

ANTIQUITIES ORDINANCE

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Chapter 5: ANTIQUITIES

An Ordinance to Provide for the Control
of Antiquities

(31st December, 1929)

Short title.

1. This Ordinance may be cited as the Antiquities Ordinance.

PART I. — INTERPRETATION.

Interpretation.

2. (1) In this Ordinance, unless the context otherwise requires—
“antiquity” includes an historical monument and means—
 - (a) any object, whether movable or immovable or a part of the soil, which has been constructed, shaped, inscribed, erected, excavated or otherwise produced or modified by human agency earlier than the year 1700 A.D., together with any part thereof which has at a later date been added, reconstructed or restored;
 - (b) human and animal remains of a date earlier than the year 600 A.D.; or
 - (c) any building or construction of a date later than the year 1700 A.D., which the Director may, by order,* declare to be an antiquity;

“Board” means the Archaeological Advisory Board established under section 23;

“dealer” means a person engaged in the business of buying and selling antiquities for the purpose of trade and “to deal in antiquities” means to engage in such business;

“Department” means the Department of Antiquities;

“Director” means the Director of the Department;

* For an order under this paragraph in relation to the town of Acre see Gazette No. 374.

“historical site” means an area which the Director reasonably believes to contain antiquities or to be associated with important historical events.

- (2) The decision of the Director whether any object is or is not an antiquity within the meaning of this Ordinance shall be final.

PART II. — DISCOVERY OF, AND PROPERTY IN, ANTIQUITIES.

Discovery of antiquities.

3. Any person who discovers an antiquity without being furnished with a licence to excavate in accordance with section 6 of this Ordinance shall forthwith give notice of his discovery to the nearest officer of the Department, or to the nearest district officer or assistant district officer, and shall take any other action that may be prescribed.

Property in antiquities.

4. (1) The High Commissioner¹ shall have the right to acquire on behalf of the Government, in accordance with the provisions of this Ordinance, any antiquity which may be discovered in Palestine² after the date of the commencement of this Ordinance, and, until such right has been renounced in accordance with the provisions of subsection (2), it shall continue to exist, and no person shall enjoy any right or interest in such antiquity by reason of his being the owner of the land in which the antiquity is discovered or being the finder of the antiquity; nor shall any such person be entitled to dispose of the antiquity; and any person to whom such antiquity is transferred shall have no right or property therein.

- (2) The Director may in writing renounce the right of the High Commissioner to acquire an antiquity under this section.

Compensation to finder for antiquities acquired by the High Commissioner.

5. (1) Save as provided in subsection (3), the right of the High Commissioner to acquire an antiquity under section 4 shall be subject to the payment to the finder of the value thereof.

- (2) Such value shall be fixed by agreement between the Director

1. The powers of the High Commissioner were transferred to the Provisional Government of Israel by Section 14(a) of the Administration and Law Ordinance, 5708—1948. These powers were vested in the Government of Israel by virtue of Section 12 of the Transition Law, 5709 — 1949. The powers under the Antiquities Ordinance were vested in the Minister of Education and Culture by virtue of a Government decision published in *Reshumot - Yalkut Hapirsumim*, No. 28 of 5709 — 1949, p. 576.

2. The word ‘Israel’ substitutes for the word ‘Palestine’ in all legal references as per Section 15 (a) of the Administration and Law Ordinance, 5708—1948. Likewise, the term ‘Palestine Archaeological Museum’ should be replaced by the Archaeological Museum of the Israel Department of Antiquities.

and the finder or, in default of agreement, by an arbitrator appointed by the Board, whose award shall be final.

- (3) The High Commissioner shall not be liable to pay the value of the antiquity to the finder if —
- (a) the discovery of the antiquity was made in contravention of any provision of this Ordinance; or
 - (b) the Director is of the opinion that the antiquity should be preserved in the place where it was found and includes the area within which it was found in the schedule of historical sites for which provision is made in section 17; or
 - (c) the antiquity is acquired as a result of a division made pursuant to section 8 (c) and section 11.

PART III. — EXCAVATIONS.

No search for antiquities except under licence.

6. No person shall dig or otherwise search for antiquities, whether on his own land or elsewhere, unless he has obtained a licence to excavate or to make soundings from the High Commissioner.

Persons to whom licences may be granted.

7. A licence to excavate shall be granted only to persons —
- (a) who are, in the opinion of the Director, prepared to expend on the excavations proposed a sum of money sufficient to secure a result satisfactory on archaeological grounds; and
 - (b) whose scientific competence is reasonably assured by the guarantees of learned societies or institutions, or in other ways, to the satisfaction of the Director:

Provided that no discrimination shall be made on the grounds of nationality or creed in the grant of a licence to excavate.

