

Can the Tailor Keep the Leftover Fabric?

Darulifta Ahlesunnat (Dawateislami)

Question

What do the noble scholars and jurists of Islamic law say about the following: I have been running my own tailoring shop for the past twenty years. Many people give me their clothes to tailor, and I sew them to their measurements. I show it to the customer, and they take it with satisfaction. Generally, there are only shavings or such small pieces of leftover fabric that aren't usable, nor does the customer ask about them; they only check their clothes and take them. So please provide Sharī'ah guidance about this: although people generally don't ask about the shavings, nor do they take them back, but if a customer says beforehand to return the shavings and even the smallest piece of leftover fabric, do I have to return it to them or can I keep it myself even though they told me to return it, as tailors generally keep it?

Furthermore, sometimes we receive an entire bolt of fabric from which I take some fabric and use to tailor the clothes according to the customer's measurements. Even then, some fabric is left over from the bolt, and it can be used. Must this be returned to the owner, or can I keep it myself for my own use? The bolt is usually small, and the customer asks if anything is left over or if the entire fabric was used. Please explain the ruling of both situations in detail.

Answer

In the inquired situation, you are allowed to keep the scraps from the fabric and the unusable small pieces of cloth due to 'urf; you do not have to inform every customer that there are leftover scraps from their fabric. But keep in mind that they must actually be scraps or such small pieces of cloth that are no longer usable. But if there is enough fabric that can be used, then it is necessary to return the fabric to the owner, and it cannot be kept without their permission. Furthermore, although customers generally don't take the scraps and non-useable pieces of fabric, nor do they ask about them, but if someone says that the scraps and the leftover fabric should be returned to them no matter how little or how much, then in this situation you must return the scraps and non-usable pieces of fabric to the owner. You are not allowed to keep the fabric claiming that it is allowed to keep because of 'urf. Similarly, if someone gave a bolt of fabric, and there are scraps as well as leftover pieces of fabric that can be used to make something, such as children's clothes, a shalwar, or a shirt, then it is necessary to return this fabric to the owner; you cannot keep it without the owner's permission. The reason for this is that the tailor is an ajīr mushtarak and anything people give to him is an amānah (safekeeping) in his possession, on which the ajīr (tailor) will exercise his expertise to prepare something. An ajīr mushtarak is only allowed to use the material to the extent allowed by the owner. After that, the remaining item must be returned to the original owner. Making further changes to the item without permission or keeping it for

oneself is a form of “unlawfully consuming others' wealth” and a sin. For this reason, the jurists have explicitly stated about tailors and cobblers that if a person gives a tailor or a cobbler a cloth or leather to prepare something and some cloth or leather is left over, it belongs to the owner. If one made changes to it without permission, they must pay tāwān (compensation). However, if there is explicit permission from the owner or implicit permission (e.g., through ‘urf), then the ajīr is permitted to keep the leftover item. But if the owner said to return the leftovers of his item, then the ajīr must return even the smallest remaining item (as explained above) because by explicitly saying this, the permission which was understood through ‘urf is revoked. Regarding the prohibition of unlawfully consuming other’s wealth, it is stated in The Noble Qur’ān:

﴿وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ﴾

Translation (Kanz-ul-‘Irfān): And do not consume the wealth of one another unjustly. (Part 2, Surah Al-Baqarah, Verse 188)

It is stated in Tafsīr Na‘īmī under this verse:

رشوت، غصب، لوٹ، چوری، جھوٹی قسمیں، جوا، کہانت، خیانت وغیرہ ناجائز پیشے، یہ سب باطل آمدنیاں ہیں: یعنی نہ تو تم اپنے مال غلط طرح خرچ کرو اور نہ آپس میں ایک دوسرے کا مال ناجائز طریقے سے حاصل کر کے استعمال کرو۔

Translation: Bribery, usurpation, looting, theft, false oaths, gambling, fortune telling, injustice, and all other impermissible jobs are invalid sources of earning. This means: neither spend your wealth in improper ways nor spend others’ wealth after attaining it through impermissible means. (Tafsīr Na‘īmī, Vol. 02, p. 232, Publ. Maktabah Islāmiyah, Lahore)

It is stated in the ḥadīth:

ان النبي صلى الله عليه وسلم قال: لا يحل مال امرء مسلم الا عن طيب نفس

Translation: The Prophet ﷺ said: It is not permissible to take the wealth of another Muslim without his permission. (Sunan al-Dār Qutnī, Ḥadīth No. 2886, Vol. 03, p. 424, Publ. Mu’assisah al-Risālah, Beirut)

It is stated in Radd al-Muḥtār:

لا يجوز لاحد من المسلمين اخذ مال احد بغير سبب شرعى

(Radd al-Muḥtār, Vol. 04, p. 61, Publ. Dār al-Fikr, Beirut)

Defining an ajīr mushtarak and the rule that the possession he holds is a safekeeping, it is stated in Tuḥfah al-Fuqahā’:

وهو نوعان استئجار الاجير المشترك والاجير الخاص الذى يسمى اجير الواحد فالاجير المشترك كاسمه الذى يتقبل الاعمال من الناس كالصباغ والقصار ونحوهما --- فاما الاجير المشترك تكون العين التى فى يده امانة ملخصاً

(Tuḥfah al-Fuqahā’, Vol. 02, p. 352, Publ. Dār al-Kutub al-‘Ilmiyah, Beirut)

The leftover cloth that the tailor has is also an amānah from the owner. Thus, it is stated in Jāmi‘ al-Fusūlain:

خاطه وفضل منه شيء فسرق ضمنه وكذا الاسكاف لو دفع إليه صرم ففضل منه شيء ضمنه إذا ثبت يده على مال الغير بلا إذنه إذا المالك إنما سلم إليه للقطع لا غير فإذا قطع يجب عليه رد الزيادة

(Jāmi‘ al-Fusūlain, Chapter 33 about the necessary liabilities, Vol. 02, p. 129, Publ. Karachi)

The Imām of Ahl as-Sunnah, Imām Aḥmad Razā Khān رحمۃ اللہ تعالیٰ علیہ was asked: there is a tailor who keeps the usable fabric from a suit and he makes caps out of it and sell them. Is it permissible to buy them or not? He replied:

(چونکہ اس صورت میں درزی کا وہ کپڑا ذاتی استعمال میں لانا غضب اور ناجائز ہے، اس لیے اس سے بنی ہوئی ٹوپی خریدنا بھی) ضرور معصیت و حرام ہے۔

Translation: Because it is theft and impermissible for the tailor to use the fabric for his own personal use, buying the caps made of it is certainly a sin and ḥarām.

(Fatāwā Razawiyyah, Vol. 23, p. 567, Publ. Raza Foundation, Lahore)

Permission can be granted due to ‘urf. Regarding this, the Imām of Ahl as-Sunnah رحمۃ اللہ تعالیٰ علیہ writes:

جبکہ مالک آب کی اجازت مطلقاً یا اس شخص خاص کیلئے صراحۃً خواہ دلالتاً ثابت ہو، صراحۃً یہ کہ اُس نے یہی کہہ کر سبیل لگائی ہو کہ جو چاہے پئے وضوء کرے،

نہائے۔۔۔ اور دلالتیوں کہ لوگ اس سے وضوء کرتے ہیں اور وہ منع نہیں کرتا یا سقایہ قدیم ہے اور ہمیشہ سے یوں ہی ہوتا چلا آیا ہے۔ لان المعروف

کالمشروط کما هو معروف فی مسائل لاتحصی۔

Translation: ...given that the owner of the Sabeel (water source) gave general permission or permission was granted to him explicitly or implicitly. Explicit permission means that he clearly stated when setting up the water source, “whoever wants can drink water from it, perform wudū, and even shower”... Implicit permission is when people perform wudū with it and he doesn’t stop them, or that it is an old water source and it has always been used in this manner, “because customs are like stipulated conditions. This is well known in many rulings.” (Fatāwā Razawiyah, Vol. 02, p. 481, Publ. Raza Foundation, Lahore)

The Imām of Ahl as-Sunnah رحمۃ اللہ تعالیٰ علیہ states regarding when there is explicitness against something understood through ‘urf:

المعروف کالمشروط قاعدہ کلیہ ہے، مگر جب صراحۃً معروف کی نفی کر دے، تو مشروط نہیں رہے گا۔ لان الصریح یفوق الدلالة کما فی الخانیة وغیرھا۔

Translation: “Customary practices are like stipulated conditions,” is a definitive principle. However, when custom practices are explicitly negated, they will not remain stipulated conditions “because something explicit takes precedence over something implied, as mentioned in al-Khāniyah, etc.” (Fatāwā Razawiyah, Vol. 09, p. 646, Publ. Raza Foundation, Lahore)

He also writes:

ان النفی الصریح یزیل حکم دلالة الحال فان الصریح یفوق الدلالة۔

Translation: An explicit negation eliminates the ruling established by situation-based indication because explicitness takes precedence over implication. (Fatāwā Razawiyah, Vol. 06, p. 640, Publ. Raza Foundation, Lahore)

It is stated in the booklet of Amīr of Ahl as-Sunnah, ‘Allāmah Maulānā Muḥammad Ilyās ‘Attār Qādrī دامت برکاتہم العالیة named “Darziyon Ke Bare Me Suwāl Jawāb”:

کپڑا سینے کے بعد جو کترن بچتی ہے، عام طور پر عرف یہی ہے کہ اس کو واپس نہیں لیا جاتا، تو اسے رکھنے میں حرج نہیں۔۔۔ اور جہاں لوگ واپس لیتے ہوں

وہاں واپس دینے پڑیں گے، ہاں گر مالک معلوم ہونے کے بعد کہتا ہے کہ ٹھیک ہے، ہمارا کام پورا ہو گیا ہے، اب جو بچا ہے وہ تم رکھ لو، تو اب پورا تھان

بھی بچ گیا اور آپ نے اجازت کے ساتھ رکھ لیا، تو کوئی حرج نہیں۔ ملخصاً

Translation: The ‘urf is that after stitching clothes, the leftover scraps are not taken back, hence there is no issue in keeping them. But wherever people take them back, they must be returned. However, if the owner says, “My work is done, so you can

keep the leftovers,” now, if the entire bolt of cloth is left and he keeps it with his permission, there is no issue. (Darziyon Ke Bare Me Suwāl Jawāb, p. 35, Publ. Maktaba-Tul-Madinah, Karachi)

وَاللّٰهُ اَعْلَمُ عَزَّوَجَلَّ وَرَسُولُهُ اَعْلَمُ صَلَّى اللّٰهُ تَعَالٰى عَلَيْهِ وَاٰلِهٖ وَسَلَّم

(Allah Almighty knows best and His Messenger صَلَّى اللّٰهُ عَلَيْهِ وَاٰلِهٖ وَسَلَّم knows best.)

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