

## Islamic Approach to Protecting Property “Gleaning and its Modern Applications as a Model”

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### Abstract

Islam recognizes the ownership system, for Allah is the true and ultimate owner of property, which He grants to whomever He wishes, and whoever Allah gives property, none shall remove ownership of it except Allah Almighty. Actually, public finance in Islam entails a moral dimension, which is strictly safeguarded, for it aims alongside the soundness of the financial systems to promote moral virtues, for everlasting civilizations are grounded in capital and morality. Actually, Islam has, since the inception of the Islamic state, prescribed various kinds of contracts, and enacted diverse systems to develop capital, while prescribing deterrent punishments some of which are physical and financial to protect it. Islam's orientation in achieving all of this is to abide by the fundamentals, and categorical precepts, whereby it is impermissible to violate or contravene them, and it also created a wide circle for independent interpretation related to capital and wealth, to achieve the public interest under the rubric of the aims of the Shari'ah, and its overall foundations, whereby it does not impose stifling limitations, or inert rules, or sterile methods.<sup>1</sup>The Muslim jurists have concurred on the necessity of defining gleaning (Al-Luqata r.) but they differed on the period of announcement(al-Ta`rif ar.) according to the value and importance of the gleaning; whereby if the gleaning is considerable wealth, the majority of the Fuqaha are of the position that it is announced for a period of one year and the Hanafis have delved in detail regarding this matter. And if the glean is of tiny value, this has given rise to difference between them, where it is not announced for a year, but rather is announced as an amount which most probably the one who lost it does not claim it, while the Hanbali jurists hold the position regarding it as being the same as the amount of a considerable value, which is announced for a complete period of one year which is the position that I favor and consider more plausible. And it is permissible for the indigent gleaner to benefit from the glean. However, if he is wealthy then he may give it in charity where the reward (i.e. Divine recompense) is for its owner, and he may give it in charity to any poor person, even if a relative.

**Keywords:** Glean, Property, Benefit, Capital, Poor Person

### 1. Introduction

All praise to Allah the Lord of the worlds and peace and blessings be upon our lord Muhammad who was sent as a mercy to all of creation, his family and all his companions.

In fact Islam is keen to develop wealth, foster it, and safeguard it for its owners; because capital is the pillar of life, and for this reason there is no Sa'iba (ownerless property) in Islam, nor wasted wealth, nor capacities that are immobilized, for the Religion of Islam is a religion of exploiting and harnessing resources and capacities, and it urges benefiting from what Allah has made licit and what He bestowed, from the exterior and hidden resources of the earth.

Due to all the foregoing gleaning (Al-Luqata) was addressed by Islam to fulfill the above aims, enabling returning the lost wealth to its proprietor so that he would benefit from it, while consecrating among the members of the Muslim community the meanings of cooperation, mutual solidarity and benevolence; which are sublime meanings which foster brotherhood and mutual support which underpin a society grounded in the overall aims and foundations of Islam.

Hence, in case the owner of the glean does not appear after announcement for a period of one year then the one who finds it after it becomes identified as a glean, in case he is poor, may benefit from it, which is an actualization also of the Islamic principle, namely, that there is no Sa'iba or waste of wealth, but actually wealth is owned ultimately by God who grants it to whom He wishes, and both parties are in the final analysis beneficiaries; for the loser of property is recompensed (by God) because it is a charity that was given on his behalf without his knowing so.

The subject of Al-Luqata is an important one, which raises the curiosity of people in our times, and there is a dearth of studies and research on it. Hence, I wish to research it, while very hopeful that Allah would afford me help and success. Actually, the axes of the study include an introduction and sections as follows:

### 2. Introduction: Islam's View of Capital (wealth).

Ownership connotes the possession of a person of a thing; which legally authorizes him to benefit from it, and to dispose of it solely unless there is a hindrance. And the ownership of property denotes: the possession of a person

<sup>1</sup>Awahab, Nadhir Bin Muhammad Al-Tayyeb, *Protection of Public Property in Islamic, Jurisprudence*, Nayef Arab Academy for Security Sciences, Center of Studies and Research, Riyadh, 2001 A.D., p.5.

of property or money; where such possession authorizes him under Islamic Law to benefit from it and to dispose of it solely unless there is a hindrance preventing such.<sup>1</sup>

Actually, Islam affirms and acknowledges the system of ownership as is evidenced in the Quranic Ayah: {Say (O Muhammad SAW): "O Allah! Possessor of the kingdom, You give the kingdom to whom You will, and You take the kingdom from whom You will, and You endue with honour whom You will, and You humiliate whom You will. In Your Hand is the good. Verily, You are Able to do all things.} Quran (3: 26). Hence, Allah is the true Sovereign of property, which He gives to whomever He wishes, whereby if Allah grants property to someone, none shall remove it from him except He. Accordingly the property of people is derived from the Sovereignty of Allah, and is sacred. And its sanctity emanates from the Sanctity of the Sovereign of all property, praise be to Him.<sup>2</sup>

The general finance in Islam has a moral dimension, which surrounds the financial policy in Islam with a perimeter of morals aspects, for it aims alongside the soundness of financial systems to achieving the good morals of nations, where everlasting civilizations are built upon the foundation of capital and morality. Truly, trade should not divert from remembrance of Allah: {*Men whom neither trade nor sale diverts them from the Remembrance of Allah (with heart and tongue), nor from performing AsSalat (Iqamat-as-Salat), nor from giving the Zakat. They fear a Day when hearts and eyes will shiver*} Quran (24: 37). In reality, the tiller of the soil is rewarded, not just by the harvest and profits, but is also rewarded by Allah.<sup>3</sup> In the sound Prophetic Hadith: [*Never does a Muslim plant a tree except that he has the reward of charity for him, for what is eaten out of that is charity; what is stolen out of that, what the beasts eat out of that, what the birds eat out of that is charity for him. (In short) none incurs a loss to him but it becomes a charity on his part.*]<sup>4</sup> Moreover, Islam greatly esteemed work, where wealth multiplies by not just work but also by benevolence: {*Who is he that will lend to Allah a goodly loan so that He may multiply it to him many times? And it is Allah that decreases or increases (your provisions), and unto Him you shall return.*} Quran (2: 245). Moreover, the aim of taxation is not merely to generate the great income for the Muslim state, but Islam determined specific ways for expending the revenues, which achieve the welfare the poor and indigent classes: {*As-Sadaqat (here it means Zakat) are only for the Fuqara (poor), and Al-Masakin (the poor) and those employed to collect (the funds); and for to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allahs Cause, and for the wayfarer (a traveller who is cut off from everything); a duty imposed by Allah. And Allah is All-Knower, All-Wise.*} Quran (9: 60). Thus, Zakat (almsgiving) bolsters social interests, by helping the needy, the poor, the slaves, those indebted, the wayfarers, and fostering cooperation between the members of society with a view to pay outstanding debts.<sup>5</sup> In fact, property or wealth are one of the five ramparts: Religion, human life, property, the human mind, offspring, and the Sharia duties are based on safeguarding the latter's aims in the interests of human beings.<sup>6</sup>

Islam stipulated since the establishment of the Islamic State the types of contracts and the various systems, and prescribed deterrent physical and financial punishments to ensure the protection of wealth, based on unchanging fundamentals, and categorical prescriptions, which are inviolable, and it left a wide circle for individual interpretation and exertion related to property and wealth, with a view to achieve the public interest under the aegis of the aims of the Shari'ah, and its overall fundamental principles, whereby it did not impose stifling prescriptions, or inert rules, or sterile methods.<sup>7</sup>

Among the methods of establishing property rights:

- 1- Sound acquisition of property: This is actualized by the legitimate methods of acquiring property, engendering an absolute possession of property provided that this materializes through sound means.
- 2- Rules of the soundness and validity of contracts: Whereas each of the transactions contracts has conditions both sound and in force in order for the consequences of each contract to apply to the contracting party, whereby there is no infraction and the sound contract becomes legitimately that of the contracting party. Moreover, most contracts are obligatory as is evidenced in the Hadith: [And the Muslims will be held to their conditions, except the conditions that make the lawful unlawful, or the unlawful lawful.]<sup>8</sup>
- 3- Prohibition of Riba usury: This is substantiated in Ayahs and Hadiths which are of categorical determination, which may not be denied in any case whatsoever. Moreover, the wisdom behind this categorical prohibition is clearly in evidence in the illegitimate huge wealth of the usurer and is Islamically prohibited given that it engenders the disruption of fraternal relations. "In Riba there is an infringement

<sup>1</sup>Jardan, Taher Haydar, *Islamic Economics, Capital, Usury and Zakat*, Dar Wael, Amman, 1<sup>st</sup> ed., 1999 A.D., p.26.

<sup>2</sup>Ibid, p. 29.

<sup>3</sup>Mohammad, Qutb Ibrahim, *Financial Systems in Islam*, the General Egyptian Book Organization, 4<sup>th</sup> ed., 1996, p. 15.

