

Jurisprudential Rulings Pertaining To Exhumation Of A Corpse After Burial (Health Awareness And Preservation Of The Rights Of The Deceased): Examples Of Efforts By The Kingdom Of Saudi Arabia

Jamal Lakhdar Hammoud Azzoun¹, Abdulhadi Hussein Hadi Al-Quray², Jabir Mohammed Jabir Al-Shehri³

^{1, 2, 3} Department of Sharia, College of Sharia, Najran University, Kingdom of Saudi Arabia

¹Email ID: jlazoune@nu.edu.sa,

²Email ID: aaa343ssss65@gmail.com

³Email ID: Jaber.omr@gmail.com

¹<https://orcid.org/0009-0008-7464-8930>

Cite this paper as: Jamal Lakhdar Hammoud Azzoun, Abdulhadi Hussein Hadi Al-Quray, Jabir Mohammed Jabir Al-Shehri, (2025) Jurisprudential Rulings Pertaining To Exhumation Of A Corpse After Burial (Health Awareness And Preservation Of The Rights Of The Deceased): Examples Of Efforts By The Kingdom Of Saudi Arabia. *Journal of Neonatal Surgery*, 14 (4), 113-120.

ABSTRACT

The legally established principle is that if a person has been buried and buried, it is not permissible to remove him from the grave because it is a form of dishonor, and the honor of the dead is to bury him, but sometimes there is a criminal suspicion, so the competent authorities issue a permit to remove the body in order to conduct a forensic autopsy, or he is buried with the dead person based on his will, valuable money that his heirs are more deserving of, which necessitates removing this money, and other justifications mentioned by jurists, both ancient and modern, and what is buried from this money is considered an essential element in the economic life of the heirs, and they are more deserving of it.

The objectives of the research were represented in the following matters, the most important of which are:

- 1 - Providing legal answers to questions related to removing the body of the dead after burial.
- 2 - Monitoring a group of scattered rulings related to this topic in one place.
- 3 - Proving the ability of Sharia to find appropriate solutions to people's problems in their lives.

The research concluded with a group of scientific results that we explained at the end.

It also concluded with a set of important recommendations listed at the end, which are related and connected to the scope of this research.

Keywords: *Burial - Exhumation - Autopsy - Criminal suspicion*

1. INTRODUCTION

Praise be to Allah alone, and prayers and peace be upon the one after whom there is no prophet.

To begin with:

Sharia law has guaranteed the deceased their rights concerning cleansing, washing, shrouding, perfuming, performing funeral prayers over them, and ensuring their burial in an appropriately deep grave, which might be either a vertical pit or a lateral niche. Among the purposes of ensuring sufficient grave depth is to prevent predatory animals from reaching the corpse. Furthermore, the connection between the deceased and the living, particularly relatives, continues through prayers for the deceased and periodic inspection of the grave to remove weeds, thorns, and plants that may have grown upon it, as well as levelling the grave in cases where soil erosion occurs due to rainfall. All of these, among other rights, are secured for the deceased by Sharia, including the prohibition of opening their grave and uncovering their body except under conditions of absolute necessity dictated by circumstances. This clearly highlights the utmost importance of the present research, as it explicitly demonstrates one of the essential rights of the deceased—namely, to be left undisturbed in their grave as buried, without interference, except when justified by recognised Sharia grounds.

2. RESEARCH PROBLEMS AND QUESTIONS

This research addresses one fundamental question: What is meant by exhuming a corpse after burial? This core question leads to several subsidiary enquiries closely connected to identifying various rulings and regulations related to it.

3. REASONS FOR SELECTING THE TOPIC

The reasons for choosing this topic can be summarised in two points:

Firstly: The desire to document various rulings and regulations concerning the exhumation of corpses after their burial has been completed.

Secondly: The existence of queries regarding the legal ruling of such exhumation, as well as clarifying its rules and etiquette.

4. RESEARCH OBJECTIVES

It can be stated that the most important objectives aimed at by this research are as follows:

1. Supporting the research orientation of Najran University in the field of contemporary jurisprudential issues.
2. Contributing, through this research, to disseminating the jurisprudential rulings and regulations concerning the rights of the deceased.
3. Compiling scattered issues relevant to this research into one place.
4. Demonstrating the capability of Sharia law to address people's issues in light of its original jurisprudential principles.

