

Purchase of Seized Goods a Contemporary Jurisprudential Study: Supporting the National Economy to Achieve Sustainable Development

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Abstract: Global, international and local markets are known to seize a large number of goods, some of which are spoiled and destined for destruction, and some of which are safe and end up in the auction market. Traders pose several problems regarding participation in purchasing these goods seized by customs and the competent authorities. This research monitors a set of important provisions and controls.

The Kingdom of Saudi Arabia is distinguished in this sensitive aspect by seizing prohibited goods, unlicensed goods, or goods that have suffered a defect that harms public health, and they will either be destroyed or sold at auction to support the state treasury.

The research objectives were the most important:

1. Providing legitimate answers to the questions of merchants whose goods have been seized and who wish to participate in auctions in the hope of winning their goods again at reasonable prices.
2. Monitoring a group of miscellaneous provisions and controls related to this topic in one place.
3. Proving the ability of Sharia to find appropriate solutions to people's calamities in their lives.

This research concluded with a set of scientific results that we explained at the end of the research.

The research also concluded with a set of important recommendations listed at the end, which are relevant and related to the field of this research.

Keywords: Reservation, Auctions, Sale, Purchase

INTRODUCTION

All praise is due to Allah alone, and peace and blessings be upon the one after whom there is no prophet.

To Begin with:

The customs authorities and regulatory bodies, such as the Ministry of Commerce through its inspectors, play a crucial role in monitoring goods smuggled by traders across borders or through travel hubs such as airports, railway stations, ports, and other points of entry. The reasons for seizure vary and include: Failure of the smuggler to obtain an official licence to engage in trade; importing goods in quantities exceeding the legally permitted limit; trafficking counterfeit goods bearing trademarks of international commercial brands; and smuggling contraband within legally authorised goods, such as

hiding illicit substances like narcotics inside otherwise lawful shipments. While narcotics are seized for destruction, the remaining goods are typically directed to public commercial auctions. Each of these scenarios raises significant jurisprudential rulings and regulatory provisions that must be examined in detail.

RESEARCH PROBLEMS AND QUESTIONS:

This study seeks to answer a fundamental question:

What constitutes seized goods? From this primary question, several subsidiary questions emerge, all of which are closely linked to examining the legal and regulatory framework governing goods confiscated by the relevant authorities. This includes analysing the reasons for such seizures and their legal implications.

REASONS FOR SELECTING THE TOPIC:

The selection of this research topic is based on two primary considerations:

First: The pressing need to compile and analyse the various legal and regulatory provisions concerning commercial goods seized by competent authorities.

Second: The frequent inquiries from traders whose goods have been confiscated and are often put up for auction, prompting questions about the legal permissibility of participating in these auctions to repurchase their seized merchandise at favourable prices.

RESEARCH OBJECTIVES:

The primary objectives of this study are as follows:

1. To contribute to the research priorities of Najran University in the field of contemporary jurisprudential issues.
2. To provide clarity on the legal rulings and regulatory guidelines concerning seized goods.
3. To consolidate the dispersed legal and jurisprudential discussions on this subject into a single comprehensive study.
4. To demonstrate the ability of Islamic jurisprudence to address modern commercial challenges in light of its foundational principles.

LITERATURE REVIEW:

Following extensive research and meticulous verification by the researchers, within the scope of their sources, they found scattered excerpts from articles related to the subject and various fatwas. However, these do not rise to the level or comprehensiveness of this study.

RESEARCH METHODOLOGY

The nature of this research necessitated adopting an inductive-analytical approach, focusing on identifying the legal provisions and jurisprudential rulings pertaining to goods seized by the competent authorities for various reasons.

Research Structure and Procedures:

This study is structured as follows:

Introduction: Summarising the research topic, highlighting its significance, identifying the key issues and questions, explaining the reasons for its selection, outlining its objectives, reviewing the literature, and presenting the methodology and structure of the research.

Topic One: Clarification of the key terms in the research title.

Topic Two: Reasons for the seizure of commercial goods by the competent authorities.

Topic Three: Conditions of Reserved Goods and Their Rulings.

Topic Four: General key regulatory provisions.

Conclusion: Summarising the key findings and recommendations.

Index of Topics.