<sup>4</sup>Authenticated by Muslim, Muslim Abu Al-Hassan Al-Qusheiri AL-Naysabouri, 261H., *Al-Jame' Al-Sahih*, edited by: Mohammad Fouad Abdel Baqi, Dar Ihya'a Al-Turath Al-Arabi-Beirut, Chapter on the Virtues of Planting and Agriculture, Hadith No.: 1552, Part 33, p.1188.

<sup>5</sup>Qutb, op. cit., p.16.

<sup>6</sup>Awhab, op. cit., p.3.

<sup>7</sup>Ibid, p.5.

<sup>8</sup>Al-Bayhaqi, Abu Bakr, Ahmad Bin Al-Hussein Bin Ali Bin Musa AL-Khusrawajirdi, 458 H., *AL-Sunan Al-Saghir*, edited by Abdel Mu'ti Amin Qal'aji, Islamic Studies Universities in Pakistan, Karachi, Pakistan, 1<sup>st</sup> ed., 1989, Part 3, p. 81.

on the wealth of Muslims, and in case Ribaspreads then poverty will be rampant as well as the illicit violation of people's property.”

And akin to Riba (usury) are gifts to official functionaries, bribes and other illicit gains.

- 4- Recourse to courts of law to guarantee (cover) infringement: this method is applied in case the right of a third party relates to the owner and he fails to pay it whereupon he shall be obliged to pay, and based on this arises the sale of governor and the judgment related to falling due.<sup>1</sup>

And among the aims of Islam is the preservation of wealth<sup>2</sup>, and this is based on the Ayah: {O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent.} Quran (4: 29). Moreover, there is the Hadith of the Prophet Muhammad peace be upon him: ["Verily your blood, your property and your honor are as sacred and inviolable as the sanctity of this day of yours,].<sup>3</sup> All of the foregoing are concerned with the imperative of the preservation and protection of wealth and the sinfulness associated with infringing upon it.

And among the means of acquiring money is what results from coincidence and what is occasional, or what is termed gain without compensation; which is what is acquired by a person without any mentionable effort, and involuntarily without his seeking it, and related to this are numerous issues, including Al-Luqata.

### 3. Section I: Concept of Al-Luqata.

#### 3.1. First: Al-Luqata Linguistically:

It is to pick something up from the ground.<sup>4</sup>

#### 3.2. Second: Al-Luqata Idiomatically:

This is a properly recognized property that is inadvertently lost at a location not owned, where the one who found it does not know its true owner.<sup>5</sup>

It has also been announced as the property of a Muslim subject to loss whether such is in an urban area or the hinterland, where inanimate matter and animals are the same in this regard, excepting camels as agreed upon.<sup>6</sup>

And it has been stated that it is to lift something lost for preserving for another person rather than for acquiring as property, and it is agreed upon that is not guaranteed by the gleaner as is agreed upon except by encroachment and prevention after demand.<sup>7</sup>

According to this announcement the purpose for which the Luqata was lifted namely to preserve it for its owner, rather than as property for the person who finds it; Moreover, the finder does not guarantee the Luqata unless he is derelict in protecting it, given that it is essentially a trust.

Ibn 'Arafah defined it by stating that: "it is property that is found in a recognized safe place, honest money, which is not a human or cattle"; he said "that it is property not considered Al-Laqaet (foundling)", because it is not property, and his statement that it is recognized as a form of wealth excluding the property of enemy warrior, and his statement it is not a speaking animal excluding the speaking person who would be called Al-Laqaet (foundling) not Luqata, and his statement, not cattle, which includes the camels, cattle and sheep and in this context are called (stray creatures) rather than Luqata, and also the gold and exhibits and what is found on the beach which Muslims try to catch to survive.<sup>8</sup>

#### 3.3. Third: Relationship between the Linguistic and Idiomatic Meaning.

This lifted property was named as an active participle to accentuate its meaning namely that it is as though it lifted itself<sup>9</sup>

### 4. Section II: Types of Al-Luqata.

The Muslim jurists (Fuqaha) have differed in the classification of Al-Luqata, where their view did not converge on a single criterion or standard. Some of them rendered the classification based on the keenness of the owner to recover it, and its value to the one who lost it, and some considered as fundamental the concern for perishing and the loss of benefit from the item, and accordingly their classification differed and I shall state the classification of

<sup>1</sup>Zozo, FaridahSadeq, *Theory of Capital in Islamic Law, A Teleological Jurisprudential Study*. fiqh.islammessage.com/NewsDetails.aspx?id

<sup>2</sup>Ibid, fiqh.islammessage.com/NewsDetails.aspx?id

<sup>3</sup>Muslim, *Al-Jame' Al-Sahih*, Chapter on the Hajj Pilgrimage of the Prophet peace be upon him, Part 2, p.889.

<sup>4</sup>Al-Razi, Zein Eddin Abu Abdullah Mohammad Bin Abu Bakr Bin Abdel Qader, 666 H., Mukhtar Al-Sihah, edited by Yousef Al-Sheikh Muhammad, Al-Asriyyah Bookshop- Al-Dar Al-Namudhajiyyah, Beirut- Sidon, 5<sup>th</sup> ed., 1420H., p.284.

<sup>5</sup>Al-Ramli, Shams Eddin Mohammad Bin Abi Al-Abbas Bin HamzahShehabEddin, 1004 H., *Nihayat Al-MuhtajlaSharh Al-Minhaj*, Dar El-Fikr, Beirut, last edition, 1984 A.D., Part 5, p. 426.

<sup>6</sup>IbnRushd, Abu Al-Walid Muhammad Bin Ahmad Bin Muhammad Bin Ahmad Bin Rushd Al-Qurtubi, 595 H., *Bidayat Al-MujtahidWaNihayat Al-Muqtasid*, Dar Al-Hadith-Cairo, without printing, date of publication 1425H., Part 4, p.89.

<sup>7</sup>ShaykhiZadah, Abdel Rahman Bin Muhammad Bin Suleiman, 1078H., *Mujma' Al-Anhur Fi SharhMultaqa Al-Abhur*, Dar Ihyaa Al-Turath Al-Arabi, Part 1, p.704.

<sup>8</sup>Al-Kharashi, Muhammad Bin Abdullah Al-Kharashi Al-Maliki Abu Abdullah; 1101 H., *SharhMukhtassar Khalil Lil Kharashi*, Dar El-Fikr Printing House, Beirut-Part 7, p. 121.

<sup>9</sup>Al-Zayla'i, Uthman Bin Ali Bin Muhjin Al-Bari'i, 743H., ShehabEddin Ahmad Bin Muhammad Bin Ahmad Bin Younis, 1021H., *Tabyin Al-Haqa'eqSharhKanz Al-Daqa'eqWaHashiyat Al-Shalabi*, Al-Amiriyyah Al-Kubra Printing Press-Bulaq, Cairo, 1<sup>st</sup> ed., 1313 H., Part 3, p.301.

each party thereof separately.

#### **4.1. First: Sections of Al-Luqata according to the Hanafis.**

**What the gleaner finds is of two types:**

##### **4.1.1. First Type:**

What he knows regarding what the owner does not need such as the skins of pomegranate and dates nuclei (seeds).<sup>1</sup> Hence, he may take it and benefit from it, and it does not represent ownership granted by another, for acquiring property from an unknown person is invalid, and the property of the one rendering something licit does not perish by being licit, but the one availing of something licit may avail of it while the property right of the one affording something licit is retained, where if he finds it in his hand he has found his property, for the Prophet (peace be upon him) said: [If anyone finds his very property with a man, he is more entitled to it (than anyone else), and the buyer should pursue the one who sold it.]<sup>2</sup>, and if he finds it collected then he may not benefit from it, because it is plausible that the owner did not throw it after collecting it, but rather it fell from him, and this is of the second type.

##### **4.1.2. Second Type:**

**Where it is known that the owner desires it and so the one who gleans it must preserve it, and shall identify (announce) it to convey it to its owner.<sup>3</sup>**

The criterion is not sound regarding the Hanafis for rendering the matter depend on what is demanded by the owner of the luqata is not clearly announced, for what is demanded by each one of us is different and at variance with what is desired and demanded by the other. If they said it has no value, or recognition by most people, or what is of value and recognized by most people- would be more precise and Allah knows best.

#### **4.2. Second: Sections of Al-Luqata according to the Malikis:**

The Malikis classified Al-Luqata into the following sections:

**4.2.1. Section I:** The tiny thing such as a date for it is of unknown ownership and the finder may eat it or give it in charity.

**4.2.2. Section II:** The tiny thing which may be benefited from and whose owner may demand it, where it is necessary to announce it as is unanimously agreed upon, and there is difference on its amount, where it was said that it is one year, and some say days.

**4.2.3. Section III:** A lot which is significant, which should be announced as one year as all concur, and shall be announced at the gates of mosques after the prayers when people congregate, and it may be announced by the finder himself or to give it to the imam to declare it in case he is morally upright, or to give it to a trustworthy person to announce it, or to hire someone to announce it (and find the owner).

