

Pawning and Mortgaging

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Q1670. The owner of a mortgaged property died and left behind minor children. The loan was not fully paid. The lender repossessed the property, which is worth much more than the outstanding amount of the loan. How should the extra amount [from the proceeds of selling the property] be treated? And how should the minor children restore their right?

A: Where it is possible for the mortgagee (lender) to sell the property to get his money back, the property should be sold for the highest price possible. If the property has fetched more than the amount of debt, the lender can take what is his and pay the remainder to the rightful owners. As the question goes, the surplus amount should go to the inheritors.

Q1671. A mukallaf borrowed a sum of money from a person, and undertook to pay it back within a specified period of time in return for mortgaging his property. Having done that, the owner rented the same property from the person for a given rent and a particular period. Is it permissible for him to do so?

A: There is a problem in renting some property to its owner. Furthermore, this type of transaction is nothing but a ploy to circumvent the involvement in a ribā-bearing loan transaction that is both ḥarām and invalid.

Q1672. A person mortgaged a plot of land to another in return for a loan. The situation continued for forty years during which both parties died. Now, the heirs of the landlord are demanding from their counterparts to return the land to them. They refused to agree to their request, claiming that they inherited the land from their father. Can the heirs of the landlord restore their right in the land?

A: If it is proved that the mortgagee who kept the land as collateral for the loan had the right of possessing the land in settlement of the loan, that the value of the land was either equivalent to, or less than, the amount of debt, and that it was at his disposal until he passed away, it is apparent that the land is his.

Accordingly, after his death, it should become part of his estate, where the inheritors have a right to it. If this is not the case, the land should revert to the ownership of the inheritors of the mortgagor. Thus, they should have the right to get it back. They are required, though, to pay back the money their father owes to the heirs of the mortgagee.

Q1673. Is it permissible for a person who rented some property to mortgage it with a third party, or is it a condition, in order for the transaction to be valid, that the property belongs to the mortgagor?

A: There is no objection to that provided that the landlord has authorized the tenant to mortgage the property.

Q1674. I mortgaged some property to another person as collateral for the debt I owed him. In the contract, we agreed that the period of the mortgage is one year. However, I verbally promised to let him have the right of disposal in the property for three years. Which of the two is valid, i.e. the written agreement or the verbal pledge? Assuming that the transaction is not valid, what would the position of the two parties be?

A: As far as the period of the mortgage is concerned, the written paper, promise, and the



like are of no consequence. The yardstick is the loan contract. If it was for a given a period, it lapses by the end of the appointed period. If not, it remains effective until the debt is settled or the mortgagee releases the mortgagor from the debt. If the mortgage is done with, or the contract proved to be lacking to start with, it is permissible for the mortgagor to ask from the mortgagee to give him back his property. For his part, the latter should have no right to refuse to return the property and to consider it as a valid mortgage.

Q1675. My father pawned a piece of jewelry with a pawnbroker in return for a loan. Shortly before his death, my father gave permission to the pawnbroker to sell the pawn in settlement of a debt. However, the pawnbroker was not aware of this permission. I offered to pay the money back in return for the pawn. My intention was not to repay the debt, rather to get the piece of jewelry back and pawn it with another person. The pawnbroker refused to accept my protestation unless all the heirs agree to the proposal. Some of the heirs did not consent to the proposed course of action. When I approached him again with the money, [he received it, yet] declined to hand me back the pawn, claiming that it is within his right to keep it in settlement of the debt.

Is it permissible for the pawnbroker to refuse to return the pawn after he got his money back? Has he the right to refuse to return to me the money I gave him, under the pretext that it was in settlement of the debt? And is he justified in making the return of the pawn dependent on the agreement of all the heirs?

A: If paying back the money to the pawnbroker was intended to settle the debt the deceased owes the broker, the deceased would be absolved of the responsibility of the debt and the pawn retained by the broker for safekeeping. However, since the heirs now jointly own the pawn, the pawnbroker cannot return it to some of them unless they all agree to it.

If the money given to the pawnbroker was not intended to pay back the debt owed by the deceased, as it is understood from the broker's admission, he is not justified in retaining the money under the pretext that it was in settlement of the debt. It is obligatory on him to pay the person, who gave him the money, his money back, especially after he has demanded that. In the meantime, the piece of jewelry should remain pawned with the broker until the heirs come up with the money to settle the debt of the deceased and release the pawn, or give permission to the pawnbroker to sell the pawn to recover his debt.

Q1676. Can a mortgagor mortgage the collateral to another pawnbroker before the first one is terminated?

A: As long as the first contract is not terminated, the second mortgage is suspended without the permission of the first mortgagee and becomes valid only if he authorizes it.

Q1677. A person pawned his land with someone as a surety for a loan he was supposed to give him. After getting hold of the land, the pawnbroker apologized for not having the money the landlord asked for. However, they settled for ten sheep to be given to the landlord instead of the money. Now, the mortgagor wants to get his land back by paying the debt to the broker. The broker is insisting on getting repaid in kind, i.e. the same ten sheep he gave the owner of the land when they concluded the deal. Is what he is demanding shar'?

A: Mortgage is for something already loaned not for a future debt/loan. According to the question, the land and the sheep should be returned to their owners.