Index of Sources and References.

Topic One: Clarification of the Key Terms in the Research Title

The proposed title of this study is: "The Purchase of Seized Goods: A Contemporary Jurisprudential Study."

This necessitates clarifying the key terms forming the title.

- **Purchase (shirāʾ):** The term "purchase" (shirāʾ) is one of the antonymous words, meaning both to acquire a commodity in exchange for a price and to sell it in exchange for a price.

1. Linguistically, **purchase** (shirāʾ) is derived from the words *sharāʾ*, *Yashreehi*, *Shirr* with the verbal noun being *shirāʾ*, either shortened (*Qasr*) or lengthened (*Madd*). The lengthened form is commonly used in Hijazi Arabic, while the shortened form is typical in Najdi Arabic, and is the more frequently used form. The phrase *sharaytu al-matāʿ* means "I acquired the merchandise for a price" or "I sold it for a price"—hence its classification as an antonymous term (*Dhidd*). The rationale behind this dual meaning is that both the seller and the buyer engage in a reciprocal exchange involving the price and the commodity, making each item both a purchase in one context and a sale in another. [12][3]. However, the predominant usage refers to acquiring a commodity in exchange for a price, whereas delivering and transferring a commodity is considered a sale, and its use in the sense of purchase has become nearly obsolete.

Consequently, four elements are identified in the process of purchase: the seller, the buyer, the commodity, and the price. The seller exchanges his commodity with the buyer for a price, constituting an exchange wherein what is in hand is reciprocally transferred. This aligns with what Ibn Fāris, the linguist, noted—stating that the root (شرى) signifies an opposition between two parties in two matters, involving reciprocal taking and giving.[13]

2. **Commodities (As-silaʾ):** The plural form of commodity (*Silʾah*), which refers to goods. Some define it as anything traded in commerce.[6][3]

The latter definition is the intended one in this context. As for commodities privately owned by individuals and not placed for trade, they do not fall within the scope of this discussion. In the Qurʾān, it is stated: "And we have brought a meagre commodity." (*Yusuf*: 88). Al-Azhari commented: "Al-Biḍāʾa (commodity) refers to goods, and its origin lies in a portion of wealth intended for trade. The root of the term stems from (Badhʾ), which means cutting or a portion." [5]

3. **Reservation (Hajz):** Ibn Fāris stated: "The root letters (Ḥāʾ, Jīm, Zāʾ) convey a consistent meaning across Arabic usage, signifying separation between two things. This is evident in phrases like *Hajaztu bayna ar-rajulayni* (I separated between two men), meaning preventing one from reaching the other. Similarly, the region *Hijaz* was named as such because it acts as a barrier between *Najd* and *As-Sarāt*." [14] This indicates that *reservation* involves blocking or separating two entities, which is precisely what happens when merchants are prevented from accessing their confiscated goods. Thus, the jurisprudential definition of reservation is: "The confiscation of goods that violate trade regulations and laws."

Key Interpretations from the Above Definitions:

1. The sale and purchase process is central to this discussion. The seller violated trade regulations, leading to the reservation of their goods. The buyer participates in auctions intending to acquire the confiscated goods, which may, in some cases, be their own goods.
2. Goods owned privately but not intended for trade are excluded from state-controlled confiscation. Privately held goods are not subject to seizure and do not enter state auctions. However, owners may participate in auctions held by private entities that are independent of state-controlled auctions.
3. The reservation of goods is legally realised upon their confiscation by the competent authorities. Once goods are seized, they are no longer in the possession of their original owners. Ownership transfers to the state authorities responsible for enforcement.

Topic Two: Reasons for the seizure of commercial goods by the competent authorities

There are several reasons why competent authorities confiscate goods from their owners, the most significant of which are as follows:

1. The goods are prohibited for use, such as illicit substances, primarily narcotics, which are subject to destruction. In addition, the individual in possession of such goods faces punitive measures determined by the judiciary. These prohibited items are not eligible for auction under any circumstances.
2. The goods are permissible for use, but their owner lacks the required legal licence to conduct trade, particularly in matters of import and international commerce. In such cases, the individual may attempt to circumvent the law by offering bribes to corrupt customs officials to clear the goods. However, if the act is uncovered, the goods are confiscated and eventually sold at public auction.
3. The goods are lawful and their owner does not engage in commercial trade, but the individual, as a traveller, carries an amount exceeding the legally permitted customs limit. This results in the confiscation of the entire quantity, which is subsequently placed in a public auction.

