

The Effect of Death on the Donation Contract in Islamic Jurisprudence

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Abstract:

The gift contract is a legal and non-compulsory donation contract. If a person donates a gift to someone else and does not take possession of it and dies before the donated person takes possession of it, then it is his property and money and is not obligatory for the heirs of the donated person because the principle of the gift is to be taken. But if the donor dies before the gift is received, his heirs have the choice between keeping it as their property or giving permission to donate it because it is considered one of the donation contracts. But if the purpose of the gift is God Almighty, i.e. charity, it is not permissible to withdraw it after donating it.

Introduction:

Praise be to God, Lord of the Worlds, and prayers and peace be upon the Messenger of God, Muhammad, may God's prayers and peace be upon him. The Islamic Sharia called people to follow all that strengthen the bonds of love between people and society and to everything that strengthens the ties and bonds between them. Since death is a heavenly event that affects every person and ends all dealings, it was necessary to have a legislative study showing the impact of death on the contracts that a Muslim concludes during his life and clarifying their condition after his death because the inheritance is considered the property of others. This person may have donated some of his money during his life as a gift to others, so this study came to show the extent of the impact of real death on the gift contract as a type of donation contract.

Significance:

Death is predestined and written for all people, and it is a celestial event outside a person's control. And since a person signs contracts during his life and then suffers death outside his will, the importance of the study came to show the extent of the impact of death on what a person signs during his life, and the gift contract was the doctrinal application of this study.

Problem Statement:

- 1- What is the real death in Islamic jurisprudence?
- 2- What is the effect of real death on the gift contract in the Islamic jurisprudence?

Objectives of the study:

- 1- Explanation of the reality of death in Islamic jurisprudence.
- 2- Knowing the effect of death on the gift contract in Islamic jurisprudence.

Study Methodology:

The study followed the inductive-analytical approach.

Previous studies:

1- Al-Rajhi (2013): The researcher talked about the heavenly events and their impact in on transactions, and the common part was death as one of the heavenly events. But the researcher has not included a jurisprudential application of the gift in the financial transactions section, as he mentioned the effect of death on sale, agency, damage and the lost and did not indicate the extent of its impact on the gift contract.

2-Al-Khasawneh, (2004): The researcher talked about the impact of death on financial compensation contracts, and this study came to show the effect of death on the gift contract as one of the donation contracts in Islamic jurisprudence in order to fill the deficiency in the previous studies.

3- Al-Makashfi (1980): The researcher talked about the rights and obligations of a person that he or she has to fulfil per the Islamic jurisprudence. The researcher contented himself with listing the sayings of the jurists and some evidence on the jurisprudential applications that he mentioned in the study. The study lacked a scientific methodology that shows the legal evidence and its significance while discussing it with other evidence in other jurisprudential sayings.

The First Topic: Terms related to the study:

The first section: Definition of death:

Death is called stillness. It is said: the wind died, i.e. it calmed down, and the masculine and feminine are equal in this ⁽¹⁾. It is called sadness and fear ⁽²⁾, because the Almighty says: (death will come to him from every quarter, yet will he not die) ⁽³⁾. And the word death also denotes the sleep ⁽⁴⁾. Almighty' says: (and those that do not die [He takes] during their sleep) ⁽⁵⁾, and the land of dead, that is, it was neither cultivated nor inhabited, and a man whose heart is dead is dull ⁽⁶⁾.

1- Ibn Manzoor, Muhammad Ibn Makram, Lisan al-Arab, Dar Sader, Beirut, Lebanon, 3rd edition, 1414 AH 2/90-93, Al-Hamawi, Ahmad Ibn Muhammad, The Lighting Lamp in Gharib al-Sharh al-Kabeer, Scientific Library, Beirut, Lebanon, d. DT, 2/583.

2Ibn Faris, Ahmad bin Faris, A Dictionary of Language Measures, T: Abd al-Salam Muhammad, Dar al-Fikr, Beirut, d., 1399 AH, 1979 AD, 5/283.