5. LITERATURE REVIEW

After careful and thorough investigation by the researchers, and within the scope of their available sources, they found only scattered articles and miscellaneous fatwas relevant to the topic, which do not rise to the level required by this research specifically dedicated to clarifying the justifications for the exhumation of corpses after burial and elucidating several related rulings.

6. RESEARCH METHODOLOGY

The nature of this research required adopting an inductive-analytical methodology, focused on identifying regulations, rulings, and justifications related to exhuming corpses after burial.

7. RESEARCH STRUCTURE AND PROCEDURES

The research consists of an introductory introduction, four topics, a conclusion, recommendations, and an index of sources and references, organised as follows:

Introduction: summarising the research idea, highlighting its importance, problems and questions, reasons for its selection, objectives, literature review, methodology, and structure.

Topic One: The Meaning of Exhuming a Corpse after Burial

It is evident from the context of the title that the intended meaning is performing an excavation, digging, and exploration at a precisely defined location in order to retrieve a corpse that has been buried and interred following the procedures of washing, shrouding, and funeral prayer. Such exhumation necessarily involves removing the corpse from the grave and placing it securely in a mortuary refrigerator under the supervision of competent governmental authorities, such as the police, in coordination with the court and public prosecution. This exhumation is temporary and is followed by reburial in the same grave or in another grave if the original grave has since been occupied by another deceased person's corpse. This exhumation is not arbitrary, but rather based on recognised Sharia justifications, which shall be discussed in the following topic.

Topic Two: Justifications for Exhuming a Corpse from the Grave after Burial

The fundamental principle regarding a corpse that has been buried and interred is that it should not be subjected to exhumation. Leaving the body concealed within its grave is a right guaranteed by Sharia. Any person who disturbs it without a recognised Sharia justification falls under the category of grave robbers who are tempted by Satan to desecrate graves either out of greed for valuable shrouds or to perform malicious witchcraft using body parts of the deceased, among other forms of grave desecration outlined by jurists regarding aggressive grave robbers.

Al-Mazari stated: "Completion of burial prevents exhumation of the deceased".¹

This view represents near-unanimity among jurists. Ibn al-Hajj al-Maliki thus stated:

"The scholars, may Allah have mercy upon them, have agreed that the place in which a Muslim is buried becomes an

¹ Sharh al-Talqeen, Al-Mazari, 1/1198.

endowment dedicated to that deceased as long as any part of the body remains until it completely disintegrates. Only once it has completely decomposed may another body be buried therein. If any of the bones remain, the sanctity remains intact, just as if the whole body were present, and it is unanimously forbidden to dig there, to bury another person alongside, or to uncover the grave unless the burial place was unlawfully taken. The wisdom behind prohibiting the uncovering is the fear that the state of the deceased might have changed from its original form, thus jurists prohibited this to preserve the deceased's dignity. Allah Almighty has bestowed His favour upon us in His Book, stating: 'Have We not made the earth a receptacle for the living and the dead?' [Al-Mursalat: 25–26]. Thus, concealment in life pertains to covering one's private parts, and in death, it relates to concealing the decay and altered condition of corpses. Constructing structures upon graves has become a cause for breaching this consensus and violating the sanctity of Muslim graves through excavation and uncovering their remains"².

Since this fundamental principle is established by the unanimous agreement of jurists, it must not be contravened except by a recognised and acceptable Sharia justification. There are several justifications in this regard, the most important of which are as follows:

First Justification: Forgetting To Perform Funeral Prayer over the Deceased

If the deceased has been buried, and those performing the burial have either forgotten or inadvertently neglected to perform the funeral prayer, or omitted it out of ignorance, is it obligatory to exhume the corpse from its grave to perform the prayer, or is it sufficient for worshippers to perform the prayer directly over the grave without removing the corpse? Alternatively, should supplications alone be made for the deceased before the supplicants disperse?

