Presents and Gifts

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Q1700. Is it shar‘ī to use a present given by a minor orphan?

A: It hinges upon the permission of his shar‘ī guardian.

Q1701. Two brothers jointly own a plot of land. One of them gave his share by way of gift to his nephew who took possession of it. Is it permissible for the heirs of the gift giver to lay claim to the property, considering it part of the estate of their father?

A: If it is proved that the deceased gave his share in the land to his nephew as a gift, and that he handed it over to him, leaving it at his disposal, the inheritors should have no right in it.

Q1702. A person built a house for his father on land that belonged to the latter. With the permission of the father, he built another storey on top of the house for himself. Both the father and the son died. There is neither evidence nor a will that could lead to proving its owner. How could this issue be resolved?

A: If the son had paid all expenditure arising from the building of the second storey, which was at his disposal and remained so throughout his lifetime, it should be his and part of his estate after his death according to shar‘. Accordingly, it is transferred to his inheritors.

Q1703. Before his death, my father officially registered some property in my name when I was eleven years old. A plot of land and half of another property were registered in the name of my brother; the other half of the property was registered in the name of my mother. Now, the rest of the heirs are laying a claim to my property, alleging that it is not mine by shar‘, whereas they recognize the ownership of the land and the properties of my brother and mother. My father did not leave a will, nor is there a witness. What is your view?

A: During his lifetime, whatever the father had given by way of gift to some inheritors, who took possession of it in a proper manner, so much so that he transferred it into their respective names, that gift is the recipient’s by shar‘. Therefore, the other heirs have no right to claim it for themselves unless it is proved in a reliable way that the father did not grant his son the [disputed] property and that the registration of the official document in his name was not accompanied by any real intention to transfer it to him.

Q1704. During his lifetime, my husband built a house. I contributed to the completion of the building by donating my labor which had resulted in saving on building costs. He told me many times that I was his partner in the property and that he would register a share equivalent to two sixths of the house in my name. Unfortunately, he died before he could conclude the registration. I do not have any written document like a will to substantiate my claim. What should I do?

A: Helping in building the house and promising a share in the property does not amount to becoming a partner in the ownership of the property. So unless it is proved beyond doubt that your husband had given you a share during his lifetime, you have no right in the property.

Q1705. While enjoying full mental capacity, my husband called in the bank manager and gave me, by way of gift, all the money in

his account. This has been done with his own signature on the papers in the presence of the bank manager to the effect of giving me the right of withdrawal. Accordingly, the bank provided me with a check book which I used to withdraw money from the account. A month and a half later, his son accompanied him to the bank. When he was asked whether the money in the account was his wife's, he nodded, "Yes". When he was asked another question as to whether the money was his sons', he nodded, indicating the affirmative. It is worth mentioning, though, that he was not mentally well then. Does the money belong to me or to my stepsons?

A: Since taking possession of the thing given by way of gift is a condition to owning it, and the transfer of the money in the bank by way of signature and issuing a check book cannot be regarded as sound, the said grant cannot be deemed sharʻī. However, what you have withdrawn of money, while your husband was mentally well, is rightfully yours. Your husband's remaining money in the bank should be part of his estate. Therefore, it has been transferred to his inheritors, on his death. Furthermore, his undertaking, while in a diminished mental capacity, is of no consequence.

Q1706. Are the things bought for a mother by her children during her lifetime considered part of the estate after her death?

A: If the things, bought by the children for their mother, have been given to her by way of gift and put at her disposal, they are rightfully hers and, therefore, regarded as part of her estate after her death.

Q1707. Are the items of jewelry, bought by a husband for his wife, considered part of his estate after his death so that they can be distributed amongst his heirs, including his wife?

A: If the items of jewelry have been at the disposal of the wife, so much so that she does with them as though she were the owner, they are rightfully hers unless it is proved otherwise.

Q1708. Do the presents, given to the husband and his wife during their married life, belong to the wife, the husband, or both of them?