**4.2.4. Section IV:** What does not remain in the hand of the finder such as humid food or where there is concern that it would perish such as the goat in wilderness where it is permissible for the finder to eat it whether he is rich or poor, or to give it away in charity.

**4.2.5. Section V:** Where there is no fear of perishing, and it remains in the possession of the finder such as camels which should not be taken, and if taken the finder should announce such.<sup>4</sup>

#### **4.3. Third: Sections of Al-Luqata According to the Shafi'is**

**4.3.1. Section I:** What is perpetually present such as gold and silver, where the finder has a choice between acquiring it and keeping it in case he announces such and did not find the owner.

**4.3.2. Section II:** What does not perpetually remain; but in fact becomes corrupted such as humid food which can't be dried and legumes, where the finder has a choice to either own it, and thence eat and drink it and receive its value, or sell it at the equivalent price, and keeps the price (value) for the owner.

**4.3.3. Section III:** What lasts perpetually but by processing such as dates that are dried, where the finder does what serves the interests of the owner by such sale at the appropriate price, and keeping the value for him, or drying and keeping it for the owner in case the finder contributes its drying; otherwise he would sell a portion of it with the permission of the governor in case he finds it and shall spend the portion mentioned on drying the remainder.<sup>5</sup>

**4.3.4. Section IV:** An animal that does not defend itself from among the young animals such as the goat,

<sup>1</sup>Al-Sarakhsi, Muhammad Bin Ahmad Bin Abu Sahl, 483H., *Al-Mabsout*, Dar El-Ma'rifah-Beirut, without printing, 1993 A.D., Part 11, p. 3.

<sup>2</sup>Al-Tabarani, Abu Al-Qassem Suleiman Bin Ahmad Bin Ayoub Bin Muteir, 360 H., *Al-Mu'jam Al-Kabir*, edited by Hamdi Bin Abdel Majid Al-Salafi, Maktabat Ibn Taymiyyah-Cairo, 2<sup>nd</sup> ed., Part 7, p. 207.

<sup>3</sup>Al-Sarakhsi, op. cit., part 11, p. 3.

<sup>4</sup>Ibn Jazzi, *Al-Qawanin Al-Fiqhiyyah*, pp.224-225.

<sup>5</sup>Al-Shirbini, Mohammad Bin Ahmad Al-Khatib, *Al-Iqna'a Fi Hall Alfadh Abi Shuja'a*, p.273.

calf and what is similar which if left shall get lost due to wild animals, or a treacherous person, where he finds it in a remote area, the finder has the choice of acquiring it and then eating it and shall pay the price to the owner, or leave it, and to volunteer to spend on it if he wishes, and if he does not volunteer such and wishes to return he may spend with the permission of the governor, and if he does not find the latter, he shall bring witnesses. Or he may sell it at an equivalent price, and keep the price for the owner, and he shall announce it and then acquire the price.<sup>1</sup>

And he went to a wilderness area and if he finds it he may:

- Hold on to it while announcing it, or sell it and announce it while owning the price, and he may not eat it and collect its price given that it would be easy to sell in an urban center as opposed to a wilderness region, for there he might not find a buyer, and it would be arduous to move it.<sup>2</sup>
- As to the animal from among the young animals who could not be overcome such as camels, horses and mules, or due to the strength of the foe such as rabbits, or due to their flying such as doves, it is impermissible to acquire it in the secure desert, and should be left because it is protected by being resistant to most wild animals, who can find its food until its owner finds it- where one who acquires it for possession shall guarantee it, and is released from guarantee by referring it to the judge rather than returning it to its original location. The ownership was associated with the will to keep it, and hence it is permissible for the governor and his deputies (to preserve it).<sup>3</sup>

And what is not sacrosanct is what is in the desert where it is permissible to acquire it in possession, because in such situation it is lost as a result of the treacherous hand lifting it, and if he finds it in an urban area in a town or village, he may take it for possession, and he has the choice of following one of the three options.<sup>4</sup>

I say: In the present time there are no locations which may be classified as secure and others that are not secure, treachery and theft may occur in all locations, and hence it is impossible to classify places as ones where gleaning is permissible and elsewhere it is not permissible.

#### 4.4. Fourth: Sections of Al-Luqata According to the Hanbalis:

##### Al-Luqata is of Three Sections:

**4.4.1. Section I:** What is not greatly desired by average people such as whip and strap of a sandal which is within the two fingers, a loaf, a piece of fruit, and all that does not constitute a danger, where it is permissible to avail of it given the Hadith of Jaber: [The Messenger of Allah (pbuh) gave us license to use (for our purpose) a stick, a rope, a whip and things of that type which a man picked up; he may benefit from them.]<sup>5</sup>. Hence, it is not necessary to announce it, because it is among the licit things, and the finder is not obliged to pay its price in case the owner is found.<sup>6</sup>

**4.4.2. Section II:** Addawal (Stray animals): This is the name of the animals which are resistant to attack young lions,, and they are not amenable to being overcome either due to their huge body such as camels, cows, mules and donkeys<sup>7</sup> or due to their speed, or due to their flying ability, or due to their fangs, and so it is impermissible to glean them;<sup>8</sup> where the Prophet (pbuh) said: [You have nothing to do with that. Leave that alone, for it has feet and also a leather bag, it drinks water, and eats (the leaves) of the trees. till its owner finds it]<sup>9</sup> And another Hadith: [“No one gives refuge to a stray animal but one who is also astray.”]<sup>10</sup>

**4.4.3. Section III:** Other than the two previous sections in terms of cash money, furniture, raiment, books, ploughed land<sup>11</sup>

I believe that the best classification is that of the Hanbalis for it is comprehensive and cogent; inclusive of all the situations of gleaning, and all that occurs and is lost from a person, whether desirable or not, or is of significant or considerable value, or is subject to perishing, whereby it is a classification that is comprehensive and inclusive.

#### 5. Section III: Legality of Al-Luqata

AL-Luqata (gleaning) is permissible (lawful) in Islam and is grounded in the consensus (Ijma`a) as well as Ayahs

<sup>1</sup>Al-Shirbini, *Mughni Al-Muhtaj*, part 3, p. 584. Al-Ramli, *Nihayat Al-MuhtajIlSharh Al-Minhaj*, Part 5, p.434.

<sup>2</sup>Al-Shirbini, Mohammad Bin Ahmad Al-Khatib, *Al-Iqna`a Fi Hall Alfadh Abu Shuja`a*, p. 374.

<sup>3</sup>Ibid, p. 374. Al-Shirbini, *Mughni Al-MuhtajIlMa`arifatMa`aniAlfadh Al-Minhaj*, part 3, p.584. Al-Ramli, op. cit., part 5, p.434.

<sup>4</sup>Al-Shirbini, op. cit., 977H., *Al-Iqna`a Fi Hall Alfadh Abu Shuja`a*, edited by Maktab Al-BuhuthW`alDirassat, Dar El-Fikr, Beirut, 374.

<sup>5</sup>Authenticated by Abu Daoud Suleiman Bin Al-Ash`ath Bin Ishaq Bin Bashir Bin Shaddad Bin Amro Al-Azadi, ???, *Sunan Abu Daoud*, edited by Muhammad Muhyddin Abdel Hamid, Al-Maktaba Al-Asriyyah, Sidon- Beirut, annotation 1717, part 2, p.138.

<sup>6</sup>Al-Bahouti, Mansour Bin Younis Bin Salah Eddin, 1051H., *Daqa`eqOuli Al-Nuha Li Sharh Al-Muntaha* known as *SharhMuntaha Al-Iradaat*, 1<sup>st</sup> ed., part 2, p.377.

<sup>7</sup>Ibid, part 2, p.377.

<sup>8</sup>Ibid, Part 2, p.377.

<sup>9</sup>Authenticated by Muslim, op. cit., *Kitab AL-Luqata*, Hadith 1722, part 3, p. 1349.

<sup>10</sup>Al-Tabarani, *Al-Mu`jam Al-Kabir*, Hadith 2376, part 2, p.330.

<sup>11</sup>Ibid, Part 2, p.377.

enjoining benevolence; where taking it for keeping and returning to the rightful owner is a form of benevolence.

