



*Asesorías y Tutorías para la Investigación Científica en la Educación Puig-Salabarría S.C.
José María Pino Suárez 400-2 esq a Lerdo de Tejada, Toluca, Estado de México. 7223898476*

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TÍTULO: Requisitos legales y jurisprudenciales para disfrutar del donante de la dotación.

AUTORES:

1. Ph.D. stud. Mostafa Narimani.
2. Assist. Prof. Mahdi Zolfaghari.
3. Assist. Prof. Amir Khajeh Zadeh.

RESUMEN: Hay opiniones contradictorias en la jurisprudencia y en la legislación iraní sobre la posibilidad o la negativa de disfrutar de un donante de la dotación. En los últimos años, la teoría de la posibilidad ha prevalecido, y los investigadores han estado tratando de abrir formas para utilizar al donante de la dotación. El disfrute beneficioso del donante por parte del objeto de dotación con el concepto de dedicación y meramente de beneficio para los demás no es tan conflictivo y la licencia de uso puede maximizarse. Este buen establecimiento del sistema legal ha tenido un efecto positivo en la actitud de la gente hacia la dotación. Esta investigación explora y explica el aspecto jurisprudencial y legal del tema.

PALABRAS CLAVES: Donante, disfrute benéfico del donante, posibilidad, rechazo.

TITLE: Jurisprudential and legal requirements of enjoying donor from the endowment.

AUTHORS:

1. Ph.D. stud. Mostafa Narimani.
2. Assist. Prof. Mahdi Zolfaghari.
3. Assist. Prof. Amir Khajeh Zadeh.

ABSTRACT: There are conflicting opinions in jurisprudence and in Iranian legislation about the possibility or refusal to enjoy a donor's endowment. In recent years, the theory of possibility has prevailed, and researchers have been trying to open up ways to use the donor endowment. The beneficial enjoyment of the donor by the object of endowment with the concept of dedication and merely of benefit for others is not so conflicting and the license of use can be maximized. This good establishment of the legal system has had a positive effect on the attitude of the people toward the endowment. This research explores and explains the jurisprudential and legal aspect of the subject.

KEY WORDS: Donor, beneficial enjoyment of donor, possibility, refusal.

INTRODUCTION.

Today, charity and endowment organizations are expanding and institutionalizing in the world, and various societies are thinking of legal organizing in order to institutionalize people's "voluntary legal acts". Undoubtedly, studying the legal systems of different countries can have a tremendous effect on the development of this "institution".

Kabisi from the book of Controversy of opinions... has quoted: "The Romans were acquainted with the system of "synagogue institutions" and "charity institutions". These institutions administered the poor and the disabled people. Some properties were dedicated to these institutions to be consumed by the poor and the disabled". This issue can be seen over the past decades, and in more than one country with more or less diverse and common points (apart from religious, cultural issues, etc.) (Endowment Knowledge Base, 2014).

One of the problems of endowment in some societies is the lack of interest of donor from endowment and interests of endowment, which has developed different approaches and views in different religions and countries.

In Islam, the property of the endowment does not have a specific owner; therefore, the use of this property and the maintenance of that property require special seizure which any possession is not permissible in terms of jurisprudence and it cannot be treated like another property (Rahimi, 2004, p. 23).

Endowment is the entailment of object and dedication of interests; that is, when the endowment is properly fulfilled and the receipt of the endowment was obtained, the endowment is required and the ownership of object of endowment is removed from donor, and a new legal personality will be created for endowment. From now on, donor is considered as a foreigner to endowment and endowment has an independent legal personality and continues his life forever. According to the laws of the subject, the fulfillment of endowment is created by the beginning of a "new legal personality", and after concluding an endowment contract, neither the donor is owner of the property of endowment nor beneficiary of an endowment.

The law "Authority of Organization, Endowments and Charity", adopted in 1983, recognizes this legal personality. In the sources of jurisprudence, the theories about the "repudiation of property", the appropriation of the endowment to God, was made on this basis. However, given that in the jurisprudence, the existence of an entity that has a legal personality independent of individuals is not conceivable, the theory of legal personality remains unknown, but today in Iran's law, the existence of such an institution is recognized in addition to the real people; In addition to the aforementioned law, Articles 583, 584, 587 and 588 of the Commercial Law of 1311 also has recognized the legal personality. Article 588 states: "A legal person may have all the rights and

duties that the law considers to individuals, except the rights that are special to human beings, such as the rights of paternity, filiation".

Adoption of the legal personality for the endowment ends the disputes in jurisprudence regarding the owner of this property and makes Iran's civil rights closer to Islamic jurisprudence. In addition, practically, personal creditors of donor or beneficiary of an endowment will not have a right to the property and all contracts and transactions are made in the name of the endowment, and the trustee or manager acts as the director of the agency.