3Abraham, verse 17

4Ibn Manzur, Lisan Al Arab, 2/92

5Az-Zumar, Verse (42)

6Al-FayrouzAbadi, Muhammad bin Yaqoub, Al-Muheet Dictionary, T: Muhammad Naim, Al-Resala Foundation, Beirut, Lebanon, 8th edition, 1426 AH, 2005 AD, 1/161-162.

The Second Section: Medical definition of death:

From a medical point of view, death is divided into sections ().

Clinical death: It is the cessation of the heart, blood circulation, and cessation of breathing and it is not necessary that the cessation be permanent, as the brain continues to function for six minutes after the heart and breathing stop. During this period, the heartbeat and breathing can be restored if rapid and appropriate CPR is performed.

Somatic death: It is the complete and permanent cessation of the work of the heart, brain and lungs, which leads to a cessation of the ability to sense movement. This results in the death of human cells little by little over different periods.

Brain death: It is the complete and permanent cessation of brain function regardless of the life or death of other body parts such as the heart.

Euthanasia: Ending the patient's life to get rid of the suffering of pain, by giving the patient a substance that causes death, or stopping an essential treatment in the disease that leads to death. This type of death is inconsistent with the provisions of Islamic legislation and is not enforced.

The Third Section: Types of death in Islamic jurisprudence:

Real death: It is the death in which the soul leaves the body with certainty and the soul moves from one life to another life, or from one house to another, and death is a barrier between the soul and the body⁽⁷⁾. This death is known by witnessing and is proven before the judiciary with evidence on it. It is this type of death that the study will take care of and show its impact on donation contracts, documentation and participation.

Judicial death: This means the judge's ruling a person to die, even if he was alive for a legitimate reason that necessitates that, such as apostasy or absence for a long period,⁸ and he did not know his life from his death. This death is known as the death of the missing or absent.

Discretionary death: Judgment of the death of the fetus while it was a pregnancy in its mother's womb, for a specific reason as a felony, whether the felony was a concrete, material or moral fact, which led to its death in appreciation⁽⁹⁾.

The fourth section: The concept of contract:

It came in the explanation of al-Ahkam Journal that the contract is the commitment of the contracting parties and their pledge is a matter in which the offer is linked to acceptance⁽¹⁰⁾. By clarifying the truth of this word and its meaning in the legal terminology used by jurists, the

⁷Ibn al-Qayyim, *The Soul*, 1/34.

⁸Al-Kasani, *Alaa Al-Din Abu Bakr, Badaa' Al-Sana'i in the Order of Laws*, Dar Al-Kutub Al-Ilmiyya, Beirut, Lebanon, 2, 1406 AH, 1986 AD, 6/196, 320.

⁹Al-Ramli, *Shams Al-Din Muhammad, The End of the Needy Explanation of the Curriculum*, Dar Al-Fikr, Beirut, Lebanon, last edition, 1404 AH, 1984 AD, 6/64.

¹⁰Amin Effendi, *Ali Haider Khawaja, Pearls of Rulers in Explanation of the Journal of Judgment*, Dar Al-Jeel, 1, 1411 AH, 1991 AD, 105/1.

contract is an obligation between two parties to which the offer is linked to acceptance in a way that shows its legal effect.

- **The pillars of the contract in Islamic jurisprudence:**

The jurists differed about the pillars of the contract and what is to be concluded in Islamic jurisprudence.

The Hanafi school held that the cornerstone of the contract is the formula, i.e. the form and acceptance⁽¹¹⁾.

While the majority of jurists from the Malikis⁽¹²⁾, Shafi'is⁽¹³⁾ and the Hanbalis⁽¹⁴⁾, have stated that the pillars of the contract are three pillars:

- The two contracting parties.
- The subject of the contract, i.e. the origin of the contract, and it may be property such as vehicles or usufructs such as housing.
- Form and acceptance.

The Second Topic: The effect of death on eligibility in Islamic jurisprudence:

The first section: Eligibility in Islamic jurisprudence:

It means the capacity of the human being to be qualified to acquire rights and able to assume duties and to be fit to establish contracts and bear dispositions⁽¹⁵⁾.

It also means the capacity of the human being to be qualified to acquire rights and able to assume duties and to be fit to establish contracts and bear dispositions, as it is his ability to compel others and commit himself.

