

Jurisprudence - al-m.ca/jurisprudence

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 - Click on 'Participants' > 'Raise Hand'
 - You may unmute when requested, to ask your question
 - This is preferable over typing questions in chat
- **Notes are available to download at the above link**
 - link will only be available during the class time
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- Email mahdi@al-m.ca for any questions or feedback

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Financial Matters

- ✓ *Dayn* (loan & debt).
- ✓ *Dhimān* (surety).
- ✓ *Rahn* (deposit or security).
- ✓ *Hawālah* (transfer of the debt).
- ✓ *Kafālah* (guarantee).
- ✓ *Wadi'ah* (trust, *amānat*).
- *Hajr* (debarment)
- *Habs* (restricting the usage)

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Hajr – (الحجر) – Debarment

- *Hajr* means debarment; it means that shari'a excludes a person from exercising his right in his possessions.
- *Hajr* and debarment happens for different reasons:
 1. Being a minor.
 2. Insanity.
 3. Foolishness.
 4. Bankruptcy.
- A debarred person is known as "maḥjūr".

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Hajr – (الحجر) – Debarment (2)

1. Being a minor.

- A non-bāligh is debarred from exercising his right independently in his possessions regarding business transaction, gift, loan, compromise, rent, deposit or borrowing, etc.
- This applies even if he is mature enough.
- However, there is no problem in simple give and take which is commonly accepted from minor children such as buying a common item from the store, etc.

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Hajr – (الحجر) – Debarment (3)

Being a minor (continued)

- A non-bāligh cannot even get involved in a “buy now and pay later” deal where the payment is deferred till he attains the age of bulūgh.
- Nor can a non-bāligh decide in matters about himself or herself such as marriage and divorce.

➤ Does the debarment end with bulūgh of a child?

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Hajr – (الحجر) – Debarment (4)

Being a minor (continued)

- Who has authority in matters of a minor?
 1. Father and paternal grandfather.
 2. A guardian appointed by one of them.
 3. A mujtahid.
 4. If the mujtahid cannot exercise his authority, then the ‘ādil Shi’a elders have the authority. In absence of ‘ādil Shi’as, ordinary Shi’as have the authority.
- Father & paternal grandfather have the authority independent of one another.

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Hajr – (الحجر) – Debarment (5)

2. Being of unsound mind

- A person of unsound mind (*majnūn*) is debarred from exercising authority in matters of his possessions.

3. Foolishness

- Foolishness (*safah* – السفه) means deficiency in intellect or understanding in protecting his properties.
- Here foolishness (*safah*) is opposition of maturity (*rushd*). A foolish person is debarred irrespective of his age as long as he does not attain maturity in financial matters.

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Hajr – (الحجر) – Debarment (6)

Foolishness (continued)

- The guardian should test the foolish person by assigning financial matters in a limited form to see if he has attained maturity or not. If he succeeds the test, then he has absolute right over his possessions.

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Hajr – (الحجر) – Debarment (7)

4. Bankruptcy

- Bankruptcy is *falas* (الفلس) and a bankrupt person is known as *mufliis* (المفلس).
- It applies to a person who is debarred from his possessions because of his inability to pay his debts.
- A person who is overburdened with debts (even if it is more than his entire wealth), he can dispose his wealth as he wants as long as he is not debarred by the religious judge.

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Hajr – (الحجر) – Debarment (8)

Bankruptcy (continued)

- Bankruptcy depends on four conditions:
 1. The debts are religiously valid.
 2. All his assets (other than the basic necessities of life) are not able to pay off his debts.
 3. The debts are payable now.
 4. The creditors, some or all, approach the religious judge and ask for debarring the person from selling or gifting off his assets.

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Hajr – (الحجر) – Debarment (9)

Bankruptcy (continued)

- The religious judge, with the agreement of the creditors, can force the debarred person to sell his assets and pay the loan of the debtors accordingly.
- However, as discussed in the section of *dayn*, the basic necessities of life (such as the residence home) cannot be part of this process of selling the assets.

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Hajr – (الحجر) – Debarment (10)

5. Deathbed

- A sick person whose illness usually does not end with death: such a person has absolute right over his possessions.
- A sick person whose illness usually does end with death:
 - a) In using it for himself or for his family members – there is no problem in it at all.

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Hajr – (الحجر) – Debarment (11)

Deathbed (continued)

b) In his transactions that end up in loss (e.g., underselling or giving away as charity or waqf or giving usage of a property without rent): there are two views:

- i. Khu'i: he has full right as long as it he lives.
- ii. Sistani: he has only right up to 1/3 of his assets; his decision in 2/3 depends on the consent of the heirs.

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Habs – (الحبس) – Restricting the Usage

- **Habs** means to confine something; here it means restricting the usage of a property or an item.
- It is permissible for the owner to restrict his property for a specific usage by a person or a cause without curbing his ownership.
- Habs can be of two types:
 - a) Perpetual: it becomes like waqf where the owner cannot take it back.
 - b) Fixed-term: e.g., for ten years or one season or twenty five years – and then it reverts to the owner.

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Habs – (الحبس) – Restricting the Usage (2)

- If the owner restricts his property for usage for education, for example, for 25 years and then he dies in the 10th year – the *habs* would still be valid for the remaining 15 years and heirs cannot cancel it. It will revert to their control after the expiry of the term.

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Habs – (الحبس) – Restricting the Usage (3)

- **Restricting the usage of a house:**
 1. **As-Sukna:** The owner says: “I make you reside in my house.” No time is fixed.
 2. **Al-'Umri:** The owner says: “You can reside in this house as long as you live.”
 3. **Ar-Ruqbi:** The owner says: “You can reside in this house for five years.”

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Habs – (الحبس) – Restricting the Usage (4)

Restricting the usage of a house (continued):

- This depends on proposal and acceptance by both parties.
- All the conditions like bulugh, being of sound mind, and not being foolish and bankrupt also apply here.
- Once the owner gives the usage for a fixed time or for his or the other party's lifetime, then it cannot be taken back until the expiry of the term.

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