Topic Three: Conditions of Reserved Goods and Their Rulings

Confiscated goods fall into the following categories:

First Case: Goods Prohibited for Use. These include: Alcoholic beverages and narcotics. Counterfeit goods bearing fraudulent commercial trademarks. Perishable or expired products, which are unfit for consumption or use. The rulings regarding these goods are as follows:

1. **Prohibition** – It is strictly forbidden for a Muslim to engage in commerce involving prohibited goods, as such transactions eradicate blessings, bring misfortune, cause societal harm, and spread corruption among the populace.

A'ishah (RA) narrated: "When the verses from Surah Al-Baqarah concerning usury were revealed, the Prophet (SAW) proceeded to the mosque, recited them to the people, and then prohibited the trade of alcohol." [8][9]

The narrations on this subject are well-known and established, including those that explicitly mention the curse upon alcohol, its consumer, server, seller, buyer, producer, transporter, recipient, and those who profit from it. This categorically prohibits any trade in alcoholic beverages and serves as definitive proof that such earnings are impure and unlawful. Any financial gains derived from alcohol—whether by states, institutions, or individuals—are considered a form of disgrace. The supposed economic benefits of alcohol trade do not outweigh the overwhelming societal harms it brings. Jurists have affirmed the principle that: "Preventing harm takes precedence over securing benefits." [11]

2. Punishment in the Hereafter: The divine punishments associated with engaging in prohibited trade serve as a severe deterrent for any Muslim contemplating involvement in such dealings. An example is the severe punishment prescribed for alcohol consumption, let alone for those who trade in it. Jabir

ibn Abdullah (RA) narrated that the Prophet (SAW) said:

"Every intoxicant is prohibited. Indeed, Allah the Almighty has pledged that whoever drinks intoxicants shall be made to drink from the filth of Hell." The companions asked: "O Messenger of Allah, what is the filth of Hell?" He replied: "The sweat of the inhabitants of Hell, or the discharge of its dwellers." [8]

3. Destruction of Prohibited Goods: Linguistically, the term destruction refers to ruin, annihilation, and complete eradication. [9]

In legal and religious terminology, it refers to the complete elimination of prohibited substances through methods that ensure their total eradication, leaving no trace behind.

The common method of destroying prohibited goods such as narcotics involves incineration in remote locations or in specialised furnaces. Dumping such materials into oceans and rivers is strictly forbidden due to the potential harm it may cause to marine life and the environment.

As for alcoholic beverages, they are typically poured out from their bottles into waste drainage systems, where their fermented content is completely discarded. The bottles themselves may then be reused after undergoing thorough washing, sterilisation, and the removal of all traces of alcohol. Alternatively, they may be melted down in furnaces and repurposed into glass containers of different shapes and forms, distinct from their previous use as alcohol bottles.

There are several evidences supporting the destruction of alcohol, including the historical account of Abu Talha (RA), who, upon learning of the prohibition of alcohol, instructed Anas ibn Malik (RA) as follows: "Go and pour it out." Anas reported: "I went out and poured it away, and it flowed through the streets of Madinah." [7][8]

And his statement: "through the streets of Madinah" refers to the fact that the city's streets were composed of mud and dust, making this comparable to disposing of alcohol in sewage systems today. This destruction of intoxicants is the legally prescribed method. As for the claim that alcohol should not be destroyed but rather left to undergo fermentation changes until the intoxicating properties vanish, this argument is weak from a jurisprudential perspective and serves as a means for Satan to tempt people back into consuming it.

Al-Nawawi stated: "These narrations indicate that alcohol does not become pure through fermentation. This is our view and the stance of the majority. However, Abu Hanifa permitted it. Furthermore, they also indicate that it is impermissible to retain alcohol, a position upon which the majority agree." [16]

It is important to emphasise that the destruction of prohibited materials must be supervised by qualified and trustworthy specialists, with the process conducted under proper oversight and monitoring. This is because some individuals may succumb to temptation and embezzle prohibited items such as a bag of narcotics or a bottle of alcohol, which constitutes a betrayal of trust and the consumption of illicit earnings.