Conditions of licences.

8. In addition to any conditions which may be prescribed, every licence granted under this Part shall be subject to the following conditions —
- (a) if the land within which the licence is granted is private property, the holder of the licence shall arrange with the owner as to the terms upon which he may enter upon the land for purposes of excavation;
 - (b) the holder of the licence shall take all reasonable measures for the preservation of the antiquities discovered by him;
 - (c) at the close of the excavation or at such other times as the Director may require the holder of the licence shall afford an opportunity to the Director to divide, pursuant to section 11, the antiquities so found by exercising or

renouncing the right of the High Commissioner to acquire such antiquities;

- (d) the holder of the licence shall, within a reasonable time, deposit with the Director any photographs, casts, squeezes or other reproductions of objects falling to his share in such division which the Director may require;
- (e) the holder of the licence shall furnish plans of his excavations to the Director and shall, before the division takes place, furnish the Director with lists of all the antiquities discovered therein and any additional information relating thereto which the Director may require;
- (f) the holder of the licence, or the society or institution on whose behalf he acts, shall deposit with the Director two copies of any preliminary reports which he may publish relating to his excavations; and
- (g) the holder of the licence, or the society or institution on whose behalf he acts, shall produce, within a period of two years after the completion of his excavations (unless this period be extended by the Director), an adequate scientific publication of the results of his excavations and shall deposit two copies of such publication with the Director.

Suspension or
cancellation of
licence.

9. In case of breach of any of the conditions upon which a licence to excavate is granted, the Director may forthwith suspend or cancel such licence.

Compulsory
acquisition of land
comprised in licence.

10. (1) If in the opinion of the High Commissioner negotiations for the agreement referred to in section 8 (a) upon reasonable terms have failed, the High Commissioner may, on behalf and at the cost of the holder of the licence, expropriate the land in whole or in part or obtain compulsorily a lease thereof in accordance with the provisions of the Land (Expropriation) Ordinance.³
- (2) In assessing the compensation to be paid to the owner the court shall be guided by the value of neighbouring land of a similar character.

Division of
antiquities.

11. (1) In making the division referred to in section 8 (c), the Director shall acquire for the High Commissioner all antiquities which

3. This Ordinance was repealed and substituted by the Land (Acquisition for Public Purposes) Ordinance, 1943.

are in his opinion indispensable for the scientific completeness of the Palestine Archaeological Museum or for the purpose of illustrating the history of art of Palestine.

- (2) He shall then make a division of the remaining antiquities aiming as far as possible at giving the holder of the licence a fair share of the results of the excavation.
- (3) In order to make such a division possible, the Director may supplement the share of the holder of the licence by objects which are the property of the Government.
- (4) If such division is in the opinion of the Director impossible, the holder of the licence shall be granted such compensation as the Director, with the approval of the High Commissioner, may determine.
- (5) The cost of transport to the Palestine Archaeological Museum of any antiquity which the High Commissioner may acquire in such division shall be borne by public funds.

PART IV. — EXPORTATION OF ANTIQUITIES.

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| Prohibition of exportation of antiquities except under licence. | 12. | No person shall export from Palestine any antiquity unless he has obtained a licence to export the same from the Director. |
| Exemptions from licence fees. | 13. | No fee shall be charged on a licence to export in respect of —
(a) antiquities purchased or exchanged under section 26;
(b) antiquities renounced by the Director in favour of, or granted to, a person holding a licence to excavate;
(c) antiquities which the Director is satisfied were imported into Palestine subsequent to the thirty-first day of December, 1900;
(d) antiquities loaned as provided in section 27;
(e) antiquities which are proved to the satisfaction of the Director to be of religious use or devoted to a religious purpose and to be the property of a religious or ecclesiastical body. |
| Production of antiquity. | 14. | Any applicant for a licence to export an antiquity shall, if required by the Director, deposit such antiquity with the Director for the purpose of inspection, declare the value thereof and furnish any other particulars which the Director may require. |
| Production of licence. | 15. | A licence to export antiquities shall be produced by the holder to the Palestine Customs on demand. |

Power of Director to prohibit export of antiquities.

16. The Director may prohibit the exportation from Palestine of any antiquity the retention of which in Palestine he considers to be necessary in the public interest:

Provided that he shall not prohibit the exportation of —

- (a) antiquities which the Director is satisfied were imported into Palestine subsequent to the thirty-first day of December, 1900;
- (b) any antiquity of religious use or devoted to a religious purpose which is being exported by a religious or ecclesiastical body for a religious or ecclesiastical purpose.