The jurists differed on this issue as follows:

1. According to the Hanafi school, if the deceased has been buried without the funeral prayer being performed, the prayer should be offered at the graveside provided that no more than three days have elapsed. Al-Marghinani, in his book *Al-Hidayah*, restricted this ruling to cases where the corpse had not yet decomposed, without strictly limiting it to three days. Instead, he indicated that the determining factor is the condition of the corpse, varying according to circumstances, time, and place. Decomposition rates differ according to the deceased's physical condition—whether fat or thin—as well as climatic conditions such as heat or cold, and the nature of the burial site, whether the earth is firm or soft. Thus, if in their judgement the corpse had decomposed before three days, they would not offer prayer over it. Moreover, if the deceased was buried after the funeral prayer was performed, and it was later realised that the body had not been washed, then if soil had not yet been placed upon the corpse, they would remove it from the grave, wash it, and repeat the funeral prayer. However, if soil had already been placed over it, they would not exhume the corpse but would repeat the prayer at the grave as a preferable measure (*istihsan*).

This is because the initial prayer is considered invalid due to the omission of purification (washing) despite its availability at the time; now, since purification is impossible, the obligation of washing ceases.³

2. The Maliki school holds that the funeral prayer is performed at the grave, which is the view of Ibn al-Qasim and Ibn Wahb. However, Ashhab and Sahnun held the view that prayer should not be performed. The prevailing Maliki position is the first view, as summarised by Khalil in his *Mukhtasar*⁴. It has been reported from Malik that they neither perform prayer nor exhume the deceased, but instead offer supplications and then disperse.⁵

Ibn Rushd elaborated on the Maliki school's position concerning this issue:

"The jurists differed regarding a person who was buried without funeral prayer having been performed. It was said that the corpse should be exhumed and the prayer performed over it unless the opportunity had elapsed; if the opportunity had elapsed, the prayer should then be performed over the grave itself. This is the view of Ibn al-Qasim and Ibn Wahb. It was also said that the corpse should be exhumed unless the opportunity had passed, in which case it should neither be exhumed nor prayed over at the grave, so as not to open the door to praying at graves. This is the view of Ashhab and Sahnun, and similarly stated in Malik's *Al-Mabsut*. Jurists disagreed on what constitutes 'the passing of the opportunity', holding three views:

The first: It occurs once soil has been placed over the deceased, whether bricks have been placed or not. This is the view of Ashhab.

The second: It occurs when burial is fully completed. This is Ibn Wahb's position here.

The third: It occurs when there is fear that the corpse might have decomposed. This is the view of Sahnun, Isa, and Ibn al-Qasim's narration here. Prayer at the graveside, according to those who permit it, is only allowed if not much time has elapsed such that the body would have decayed or otherwise deteriorated".⁶

² Al-Madkhal, Ibn al-Hajj al-Maliki, 2/19.

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⁴ Al-Jawab al-Hamidi Sharh Mukhtasar Khalil, Qudhari, 1/106.

⁵ Al-Tawdih Sharh Mukhtasar Ibn al-Hajib, Khalil ibn Ishaq al-Maliki, 2/154.

⁶ Al-Bayan wa al-Tahsil, Ibn Rushd al-Jadd, 2/255.

3. The Shafi'i school agreed with the Maliki school in holding that if the deceased was buried without the funeral prayer having been performed, exhumation for the sake of performing the prayer is impermissible; rather, the prayer is to be performed at the graveside.⁷

4. The Hanbali school has two narrations concerning this issue. Ibn Qudamah said: "If the deceased was buried before the funeral prayer, it is narrated from Ahmad that the body should be exhumed and prayed over. Another narration states that performing prayer over the grave itself is permissible. Al-Qadi preferred that prayer be offered at the grave without exhumation, as the Prophet (SAW) prayed at the grave of the poor woman without exhuming her. The reasoning for the first narration is that burial occurred before fulfilling an obligatory act, thus warranting exhumation—similar to burial without washing. Graveside prayer is permitted only in cases of necessity. However, in the case of the poor woman, the prayer had already been performed, hence it was no longer obligatory and thus exhumation was unnecessary. In all cases, if the corpse has decomposed, exhumation is impermissible".⁸

In conclusion, the majority of jurists favour refraining from exhumation if the deceased was buried without the funeral prayer having been performed, as exhumation involves a violation of the sanctity of the deceased. Their solution is to perform the funeral prayer at the grave itself, as compensation for an obligatory act missed due to forgetfulness or ignorance. Those who permit exhumation have set strict criteria, chief among them being that the corpse has not decomposed.