As for counterfeit goods, they may be repurposed for charitable causes, such as donations to the poor, needy, and underprivileged. This takes precedence over their destruction, as those wearing them are not engaging in advertising or commercial promotion. It cannot be claimed that their use would harm the original trademark holders, since the benefit of clothing the poor outweighs any speculative and minor harm to these companies. The jurisprudential principle states: "A greater benefit should take precedence over a lesser harm." [11] Furthermore, destroying counterfeit clothing constitutes a waste of wealth, which is a greater harm than allowing the underprivileged to wear them. Particularly when trademark logos can be removed, transforming the garments into plain clothing with no identifying marks.

Second Case: The Goods Are Permissible for Use, but Their Owner Lacks a Legal Trade Licence. If the owner lacks a legal trade licence and relies on bribery to persuade a corrupt customs official to clear the goods, or if the individual imports a quantity exceeding the legal customs limit and attempts to smuggle them through customs, the goods are seized in full and entered into public auction. This

scenario is subject to several legal rulings, the most important of which are:

1. The Prohibition of Bribery: Bribery is defined by Al-Jurjani as: "That which is given to nullify a right or to establish a falsehood." [4] In this context, bribery occurs when the trader offers money despite lacking a legal trade licence, using the bribe to falsely legitimise their activity. Likewise, the corrupt customs officer, whose rightful earnings come from their official salary, accepts illicit money in secret to permit the trader's goods to pass unchecked. If not for the agreed bribe, the customs official would not have permitted the goods to enter without scrutiny.

2. The Reservation of Excess Quantities Beyond the Legal Limit: This commonly occurs with many travellers when one of them brings a quantity of goods that is not usually permitted for an ordinary traveller. The principle is that the competent authorities should allow the traveller to retain the quantity permitted by law and confiscate the excess, which is then auctioned. This constitutes fairness and justice. However, if the entire quantity is confiscated, this causes undue harm to the traveller. The perspective of the competent authorities is that complete reservation serves as a penalty to deter the recurrence of such conduct by those who engage in trade without holding a legal licence similar to that of authorised traders.

If a customs officer stipulates that the excess quantity be taken for personal benefit, this constitutes another form of bribery within this context, which is legally and religiously prohibited. Whether the customs officer secretly accepts money from the trader or unlawfully takes the excess quantity, both actions are equivalent in their financial characterisation.

It is noteworthy to mention a frequently occurring scenario wherein an ordinary traveller who does not hold a commercial licence brings a commodity that is necessary for personal use and is not prohibited under customs laws, yet a customs officer arbitrarily prevents its entry and directs its confiscation. In such a situation, is it permissible for the traveller to secretly pay a sum of money to the customs officer to retain possession of their essential commodity, thereby likening the customs officer to a highway robber who takes money in exchange for allowing a person to proceed safely with their belongings?

3. Participation in the Public Auctions of Seized Goods:

Customs authorities, in coordination with the judiciary, adopt the practice of reserving goods that violate legal regulations. The proceeds from these auctions are allocated to the state's public treasury. Prices are often reduced to expedite the clearance of goods accumulated in various customs warehouses. This raises the question among legally compliant traders regarding the permissibility of their participation in such auctions to acquire these goods at reduced prices, thereby securing considerable profits in the market. This concern is heightened by the awareness of the circumstances surrounding the goods, including potential arbitrariness and injustice in their reservation and confiscation, leading to a sense of legal and ethical hesitation.

Through empirical study, researchers have identified several scenarios relevant to this matter:

First Scenario: The reserved goods belong to institutions or individuals burdened with debts that have reached their due dates, leading to insolvency that prevents them from settling their obligations. The competent authorities, in coordination with the court, reserve and confiscate these goods, subsequently offering them for public auction. The proceeds from the sale do not enter the state treasury but are instead delivered to creditors who possess valid documentation substantiating their claims against the insolvent debtors. This practice falls under the category of legal reservation for the benefit of others, akin to the reservation of an insolvent debtor's assets for the benefit of their creditors. The majority of jurists—including Mālik[2], al-Shāfi'ī[17], and Aḥmad[15]—have sanctioned this practice, whereas Abū Ḥanīfa opposed it. However, his two leading students dissented from his opinion and aligned with the majority view, which is the position adopted in Ḥanafī fatwās[12][1].