This is supported by the report on the authority of Zeid Bin Khaled Al-Jahni: [The Prophet (pbuh) was asked about Luqata such as gold or money and the prophet said: Recognize well the strap<sup>1</sup> and the bag (containing)<sup>2</sup> that and then make an announcement regarding that for one year, but if none recognizes it, then spend that and it would be a trust with you; and if someone comes one day to make demand of that, then pay that to him. He (the inquirer) asked about the lost camel, whereupon he said: You have nothing to do with that. Leave that alone, for it has feet and also a leather bag, it drinks water, and eats (the leaves) of the trees. He asked him about sheep, whereupon he said: Take it, it is for you, or for your brother, or for the wolf, then make an announcement regarding that for one year, but if none recognises it, then spend that].<sup>3</sup> Actually, Iltiqat signifies honesty and responsibility, in terms of the fact that the finder is entrusted with what he has found, and the Shari`ah entrusted him to keep, just like the guardian of the wealth of a child, and it also entails the meaning of acquisition inasmuch as he may acquire it in possession after announcement and its description for one year, which is what will happen mostly.<sup>4</sup>

According to Ali Bin Abu Taleb God be pleased with him he found a dinar in the period of the Prophet (pbuh) and he mentioned it to him whereupon he commanded him to announce it and it was not claimed and so he ordered him to eat it, and then its owner arrived, and he ordered him to pay the value.<sup>5</sup>

## 6. Section IV: The Provisions on Al-Luqata:

The judgment of the Fuqaha on Al-Luqata varies depending on the various circumstance surrounding the person that finds it:

Thus the ruling is that it is laudable in case he fears the loss of the Luqata in case he leaves it, but if he takes it to its owner that would be better than leaving it provided he trusts himself; because in case he fears its loss taking it to its owner is a revival of the property of a Muslim which is an act of benevolence and is hence laudable.<sup>6</sup> And the Prophetic Hadith states: [Allah helps His slave as long as he helps his brother.]<sup>7</sup> However, it is reprehensible for one who is not sure about the safety of his future albeit presently being safe; out of fear of loss or dishonesty;<sup>8</sup> because it entails exposing himself to availing of what is religiously prohibited, and a forfeiture of trust.<sup>9</sup> And also, the person might fear dereliction in undertaking the necessary announcement, and negligently allowing infringement thereof which is the position of Malek and related according to Ibn Umar and Ibn Abbas<sup>10</sup> which is a saying by the Shafiis<sup>11</sup> and the same was stated by Ahmad<sup>12</sup>, by virtue of the saying of the Prophet (pbuh): [‘The lost animal of the Muslim may lead to the burning flame of Hell.’]<sup>13</sup> And it is prohibited to glean something for oneself rather than the owner given the Hadith of the Prophet (pbuh) who said: [‘No one gives refuge to a stray animal but one who is also astray.’]<sup>14</sup> What is meant is to keep it for his own benefit rather than for the benefit of its owner; because keeping it for oneself for the sake of the real owner is not religiously prohibited, and given that he took the property of another without his permission whereby it is usurpation.<sup>15</sup> Moreover, it is prohibited to glean for one who knows himself to be dishonest.<sup>16</sup>

And in case Al-Luqata is in an insecure situation, there arise differences on the ruling of gleaning it; whereby it was said that its finder must take it given the Quranic Ayah: {The believers, men and women, are Auliya (helpers, supporters, friends, protectors) of one another,} Quran (9: 71). Hence, if he is his guardian, then it is incumbent upon him to protect his property, and among those of the opinion that it should be taken is Said Bin Al-Musayyeb, and Al-Hassan Bin Saleh.<sup>17</sup> And it is also the position of Al-Shafi`i, and it was said that it is not incumbent on him to glean, but rather it is laudable, which is the correct position; because gleaning is either a trust, or a gain.<sup>18</sup>

<sup>1</sup>Al-Affas (strap) which is the cloth in which Al-Luqata is wrapped. See Al-Khurashi, Mohammad Bin Abdullah Al-Khurashi Al-Maliki Abu Abdullah, 1101 H., *Sharh Mukhtasar Khalil Al-Kharashi*, Dar El-Fikr Printing Press-Beirut, Part 7, p.121.

<sup>2</sup>Al-Wika`a is what the opening of a container is tied or fastened with. See Al-Khurashi, Sharh Mukhtasar Khalil, Part 7, p. 121.

<sup>3</sup>Authenticated by Muslim, op. cit., *Book of Al-Luqata*, Hadith 1722, part 3, p.1349.

<sup>4</sup>Al-Shirbini, *Mughni Al-Muhtaj*, part 3, pp. 577-578.

<sup>5</sup>Al-Mawardi, *Al-Hawi Al-Kabir*, Part 8. P.4

<sup>6</sup>Al-Kassani, Alaa Eddin, Abu Baker Bin Mas`oud Bin Ahmad Al-Kassani, 587H., op. cit., Dar Al-Kutub Al-Ilmiyyah, 2<sup>nd</sup> ed., 1986, Part 6, p. 200. Al-Shirbini, *Mughni Al-Muhtaj*, Part 3, p. 578.

<sup>7</sup>Authenticated by Muslim, *Al-Jami` Al-Sahih*, Chapter on the Virtues of Gathering to Recite the Holy Quran, Hadith 2699, Part 4, p.2074.

<sup>8</sup>Al-Shirbini, op. cit., Part 3, p.578.

<sup>9</sup>Al-Bahouti, Mansour Bin Younis Bin Salah Eddin, 1051H., op. cit. 1<sup>st</sup> ed., Part 2, p.379.

<sup>10</sup>IbnRushd, Abu Al-Walid Mohammad Bin Ahmad Bin Mohammad Bin Ahmad Bin Rushd Al-Qurtubi, 595H. op. cit., date of publication 1425H., Part 4, p.88.

<sup>11</sup>Al-Shirbini, op. cit., Part 3, p.578.

<sup>12</sup>Al-Bahouti, op. cit. Part 2, p.379.

<sup>13</sup>Al-Tabarani, op. cit., Hadith 2111, Part 2, p.265.

<sup>14</sup>Has been previously authenticated.

<sup>15</sup>Al-Kassani, op. cit., Part 6, p. 200.

<sup>16</sup>Al-Shirbini, op. cit. Part 3, p.578.

<sup>17</sup>IbnQudama, Abu Mohammad MwaffaqEddin Abdullah Bin Ahmad Bin Mohammad, 620H., *Al-Mughni*, Cairo Library, Date of publication: 1388H., Part 6, pp. 73-74.

<sup>18</sup>Al-Husayni, Abu Bakr Bin Mohammad Bin Abdel Mu`min Al-Shafi`i, 929H., *Kifayat Al-Akhyar Fi Hall Ghayat Al-Ikhtisar*, edited by Ali

I say: considering Al-Luqata to pivot around the legislative rules is what achieves the legitimate interests- and God knows best- because constantly prescribing to the individual to announce the Luqata leads to great duress leading to refrainment from gleaning anything lost, because a person innately is inclined to offer assistance but without bearing a burden in excess.

Actually, the position that gleaning is absolutely reprehensible leads to the perdition of property, in addition to undermining the spirit of cooperation and solidarity which should prevail in Muslim society, for a Muslim should support his fellow Muslims.

Moreover, the position that it is absolutely obligatory engenders duress for the individual, because people are not equal in terms of the ability to keep, investigate, and striving against the impulse to acquire the Luqata without completing the period of announcement, let alone bearing the cost of announcing the matter.

It should be noted that essentially it is laudable to preserve the lost item given that this is in the interest of the person who lost his property, and moreover, this regulates the obligations of the one keeping the lost item voluntarily or by willful choice; after determining that he is able to bear the ramifications of Al-Itiqat in terms of protection and announcement, and to reimburse the equivalent value in case the owner returns after the one finding and keeping is had acquired it in possession, after the expiry of the period of announcement.

This position gives due regard to all situations and circumstances; it gives due regard to the interests of the owner of the found item by safeguarding his property, fulfilling the meanings of solidarity between the members of society, and safeguarding property which is a recognized aim of the Legislator; in addition to giving due regard to the interests of the finder where no wrongdoing is committed by him in case he eschews gleaning in the event that we say that Al-Itiqat is incumbent upon him, namely forfeiting the protection of the property of a Muslim which he could have done thereby forfeiting an obligation. On the other hand, in case he keeps a Luqata and infringes upon it, by eating it or appending it to his wealth or disposing of it in any form that does not lead to preserving it for its owner; in case we say that a Muslim is obligated to find and keep we shall have caused him duress, while adopting the position that it is laudable is consideration of the interest of the two parties (Allah knows best) and the safeguarding of both rights and eschewing gleaning for those who are capable of protecting it, and dutifully protecting without duress or bearing any consequences because this is necessitated by voluntary action based on a keenness to a continued desire of the one obliged to perform it voluntarily and by choice in quest of a recompense from Allah.

As to additional burdens this includes them under the aegis of duties and removes from them the attribute of voluntariness as prescribed by Islam, for the philosophy of Islam classifies the acts of devotion to what is voluntary and obligatory to incentivize the faithful to perform all kinds of devotional acts.