And the capacity is complete when a person is distinguished and aware of what he acts and says and does, and that is by completing the seven years. The officer of distinction is his ability to know what he is doing and his ability to distinguish between right wrong and harm and benefit in his actions and establishments⁽¹⁶⁾ and this is the opinion of Hanafis⁽¹⁷⁾.

11Al-Kasani, Badaa' al-Sana'a fi Tarb al-Shari', 5/133.

12Al-Gharnati, Muhammad bin Yusuf, The Crown and the Crown by Mukhtasar Khalil, Dar al-Kutub al-Ilmiyya, Beirut, 1, 1416 AH, 1994 AD, 6/12.

13Al-Nawawi, Abu Zakaria Muhyi Al-Din Bin Sharaf, Rawdat Al-Talibeen and Omdat Al-Muftin, T: Zuhair Al-Shawish, Islamic Bureau, Beirut, Lebanon, 3rd edition, 1412 AH, 1991 AD, 3/338.

Al-Ramini, Muhammad bin Mufleh, Branches and Correction of the Branches, T: Abdullah bin Abdul Mohsen, Al-Resala Foundation, 1, 1424 AH, 2003 AD, 6/121.

Amir Badshah, Tayseer al-Tahrir, 2/249. Al-Suyuti, Abdul Rahman bin Ahmed Al-Shabah and Al-Nazaer, Dar Al-Kutub Al-Ilmiyya, Beirut, 1, 1411 AH, 1990, 1/219. Al-Sarakhsi, Muhammad bin Ahmed, The Origins of Al-Sarkhi, Dar Al-Marefa, Beirut, dt, dt, 2/341.

16Al-Kasani, Badaa' Al-Sana'a, 5/135

17Al-Sarakhsi, Osoul Al-Sarakhsi, 2/341. Amir Badshah, Tayseer al-Tahrir, 2/249.

The majority of jurists ⁽¹⁸⁾ are of the view that a person acquires full capacity by reaching the age of majority.

The second section: Types of eligibility in Islamic jurisprudence.

Department of jurists eligibility into two types:

Obligatory capacity: the capacity of a person to be obligated to the legitimate rights of him. And this capacity is preoccupied with obligation, i.e., it is established as soon as his obligation is proven, and obligation is established for a person as soon as life exists for him. Life does not leave him until he dies.

Since life is a source of proving eligibility, the fetus in his mother's womb, provided he is born alive, acquires that capacity while in his mother's womb, because he is able to acquire rights such as lineage, inheritance and wills.

- Capacity to perform: the capacity of a person to consider his words and actions, and the legal effects are arranged on them.

Because if a person acts on his behalf or performs a legal obligation, this performance is considered, and if he transgresses against others, he is able to bear and guarantee that transgression.

The performance eligibility is divided into two parts:

Full performance capacity: full capacity in body and mind.

Deficient capacity to perform: the capacity that is lacking in the body and mind, or the completeness of one without the other.⁽¹⁹⁾

The third section: The effect of death on human capacity in Islamic jurisprudence:

If a person is exposed to death for it is a heavenly event, the person has no ability to respond to it, and he has no power to prevent it or influence it, and he has no choice in it. Death is one of the events that affect a person's capacity, in both its obligatory and performance aspects, as the capacity for obligation is waived for him to miss the purpose of the assignment. For this reason, zakat, vows and penances are forfeited from the deceased, and the sin remains related to the obligation as well as all other sacrifices, because the act is what is intended in the rights of God Almighty and the pillar in worship is related to the intention and action of the taxpayer unless it is recommended by the heirs or donated by the heirs, otherwise it ends with death, which is the opinion of the Hanafis.⁽²⁰⁾

18Al-Desouki, Muhammad bin Ahmed, Al-Desouki's footnote to the Great Commentary, Dar Al-Fikr, Beirut, dt, dt, 3/5. Al-Nawawi, Rawdat al-Talibin and Omdat al-Muftis, 3/344. Ibn Muflih, Ibrahim bin Muhammad, Al-Mubdi' fi Sharh Al-Muqni', Dar Al-Kutub Al-Ilmiyya, Beirut, Lebanon, 1, 1418 AH, 1997 AD, 4/319.