The opinion of the majority is more sound, as it ensures that creditors receive their rightful dues and absolves debtors of their obligations through the reservation of their goods and their expedited sale in

public auctions.

Accordingly, the participation of traders in auctions where the goods of insolvent debtors are sold is legally permissible and poses no objection. This participation contributes to resolving the issue of accumulated debts on insolvent individuals. "What the court reserves from the equipment of debt-laden insolvent institutions, with the intention of settling creditors' claims against the indebted parties, is lawfully permissible to purchase from public auctions to preserve rights and restore justice." [10]

Second Scenario: The reserved goods belong to individuals who were unable to pay the legally imposed taxes under coercive measures, or they had goods that were arbitrarily confiscated by the competent authorities. These goods remain their rightful property, which was unlawfully taken from them. As such, they retain priority over them and are entitled to reclaim them. If these goods are offered in public auction, the original owners face one of two possibilities:

First: If the original owners explicitly consent to the participation of traders in purchasing their unjustly confiscated goods, such participation is entirely lawful. This consent renders the participation of traders in the auction permissible. It is preferable, particularly when prices are exceptionally low, for these traders to return the goods or their proceeds to their original owners or to assist them by covering part of the price. If the original owners are in dire need of their goods but are financially incapable of repurchasing them, zakat funds may be utilised in this case. A person obligated to pay zakat may contribute from their wealth by purchasing the goods at auction and returning them to their rightful owners, whose property was confiscated unjustly. In such a case, these original owners fall under the category of indebted individuals (al-ghārimīn) who were unable to settle the costs of their confiscated assets. However, if they are capable of repurchasing their goods at the reduced auction price, they have the primary right over them, superseding other bidders.

Second: If the original owners do not consent to the participation of traders in the public auction, then it is not permissible for traders to participate in order to acquire goods that have been unjustly confiscated from their rightful owners. However, an exception applies if the participation is solely for the purpose of acquiring the goods and returning them to their original owners or compensating them for their value out of goodwill and charitable assistance. In this case, there is no objection to traders paying two parties: first, the reserving authority, and second, the original owners of the confiscated goods. [10]

It is noteworthy that original owners whose goods were unjustly confiscated retain the right to file a legal claim to recover them. This requires providing a description of the goods, proof of their safekeeping, and supporting documents verifying ownership. Furthermore, documents attached to boarding passes or tickets may serve as valid proof of ownership in such matters.

Topic Four: General Key regulatory provisions

This research has identified several key regulations that summarise its most significant findings:

1. Any prohibited goods, such as narcotics, must be destroyed rather than sold at auction.
2. Any individual engaging in trade without a valid legal licence is subject to having their goods reserved and sold at auction.
3. The default principle in commerce is permissibility, and modern trade laws require obtaining official licences that safeguard the rights of traders.
4. Any amount of money secretly demanded by a customs officer in exchange for releasing a reserved item constitutes bribery and is an illicit practice aimed at legitimising an unlawful act.
5. Any express consent from the original owners of confiscated goods allowing traders to participate in the auction renders such participation lawful.

6. Any explicit refusal from the original owners prohibits traders from participating, unless their participation serves the interests of the rightful owners.

It may be appropriate in the coming periods to expand the use of technology to support this field (Ahmed, Alharbi, & Elfeky, 2022; Elbyaly & Elfeky, 2023a, 2023c, 2023e, 2023f, 2023g, 2023h, 2023i; A. Elfeky, 2017; A. I. M. Elfeky & Elbyaly, 2016, 2019, 2023a, 2023b, 2023c, 2023e, 2023f, 2023g; A. I. M. Elfeky, Najmi, & Elbyaly, 2023, 2024a, 2024b; Elfekyand, 2016; Masada, 2017; Masadeh & Elfeky, 2016).

