141084 - Is it permissible to remove the bones of the deceased from the grave in order to bury someone else in it?

the question

We have two graves in which to bury our dead, and after their skin and bones have decayed, we dig it up and take out the bones and we put them in a dry well that is set aside for bones, then we bury another dead person in that grave, because there is not much space and we cannot expand it to add more graves because the land is restricted to two graves and one place for the bones.

Detailed answer

Praise be to Allah.

If the dead person is buried in the grave, he must be left until he has disintegrated and no trace of him is left. It is not permissible to exhume the grave and take out the bones of the deceased in order to bury another person in it; rather the deceased has more right to it until the remains have disintegrated.

Imam al-Shaafa'i said concerning the one who digs up the bones of the dead person: If the bones of the dead person are taken out, I prefer for them to be put back and buried. End quote.

Al-Umm, 1/316

Al-Nawawi (may Allah have mercy on him) said in al-Majmoo' (5/273):

With regard to exhuming a grave, it is not permissible unless there is a legitimate shar'i reason, according to the consensus of our companions.

It is permissible to exhume the grave if the deceased has disintegrated and become dust. In that case it is permissible to bury someone else in the grave, and it is permissible to cultivate the land

or build on it, and all other means of benefiting from it and disposing of it, according to the consensus of our companions, and if the land was something loaned, the lender may take it back. All of this applies if there is no trace left of the deceased, such as bones and so on. Our companions (may Allah have mercy on him) said: That differs from one country and land to another, and the opinion of experts should be followed. End quote.

Ibn Qudaamah said in al-Mughni (2/194):

If it is known for certain that the dead person has disintegrated and turned to dust, it is permissible to dig up his grave and bury someone else in it. If there is any doubt about that, reference should be made to the experts. If a person digs and find any bones in it, he should bury them and dig somewhere else. This was stated by Ahmad. End quote.

If no place can be found to bury the dead except by digging up a grave in which there is a dead body and burying people in it, that is permissible because it is a case of necessity. But in this case the person must be buried with him, and it is not permissible to remove the bones of the first deceased person from the grave.

It says in Tuhfat al-Muhtaaj (3/173):

It is haraam to put one dead person next to another, even if they are of the same gender, before the first one has completely disintegrated. It is haraam if there is no case of necessity, but in the case of necessity it is permissible as in the case of burying two people together in the grave at the same time in the case of necessity.

In al-Fataawa al-Fiqhiyyah al-Kubra (2/14) by Ibn Hajar al-Haytami (may Allah have mercy on him) it says:

When a grave is dug up either unlawfully or because it is thought that the deceased has disintegrated and there are no bones left in it, then bones are found in it, the soil must be returned and this is obligatory; and it is not permissible to bury anyone in it before the body [that is already in the grave] has disintegrated.

In al-Rawdah and elsewhere it says: It is haraam to dig up the grave of a dead person and bury someone else in it before the first one has disintegrated, as determined by the people of experience in that land. If it is dug up and any bones of the deceased are found in it before completing the digging, then the soil must be put back. If they are found after the digging is complete, they should be placed at the side of the grave and it is permissible to lay down the other person beside him because it is too difficult to lay him down without moving the bones. End quote.

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said:

If the first person has been buried and settled in his grave, then he has more right to it and in that case a second person should not be placed in the same grave as him, except in cases of extreme necessity. End quote.

Al-Sharh al-Mumti‘, 5/369

Shaykh Ibn Baaz (may Allah have mercy on him) was asked:

We have a place for the dead which is in the form of rooms below the ground. The dead person is placed in it, then after one year this grave is opened and another dead person is placed in it. Will the sinner be punished and will the doer of good be harmed in one grave?

He replied:

The Sunnah is to bury each person on his own if that is possible and if the land is big enough and it is possible to bury each person on his own. This is the Sunnah. The Prophet (blessings and peace of Allah be upon him) used to bury the dead in al-Baqee‘ (the cemetery of Madeenah) in this manner, each one on his own. But in the event of necessity if there is no room to do it any other way, there is nothing wrong with it, and each person will be called to account for his sins: the one who did good will be rewarded for his good deeds and the one who did bad will be requited for his bad deeds. “And no bearer of burdens shall bear another’s burden” [Faatir 35:18]. But whenever possible, what is prescribed is to bury each one on his own, and each grave should be separate,

and they should not be joined together in one place. End quote from the shaykh's website.

Based on this, what you have to do is work together to find a way to bury the dead in accordance with sharee'ah, by adding more places that are set aside for burial of the dead, so each deceased person will have a grave.

If that is not possible, then it is permissible to place a second person into the grave of another in the case of necessity, but the bones of the first person should not be removed from the grave; rather they should be put on the side and then the second person buried with him.

And Allah knows best.