Previous source, 2/326-327

20Ibn Abidin, Muhammad Amin, Hashiyat Ibn Abidin, Dar al-Fikr, Beirut, 2, 1412 AH, 1992 AD, 6/760.

The fourth section: The deceased's responsibility between collapse and survival in Islamic jurisprudence.

The jurists differed regarding the obligation of the deceased between survival and the attachment of his obligations and rights to them, and between their demise and the attachment of rights and their fulfillment of the money left behind by the deceased.

The jurists agreed that the obligations of the deceased must be paid from the money of the deceased, regardless of whether there are obligations or not ⁽²¹⁾. The jurisprudential dispute about the obligations of the deceased lies between their attachment to the obligation or the inheritance left by the deceased ⁽²²⁾.

The Hanafis⁽²³⁾ see that death leads to a weakening of obligations, but it does not destroy them or remove them, but rather leads to their weakening. On the other hand, the majority of jurists ⁽²⁴⁾ believe that death does not weaken the obligation and it remains strong until the rights related to it are fulfilled, such as debts, and after the liquidation of the estate.

The third topic: The impact of death on the gift contract in Islamic jurisprudence:

The gift contract is one of the contracts urged by Islamic law to strengthen societal ties between people and spread love among them. It is like purely donation contracts that are neither compensated nor replaced.

The first section: The concept of gift:

The Hanafis defined it as ownership of something without compensation. Ownership of the something means: to take out the loan and the lease because it is based on the benefits and not the notables, without compensation: to take out the sale, immediately: to take out the will. The Malikis define it as ²⁵ a beneficial ownership in favor of the given without compensation. Moreover, the Shafi'i ²⁶ defined it as the ownership of something without compensation during life. Moreover, the Hanbalis defined it as ownership that is permissible to dispose of known or

21Al-Kasani, *Badaa' Al-Sana'i*, 1/308, Khalil, *Mukhtasar Khalil*, 1/49, Al-Sherbini, *Mughni Al-Muhtaj*, 3/94, Ibn Muflih *Al-Mubdi'*, 5/284

22Al-Sarakhsi, *Al-Mabsout*, 29/137, Al-Hattab, *Mawahib Al-Jaleel*, 6/407, Al-Sherbini, *Mughni Al-Muhtaj*, 4/7, Ibn Qudamah, *Al-Mughni*, 4/421

23Al-Zayla'i, *Explaining the facts*, 6/230, Ibn Abdeen, *Hashiyah Ibn Abdin*, 6/760-761

24Al-Sawy, *Commentary on Al-Sawy on Al-Sharh Al-Saghir*, 8/196, Al-Hattab, *Mawahib Al-Jaleel*, 6/407. Al-Sherbini, *Mughni Al-Muhtaj*, 4/7,

25The conflict, *explaining the limits of Ibn Arafa*, 1/421, Al-Hattab, *Mawahib Al-Jaleel*, 6/49.

26Al-Sherbini, *Mughni Al-Muhtaj*, 3/559.

unknown money that cannot be known or is present and capable of being delivered, not obligatory during life without compensation, in what is considered a gift in custom.

It is also defined as a property that may be disposed of by a free adult person. It is charged, known, movable, real estate, unknown or known, or mixed with other indistinguishable property such as a company, or an asset capable of being delivered, i.e. not lost or misguided.

The researcher believes that the gift entails a gift without a purpose, no assignment, no interest, no compensation or consideration, as it is a kind of exchange in benefit between the donor and the donated, but the researcher is careful about the definitions of jurists that the gift must be what is permitted by Sharia and what benefits it. Accordingly, the gift is a contract of ownership of an asset for the usufructuary which is legally permissible during life.

The second section: The legality of the gift in Islamic jurisprudence:

The legality of the gift is proven in the Qur'an, Sunnah and consensus.