RESEARCH FINDINGS:

- The reservation of goods is a well-established phenomenon in the commercial sector.
- The term "purchase" applies to both acquiring goods for a price and transferring them for a price. The former usage is predominant, while the latter is now rarely employed in this sense.
- The term "goods" refers to commodities or anything traded. The latter definition is the relevant one for this research.
- In Islamic jurisprudence, the reservation of goods refers to the confiscation of goods that violate trade regulations and laws.
- Privately owned goods that are not prepared for commercial trade do not fall under the jurisdiction of official reservation procedures and are not subject to auctions. However, the owner may participate in auctions conducted by private individuals or institutions unrelated to those held by the authorities responsible for the reservation.
- The reservation of goods is established once they are officially received by the competent authorities, upon which the ownership rights of the original owners are extinguished.
- The reasons for the reservation of goods by the competent authorities are numerous, and this research has identified three primary reasons.
- Reserved goods fall under the following categories:

First Case: Goods that are prohibited for use, counterfeit, spoiled, or expired. The legal rulings concerning these have been examined in the research.

- The legal and jurisprudential definition of destruction entails the complete elimination of the prohibited material by means that render it irrecoverable.
- The elimination process is generally conducted by incinerating the prohibited materials, such as narcotics, in remote locations or specialised incinerators. Disposal in oceans and rivers is strictly prohibited to prevent harm to aquatic life.
- The destruction of prohibited materials must be carried out by qualified, trustworthy professionals under official supervision and monitoring.
- Counterfeit goods may be utilised for charitable purposes, such as distribution to the poor, needy, and underprivileged, rather than being destroyed.

Second Case: The goods are legally permissible for use, but their owner does not hold a legal licence to engage in trade. Instead, they rely on bribing certain customs officials who lack integrity to secure the release of their goods. This case involves a set of legal rulings, which have been examined in this research.

- It is permissible to reserve goods belonging to bankrupt individuals who have outstanding debts. These goods are sold in public auctions, and the proceeds are allocated to creditors.
- This procedure falls under the legal framework of asset sequestration, which is imposed on an insolvent debtor for the benefit of creditors.

- If the reserved goods belong to individuals who were unable to pay the required taxes under coercion or if their goods were unjustly confiscated by the competent authorities, then these goods were unlawfully taken from their rightful owners, and they retain the primary right to reclaim them. If such goods are placed in a public auction, the original owners have two possible courses of action:

First Course of Action: The original owners grant permission for participants to purchase their unjustly confiscated goods in the auction, thereby ensuring that the participation of traders is with the full consent of the rightful owners.

- It is recommended that, if the prices are low, the traders return the goods or their value to the original owners, or contribute a portion of the price as an act of financial relief for them.
- If the original owners are in dire need of their goods and are unable to repurchase them, it is permissible to allocate obligatory charitable donations (zakat) for this purpose. In such a case, those liable for zakat may contribute funds in the auction to acquire the confiscated goods and then return them to their rightful owners, who were unjustly deprived of them.

Second Course of Action: If the original owners of the reserved goods do not consent to the participation of traders in the public auction, then it is impermissible for traders to take part in the auction with the intent of acquiring goods that were unjustly confiscated from their rightful owners.

- However, an exception is made if the participation is for the purpose of securing the goods and returning them to their rightful owners, or if the traders compensate the original owners for the goods as an act of goodwill and financial relief.
- The rightful owners of confiscated goods may file a legal claim to recover their property, which requires a precise description of the goods, securing evidence of ownership, and attaching supporting documents proving legal possession.
- There is no restriction on the original owners participating in the public auction to reclaim their goods at reasonable prices. They have priority over other buyers, except in cases where traders outbid them in the auction.
- The proceeds from the sale of reserved goods constitute a direct financial contribution to the state's treasury and economy.
- The Research Identified Six Key Legal Guidelines and Four Research Recommendations:

CONCLUSION

The researchers have identified a set of research recommendations, which are suitable for further study, as follows:

1. Archaic Terminology in Commercial Transactions and Its Obsolescence in Contemporary Usage.
2. The Legal Framework and Regulations Governing the Destruction of Prohibited Materials.
3. The Economic Impact of Nations Dependent on Alcohol Trade: A Jurisprudential and Economic Perspective on Utilising Grapes in Permissible Trade.
4. The Legal and Ethical Framework Governing the Taxation of Goods (Customs Duties).

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