#### 7. Section V: Defining The Amount of a Considerable Value of Al-Luqata:

- The Ulema have agreed to make an announcement regarding any considerable value of it for one year, unless it is from sheep.
- And they differed on its ruling after one year, where the Fuqaha Malik, Abu Hanifa and Al-Shafi'i and Ahmad agreed that if the year lapses he may consume it in case he is poor, or to give it in charity in case he is rich, and in the event the real owner arrives he has the choice to either consider it a charitable act and is thus recompensed, or to fining him its price.
- And they differed concerning the rich person, could he consume it or expend it after the passing of one year, where Malek and Shafi' said: he may do so, while Abu Hanifa said: he may not avail of it or give it to charity.
- All are agreed that if he consumes it then he guarantees it to its owner, except for Ahl Al-Dhaher.<sup>1</sup>
- They moreover concurred that Al-Luqata shall not be returned back to one who claims it, in case he didn't recognize well the strap and the bag (containing).
- And they differed: if such is recognized is a proof required or not? Whereupon Malek said that he has the right to restore it by giving description, and no proof is required, while Abu Hanifa and Al-Shafi'i held the position that it is not merited except with proof.<sup>2</sup>

#### The positions of the Fuqaha:

The majority of the Fuqaha from among the Malikis<sup>3</sup>, Shafi'is<sup>4</sup>, Hanbalis<sup>5</sup> and Mohammad Bin Al-Hassan from the Hanafis<sup>6</sup> are of the position that the finder of Al-Luqata shall announce it for one year and is not obligated to

Abdel Hamid Baltaji and Mohammad Wahbeh Suleiman. Publisher Dar Al-Khayr-Damascus, 1<sup>st</sup> ed. 1994, Part 1, p.314.

<sup>1</sup>IbnRushd, op. cit., Part 4, p.9. IbnJizzi, op. cit., 741 H., *Al-Qawanin Al-Fiqhiyyah*, p.225.

<sup>2</sup>IbnRushd, ibid, Part 4, p.90.

<sup>3</sup>Al-Abdari, Abu Abdullah Mohammad Bin Yousef Bin Abu Al-Qassem Bin Yousef, 897 H., *Al-TajW'alIkliL Lil Mukhtasar Khalil*, 1<sup>st</sup> ed., 1994, Part 8, p. 41. Al-Kharashi, op. cit., 1101 H., op. cit., Part 7, p. 124.

<sup>4</sup>Al-Ramli, op. cit. Part 5, p. 440.

<sup>5</sup>Al-Bahouti, op. cit., 1<sup>st</sup> ed., Part 2, p.381.

<sup>6</sup>AL-Zayla'i, op. cit., 743 H., Al-ShalabiShehabEddin Ahmad Bin Mohammad Bin Ahmad Bin Yunis, 1021 H., *Tabyin Al-*

do so for more than that, and what is less is impermissible. And the Hanafis<sup>1</sup> are of the position that the finder of a lost item shall continue to announce it until it is probable to him that its owner does not demand it, and hence Abu Hanifa did not place the condition of the passing of one year to announce the lost item, but the finder shall continue to announce the Luqata for varying periods based on the value of the found item until he acquires knowledge that the owner of the Luqata does not demand it, contrary to the position of Muhammad from among the Hanafis who held the position that the announcement is entwined with the passage of one year without detailing further. Thus in Tabyin Al-Haqa`eq “in case it is two hundred Dirhams and more he shall announce it for one year and if more than ten Dirhams to two hundred Dirham for one month, and if ten Dirhams then one week, and for three Dirhams then three days, and for one Dirham one day. And if it is a fruit he shall give it in charity at its location, and in case he is needy then he may eat it at the location... And it has been stated that none of these amounts is salient and it is up to the discretion of the finder who shall announce it until it becomes most probable to him that its owner does not demand it, and thereafter if the Luqata is something that does not last he shall announce it and if he fears that it will spoil then he may give it in charity.”<sup>2</sup>

**I say:** the essence of the position of the Hanafis insofar as announcement; and of course I do not favor their opinion absolutely because it is not entirely sound; because leaving the matter to the supposition of the finder that the owner will not claim it is unsound from several aspects, on the one hand not everyone is capable of good judgment, and on the other it might be an encouragement for a person to suffice himself with announcement and the possession of the found item and availing of it based on the opinion permitting such, and in case the Hanafis in adopting this position do not mean to undermine the right of the owner of the lost item because they deem it permissible to give the item in charity to the poor person, and do not allow for the rich person to avail of it.

Moreover, rendering the period of announcement as contingent on the increasing value is not sound; because the values of things to people is varying and so is rendering the Hawl (one year) solely for what is above two hundred Dirhams, and one month for what is more than ten... Actually, sometimes ten for some people is equivalent to a thousand for others and so forth, where the extent of the need of a person, and the method of his acquiring money is a determinant of how he values money in my opinion, and hence in my view the one year should be applicable to and inclusive of all.

#### **Proof of the necessity of announcing the lost item for one whole year**

- [The Prophet (pbuh) was asked about Luqata such as gold or money and the prophet said: Recognize well the strap<sup>3</sup> and the bag (containing)<sup>4</sup> that and then make an announcement regarding that for one year, but if none recognizes it, then spend that and it would be a trust with you; and if someone comes one day to make demand of that, then pay that to him. He (the inquirer) asked about the lost camel, whereupon he said: You have nothing to do with that. Leave that alone, for it has feet and also a leather bag, it drinks water, and eats (the leaves) of the trees. He asked him about sheep, whereupon he said: Take it, it is for you, or for your brother, or for the wolf, then make an announcement regarding that for one year, but if none recognises it, then spend that].<sup>5</sup> Hence, the Prophet (pbuh) commanded him to announce it for one year without differentiating between the small or large amount.<sup>6</sup>
- The cravens usually come during the year, in which the four seasons pass.
- Because if the announcement is not for a year then the property would be lost from their owners, and if the announcement is forever then the finding and keeping would be impossible, and hence the year is in the interest of the two parties.<sup>7</sup>
- And because the Hawl (passage of one year) is a basic rampart in zakat almsgiving, then it is more behooving for it to be a rampart of Al-Luqatabecause the Hawl is the totality of the four seasons, and the Hawl (passage of one year) ends by coming of the season of finding it, and restricting oneself to what is less is dereliction, and while a period in excess entails duress.<sup>8</sup>

#### **8. Section VI: Location of Announcing Al-Luqata.**

As regards the place of announcement it is markets and mosques gates, because they are where people congregate, and pass, and hence the announcement there is quicker for spreading the news.<sup>9</sup> And it is announced by virtue of the fact that someone makes a claim for it where it is known that its owner is there and this does not require the

*Haqa`eq Sharh Kanz Al-Daqa`eq and Hashiyat Al-Shalabi*, 1<sup>st</sup> ed., 1313 H., Part, 3, 2, 2.

<sup>1</sup>Al-Zaylami, op. cit., part 3, 2, 3.

<sup>2</sup>See Ibid., Part 3, 2, 3.

<sup>3</sup>See Al-Khurashi, op. cit., 1101H., op. cit., Part 7, p.121.

<sup>4</sup>See Al-Khurashi, op. cit., Part 7, p.121.

<sup>5</sup>Authenticated by Muslim Abu Al-Hassan Al-Qusheiri Bin Al-Hajjaj, 261H., *Al-Jame` Al-Sahih*, edited by Mohammad Fuad Abdel Baqi, Dar Ihya`a Al-Turath Al-Arabi, Beirut, Kitab Al-Luqata Hadith 1722, Part 3, p.1349.

<sup>6</sup>Al-Zaylami, op. cit. Part 3,3,3.

<sup>7</sup>Al-Shirbini, op. cit., Part 3, p.589.

<sup>8</sup>Al-Mawardi, op. cit., Part 8, p.12.

<sup>9</sup>Al-Kassani, 587H., op. cit., Part 6, p.202.



command of the imam; because a person is encouraged and inclined to do good and this is a manifestation of it.<sup>1</sup> Moreover, he shall announce it at the forums and meeting places in the country in which he found it, and in the markets, and at times in which they gather, such as after prayers in mosques;<sup>2</sup> because what is intended is to spread mention of it, to locate its owner, and so it is necessary to seek the gathering places of people, and not to emphasize the mosque; because the mosque was not built for this purpose. The Prophet (pbuh) said: ["If anyone hears a man inquiring in the mosque about something he has lost, he should say: 'La raddahaAllahu 'alaika (May Allah not restore it to you),' for mosques are not built for this purpose."]<sup>3</sup>

Umar God be pleased with him ordered the finder of Al-Luqata to announce it at the gate of the mosque,<sup>4</sup> and if it is in a desert then he shall announce it in the nearest urban area<sup>5</sup> and he shall announce at the location in which he found it and to do so repeatedly; because asking for the lost item at the location where it was found is greater.<sup>6</sup>

Hence, it is necessary for the finder to announce it at the location in which he found it, and to announce it where people congregate, and thus he commanded him to announce in the season; because what is intended is to convey it to the owner, such by announcement in the meeting place of people where he found it whereby people would discuss it between them, whereupon the news would reach the owner.<sup>7</sup>

### 9. Section Seven: How to announce and describe of Al-Luqata:

It is necessary to safeguard well its strap and the bag (containing), and its number and qualities. This is based on the Hadith of the Prophet (pbuh) narrated by Zeid Bin Khaled: [Recognize well the strap and the bag (containing)].