First: The Holy Quran

Almighty says: "When a (courteous) greeting is offered you, meet it with a greeting still more courteous, or (at least) of equal courtesy. Allah takes careful account of all things."²⁷The point of indication here is that what is meant by the greeting is a gift and peace, and the first is closer to the meaning, and this is achieved in his saying meet it with a greeting, i.e. reply in the same way.²⁸

Second: The Sunnah:

It is narrated on the authority of Abu Hurairah, may God be pleased with him, on the authority of the Prophet, may God's prayers and peace be upon him, who said: (Give gifts to love one another)²⁹

Significance: The hadith indicates that giving in is a means to love among people.³⁰

Third: The consensus of the jurists:

The Islamic nation is unanimously agreed on the legality of the gift and acting on it, and there is no known contradiction in that.

²⁷The Women Surah, Verse 86.

²⁸Al-Baidawi, Tafsir Al-Baidawi, 2/88. Al-Sarakhsi, Al-Mabsout, 12/48.

²⁹Al-Bayhaqi, Al-Sunan Al-Kubra, Book of Gifts, Chapter: Incitement to Gift, 6/280, No. 11946, Narrated by Al-Zayla'i, Nasab Al-Raya, Book of Gift, 4/120, he said: A good hadith.

³⁰Al-Shawkani, Nayl Al-Awtar, The Gift Book, Chapter: The Gift's Lack of Acceptance and Retention, 5/415.

The third section: The pillars of the gift in Islamic jurisprudence:

First: The cornerstone of the gift according to the Hanafi school is the offer from the donor and the acceptance or receipt from the donated. This means that the gift is a legal act, and the legal act is achieved by its legally convening, so it is not a legal gift unless it is accepted.

Second: The pillars of the gift according to the majority of jurists:

- The donor, who is the owner of the gift, and he should be the owner of the thing given.
- The donated person has the eligibility to own property.
- The gift, the donated thing.
- The formula, offer and acceptance, as if the donor says: You are given such-and-such, and the donor responds, "I accept."

The fourth section: The impact of the donor's death on the gift contract in Islamic jurisprudence:

First: The sayings of the jurists on the matter:

The first view: The Hanafis,³¹ Malikis,³² Shafi'is³³ and Hanbalis³⁴ view the contract of gift as invalid if the donor dies before the donated receives the gift, and in this case it is left to the donor's heirs.

Evidence for the first saying: The believers in this opinion used the Prophetic Sunnah, the views of the Companions and the reason.

First: The Sunnah:

It was narrated on the authority of the Prophet, may God's prayers and peace be upon him, that he said: "A gift is not valid unless it is received."³⁵

31Al-Sarakhsi, *Al-Mabsout*, 12/48, Al-Ghitabi, *Al-Banna Sharh Al-Hedaya*, 10/163, Al-Kasani, *Badaa' Al-Sana'i*, 6/115.

32Malik, *Blog*, 4/387, Alish, *Manah Al-Jalil*, 8/183.

33Al-Ramli, *Nihayat Al-Muhtaj*, 5/408, Al-Sherbiny, *Mughni Al-Muhtaj*, 3/565, Al-Nawawi, *Al-Majmoo'*, 15/378, Qalyubi and Umira, *Hashiyah Qalyubi and Umira*, 3/112.

34Al-Mardawi, *Al-Insaaf*, 7/133, Ibn Muflih *Al-Mubdi'*, 5/192, Ibn Qudamah, *Al-Mughni*, 6/41, Al-Bahooti, *Kashaf Al-Qinaa*, 4/301.

35Al-Na'ani, Abu Bakr Abd al-Zaq ibn Hammam, *al-Musannaf*, t.: Habib al-Rahman al-Azami, The Scientific Council, India, the Islamic Bureau, Beirut, 2, 1403 AH, *The Book of Wills*, Bab al-Nahl, 9/104, Hadith No. 16515, taken by al-Zayla'i, Nab al-Raya, *The Gift Book*, 4/114, the second hadith said: A strange hadith.