PART V. — HISTORICAL MONUMENTS AND SITES.

Schedule of historical monuments and sites.

17. (1) The Director shall publish in the Gazette a schedule of historical monuments and historical sites⁴ and may, from time to time, make additions or amendments thereto:

Provided that until such time as the Director shall exercise the power hereby conferred upon him, the Provisional Schedule of Historical Sites and Monuments, dated the fifteenth day of June, 1929, and published in the Gazette Extraordinary of that date shall be deemed to be a schedule of historical monuments and historical sites duly published by the Director hereunder.

- (2) Copies of the relevant parts of the schedule shall be available for inspection in every District Office and Police Station in the subdistrict in which an historical monument or historical site is situated.
- (3) The Director shall have the power to determine the limits of an historical site.

Acts prohibited in regard to historical monuments and sites.

18. No person shall —

- (a) dig to a depth of more than one metre upon any historical site included in a schedule so published or any addition to or amendment of such schedule, unless he has obtained permission from the Director to do so;
- (b) excavate, build, plant trees, quarry, irrigate, burn lime or do similar work or deposit earth or refuse, on or in the immediate neighbourhood of an historical monument or site, or establish a cemetery on an historical site, without the permission of the Director;

4. The schedule was published in Suppl. No. 2 to the Palestine Gazette Extraordinary No. 1375 of 24th November, 1944 and has since been added to from time to time.

Care of historical monuments and sites.

- (c) demolish an historical monument or pull down or remove any part thereof, without the permission of the Director;
- (d) make alterations, additions or repairs to any historical monument, without the permission of the Director;
- (e) erect buildings or walls abutting upon an historical monument, without the permission of the Director:

Provided that paragraphs (d) and (e) shall not apply to historical monuments of religious use or devoted to a religious purpose which are the property of a religious or ecclesiastical body.

19. (1) Where any historical monument or historical site is registered in the land registers as private property, the Director may —
- (a) make arrangements with the owner for its preservation, inspection and maintenance and may make a contribution from public funds towards the cost of carrying out any works of repair or conservation which he deems necessary and which the owner may be willing to undertake:

Provided that where the Director so contributes towards the cost of carrying out such works they shall be performed subject to any conditions which he may impose; or

- (b) purchase or lease the site by private treaty; or
- (c) acquire the site or obtain compulsorily a lease thereof in accordance with the provisions of the Land (Expropriation) Ordinance;⁵ or
- (d) in the case of an historical monument, remove the whole or any part thereof, making good any damage done to the site or to buildings thereon by such removal and paying compensation therefore:

Provided that the amount of such compensation shall be fixed by agreement or, in the case of dispute, by an arbitrator appointed by the Chief Justice; and

Provided that paragraphs (c) and (d) shall not apply to sites or historical monuments of religious use or devoted to a religious purpose which are the property of a religious or ecclesiastical body.

- (2) Where the Director considers that it would be advantageous that a society or institution should undertake the maintenance or conservation of an historical monument or site, he may grant to the society or institution a licence to maintain or conserve such monument or site on such terms and conditions,

5. See above, n. 3.

including provision for the charge of a fee for admission thereto, as may be agreed:

Provided that, if the monument or site is wholly or partially private property, the powers bestowed upon the society or institution shall not exceed those bestowed herein upon the Director.

(3) In case of breach of any of the terms or conditions imposed in a licence granted under the preceding sub-section, the Director may forthwith suspend or cancel such licence.

Registration of
unregistered
historical sites.

20. Where an historical site is not registered in the land registers as private property, it may be registered at any time in the name of the High Commissioner if in the opinion of the Director such registration is necessary on archaeological grounds:

Provided that the person claiming to be the owner thereof may, subject to the provisions of the Land (Settlement of Title) Ordinance, institute proceedings at any time for the rectification of the register; and

Provided further that this section shall not apply to historical sites of religious use or devoted to a religious purpose which are the property of a religious or ecclesiastical body.

Inspection of
historical sites.

21. The owner of an historical site shall at all reasonable times permit any officer of the Department, and any other person on behalf of the Director, to enter upon the site to inspect and study the monuments and to make drawings, photographs or reproductions thereof by the making of casts or by any other method, and to carry out any necessary work for the maintenance or conservation thereof.

PART VI. — PENALTIES.

Penalties.

22. (1) Any person who, being the finder of any antiquity, fails to report the antiquity or to take action to protect it or to state the circumstances of the discovery or the origin of the antiquity, or wilfully makes a false statement of such circumstances or such origin, is guilty of an offence and is liable to imprisonment for one month or a fine of twenty pounds.