Moreover, its unit, dirhams or dinars should be announced, and their type, and in case it is raiment then its type should be announced; hence its amount, weight, or number or length should be announced.<sup>8</sup>

And where there is no strap or bag then he should suffice himself with mentioning the description, where it is probable that one who brings it is truthful as in the strap and the bag.<sup>9</sup>

It is necessary for the one announcing the lost and found item not to show it to anyone, or to designate it; and this is to prevent someone to claim and acquire it unrightfully.<sup>10</sup>

Moreover, he shall not describe its type; but rather shall merge its name with others, and say O one who has lost something; because if the type is mentioned then some of the clever people would guess its value, and so it is preferable not to mention the type or quality.<sup>11</sup>

As to the aspect of announcement his has in this regard two options: either to say, who has lost something, without describing it, and this is the better course of action. Or he may mention the type of the item by saying, who has lost dirhams, or who has lost dinars, and refrain from describing all its aspects in terms of number, weight. And mentioning strap or bag is of two facets: one of them is that there is no guarantee due upon him because they are not payable to the claimer based on the attribute until proof is established. And the second facet: guarantee is incumbent upon him, because perhaps the ruler deems that it is payable based on attribute, and so if he hears its announcement where he is not very honest he would hasten to claim it.<sup>12</sup>

And announcement shall be made at the start of the announcement year twice every day at the two times of the day, not by night, or at the time of the noon nap.<sup>13</sup>

I say: this is in the past by day rather than night, because this is their time of gathering, but in our period of time the social media is sufficient for announcement, for Facebook, WhatsApp, newspapers and other social media, and advertisements represent a wide space, and hence it is not necessary to adhere to the foregoing conditions set by the Fuqaha; and actually it is not necessary to meet people face to face, but it is actually sufficient to merely announce the lost and found time in a clear manner, thereby achieving the aim of revealing it and its description in an indubitable manner, coupled with indicating its contents, whereby its owner can identify it, given that this is the aim and purpose of announcement.

In olden times announcement was by mentioning the strap or bag, but in present times the mechanism of identification is different based on the different mechanism of preservation; where no one keeps his property in a strap or bag and cloth, given that wallets and handbags have replaced them, and hence the identification of

<sup>1</sup>Al-Abdari, Part 8, p.41. Al-Kharashi, op. cit. Part 7, p.124.

<sup>2</sup>Al-Mawardi, Part 8, p.13.

<sup>3</sup>Muslim, op. cit., *Al-Luqata Chapter on Prohibiting Declaring Losing an Item in the Mosque and what Does the One Hearing him Say*, Hadith 568, Part 1, p.397.

<sup>4</sup>IbnQudama, Part 6, p. 75.

<sup>5</sup>Al-Bahouti, op. cit., Part 2, p. 381.

<sup>6</sup>Al-Shirbini, op. cit., Part 3, p.588.

<sup>7</sup>Al-Sarakhsi, Al-Mabsout, Part 11, p. 7.

<sup>8</sup>IbnQudama, op. cit., Part 6, pp. 83-84.

<sup>9</sup>Al-Khurashi, op. cit., Part 7, p.121.

<sup>10</sup>Al-Abdari, op. cit., Part 8, p.43.

<sup>11</sup>Al-Khurashi, op. cit., Part 7, p.125.

<sup>12</sup>Al-Mawardi, op. cit., Part 8, p. 14.

<sup>13</sup>Al-Shirbini, op. cit., part 3, p. 589.

everything is according to the manner of keeping, and so what is important is to identify without doubt whereby the lost property reaches the owner to the exclusion of others, whereby there is no error or excess in announcement, given that announcement of all the descriptions of the lost items leads to their being claimed by other than their true owner.

And hence it is said one who has lost a sum of money at that particular location, or a gold bracelet without mentioning its remaining details, whereupon the remaining description must be provided by the claimer, so that if he provides the true description it shall be handed over to him.

#### 10. Section Eight: Availing of the Luqata After Announcement:

There is no difference insofar as the necessity of announcing the Luqata between whether the finder is rich, or poor, Muslim or an unbeliever, an upright or corrupt person who can honestly keep it; because gleaning is a form of gain.<sup>1</sup>

Malikis<sup>2</sup>, Shafiis<sup>3</sup>, and Hanbalis<sup>4</sup> hold the position that the gleaner, if one year period passes and there is no claimer then he has a choice, if he will he can keep the lost item, or give it in charity, or acquire it in possession even if he were a rich person, and they based their position on the following:

- The Hadith of the Prophet (pbuh): [make announcement of that for a year. If its owner comes (within this time return that to him), otherwise it is yours].<sup>5</sup>
- And in Al-Nissa`i the Prophet (pbuh) was asked about Al-luqata and said: [it must be announced and not be hidden then if he finds its owner he should return it to him, otherwise it is Allah's property which He gives to whom He will].<sup>6</sup>
- .. the Prophet said : Announce it for one year and if the owner does not make an appearance then avail of it.<sup>7</sup>
- The general idea of the Hadith of the Prophet (pbuh) concerning the person who find the Luqata is it is permissible to eat them and to own them which equalizes between the rich and the poor.
- Because any of the gleaners may eat and possess like the poor.
- Because what is established for the poor in gleaning also applies to the rich as in charity and rituals.
- Because all that the poor man accepts to perish on condition of guarantee such as the loan the rich man may accept on condition of guarantee, and so every use of the property of another in case of guarantee- the rich and poor are equal in this regard, such as availing of the property of another in case of necessity.
- Because he allowed himself to perish the property of another, and hence the applicable rule applies equally to the rich and poor.
- Because all that is availed of upon being desperate in finding the owner the rule equally applies to rich and poor as in Arrikaz (buried treasure).
- Because the situation of the Luqata in the possession of its finder is perhaps usurped and so must be taken prior and after its being due from the rich and poor, or the deposits whereby it is impermissible for the poor to possess them, not for a rich man to give them in charity, or where there is gain whereby it is permissible for the rich and poor to acquire in possession.<sup>8</sup>
- Because the Prophet (pbuh) did not differentiate, because it is acquisition of money for a compensation which is akin to sale<sup>9</sup>; and because gleaning is a form of gain.<sup>10</sup>

The Hanafis hold the position that if the gleaner is a needy person he may spend from it for his needs after announcement; because he is permitted to give from it charity to needy persons and thus the owner will be recompensed by Allah. Thus he is permitted to spend from it on himself due to this position<sup>11</sup>, but if he were rich then he is not permitted to avail of it, but can rather give from it in charity to a stranger, and this is permissible in

<sup>1</sup>Al-Bahouti, op. cit. Part 4, p. 224.

<sup>2</sup>Al-Abdari, op. cit., Part 8, p.40. Aleish, Mohammad Bin Ahmad Bin Mohammad, 1299 H., *Manh Al-JalilSharhMukhtasar Khalil*, Part 8, p.234.

<sup>3</sup>Al-Shafi`i, Abu Abdullah Mohammad Bin Idris, d. 204H., Al-Umm, Dar Al-Ma`rifah-Beirut, 1990A.D., Part 4, p. 70. Al-Mawardi, op. cit., *Al-Hawi Al-Kabir Fi FiqhMadhhab Al-Imam Al-Shafi`i* which is a commentary on the *Mukhtasar* of Al-Muzni, edited by Sheikh Ali Mohammad Mu`awwad- Sheikh Adel Ahmad Abdel Mawjud, Beirut -Lebanon, 1<sup>st</sup> ed., 1999 A.D., Part 8, p. 9.

<sup>4</sup>Al-Bahouti, op. cit. Part 4, p.224. IbnQudamah, Abu Mohammad MuwaffiqEddin Abdullah Bin Ahmad, 620 H., *Al-Kafi Fi Fiqh Al-Imam Ahmad Bin Hanbal*, Dar Al-Kutub Al-Ilmiyyah, 1<sup>st</sup> ed., 1994 A.D., Part 2, p. 198.

<sup>5</sup>Has been previously authenticated.

<sup>6</sup>Al-Nisa`i, Abu Abdel Rahman Ahmad Bin Shu`ayb Bin Ali Al-Khurasani, 303 H.,. edited by Hassan Abdel Mun`imShalabi, and supervised by: Shu`ayb Al-Arna`out with an introduction by Abdullah Bin Abdel Muhsin Al-Turki, Mu`assasat Al-Risalah-Beirut, 1<sup>st</sup> ed., 1, 2001 A.D., *Al-Sunan AL-Kubra*, H. 5777, Part 5, p. 344.

<sup>7</sup>Al-Mawardi, op. cit. Part 8, p.9.

<sup>8</sup>Ibid, Part 8, p. 10.

<sup>9</sup>IbnQudamah, *Al-Kafi Fi Fiqh Al-Imam Ahmad Bin Hanbal*, Part 2, p.198.