Similarly, jurists have differed regarding burying a corpse without washing or shrouding. The majority incline towards permitting exhumation for the purposes of washing and shrouding if the burial occurred recently. This contrasts with situations where a long time has passed, resulting in decomposition and decay of the corpse, in which case exhumation becomes questionable. This is particularly so given that Shafi'i and Hanbali jurists reasoned regarding shrouding that its purpose is to preserve the dignity of the deceased through concealment, which is already achieved by placing soil upon the corpse. Thus, exhumation in such circumstances would constitute a violation of the sanctity of the deceased.

Since washing is an obligatory act and feasible to perform, it must be carried out. However, if decomposition is feared, exhumation should not take place, as performing the washing becomes impossible. Therefore, this obligation lapses just as purification (*wudu*) and facing the *qiblah* lapse for a living person when impossible.

The strongest evidence cited by jurists for permitting exhumation in cases where washing has been forgotten is the Hadith narrated by Jabir ibn Abdullah, may Allah be pleased with them both, who said: "The Messenger of Allah (SAW) came to Abdullah ibn Ubayy after he had been placed in his grave. He commanded that Abdullah's body be exhumed, placed him upon his knees, blew saliva upon him, and clothed him in his shirt"⁹.

Ibn Battal al-Maliki stated: "Al-Muhallab said: This Hadith indicates the permissibility of exhuming a deceased after burial if there is a valid reason, such as forgetting to wash him or a similar necessity. Ibn al-Mundhir said: Scholars differed regarding exhuming someone buried without washing. All of them permitted exhumation and washing, and this was the view of Malik, Al-Thawri, and Al-Shafi'i. However, Malik conditioned it upon the corpse not having decomposed, as narrated by Ali ibn Ziyad from him. Abu Hanifah and his companions stated: If the deceased has been placed in the burial niche and covered with soil without being washed, it is impermissible to exhume the corpse. This is also the opinion of Ashhab. Nevertheless, the first opinion is more correct based on Jabir's Hadith"¹⁰.

Second Justification: Presence of Criminal Suspicion and Necessity for Autopsy

Frequently, intentional homicide occurs without initial indications becoming evident. The burial is completed and the deceased is interred. Subsequently, new evidence emerges indicating a potential intentional killing, prompting the Public Prosecutor to authorise exhumation of the corpse to perform an autopsy. This autopsy serves to ascertain whether the deceased died a natural death or was murdered intentionally. The results of such an autopsy have significant evidential value in convicting the suspected perpetrator, who might confess after the autopsy or whose fingerprints might be found on the corpse, conclusively establishing their guilt.

"The scholars, may Allah have mercy upon them, have permitted forensic autopsy even after the deceased has been buried due to the significant public interest involved, which outweighs the sanctity of the deceased and the inviolability of their body post-burial. However, autopsy for purely educational purposes is not permissible after burial"¹¹.

Third Justification: Valuable Items Dropped Into the Grave

Occasionally, valuable items such as jewels, rubies, diamonds, or gold fall into the grave during burial. In such cases, the heirs have priority if the item belonged to the deceased during their lifetime. Alternatively, the item may belong to someone attending the burial, such as the gravedigger or another person present. Such items hold substantial financial value, and the prohibition of wasting wealth is well-established in Sharia law, thereby justifying exhumation to retrieve the valuable item.

⁷ Nihayat al-Matlab fi Dirayat al-Madhab, Al-Juwayni, 3/30.

⁸ Al-Mughni, Ibn Qudamah, 3/500.

⁹ Sahih al-Bukhari, No. 1285; Sahih Muslim, No. 2773.

¹⁰ Sharh Sahih al-Bukhari, Ibn Battal, 3/336.

¹¹ Fiqh al-Nawazil fi al-'Ibadat, Khalid ibn Ali al-Mushayqih, p. 72.

However, jurists who oppose this action emphasise the sanctity of the deceased and the possibility of the corpse having undergone decomposition, which would violate its dignity.