(2) Any person who fails to give reasonable facilities to an officer of the Government to inspect, copy or study an antiquity, where the duty to give such facilities is imposed under this Ordinance, is guilty of an offence and is liable to a fine of twenty pounds.

(3) Any person who, not being the holder of a licence to excavate granted under section 6, digs for antiquities or demolishes

+ amendment
imprisonment for a term
of 30,000 and fine

- any ancient walls or other structures or objects which are antiquities within the meaning of this Ordinance, whether above or below the ground, even though these acts are done upon land of which he is the owner, is guilty of an offence and is liable to a fine of two hundred pounds.
- (4) Any person who, not being the holder of a licence to export granted under section 12, exports or attempts to export any antiquity is guilty of an offence and is liable to imprisonment for six months or a fine of one hundred pounds or both such penalties.
 - (5) Any person who exports or attempts to export an antiquity of which the exportation has been prohibited in accordance with section 16 is guilty of an offence and is liable to imprisonment for six months or a fine of one thousand pounds or the value of the antiquity whichever is the greater sum.
 - (6) Any person who commits an offence against any of the provisions of section 18 is guilty of an offence and is liable to a fine of two hundred pounds.
 - (7) Any person who, not being the holder of a licence granted under section 25, deals in antiquities is guilty of an offence and is liable to imprisonment for six months or a fine of one hundred pounds or both such penalties.
 - (8) Any person who maliciously or negligently destroys, injures, defaces or disfigures any antiquity is guilty of an offence and is liable to imprisonment for twelve months or a fine of one hundred pounds or both such penalties.
 - (9) Any person who wilfully deceives or attempts to deceive a purchaser or any officer of the Government by any description, statement or other indication as to the genuineness or antiquity of any object of archaeological interest is guilty of an offence and is liable to imprisonment for one year or a fine of one hundred pounds or both such penalties.

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PART VII. — MISCELLANEOUS.

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| Advisory Board. | 23. (1) There shall be established an Archaeological Advisory Board, consisting of representatives of the public and representatives of the Government. The Board shall be composed and act in accordance with rules made under section 30.
(2) The Director shall not be bound by the advice of the Board. |
| Right to inspect antiquities. | 24. Every person in possession of an antiquity shall, at the request of the Director, permit the same to be inspected and studied at |

- all reasonable times by an officer of the Department or other person on his behalf, and shall give to him all reasonable facilities to make drawings, photographs or reproductions thereof by the making of casts or by any other means: Provided that any such drawings, photographs or reproductions shall not be sold without the consent of the person in possession of the antiquity.
- Dealers. 25. 1- No person shall deal in antiquities unless he is in possession of a dealer's licence granted by the Director.
- Authorisation for sale or exchange of Government antiquities. 26. The High Commissioner may authorise the sale or exchange of antiquities which are the property of the Government and, in the opinion of the Director, are not required for the Palestine Archaeological Museum.
- Loan of Government antiquities. 27. (1) The Director, with the approval of the High Commissioner, may make loans to learned societies, educational institutions or bodies, or museums, of any antiquities which are the property of the Government, and may authorise the exportation of such antiquities from Palestine for the purpose.
(2) An agreement for a loan under the preceding subsection shall contain adequate provisions for the preservation, assurance and return of the antiquities by and at the cost of the learned society, educational institution or body or museum to whom the antiquities are lent.
- Reciprocity as to importation of antiquities from neighbouring territories. 28. (1) Where it appears that adequate provision is made by the law of any neighbouring territory to prevent the importation of antiquities from Palestine otherwise than under licence of the Department, the High Commissioner may issue an order forbidding the import of antiquities from such territory into Palestine otherwise than under a licence granted by the Department of Antiquities in that territory.
(2) Any antiquities seized on account of the contravention of such an order shall be returned to the Government of the territory from which the importation has been attempted.
- Delegation of powers. 29. The Director may, with the approval of the High Commissioner, delegate the exercise of any powers possessed by him under this Ordinance to any other officer of the Department.

PART VIII. — RULES.

- Rules. 30. The High Commissioner may make rules —
(a) excluding any class of antiquities from the operation of this

- Ordinance or any part thereof;
- (b) determining the composition of the Board, the term of office of the members representing the public, the procedure of the Board and the matters to be referred to it by the Director for consideration and expression of opinion;
 - (c) determining the conditions upon which licences to excavate shall be granted;
 - (d) determining the conditions upon which licences may be granted to, and held by, dealers and prescribing the fees to be paid therefor;
 - (e) governing the grant of licences to export antiquities and, subject to the provisions of section 13, the fees to be paid therefor; and
 - (f) generally, for giving effect to this Ordinance.