However, regarding the possibility or refusal of benefiting donor from the endowment, one of the instances in which the donor may benefit from the property of the endowment, is the endowment for the benefit of real persons, the intention is that the donor places himself in the contract of endowment, a beneficiary of endowment. Endowment for the benefit of real persons may be in different forms. Occasionally, the donor endows himself directly, sometimes indirectly, i.e the direction of endowment is on public or unconventional human beings, but the donor will later be subject to them. In other cases, it is possible that donor conditioned the payment of debts and its expenses in endowment.

In this research, the question is what are the possible or refusal cases of enjoying donor from the endowment in Imamiyeh jurisprudence and Iranian law?

The concept and foundations of the endowment.

The concept of endowment.

Civil law, in accordance with jurisprudential sources, considers the entailment of the object of property as the preservation of object of endowment from any transfer of a document after realizing endowment. Except in the exceptional cases stipulated in jurisprudence and law. The purpose of dedication of benefits is that the interest of the endowment will be used in the direction that donor

has determined. In other words, the purpose of dedication of interest is that the interests of the endowment property to be used well (Safai 2016, p. 250).

Endowment is one of the legal acts required the will. Legal actions are divided into two types of contract and unilateral legal act. The jurists disagree about the legal nature of endowment in terms of contract or unilateral legal act: 1. Endowment (special-general) by announcing will of donor and without need to accept; 2. A special endowment needs to be accepted, but in the general endowment, acceptance is not required; 3. In the general and special endowment, acceptance is not condition.

The civil law of Iran is based on the third view; regarding the ownership of the endowment property, some of the jurisprudents consider donor as owner, some consider the object of endowment belonging to the beneficiary of endowment, and some consider God as owner of property of the endowment. By verifying the legal nature of endowment and the status of the ownership of property of the endowment, we believe that: 1. Endowment is unilateral legal act, not the contract¹ (Hosseini Khamenei 2015, p. 29); 2. By the fulfillment of the endowment, a new legal person is formed that owns the property of the endowment.

The endowment in Islamic jurisprudence has features that among them, two characteristics of stability, durability and independence are very important. On the basis of the first feature, the endowment has the necessity of survival, and any change in it is contrary to the first principle, and according to the second feature, the subject of endowment because of its independence, is only realized and sustained on the basis of the view of donor.

¹ The better promise is that endowment is unilateral legal act not contract because 1. If we consider acceptance a condition for the endowment, why acceptance of the first class of beneficiaries of endowment is sufficient? 2. If we consider the acceptance in a particular endowment, in the general endowment that only the consumption of property in the established direction will not a place, because it does not seem reasonable the establishing of endowment by accepting the representative of the beneficiaries of the rational society and, on the other hand, accepting condition is for ownership, which is not subject to ownership. Ayatollah Khamenei considers endowment as unilateral legal act but in the correctness of endowment consider the delivery of beneficiaries of endowment as condition that if they do not receive the object of endowment, the endowment will not be realized.

Legal and jurisprudential foundations of endowment.

In the sources of Imamiyeh jurisprudence and Iranian law, the principle is based on the respect for the sales of property of endowment. But sometimes situations arise that it is possible to make a contradictory decision to maintain an endowment institution and an expedient of beneficiary endowment, such as the sale of an endowment that is removed under conditions of reverence for the sale of endowment (Gholizadeh, 2004, p.199-120).

The opinions of the jurists.

Sheikh Tusi believes that if a property is first endowed on self and then on children and then on the poor, the endowment on self will not be right (Tusi, al-Khalaf, p. 549; al-Mabsut, 2008, p. 299). Ibn-Edris Helli also stated that the conditions of the endowment are that the beneficiary of endowment is against the donor (Heli 1410, p. 155). Shahid Sani writes in the following sentence: "If one endows on his own self, although afterward he mentions a beneficiary of endowment that the endowment is correct to him, this endowment is void, because in this case, it will be interrupted (Ameli, 1410, p. 299).

In the book of Masalek al-Afham, while stipulating the absence of any offense in its validity, this condition is considered rational; he argues: the endowment of the removal of property from donor and the conveyance and its inclusion is in the property of the beneficiary of endowment, and since the property is real and persistent for the donor, its renewal is not reasonable (Ameli, 2001, v. 1, p. 354). Mohaghegh Korki also considers endowment on soul unreasonable (Korki Ameli, 1414, p. 25). Imam Khomeini's contemporary jurisprudents write: if he endows on himself, it is not true, and if he endows on self and others, if it is in agreement, it is void to self and to others wrong, and if it is in order, it is interrupted in the parts of endowment (Mousavi Khomeini, p. 67). The same theme

is mentioned by Ayatollah Khoiy in his fatwa (Mousavi Khoiy, p. 243); therefore, the validity of this condition is a consensus beyond the fact that endowment on soul does not exist in the tradition. As a result, donor cannot, either totally or externally, place himself in the beneficiary of endowment or place endowment for his debts; in that case, the endowment is void. If the donor is alive, the object of endowment will be in his property and, if the property is transferred to the heirs.

Endowment in Iranian Civil Code.