<sup>10</sup>Al-Bahouti, op. cit., Part 4, p. 224.

<sup>11</sup>Al-Sarakhsi, op. cit. Part 11, p. 7.

case his parents, wife and sons are poor.<sup>1</sup>

In case the period of announcement passed and the owner does not appear, where in case the man is well to do then it is impermissible for him to spend on himself, but rather shall give it in charity to the poor, and in case he was of meager means then he may give in charity to himself, and if he wishes he may give in charity to the poor, and if the owner shows up, he may allow the charitable act and for him is the recompense, and if he wishes he would take it back from the recipient of the charity, and if he wishes he shall guarantee the gleaned item, and in case it is something that quickly rots, then he shall announce it proportionately with what does not corrupt, and then gives in charity or spends on himself.<sup>2</sup>

They mustered the following evidences for their position:

- It is incumbent on him to preserve it and to give it back to the rightful owners, for Allah says in the Holy Quran: {Verily! Allah commands that you should render back the trusts to those, to whom they are due;} Quran (4: 58), such by handing it over when capable of doing so, and to give charity on his behalf if he can't give it back to the rightful owner, so that the same reward of giving it materializes.<sup>3</sup>
- It is the property of another and is hence impermissible to avail of it without his consent as in in the Quranic Ayah: {And eat up not one another's property unjustly (in any illegal way),} Quran (2: 188). However, it is permissible to benefit from it for the poor person by means of charitable giving given the saying of the Prophet (pbuh) "Then he should give it in charity", or based on consensus (ijma' a) where it is prohibited to avail of it, for if what legitimates it is poverty there is no difference between the poor finder gleaner, or his other relatives, or stranger, given that the aim is achieved, which is to give charity to the needy.<sup>4</sup>
- And because the aim is for the owner to avail of the recompense this aim is not achieved if he spends it on himself if he were rich, but rather it is clear that he was working for his own benefit and it is religiously impermissible for him to acquire the Luqata for himself.<sup>5</sup>

It is reported that the Prophet (pbuh) said: [Gleaning is not lawful, for one who gleans something must announce it, whereupon if its owner appears then he should return the property to him, and if does not appear then he should give it in charity,...]<sup>6</sup> And based on this we say: First: He denied permissibility absolutely, and the situation of poverty is not intended by consensus, and the situation of richness is designated; Second: he ordered to give charity, and the recipient of charity is the poor rather than the rich, and availing of the property of a Muslim without his permission is impermissible except in case of necessity, and there is no necessity in case he is rich.<sup>7</sup>

The plausible opinion on availing of Luqata.

The position of the Hanafis is the more plausible which holds that it is permissible to avail of the gleaned item for the poor and not the rich after lapse of the period of announcement due to the following reasons:

- As to the Hadith it does not contain an argument because the Prophet guides to preserving it, because this was his usual conduct concerning gleaned items, or there should be a reconciliation between the two Hadiths to avoid contradiction.<sup>8</sup>
- Because availing of it is subject to consideration given that it is guaranteed for the one that avails of it, and the one who returns it back to him, it will be kept in the hope to find of its owner.<sup>9</sup>
- It is possible due to his poverty and debts where it is permitted to avail of it and to include it in his property.<sup>10</sup>

## 11. Section Nine: Announcing the Small Amount:

The Muslim jurists have concurred that the small amount shall be announced, but they differed on the time of announcement; thus there are those that held that it should be announced for a year just as in the case of a large and significant amount, and some are of the view that the method of announcement is different from that which is of value.

<sup>1</sup>Al-Zayla'i, op. cit., *Tabyin Al-Haqa'eq*, Part 3, p.307.

<sup>2</sup>Al-Samarqandi, Mohammad Bin Ahmad Bin Abu Ahmad, Abu Baker Alaa Eddin Al-Samarqandi, 540 H., *Tuhfat Al-Fuqaha*, Dar Al-Kutub Al-Ilmiyyah, Beirut –Lebanon, 2<sup>nd</sup> ed., 1994, Part 3, p. 355.

<sup>3</sup>Al-Zayla'i, op. cit., *Tabyin Al-Haqa'eq*, Part 3, p. 304.

<sup>4</sup>Ibid, Part 3, p.304

<sup>5</sup>Al-Sarakhsi, op. cit. Part 11, p. 7.

<sup>6</sup>Authenticated by Al-Tabarani: Al-Tabarani, Abu Al-Qasem, Suleiman Bin Ahmad Bin Ayyoub Bin Muteir Al-Lakhmi Al-Shami, 360 H., *Mu'jam Al-Awsat*, edited by Tariq Bin Awadallah Bin Mohammad, Abdel Muhsin Bin Ibrahim Al-Husseini, Dar Al-Haramayn-Cairo, H. 2208, Part 2, p. 353.

<sup>7</sup>Al-Kassani, op. cit. Part 6, p. 202.

<sup>8</sup>Ibid, part 6, p. 202.

<sup>9</sup>Al-Zayla'i, *Tabyin Al-Haqa'eq Sharh Kanz Al-Daqa'eq Wa Hashiyat Al-Shalabi*, Al-Amiriyah Al-Kubra Printing press-Bulaq, Cairo, 1<sup>st</sup> ed., 1313 H., Part 3, p.301.

<sup>10</sup>Al-Sarakhsi, op. cit., Part 11, p. 6.

### Positions of the Fuqaha on this matter:

Malikis<sup>1</sup> and Hanafis<sup>2</sup> are of the position that the small amount need not be announced for a year, but shall be announced for a time where it is probable that the one losing it does not demand it, and they defined the small amount as not requiring the hand amputation of the thief, and some said: what is less than a dirham is a small amount, and what is less than a dinar is a small amount, and some said what does not push the owner to seek it is a small amount;<sup>3</sup>; and some have defined it by saying: the small amount is what is most likely that amount whose loser does not much regret losing, and most does not claim it for a prolonged period of time.<sup>4</sup>

The Shafi'is<sup>5</sup> have three opinions on the small amount: the first is that it is not announced because the one that lost it does not have much regret, and does not await it for a prolonged time; hence 'Aisha God be pleased with her said "It is permissible to benefit from what is less than a dirham" and the amount not necessitating amputation of the hand of the thief. The second: one announcement suffices. The third: it shall be announced for one year because of the generalization, and because the small and large amount is of equal import, which is the position of their school of Islamic law.<sup>6</sup>

The Hanbalis<sup>7</sup> hold the position that there is no difference between the small gleaned item and the large one except for the tiny amount such as the fruit and the piece of bread,, where it is permissible for it to be gleaned and availed of without announcement; as for the small amount it is announced just like the significant amount.

They responded to the majority through the following:

- The hadith of Zeid Bin Khaled is general concerning every luqata, and it should be kept in generality excepting the presence of a proof.
- There is no sacred text corroborating their position, nor insofar as the meaning of a text.
- Estimation and definition are not based on analogy (qiyas), but are rather extrapolated from a religious text or Ijma`a consensus, and what they state is not substantiated by either a religious text or an Ijma`a.
- As to the Hadith of Ali, it is weak, and was narrated by Abu Daoud who stated that all its lines of transmission are unsound. Moreover, it is inconsistent with their Madhab, and all the schools of Islamic law, .. However, it is permissible to glean what the Prophet (pbuh) mentioned in terms of the whip, the stick and the rope, and what is equivalent in value.<sup>8</sup>

I say: I agree with the Hanbalis insofar as that this estimation is not taken for granted and that it is different from one era to another, and what is of value to a person is of great value to another, for the criterion is variant and personal. Thus the need and the material situation are what determine the value of Al-Luqata for its owner. Moreover, things are of moral values transcending for some the material values. Hence, it is necessary to announce the Luqata for one whole year in case it is a small amount; validating for the gleaner to avail from it in case he were poor, or to give it in charity after the passage of one year if he were rich.

### 12. Section Ten: Evidence is a requirement for paying the Luqata to its owner.

The position of the Malikis<sup>9</sup> and Hanbalis<sup>10</sup> is that the lost and found item shall be given to its owner if he describes it; even if he does provide proof of this. Thus once the claimer of the Luqata describes it he must be given to him with its accruals regarding the Hawl of announcement; because it is a subset of it.<sup>11</sup> They religiously documented this position with the Hadith: {If someone comes and informs you about the number (of articles) of the bag and the straps, then give that to him}.

- Thus, proof was not mentioned in the Hadith, and if it were a condition for payment, it is impermeable to breach it, and without it payment is not ordained.
- If establishing proof for the Luqata is impossible, because it was lost in a state of forgetfulness and inattention, then ceasing to pay it thus preventing its reaching its owner is a forfeiture of the purpose of gleaning, and leads to the perishing of the properties of people, and this invalidates the proof such as is applicable to the expenditure on the orphan.
- Fusing this position and the favoring of gleaning over eschewing it entails extreme inconsistency; because in such case gleaning is a loss to the property of a Muslim indubitably, and an expending of effort without avail, and a forfeiture of religious obligation by virtue of eschewing the duty to announce it, and such is

<sup>1</sup>Al-Desouqi, Mohammad Bin Ahmad Bin 'Arafa, 1230 H., *Hashiyat Al-Desouqi 'Ala Al-Sharh Al-Kabir*, Dar El-Fikr, Part 4, p. 120.

