made, *see* Arts. 44, 45, 47, 48, 49, 54, 65, 66, 67, 68, 69, 70, 86 and 88

As to what may be made vaqf, *see* Arts. 43, 46, 58, 59, 60, 61, 62, 63, 64, 65, 66, 72, 73, 81, 82, 83, 84, 85, 87 and 91.

As to what may be objects of vaqfs, *see* Arts. 71, 74, 75, 76, 77, 78, 79 and 89.

C.—Vaqf lands are again divided into four classes according to the way in which the Muteveli is permitted to deal with them :

1. Lands, which the Muteveli is not required to let and which may be used by the beneficiaries.
2. Lands which are directed to be let at a double rent (Ijaretein).
3. Lands which are to be leased for a fixed term at a single rent (Vahidè).
4. Lands on which there is mulk property belonging to private persons, which are to be let at a single rent (Muqata'a).

I. The most important of the vaqfs of the first class are the Muessasati Khairiye. The law as to them is contained in Arts. 179—186, 343, 344.

If an Ijaretein vaqf is turned into a vaqf of this category it must be turned into a Muqata'alu vaqf (Art. 286).

2. The law as to Ijareteinle vaqf is dealt with in Titre F.  
 Chaps. I. and II.—Inheritance.  
 Chaps. III., IV., V., VI., VII. and VIII.—Alienation.  
 Chap. IX.—Partition, &c.  
 Chap. X.—Rights of owners in common.  
 Chap. XI.—Mortgage.  
 Chap. XII.—Agents to sell and buy.  
 Chap. XIII.—Miscellaneous.

Most of these provisions deal with the rights of the Ijaretein tenant, as owner, to deal with the property.

The relation between the Ijaretein tenant and the vaqf is also dealt with. See especially Arts. 187, 188, 192, 263—269, 286 and the articles dealing with alienation and mortgage.

3. The law as to Vahidelu vaqfs is dealt with in Titles G. and N.

4. The law as to Muqata'alu vaqfs is dealt with in Title H.

The law of inheritance depends upon whether it is a real vaqf or one of the Takhsisat category.

In the former case only, sons and daughters inherit. In the latter case the law dealing with Arazi miric applies (Art. 385).

D.—Vaqfs are divided into three classes according to the way in which they are administered.

1. Evqaf Mazbuta.—Vaqfs administered directly by the Minister of Evqaf.

They consist of—

- (a.) Properties made vaqf by the Sultans and their relations.  
 (b.) Vaqfs of which the Muteveliship is vacant (Art. 33).

2. Evqaf Mulhaqa.—Vaqfs administered by special Mutevelis under the supervision of the Minister of Evqaf (Art. 34).

3. Mustesna Evqaf.—Vaqfs managed solely by special Mutevelis without the interference of the Minister of Evqaf. They are dedications made by conquerors and other honourable persons (Art. 35).

The manner of Administration of the vaqf depends, in general, upon the terms of the dedication as expressed in the vaqfieh.

The interpretation of the terms used by the dedicator and the construction of the vaqfieh are treated of in Chaps I. and II. of Title D. and Chap. IV. of Title A. and Arts. 175, 176, 177.

As to when the term of the dedication need not be observed is treated of in Chap. III., Title D.

The Muteveli is the principal officer for the administration of the affairs of the vaqf.

The appointment of the Muteveli is treated of in Chap. I., Title I.

xiv.

His dismissal in Chap. III., Title I.

The appointment of a substitute for the Muteveli in Chap. II., Title I.

The Muteveli may grant his post to another (Art. 306).

The Muteveli can resign his office (Art. 324).

The duties, powers and liabilities of the Muteveli are treated of in Title J.

If there is more than one Muteveli, all must consent to any act which is done, Art. 327.

If there is a Nazir the Muteveli must get his consent, Art. 328.

Where the law requires it, he must apply to the Judge, Art. 326.

The Muteveli may appoint an agent, Art. 329.

He must generally follow the directions of the dedicator, Art. 165.

He must obtain the leave of the Judge if he wish to act otherwise, Art. 165.

When the intention of the dedicator is not known, the Muteveli must follow the custom, Art. 168.

As to where there is no custom (*see* Art. 169).

Sometimes, when the terms of the vaqfiel have not been acted upon from the beginning, they are not to be followed, Art. 170, 171.

As to mistake in the vaqfiel, *see* Art. 172.

The rights of the beneficiaries and the duties of the Mutevelis in respect of them are set out in Titles K. and L.

With reference to these rights it may be pointed out that the Muajele (rent paid in advance) of an Ijaretein vaqf is regarded as income, Art. 269, and that the expenses of repairs take precedence of grants, Art. 411.

That a beneficiary does not lose his right by abandoning it, but he does by refusing to accept it, Art. 174.

As to rights of persons entitled to inhabit vaqf property, Art. 404, 409—412.

The following provisions are also important:

As to alterations in vaqf property, Art. 267.

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Letting vahidé land at Ijaretein, Art. 275.

As to the irrevocability of a dedication, *see* Arts. 111, 114, 119 and 120.

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In making this translation the translators have derived great assistance from the Greek translation of Mr. Nicolaidis and from the help of Ismail Hakki Effendi, Turkish Clerk in the District Court of Kyrenia and formerly Clerk in the Daavi Court.



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