

Q: What does the judge do when witnesses retract their Arsh?

A: There are details to this which you should pay attention to:

1. If the witnesses retract their Arsh before the court rules on it, then their Arsh is forfeit and they have no liability.
2. If the judge had ruled that the mudda'a 'alayhi had to pay money based on their Arsh, and they thereafter retract, the decision is cancelled and they are liable to compensate the mudda'a 'alayhi for his loss.
3. If one of the two retracts then his is liable for half.
4. Three witnesses testified to a money case. One witness retracts. He does not owe anything. If however two retract, then the two must jointly compensate him for half the amount.
5. A man and two women testified. If a woman retracts then she is liable for a quarter of the amount. If both women retract then they are liable for half.
6. A man and ten women testified. If eight women retract then there is no liability upon them. If a ninth woman retracts, then the retracting women owe a quarter. If the man and women all retract then the man owes a sixth and the women five-sixths according to Imaam Abu Hanifah RAH. According to Imaam Abu Yusuf RAH. and Imaam Muhammed RAH. he owes half the women half.
7. Two witnesses testified that a woman married with Mahrul Mithl or more. If they retract then they are not liable. If they testified to less than Mahrul Mithl and then retracted, they are not liable for the deficiency.
8. Two witnesses testified that a man married with Mahrul Mithl or less. If they retract then they are not liable. If they testified to more than Mahrul Mithl and then retracted, they are liable for the excess.
9. If they testify that a commodity was sold at market value or more and then they retract they are not liable. If they testified to less than market value they are liable for the loss.
10. They testified that a man divorced his wife before intercourse. If they retract they are liable for half the dowry. If they retracted after intercourse there is no liability.
11. They testified that a man freed his slave. If they retract they are liable for the value of the slave.
12. They testified to Qisas. The mudda'a 'alayhi was executed. They then retracted. They are liable for Diyah not Qisas.
13. When secondary witnesses retract they are liable.
14. If the primary witnesses retract and say, "we did not authorise the any secondary witnesses," then they are not liable. If they admit, "we authorised them to testify but committed an error," then they are liable.
15. If the secondary witnesses claim that the primary witnesses lied or are mistaken, these claims will be ignored.
16. Four witnesses testified to Zina. Two witnesses testified that the perpetrator has Ihsan i.e. will be stoned and not lashed. If these two witnesses retract after the stoning they are not liable.
17. When those who have declared the witnesses reliable retract they are liable.
18. Two witnesses testify that an oath was taken. Another two testify that there was a condition as well. They then retract. Liability is only on the witnesses to the oath.

~ al-Quduri ~