

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Series of Questions Addressed to Scholar Sheikh Ata Bin Khalil Abu Al-Rashtah,  
Ameer of Hizb ut Tahrir through his “Fiqhi” Facebook Page

Answer to Question

**Public Ownership**

To Nadir Az-Za'tari

**Question:**

Assalaamu Alaikum our honourable Sheikh, I would like to ask you a question regarding public ownership. Can a private ownership transfer to a public ownership in accordance to the Shariah rules, like transferring water springs from a private ownership into public property if that is needed for the public good? And if the public no longer needs it, does it revert as private property? Similar to oil wells when they are depleted, can they become a private property?

Thank you, and May Allah help you and make your foothold strong, Wa Assalaamu Alaikum Wa Rahmatullah Wa Barakatuhu

**Answer:**

Wa Alaikum us Salaam Wa Rahmatullah Wa Barakaatuhu,

If any type of public ownership was as a result of a divine reason (*'illah*), then the rule will follow this divine reason, whether it exists or in its absence. If the *'illah* is present then that public ownership will remain, but if it was absent, then it will be permitted to privately own that type of property, however on the condition that the *'illah* is Shar'i found in a Shar'i text.

For example, public utilities are considered as public property, which have been explained by the Prophet (saw) in the Hadeeth in terms of its description, and not its quantity: On the authority of Ibn Abbas that the Prophet (saw) said:

«المسلمون شركاء في ثلاث في الماء والكأ والنار»

**“People are partners in three: Water, Pasture, and fire.”** Narrated by Abu Dawoud and narrated by Anas from the Hadeeth of Ibn Abbas and he added: «وئمنه حرام» **“And its price is Haram”**.

Ibn Majah narrated from Abu Huraira that the Prophet (saw) said:

«ثلاث لا ييمنع: الماء والكأ والنار»

**“Three that must not be prevented: Water, Pasture, and Fire.”**

This is the evidence that people are partners in water, pasture, and fire; and that they are not permitted for ownership by individuals.

**However, the Prophet (saw) permitted individuals to own water in Ta'if and Khaibar, and they did so to irrigate their plants and fields.**

Similarly, some Muslims privately owned wells in Medina; Bukhari narrated on the authority of Abdullah (ra) from the Prophet (saw) that he said:

«مَنْ حَلَفَ عَلَى يَمِينٍ يَقْتَطِعُ بِهَا مَالَ امْرِئٍ مُسْلِمٍ، هُوَ عَلَيْهَا فَاجِرٌ، لَقِيَ اللَّهَ وَهُوَ عَلَيْهِ غَضَبَانُ»

**“Whosoever gives oaths falsely to take the wealth of a Muslim illegitimately, he is a fajir (wicked), and will meet Allah while He (swt) is angry with him.”**

And Allah (swt) revealed:

﴿إِنَّ الَّذِينَ يَشْتَرُونَ بِعَهْدِ اللَّهِ وَأَيْمَانِهِمْ ثَمَنًا قَلِيلًا﴾

**“Indeed those who exchange the covenant of Allah and their [own] oaths for a small price.” [Al-i-Imran: 77]**

Al-Ash’ath came and said: An Ayah was revealed about what Abu Abdul Rahman spoke to you about me, **I had a well in the land of my cousin**, he asked: «شُهُودِكَ» “Your witnesses”, I said I do not have witnesses, he said: «فِيَمِينُهُ» “his oath (is required)”, I said: O Messenger of Allah, then he must give an oath, then the Prophet (saw) mentioned this Hadeeth, and Allah (swt) revealed the Ayah to support His truth.” **End quote**

If partnership in water, in and of itself, and not because of the need for it, it would have not been permitted for individuals to own it. From the saying of the Prophet (saw):

«المسلمون شركاء في ثلاث في الماء»..

**“People are partners in three: water...”**

And the permission given by the Prophet (saw) to individuals to own water, this extracts the *‘illah* in the partnership in water, pasture and fire, and it is from the public utilities that people can not live without.

Hence the Hadeeth has mentioned three but they are based on *‘illah* because they are public utilities. Therefore this *‘illah* follows what is reasoned in its existence and absence; so anything that is considered as public utility is considered as public property, but if it is not considered as public utility even if it was mentioned in the Hadeeth like water, then it is not public property, but it is considered as property that can be privately owned. Public utilities are decided when all resources are not available for a group of people, whether it is a group living in house made of tents, or living in a village or city or a state, and have disputed to get it, is considered public utility, like water source, pastures or woods, grazing areas for cattle, and the like.

-e.g. Minerals are considered as public property if found in abundance, like in mines and the like, these minerals are public property, and it is not permitted to be owned by individuals, due to what Tirmithi narrated from Abyadh Bin Jamal:

«أنه وفد إلى رسول الله ﷺ، فاستقطعه الملح فقطع له، فلما أن ولى، قال رجل من المجلس: أتدري ما قطعت له؟ إنما قطعت له الماء العذب، قال: فانتزعه منه»

**“He came to the Prophet (saw) and asked to assign him a salt (mine), so He (saw) did, when he left, a man from his (saw) council said: Are you aware of what you assigned him? You assigned him a perennial (*‘id*) spring of water, he said: so he took it back from him.”**

“*‘id*” water is the continuous source of water, he drew the similarity between salt and water for its unlimited source. This Hadeeth is an evidence that the Prophet (saw) has given a portion of mountain salt for Abyadh Bin Jamal, but when he (saw) found out that the mineral is unlimited, he took it back from him and prevented its private ownership, i.e. it is public property. Salt here is an example of a mineral, what is intended is the mineral not the salt. From this Hadeeth it is clear that the *‘illah* of prevention of giving the portion of the mineral of salt is that it is *‘id* i.e. unlimited.

This ruling, that the unlimited mineral is a public property, which includes all minerals whether they are on the surface and easily accessed that people frequent and use, like salt,

coal, emerald and the like, or it was found underground, that needs to be extracted with equipment, like gold, silver, iron, bronze, lead, and the like. And whether it is solid like crystals or liquid like oil, they are minerals that come under the Hadeeth. Since unlimited minerals are public property for all citizens, the state is not permitted to give its ownership to individuals, companies, or allow individual or companies to extract them for their own use; instead the state must extract them itself on behalf of the Muslims, in looking after their affairs, and all that it extracts from them is public property for all the citizens.

Therefore, the property mentioned in the question will be considered as public ownership if they are public utilities, e.g. the water well in a village which is the only source of water, it is a public property and not allowed for individual ownership... But if the people in the village have another sufficient source of water, it will be permitted for an individual to dig a well in his land and own it, because it is not from the public utilities in this case, i.e. that the *'illah* of its public property is absent. But the well which was a public property does not become a private property but remains as a public property and it will be allowed to sell to individuals if there is sufficient water for the people and then it will be priced for the private ownership.

Hence, the water well is a public property if the people have no other source, but if there was an depletes or the people do not need it any more, i.e. the *'illah* is absent of it being a public utility, by the presence of a sufficient source of water, then it will be permitted to sell that well to individuals and it's priced for private ownership. Oil wells for example are public utilities as long as it is unlimited, but if there were depletes, i.e. the *'illah* for being a public property is absent, then it is allowed to sell this well for people and its price is put for private ownership.

**Your brother,**

**Ata Bin Khalil Abu Al-Rashtah**

15 Jumada I 1437 AH

24/2/2016 CE

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<https://www.facebook.com/AmeerhtAtabinKhalil/photos/a.122855544578192.1073741828.122848424578904/448428962020847/?type=3&theater>

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