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Significance: The gift is not judged to be owned by the donated person except by acceptance and possession.³⁶

- The saying of the Prophet, peace and blessings be upon him: (The donor is more entitled to his gift as long as it is not approved).³⁷

Significance: The hadith indicates that the gift belongs to the donor before unless it is accepted and received by the donated.³⁸

- It was narrated on the authority of the Prophet, may God's prayers and peace be upon him (that he gave the Negus thirty ounces of musk, then said to Umm Salamah that I see the Negus has died, and I do not see the gift that was given to him but that it will be returned, and if it is returned to me, it is yours).³⁹

Evidence: The hadith indicates that the gift can only be acquired by taking possession of it.⁴⁰

Second: The reasonable:

- The gift is a contract of donation in which the property is not denoted by mere sayings, such as a will, for example, because the donation contract is weak in itself and does not relate to the attribute of necessity.⁴¹
- If the property is donated by mere saying, the donor must hand over the gift to the donated. This is contrary to the meaning of donation, which is different from contracts of compensation.⁴²
- If the gift is given out of piety to other than God and without intentional reward, it is voided before possession, and this indicates that the gift without intentional reward contradicts charity for God's sake, in which acceptance is sufficient.⁴³

36Al-Sarakhsi, Al-Mabsout, 12/48. Al-Gitabi, building, 10/163. An-Nawawi, Al-Majmoo', 15/378.

37Dar Qatni, Abu al-Hasan Ali bin Amr, Sunan al-Dar Qatni, Foundation of the Message, Beirut, Lebanon, 1, 1424 AH, 2004 AD, Book of Sales, 3/461, No. No. 2323, an authentic hadith.

38Al-Shawkani, Nile Al-Awtar, 6/15, Al-Sarakhsi, Al-Mabsout, 12/53.

39Al-Shaibani, Abu Abdullah Ahmad bin Muhammad, Musnad of Imam Ahmad bin Hanbal, T.: Shoaib Al-Arnot, Foundation of the Message, Beirut, 1, 1424 AH, 2001 AD, Musnad al-Qabil, hadith of Umm Kulthum bint Uqba, 45/246, No. 27276, Arajh, Al-Haitmi, Abu al-Hasan, Nour al-Din Ali, The Compound of Sustainability and the Source of Benefits, T: Hussam al-Din al-Qudsi, Library of al-Qudsi, Cairo, d., 1414 AH, 1994 AD, the door of reward for the gift, 4/148, No. 6728, authentic hadith.

40Al-Shawkani, Nile Al-Awtar, 5/414, Al-Sherbiny, Mughni Al-Muhtaaj, 3/565.

41Al-Sarakhsi, Al-Mabsout, 12/48.

42Al-Sarakhsi, Al-Mabsout, 12/48

43Al-Qarafi, Al-Thakhira, 6/230, Alish, Manah Al-Jalil, 8/182.

- The gift is void before receiving when the donor's money is covered by the debt of the creditors.⁴⁴
- Neglecting possession is a cause for invalidity, because the person has the basis to take possession of his property, which is a priority.⁴⁵

The second view: The Malikis,⁴⁶ Shafi'is,⁴⁷ Hanbalis⁴⁸ and Zahiriyyah⁴⁹ view that the gift is not invalidated by the death of the donor before receiving it but the heirs can receive it by his permission.

Evidence to this is inferred from the Sunnah and the reasonable.

First: The Sunnah:

It was narrated on the authority of the Prophet, may God's prayers and peace be upon him, that he said: "The one who returns in his gift is like a dog returning to its vomit."⁵⁰

Significance: The hadith indicates the prohibition of retracting the gift after it has been granted and given to the one who was given. It also indicated that by mere saying and accepting it must be possessed by the one who is donated.⁵¹

Second: The reasonable.

- The gift is like the sale, and acceptance and possession are sufficient as a condition and not an element.⁵²
- The gift is considered a possession for life and acceptance is sufficient. This is in contrast to the will, and it is like reward and other gifts and types of virtues, so it should be treated like other contracts that are validated by the contract and are valid by mere saying.⁵³

44Alish, *Manah Al-Jalil*, 8/182.

45Al-Hattab, *Gifts of Al-Jalil*, 6/57, Alish, *Manah Al-Jalil*, 8/182.

46Malik, *Blog*: 4/387, Alish, *Manah Al-Jalil*, 8/183.