A: It depends on the type and nature of the present itself, on whether it is exclusive to men, women, or is for both of them. So, that which is destined for the husband or the wife should be exclusively his/hers. That which is apparently destined for both of them should be jointly owned.

Q1709. In the event of divorce, is it permissible for the wife to take away the things, such as linen, carpets, and clothes, which she brought with her from her parents' home?

A: Things that the wife brought with her from her parents' home, that she bought for herself, or that were given to her as a present are rightfully hers. It is within her right to demand that it be given back to her if they are still available. She has no right, though, to demand from the husband to return to her the things which have been given as gifts to the husband by the family or relatives of the wife. If they exist, the granter of the gifts should decide. That is, it is within the granter's jurisdiction to revoke the gift transaction and take it back provided that the husband is not a blood relative of the granter.

Q1710. After I divorced my wife, I took away all the jewelry, make-up, and other things which I bought her during our married life. Have I the right to do with them whatever I like?

A: If you gave them to your [ex-] wife, by way of loan or gift provided that it is still in its

pristine condition, and that she is not among your blood relatives, you can cancel the gift transaction, retrieve the property, and use it. Otherwise, it is not permissible.

Q1711. My father gave me a plot of land by way of gift. The title deed of the land is officially in my name. A year later, he regretted his decision. Is it permissible for me to make use of the land?

A: If your father changed his mind and revoked the gift deed after you received the land and occupied it, the land is yours by shar‘. Your father has not right to demand it back. And if he had second thoughts before you took possession of the land, he has the right to rescind the gift. If this is the case, you do not have any right to the land. Registering the land in your name is not sufficient for actually taking hold of the gift which is necessary in a gift deed.

Q1712. I gave a person a plot of land by way of gift. He built a house on part of the land. Is it permissible for me to ask him to give me back what I gave him, or compensate me, or return to me what’s left unbuilt of the land?

A: After the recipient has taken possession of the land with your permission and has practically occupied it by building a house, you have no right of revoking the gift. Nor have you the right to get back the land or the price thereof. And if the house was built on a part of the land, nevertheless due to proportionate area of the land it is considered by common view that he took the whole land, you are not entitled to claim back any part thereof.

Q1713. Is it permissible for a person to give all his property to one of his sons to the exclusion of the others?

A: Should this result in creating discord and strife between the offspring, it is not permissible.

Q1714. A person gifted his property to five people in return for something else. The gift deed stipulates that they build a ḥusayniyyah to be used for this purpose for ten years after the building has been completed. Should they wish to treat it as endowment after that, they may do so. They built the ḥusayniyyah with the help of the public. In the endowment deed, they gave themselves wide-ranging powers, including the appointment of the trustees of the endowment. Is it incumbent on the others to abide by their decision as to the choosing of the person who should take overall charge of the trust? Is there any legal obstacle to non-compliance with the provisions in the endowment deed? And what would the position be if one of the five-member committee goes against endowing the ḥusayniyyah?

A: They have to abide by the conditions laid down by the benefactor in the gift deed. If they do not follow the conditions he laid down regarding ḥabs or endowment, the gift giver or his heirs have the right to rescind the gift. And as far as the conditions they laid down in the endowment deed are concerned, such as the right to appoint the general supervisor, if the five-member body were acting according to the authority vested in them by the gift giver himself, these conditions have to be adhered to and acted upon. Should some members of the committee refuse to declare the ḥusayniyyah an endowment, the other members should toe the line provided that according to the gift giver a unanimous vote for rendering it as endowment is necessary.

Q1715. A person gave one third of his house to his wife by way of gift. A year later, he leased the entire property to someone for fifteen years. After a while, he passed away without leaving behind any children. Are both the gift and the lease valid? If the deceased was in debt, is it going to be paid off from the entire property or from the two-thirds and the remainder distributed according to inheritance law? Should the creditors wait until the expiry of the lease?