Ibn al-Hajj al-Maliki stated: "Jurists have disagreed regarding a deceased who has been placed in a grave niche and partially covered with soil, after which it is remembered that a valuable ruby or an expensive item fell into the grave. Is it permissible to remove the soil covering the deceased to retrieve the fallen item, in view of the Prophet's (SAW) prohibition of wasting wealth? Or is it impermissible due to the sanctity of a Muslim, thereby forbidding uncovering the body after some soil has been placed over it? There are two scholarly opinions on this matter. The wisdom behind prohibiting exhumation is the fear that the condition of the corpse may have changed, thus jurists prevented this action to maintain the deceased's dignity" 12.

It appears permissible to exhume a grave for the purpose of retrieving valuable property, because the living have a greater right to it. Leaving such property in the grave constitutes waste and might entice thieves to exhume the grave themselves, severely violating the dignity of the deceased. Therefore, allowing the owner of the property or the heirs of the deceased to exhume the grave themselves is preferable to leaving it to strangers who may act disrespectfully. Relatives and family members are more likely to preserve the dignity of their deceased while exhuming.

Fourth Justification: Burial of the Deceased Facing Away From the Qiblah

If the deceased is buried without facing the Qiblah and soil has already been placed over the corpse, the grave should not be exhumed to correct this. However, if soil has not yet been placed, the error must be corrected, even by removing bricks already set in place. This ruling is agreed upon by the Hanafi and Maliki schools, in order to protect the dignity of the deceased from violation, as exhumation constitutes mutilation, which we have been prohibited from performing 13.

The Shafi'i and Hanbali schools stated that if a deceased is buried facing away from the Qiblah, the grave must be exhumed to reposition the corpse towards the Qiblah. This rectifies the obligation of correct positioning towards the Qiblah, as this obligation remains achievable and therefore necessitates exhumation, as if soil had not yet been placed over the corpse. However, if the body has already decomposed or decomposition is feared, the corpse should remain undisturbed and must not be exhumed 14.

In our view, the stronger opinion is that exhumation is obligatory to ensure correct orientation towards the Qiblah unless the corpse has decomposed or turned to dust.

Ibn Aqil al-Hanbali stated: "If a corpse has been buried facing away from the Qiblah, our companions say it should be exhumed, as orientation towards the Qiblah is a required practice which remains possible to rectify and thus should not be neglected. The Prophet (SAW) and his Companions exhumed graves for reasons lesser than this, so this case is even more deserving" 15.

Ibn Qudamah stated: "Regarding their claim that exhumation constitutes mutilation, we say: it constitutes mutilation only in relation to a corpse that has already decomposed" 16.

Topic Three: Regulations and Etiquette Governing the Exhumation of a Corpse from the Grave after Burial for a Recognised Sharia Justification

If a recognised Sharia or legal justification for exhuming a corpse is established, certain regulations and etiquette must be observed during the exhumation, the most important of which are as follows:

1. The responsibility of exhuming the deceased belongs primarily to their closest relative, as it is their established right. However, if they voluntarily relinquish this right and allow someone else to carry out the exhumation, it is permissible—similar to how a different person may lead the funeral prayer or handle the burial.
2. The exhumation process should be limited strictly to the necessity at hand. For instance, if a valuable item such as a gemstone accidentally falls into the grave and settles outside the burial shroud, there is no need to unwrap the shroud—only the necessary part of the grave should be opened. This is in line with the legal maxim: "Necessities are assessed according to their extent." (*Al-Darurat Tuqaddaru Biqadariha*) 17.
3. The deceased's remains must be handled with care to avoid disfigurement or bone breakage. The Prophet (SAW) said, as narrated by Aisha (RA): "Breaking the bone of the deceased is like breaking it while they were alive." 18
4. If the exhumation is conducted for forensic examination, once the necessary procedures are completed, the following must be done: The incision should be sutured; the deceased should be wrapped in the shroud; and the body should be returned to the grave. There is no need to repeat the funeral prayer over the deceased, as the complete funeral rites—

¹² Al-Madkhal, Ibn al-Hajj al-Maliki, 2/19.

¹³ Radd al-Muhtar, Ibn Abidin, 2/238; Al-Dhakhirah, Al-Qarafi, 2/479.