47Al-Nawawi, *Al-Majmoo' Sharh Al-Muhadhab*, 15/378. Al-Nawawi, *Rawdat Al-Talibin and Omdat Al-Muftis*, 5/375, Al-Sherbini, *Mughni Al-Muhtaaaj*, 3/565.

48Ibn Muflih, *Al-Mubdi'*, 5/192, Al-Mardawi, *Al-Insaaf*, 7/120, Ibn Qudamah, *Al-Kafi*, 2/261.

49Ibn Hazm *Al-Mahla*, 8/71.

50Al-Bukhari, *Sahih Al-Bukhari*, *Book of Gift*, Chapter: A man's gift to his wife, 2/158, 2557.

51Al-Shawkani, *Neil Al-Awtar*, 6/115, Ibn Muflih, *Al-Mubdaa*, 5/193. Ibn Hazm *local*, 8/71.

52Al-Qarafi, *Ammunition*, 6/230.

53Al-Qarafi, *Ammunition*, 6/230.

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- That taking possession is considered one of the conditions of completeness and not one of the conditions of validity; because the principle in contracts is that there is no condition for receipt of their validity until there is evidence for the stipulation of receipt.⁵⁴
- That the gift contract is a contract that leads to the obligation, and it is not invalidated before being received.⁵⁵
- That the gift is not donated unless it is measured and weighed, as in the sale.⁵⁶
- A gift is a contract in which ownership is not terminated by the death of the donor, and it is transferred to the heirs at all.⁵⁷

The impact of the death of the donated on the donation contract in Islamic jurisprudence:

The first view: The Hanafis,⁵⁸ Shafi'is⁵⁹ and Hanbalis⁶⁰ are of the view that the gift is invalidated by the death of the donated if he died before receiving it.

Evidence for the first saying: The believers in this opinion inferred their justification from the Sunnah and the reason.

First: The Sunnah:

- It was narrated on the authority of the Prophet, may God's prayers and peace be upon him, He gave the Negus thirty ounces of musk, then he said to Umm Salamah that "I see the Negus has died, and I do not see the gift that was given to him except that it will be returned, and if it is returned to me, it is yours."⁶¹

Evidence: the hadith indicates that the gift, before being received, in case of the death of the donated remains on the property of the donor, and the evidence is that the Prophet, peace be upon him, did not make it to the heirs of Khosrau.⁶²

Second: Sayings of the Prophet's Companions:

⁵⁴Ibn Rushd, *The Beginning of the Mujtahid and the End of Al-Muqtasid*, 4/114.

⁵⁵An-Nawawi, *Al-Majmoo'*, 15/378.

⁵⁶Ibn Qudamah, *Al-Mughni*, 6/41.

⁵⁷Al-Ajmal, Suleiman bin Amr bin Mansour, *Hashiyat Al-Jamal*, Dar Al-Fikr, Beirut, dt, dt, 598/3.

⁵⁸ابن الهمام ، فتح القدير ، 20/9 ، ابن عابدين ، حاشية ابن عابدين ، 690/5 ، الأنصاري ، اللباب في الجمع بين السنة والكتاب ، 542/2.

الشربيني ، مغني المحتاج ، 566/3 ، النووي ، المجموع ، 59378/15

البهوتي ، شرح منتهى الإيرادات ، 432/2 ، المرادوي ، الإنصاف ، 121/7 . ابن مفلح ، المبدع ، 192/5 ، ابن قدامة ، المغني ، 60.41/6

⁶¹Previous source.

⁶²Al-Sarkhasi, *Al-Mabsoot*, 12/49.

It was narrated on the authority of Omar Ibn Al-Khattab, may God be pleased with him, who said: What is the matter with people who give their children? If one of them dies, he says: “My money is in my hand.” And if he died, he said: “I gave it to my son.”⁶³

Indication: The above lines indicate that donations, which are gifts, or whatever is in their meaning, are valid only when they are received, and this is the doctrine of the Companions Abu Bakr, Omar, Othman and Ali.⁶⁴

Third: The reasonable:

- The gift is a donation contract, and in making it owned by the donated before receiving it, the donor is obligated to what he donated. This is contrary to the requirement of donation.⁶⁵
- Proving ownership can only be accomplished by receiving it, and the heir is not allowed to claim it, and the right of the heir is less than the will.⁶⁶
- The donor has the right to withdraw his gift before delivery because he can prevent the completion of the contract.⁶⁷
- The contract of gift is a weak contract in and of itself, and the attribute of necessity is not related to it, so ownership is not established in it by mere acceptance, like a will.
- That the gift contract has the quality of a permissibility that is dissolved by the death of the donated person, as is the agency.⁶⁸

The second view: The Malikis,⁶⁹ Shafi’is,⁷⁰ Hanbalis,⁷¹ and Zahiriyah ⁷²are of the view that the gift is not invalidated by the death of the donor before receiving it after acceptance, and it belongs to his heirs after him, and they have the right to receive or return it.

63Al-Bayhaqi, Al-Sunan Al-Kubra by Al-Bayhaqi, Book of the Gift, Chapter: The Child Is Arrested by His Father, 6/282, No. 11953, Narrated by Al-Zayla’i, Nasab Al-Raya, Book of Gift, 4/122.

64Ibn Qudamah, Al-Mughni 6/41.

65Al-Zaylai, explaining the facts, 5/99.

66Ibn al-Hamam, Fath al-Qadeer, 9/21.

67Ibn Mazah Al-Hanafi, Al-Muhit Al-Burhani in Al-Nomani Fiqh, 6/247.

68Al-Sherbiny, Mughni Al-Muhtaaaj, 3/566.

69Al-Gharnati, The Crown and the Crown by Mukhtasar Khalil, 8/15, Al-Sawy, Hashiyah Al-Sawy, 4/145, Ibn Juzi’, Fiqh Laws, 1/242.

70Al-Ansari, Asna Al-Matalib, 2/482. Al-Nawawi, Al-Majmoo’, 15/378. Al-Bujairmi, footnote to al-Bujairmi, 3/219.

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Evidence for the second view: Those who hold this view infer what is reasonable as follows:

- A gift is a contract that is required by mere word and death does not cancel its ownership. This is because the heirs of the donated are able to possess the property and they have the choice between returning or receiving it.⁷³
- The gift has become a right for the heirs, and it is their property, because whoever leaves a right belongs to his heirs after him.⁷⁴
- The gift is like other contracts such as sale and others, in which the heir takes the place of the father in terms of signature and annulment, and because the sale lacks validity on receipt except in the weighed due to the absence of a dispute in other than it.⁷⁵
- That the gift is owned by contract by mere acceptance, so it is not invalidated by death, and because it is a contract that devolves into necessity, it is not invalidated by death, like selling on the condition of option, which is unlike partnership and agency, and the heir takes its place by taking possession or restitution.⁷⁶
- The gift is not invalidated in any case after acceptance, unless the donor becomes insane, sick, bankrupt, or the donated has been negligent in possession and was not serious about it.⁷⁷

Conclusion:

- 1- Death is a heavenly event that affects a person outside his control, and the contracts he makes during his life are affected.
- 2- The donation contract is a non-compulsory donation contract.
- 3- If the donor dies before the gift is received by the donated, the gift is not obligatory.
- 4- If the donated person dies after receiving the gift, it is not permissible to take it back.

71Al-Ramini, *The Branches and Correction of the Branches*, 7/410, Al-Mardawi, *Al-Insaaf*, 5/192. Ibn Muflih, *Al-Mubda'*, 5/192, Al-Bahooti, *Scouts of the Mask*, 4/301. Ibn Qudamah, *Al-Mughni*, 6/41.

72Ibn Hazm *Al-Mahla*, 8/71.

73Ibn Juzi', *The Laws of Jurisprudence*, 1/242.

74Al Nafrawi, *Al Duwani Fruits*, 2/160.

75Al-Asyouty, *Jewels of Contracts*, 1/313. Al-Zarkashi, *Explanation of Al-Zarkashi*, 4/305.

76Al-Nawawi, *Al-Majmoo' Sharh Al-Muhadhab*, 15/378, Al-Bujairmi's *Hashiyah*, 3/219.

77Al-Gharnati, *crown*, 8/15, El-Sawy, *Entourage of El-Sawy*, 4/145.

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