A: If the donor let her take possession of part of the house she owned — albeit while making use of the entire house — before leasing it to the third party provided that she was among his blood relatives or the gift was in return for something else, it is valid and, therefore, enforceable as described [i.e. concerning the part of the house]. However, the lease is valid in so far as the remaining part of the property is concerned.
Conversely, the lease, coming hard on the heels of the gift, would invalidate the gift. In this case, only the lease deed concluded after the gift is valid. As for the debt of the deceased, it should be settled from the property he owned at the time of his death. What he leased during his lifetime, the lease holder has the right to make use of throughout the period of the lease. While the house itself would be part of his estate that could be used to pay off his debts and the remainder falls to the inheritors, but they cannot use the leased property until the end of the lease.

Q1716. A person directed in his will that all his immovable property should be given to one of his sons provided that the son pays him and the members of his family a certain amount of rice each year in return. A year later the father gave the son the said property by way of gift. Would the provision, regarding the transfer of the property, made in the will remain valid because it preceded the gift and, therefore, enforceable in one third, in which case the remaining two-thirds would be rendered part of the estate, i.e. after the death of the giver? Or could it be the case that it is deemed invalid because it was superseded by the gift? It is noteworthy that the property is now under the control of the son.

A: If the gift was given to the person, with the permission of the granter during his lifetime, so much so that the recipient took possession of the gift and went about handling it as though he was the owner, this would have been bound to render the will invalid because it would have been deemed a revocation of the will. That is, the property given to the intended person should have been rightfully his, i.e. the other inheritors have no right in it. Otherwise, the will would remain valid unless it is proved that the testator had changed his mind about it.

Q1717. Is it permissible for an inheritor, who donated his share in the inheritance to his brothers, to claim it back from them after several years? And what is the opinion if they refuse to give in to his demand?

A: It is not permissible for him to do that if he has already handed it over to them, and they took possession of it through which the transaction was concluded. However, if this has not been the case, i.e., before any transfer and receipt of the property, he is entitled to revoke the gift.

Q1718. One of my brothers gave me, by way of gift, a part of his share in our inheritance. He retracted his decision before the estate was divided among the inheritors. What is the ruling in the matter?

A: If he had changed his mind before you received what he granted of his share in the inheritance, his action should be deemed shar'ī. Accordingly, you have no right in his share. However, if he changed his mind after your receiving what he had given you, he cannot revoke his decision, and, therefore, has no right to the gift.

Q1719. A woman gave her land away by way of gift to a person, on the condition that he would perform hajj for her, in the belief that hajj was incumbent on her despite the fact that her relatives didn't agree with her analysis. Then, she granted the same land to one of her grand children, and passed away a week later. Which of the two donations is valid? And what would the position of the

first person, who was granted the land insofar as the performance of hajj is concerned, be?

A: If the first person was among the woman's blood relatives and took possession of the land with her permission, the first gift deed is valid and, therefore, binding. It is incumbent on the person to perform hajj on her behalf. As regards the second gift deed, it is dependent on his agreement.
If the first person was not among the woman's blood relatives or did not take possession of the land, the second gift deed would be considered a revocation of the first one. Therefore, it is deemed valid, rendering the first one invalid. Accordingly, the first person has no right in the land and is, therefore, not required to perform hajj for the woman.

Q1720. Can someone give his right to another one as a gift before he is entitled to such a right? At the time of the marriage contract, a woman forwent all the financial obligations that may become due to her by her husband. Is such a transaction valid?

A: There is a problem in, if not an objection to, such a type of grant. There is no harm if this foregoing of the wife's future rights is considered as a ṣulḥ contract or as a term stipulated in the contract that she would relinquish the rights after being entitled to them. Otherwise, it is of no effect.

Q1721. What is the ruling in the matter of exchanging presents with non-Muslims?

A: There is no objection to it in itself.