¹⁴ Al-Bayan, Al-Imrani, 3/111; Al-Mughni, Ibn Qudamah, 3/500.

¹⁵ Al-Muharrar fi al-Fiqh, Al-Majd Ibn Taymiyyah, 1/203.

¹⁶ Al-Mughni, Ibn Qudamah, 3/500.

¹⁷ Encyclopedia of Jurisprudential Maxims, Muhammad Sidqi Al-Burno, 6/264.

¹⁸ Musnad Ahmad, Hadith No. 24739 – Authentic Hadith.

including washing, shrouding, and prayer—were already performed before burial.

Topic 4: The Kingdom of Saudi Arabia's Experience in Exhuming Bodies

The Kingdom of Saudi Arabia is committed to preserving the rights of the deceased—whether through proper burial or exhumation in cases of necessity. It has developed suitable cemeteries for burials. A deceased person's body is not exhumed for forensic examination unless authorised by the relevant authorities. The Public Prosecution, in coordination with the competent authorities, must determine that there is a valid forensic or criminal investigation that necessitates exhumation and autopsy. The Saudi government has established clear health protocols for exhumation, including hygienic and procedural guidelines. The Ministry of Health has issued specific regulations concerning exhumation under the section "Exhumation of a Corpse from the Grave." Among the important health regulations stipulated are the following:

1. If the corpse has been recently buried, most microbes typically do not survive for long; however, microbiological references indicate that certain microbes do survive burial for up to several days. Additionally, certain pathogens may persist for extended periods; for instance, some biological sources indicate that the prion responsible for Creutzfeldt–Jakob disease can resist heat and survive significantly longer, thereby posing prolonged risk. Thus, before commencing exhumation procedures, it must first be verified whether there is any evidence indicating the presence of the biological agents mentioned.

2. Preventative Measures:

(a) Contamination in the area where the grave is exhumed must be removed using **portable, transportable decontamination facilities**.

(b) Protective clothing must be worn, including **high-durability work attire, water-resistant trousers and jacket, work boots with reinforced toe caps and soles**, as well as **high-durability waterproof gloves, a hard safety helmet**, and **a face shield**.

(c) **Disinfectants** may be used **both for decontamination and for odour removal** in the area.¹⁹

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).

8. CONCLUSION

1. The default rule is that a buried body should not be exhumed unless there is a valid legal or religious justification.
2. The deceased has rights both during burial and in the event of exhumation, which are safeguarded by both Islamic law and state legislation.
3. Exhumation refers to the process of opening a specific grave site where the body was buried with certainty.
4. Once exhumed, the body is preserved in a mortuary refrigerator until the forensic examination is conducted under the supervision of trusted medical specialists.
5. The body must be returned to its original burial site unless that spot has been occupied by another burial, in which case an alternative burial location must be arranged.
6. Justifications for exhuming a body after burial include the following:
 - (a) Failure to perform essential funeral rites, such as forgetting to pray over the deceased, wash the body, or shroud it properly, with some scholarly differences in opinion on the specifics.
 - (b) The existence of a criminal suspicion that necessitates forensic examination.
 - (c) Burial in a direction other than towards the Qibla, which must be corrected.
7. The Kingdom of Saudi Arabia has pioneering experience in regulating the process of exhuming corpses, having established precise controls for handling such matters. In cases involving criminal suspicion, relevant governmental authorities, including the Public Prosecution and health departments, oversee exhumations and autopsies.

• RECOMMENDATIONS

The researchers identified a number of recommendations for future studies, notably including:

1. Violations of the Sanctity of the Deceased: A Comparative Jurisprudential Study.
2. Discretionary Punishments (*Ta'zir*) for Grave Desecration for Purely Worldly Purposes.

¹⁹ Guidelines for Handling Deaths from Infectious Diseases in Forensic Medical Centres and Mortuary Departments in the Kingdom, Ministry of Health, pp. 20–21. pg. 118

3. Transfer of Human Remains and Related Jurisprudential Issues.

9. ACKNOWLEDGMENT

The authors are thankful to the Deanship of Graduate Studies and Scientific Research at Najran University for funding this work under the Student Research Funding Program grant code (NU/SRP/SEHRC/13/344-2).

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