<sup>2</sup>Sheikhi Zadeh, Abdel Rahman Bin Mohammad Bin Suleiman, 1078 H., *Majma' Al-Anhor Fi Sharh Multaqa Al-Abhur*, Dar Ihya'a Al-Turath, Part 1, p. 705.

<sup>3</sup>Al-Nawawi, *Rawdat Al-Talibin Wa 'Umdat Al-Mufteen* Part 5, p. 411.

<sup>4</sup>Al-Husayni, *Kifayat Al-Akhyar*, Part 1, p. 316.

<sup>5</sup>Al-Shirbini, op. cit., Part 3, p. 591. Al-Husayni ibid, Part 1, p. 316.

<sup>6</sup>Ibid. Part 3, p. 591.

<sup>7</sup>Ibn Qudamah, op. cit. Part 6, p. 77.

<sup>8</sup>Ibid, p. 77.

<sup>9</sup>Al-Abdari, Part 8, p. 36.

<sup>10</sup>Ibn Qudamah, op. cit., Part 6, p.84. Al-Bahouti, op. cit., Part 4, p. 220.

<sup>11</sup>Al-Bahouti, *Sharh Muntaha Al-Iradat*, Part 2, p. 383.

religiously prohibited, and so how could it be a favored course of action.

- In case it is not handed over based on description then it would be impermissible to glean given the Prophetic Hadith: [The proof is due from the claimant, and the oath is due from the one the claim is made against]<sup>1</sup>

The Prophet (pbuh) rendered the proof of the claimer of the lost and found item to be describing it, and so if he were to describe it then he shall have established proof.

- And comparing the Luqata to usurped property is unsound, and the statement of the disavower conflicts with his claim, and so proof is required, and in this context the property being a Luqata has been proven, and is owned by someone other than the person presently in possession of it, and the describer is the genuine owner, whose credibility is plausible, and so it must be returned back to him.<sup>2</sup>

And the Hanafis<sup>3</sup> and Shafi'is<sup>4</sup> hold the position that the Luqata is not given to its owner except based on proof, and Abu Hanifa said that if he so wishes he shall give to him and involve a guarantor.

“The one claiming a Luqata shall be given it in case he establishes proof, and so if he mentions signs in it then the gleaner may wish to believe him and to give it to him, and if he wishes he shall refrain until proof is established by him”<sup>5</sup> and if he so wishes he shall involve a guarantor; because payment is based on a sign as validated by the Shar'iah as is the case with the gleaner, but in that case he shall be compelled to pay, and in this case he is not compelled to do so.”<sup>6</sup>

They based their position upon the following:

- Because he is a claimant, and the burden of proof is upon the claimer based on the saying of the Prophet (pbuh) [The proof is due from the claimant,]
- The ownership is an intended right whereby it is incumbent on the usurper to guarantee to eliminate it, and it is not eliminated except based on evidence, and hence guarantee is incumbent on the usurper.
- And because possession is intended it is not due except based on evidence and a sign does not indicate such, nor possession; because a person may be in possession of the property of another. And he may be oblivious of his own property.. And the position narrated by the Shafi'is and Hanbalis is a reconciliation of narrated reports; because what may be intended is to consider it as permissible and this is my own position.<sup>7</sup>
- The Hadith of the Prophet (pbuh): [If its (that of the article) owner comes and he recognises the bag (which contained it) and its number, and the strap, then give that to them, but if not, then it is for you.”]<sup>8</sup>; and this is a command because it is evident that it is in his possession because rarely does a person know what is not in his possession, and if there is no one to claim it as property, it is then his own.<sup>9</sup>

### 13. Section Eleven: What is impermissible to glean, or to avail of it after gleaning.

It is impermissible to glean the stones of mills and huge cauldrons and large prince wood; because they are almost never lost from their owners, and they are fixed in their location, and they are more inviolable than stray animals, and a dog is not guaranteed we gleaning it is prohibited because it is not money or property.<sup>10</sup>

And excluded from property are matters that do not result in acquiring in possession.<sup>11</sup> Thus what is impermissible to borrow it is impermissible for it to be gleaned in the form of property.. And as though it is being said that what may be borrowed may be acquired as property; this is the rule of acquisition of property as relates to Luqata. Hence, it is impermissible to acquire as property the following, or to avail of or benefit from it, even if described and announced.

- What is not property and whose gleaning is prohibited such as a dog.
- Things where there is no concern that they may perish or be lost, such as real estate, fixed assets, the land that does not benefit people. It is impermissible to glean them.
- What entails forfeiture of rights, sustaining damages, financial and penal consequences for the owner of the lost and found item such as ATM cards, identification documents such as I.D., passport, family

<sup>1</sup>Authenticated by Tirmidhi: Al-Tirmidhi, Abu Issa Mohammad Bin Issa Bin Sawrah Bin Mousa Al-Dahhak, 279H., *Sunan Al-Tirmidhi*, edited and annotated by Ahmad Mohammad Shaker (parts 1,2), and Mohammad Fuad Abdel Baqi (part 3), and Ibrahim ArwahAwad the teacher at Al-Azhar (part 4,5) Printing press of Mustafa Al-Babi Al-Halabi –Egypt, 1<sup>st</sup> ed., 1975, H. 1341, Part 3, p. 618.

<sup>2</sup>*Al-Mughni*, IbnQudamah, Part 6, p. 85.

<sup>3</sup>Al-Samarqandi, Mohammad Bin Ahmad Bin Abi Ahmad, Abu Baker Alaa Eddin Al-Samarqandi, 540H., *Tuhfat Al-Fuqaha*, Dar Al-Kutub Al-Ilmiyyah, Beirut – Lebanon, 2<sup>nd</sup> ed., 1994, Part 3, p. 355. Al-Kassani, op.cit., Part 6, p. 202.

<sup>4</sup>Al-Shafi'i, op. cit., Part 4, p. 96.

<sup>5</sup>Al-Samarqandi, op. cit., Part 3, p. 355.

<sup>6</sup>Al-Kassani, op. cit., Part 6, p. 202.

<sup>7</sup>Al-Zayla'i, op. cit., *Tabyin Al-Haqa'eq*, Part 3, p.301.

<sup>8</sup>Previously authenticated.

<sup>9</sup>Al-Zayla'i, op. cit., Part 3, p. 306.

<sup>10</sup>Al-Bahouti, op. cit., Part 2, p. 378.

<sup>11</sup>Al-Shirbini, Shams Eddin, Mohammad Bin Ahmad AL-Khatib, op. cit., Part 3, p. 593.

register, credit cards, health insurance, employee I.D., university I.D., and flash memory.

#### 14. Conclusion

- The gleaner may not dispose of the lost and found item prior to announcing it.
- If the gleaner is poor it is permissible for him to benefit from it after the period of announcing the lost and found item expires.
- In case he is rich he may give it in charity provided the (Divine) recompense is for its owner, and he may give it in charity to any poor person, even if the latter is a relative.
- The rich may not avail of the lost and found item; in the sense that if the finder gives in charity the lost and found item then he may not give it in charity to a rich person, while the rich person may not avail of it.
- At the university numerous items are lost such as calculators, rulers, films and books, and sometimes raiment “shawls” and other items which the students need, and some of the administrative female employees to whom the lost items belong loan them to other students, after a period of time in case the owner does not show up. In this context, it is necessary to elucidate the rule in some **detail**:
- First: it is necessary to announce for one whole year whether the lost items are of value or are of little value.
- Second: Ascertain the situation of the benefiting person: is he well to do or is a poor person entitled to glean.
- Third: Ascertain that the lost item may be disposed of; because not all gleaned things may be availed and disposed of. For example, the I.D. card, library card, ATM cards.
- Fourth: Some items may be availed of through loaning and then returning whereby the benefit is widespread for the largest number of students, thereby serving the interests of the largest number possible, and the Divine recompense shall be obtained by the owner of the lost and found item.
- The Fuqaha have concurred on the necessity of announcing the lost and found item but they have differed on the period of announcement based on the value and importance of the lost and found item; whereby if the Luqata is of much and significant value, the majority of the Fuqaha have held the position that it shall be announced for one whole year, and the Hanafis provide details on the matter.
- And if it is of small value there have been disagreements between them where the majority of the Fuqaha hold the position that it shall not be announced for a year, but shall be announced for an amount of time whereby it becomes probable for the one missing the item not to demand it. On the other hand the Hanbalis are of the position that the rule regarding it is the same as the valuable items which shall be announced for one whole year which is the position that I find plausible and sound.

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