Q1722. A person gave his grandchild all his property during his lifetime. Does this gift cover all that he left, so much so that one cannot spend of it for his funeral?

A: If the grandchild took possession of the property later during the life time of the grandfather with his permission, the gift deed is effective regarding all gifts he took possession of.

Q1723. Are the things given to people who were wounded or maimed in the war, considered as gifts?

A: Yes, they are, save that which is paid to them as wages for their work, which is compensation of their work.

Q1724. To whom does the ownership of the presents given to the families of martyrs belong, i.e. to the heirs or their guardian?

A: It [the present] belongs to the person it was given to as intended by the giver.

Q1725. Some companies and other quarters, be they national or international give gifts to agents or middlemen when concluding commercial deals of any sort. Since this may make the recipient lean toward favoring the donor, is it permissible to accept and have ownership of such presents?

A: It is not permissible for the agent or the middleman in a sale, purchase, or a contract to accept any presents from the other party of the deal.

Q1726. Suppose a company gave a present, in exchange for another one which was presented to them and paid for by public funds. What is the ruling?

A: Should the present have been given in return for another one paid for by public money, it should be deposited in the public coffers.

Q1727. Should the present leave an adverse impact on the recipient, especially when security matters are concerned, is it permissible

to accept and use it in any way?

A: It is not permissible to have such a present. Rather, one must decline to accept it.

Q1728. Should there be any doubt that the present to be given to someone is intended to be used as a carrot to curry favor with them and make them blow trumpets in his praise, is it permissible to take it?

A: If the intended publicity is in accordance with the law and shar‘, there is no objection to it and there is no harm in accepting the present in return for making the publicity. Of course, in office environments the related rules should be observed if any.

Q1729. If a present is intended to influence the recipient and make them turn a blind eye to an offence or curry favor with the official to approve of certain practices, is it permissible to take it?

A: To say that it is permissible to accept such a present is problematic if not prohibited. Generally speaking, it is not permissible to accept the present, rather it is obligatory to turn it down if it is geared to achieving that which is not shar‘ī or legal, or to curry favor with the official to make him agree to do that which he is not entitled to. The officials should take necessary steps to stem such a practice.

Q1730. During his lifetime; is it permissible for the paternal grandfather to give all his property, or part thereof, to his son’s children and his daughter-in-law? Have his daughters the right to object to his decision?

A: It is permissible for him, in his lifetime, to grant his son’s children or daughter-in-law all his property or part thereof. His daughters have no right to object to that.

Q1731. A childless person, who does not have any parent’s brother or sister, wants to give away his property by way of gift to his wife or her relatives. Is it permissible for him to do that? If so, is there a particular amount of his property that he could part with?

A: There is no objection to the property owner’s giving away as a gift either all his property or part thereof during his lifetime to whomever he wished whether or not they are his would be heirs.

Q1732. The establishment looking after the affairs of martyrs gave a grant to the family of a martyr (my son) to meet the expenses of holding a memorial service for him. If I accept it, would this make me sinful or detract from the Allah’s reward to the martyr?

A: There is no harm in accepting these grants. It should not detract from reward of the martyr or his family.

Q1733. A hotel staff set up a joint fund to collect all the tips the guests give them. They agreed to distribute the income equally between themselves. However, some senior members of the staff have requested that they be given a bigger share. Naturally, this is bound to create some friction between members of the group. What is your opinion?

A: This is a matter for the person who gave the tip. That is, if he gave it to a particular person, it should be that person’s alone. And if the tip was for all members of the staff, it should be divided equally between them.

Q1734. Do the presents, including money given to the children, belong to them or their parents?

A: If the father, on behalf of the child, receives it, it is the child’s.

Q1735. A mother, who has two daughters, wants to give her grandchild — to the exclusion of her second daughter — a piece of arable land she owns. Has she the right to do that? And has the second daughter the right to demand a share of her mother’s estate after her death?

A: If the mother gave away the property to her grandchild in her lifetime so much so that the grandchild took possession of the granted property, it is rightfully his and no one else has the right to object to that. However, if she has instructed in her will that the property be given to her grandchild, after her death, this should be confined to one-third of the estate. Adding the remaining two-thirds to the grandchild's share is dependent on the consent of the heirs.

Q1736. A person gave part of his land to his nephew on the condition that the recipient marries his two stepdaughters to the donor's two sons. The recipient refused to honor his undertaking regarding the marriage arrangements of the second stepdaughter. Can the gift still be valid and binding?

A: The said gift deed is both valid and binding. However, the condition laid down is invalid because the stepfather has no jurisdiction over the marriage of his stepdaughters. The matter is entirely theirs if they have no father or paternal grandfather. That said, if the condition required the stepfather to do his best to persuade his stepdaughters to agree to the marriage, the condition is valid and, therefore, binding. If the recipient did not uphold the condition, the donor has the right to annul the gift deed.

Q1737. I transferred the ownership of my residential flat to my younger daughter. After I divorced her mother, I reconsidered the matter and transferred the same property to my son from a second marriage before my daughter attained the age of eighteen years. What is the ruling in this matter?

A: If you had given away the property to your daughter, and took possession of it on her behalf as her guardian, the gift is valid, binding, and irrevocable. Yet, if the gift deed was not really concluded, but was merely the change of the name in the title deed of the property to that of your daughter's, this is not sufficient to conclude the gift deed and transfer the ownership to her. Indeed, the property is yours and you can do with it whatever you like.

Q1738. When I was very ill, I distributed my property among my offspring and put everything in writing. However, after I had recovered, I demanded that they return to me some of the property I gave them. They declined. What is the ruling in this matter?

A: Writing a document is not a sufficient proof of ownership of the property by your sons and daughters. That said, if you had given them the property and they took possession of and control over it, it is rightfully theirs; you have no right to demand it back. But, if there was no gift involved at the outset, or they had not yet taken possession of it, the property should remain in your ownership and at your disposal.

Q1739. A person donated all his possessions inside his house to his wife. Among them was a book he wrote. Has the wife the copyright of the book or should it be the common ownership of all the inheritors?

A: The copyright of the book belongs to the person who owns it. So, if the author, during his lifetime, gave the book to someone or directed in his will that it would be his and the intended person took possession of the book, all rights concerning the book belong to him.

Q1740. From time to time, some government departments give their employees gifts. Since the source of funding for these gifts is not known, is it permissible for the employees to accept them and eventually have the right to use them?

A: There is no objection to giving gifts that have been funded by public money provided that the official who is giving these gifts is authorized to do so. And if the recipient thinks it

is possible to a considerable extent that the donor has such authority, there is no harm in accepting the gift from them.

Q1741. For the gift deed to be valid, is taking possession of it sufficient, or does it have to be registered in the name of the intended person, especially in things like land and property?

A: What is really meant by the "taking possession of it" is not putting the matter on paper and signing. Rather, it is the actual handing over of the thing, so that the recipient can have full control over the property which is sufficient for the gift deed to be concluded and for the realization of ownership, irrespective of its nature.

Q1742. On the occasion of marriage, birthday, etc., a person gave his friend some presents. Several years later, he changed his mind and asked the recipient to return it. Has he the right to do so? And can someone, who donated some money to be used in holding commemoration/celebration assemblies for the Imams' anniversaries, demand it back?

A: So long as the very present is available in its state, it is permissible for the donor to ask for it to be returned to them. That is unless the recipient is a blood relative of the giver or the gift is compensated for as in a deed of reciprocal present. However, after the gift has been either disposed of or changed in any way from its condition at the time of deed, the donor has no right to demand it back. Nor has he the right to get compensation for it. Also, the money one pays for the sake of Allah and to get nearer to Him, he has no right to get it back.