Articles 55 to 91 of the Civil Code of Iran are about endowment, which the related cases with subject of research are:

Article 61: endowment after its occurrence is necessary correctly and donor cannot refer to it or change it; or, exit someone from beneficiaries of endowment or bring someone to beneficiaries of endowment or make them partner or, if he has not determined trustee while contract or place trustee after it or himself interfere as trusteeship.

Article 72: Endowment on the soul, which means that the donor makes himself / herself beneficiary of endowment, or the payment of debts or other expenses from the endowment benefits, is null and void, whether it is about life or after death

Article 73: The endowment to the children, relatives and crew and the like is correct.

Article 74: In the endowment on the public interest, if the donor is also an instance of the beneficiary of endowment, he can benefit.

Article 75: donor can manage endowment affairs for a specified period of time, and can determine another trustee that independently or collectively manage with donor. Trustee of the property of the endowment may be assigned to one or more persons, other than donor, to manage each independently or donor can condition that himself or trustee who has been appointed make any order which he considers appropriate.

Article 82: If donor has determined a certain order for the management of the endowment, the trustee shall behave in the same manner and, if he has not arranged, the trustee shall be responsible for repairing and renting and collecting the benefits and sharing it with the poor and maintenance of the endowment, etc., such as a lawyer.

Article 84: It is permissible that donor places a share for trustee from interests of the endowment and, if right of trustee has not been determined, the trustee deserves for fair remuneration.

Article 85: Upon the determination of the benefits of the endowment, the result of each of the beneficiaries of endowments, the beneficiary of endowment may seize his property, although the trustee has not given permission unless the donor has conditioned the permission to seize.

Article 87: donor can condition that the benefits of endowment to be divided between the beneficiaries of endowment in equality, or in difference or giving the authority to the trustee or another person, in whatever is expedient to divide.

Article 88: Sale of endowment, if it is destroyed or it is fearful that it leads to destruction in such a way that it is not possible to benefit it, is permissible if its development is not possible or no one is ready to develop it.

The views of Iranian Lawyers.

Dr. Jafari Langroudi says: endowment is a contract by which the owner of the object protects a certain amount of his property from the transfer and gives it benefits to the person or certain persons. If the donor is a trustee, the delivery can be made and he does not need any other action. (Jafari Langroudi, Terminology of Law, 2009, p. 752).

Katouzian Master considers the entity of endowment with three major features:

1. The endowment property should be protected from transportation and waste and be removed from the property of the owner, ie, to be entailed. This entailment must be permanent, and in the long run, it cannot overcome what donor has made.
2. What is entailed should be institutionalized in the course of their movement toward the goals of the endowment; the endowment property must become authentic and become a "legal organization", because the property cannot remain without owner unless it is an autonomous entity.
3. What is entailed should be used in the way of goodness and service to others and not to be a means of selfishness and jobbery, because it is based on non-selfish thought. These three qualifications in Article 55 of the Civil Code are as follows: endowment is that the object of property to be entailed and its benefits to be dedicated (Katouzian 2007, p. 76).

Ahad Gholizadeh writes in the research: The influence of the differences in jurisprudential opinions about the nature and effects of endowment led to the emergence of different interpretations from the provisions of the civil law provisions of the rules of endowment. One of the controversial issues is the way of relation of object of endowment with donor and thus the possibility or impossibility of returning the object of endowment to the donor after the removal of the endowment. Despite the opposition's comments, the civil code has not accepted the repudiation of property from donor as a result of endowment. This ownership has not been transferred to the beneficiary of endowment or the legal personality of the endowment. As a result, the owner's possessions in the property of endowment, which are not in conflict with the right of beneficiary of endowment, are permissible.

The survival of the owner's ownership on the endowment leads whenever the endowment for any of the causes of removal is removed, the full dominance of donor or his heirs will be restored to endowment. In this way, if there is diffusion between endowment and property, the owner of endowment will have the right of pre-emption to the property by selling the property (Gholizadeh, 2010, p.67). However, by ratifying Article 3 of the Law on the Authorities of Organization of

Endowments which stipulates that "every endowment has a legal personality and that the trustee or organization is representative of it", it ended the controversy (Assembly Research Center, 2000).

Nasrin Akbarzadeh writes in the research: Among the topics discussed in endowment is "the condition of reference from endowment". The consensus of the jurists is that the "condition of reference from endowment" is absolutely null and void. But they differ in terms of the "condition of reference from endowment when needed". The result of the examination of the reasons given by the believers for the validity of condition of reference and the denials of this condition is that the condition of reference from endowment is void. In civil law, according to Article 61, donor is prohibited from any reference and change in the endowment, beneficiary of endowment, or trustee after the occurrence of the endowment and receipt (Akbarzadeh 2011, p. 38).

Time of expropriation from donor.

When endowment was properly realized and the delivery of the endowment was obtained, the endowment is necessary; and the ownership of the object of endowment will be removed from donor, and the "legal personality" will be created for the endowment. From now on, the donor is considered as an alien to endowment. Therefore, it needs a manager to manage the property of the endowment. They call him a trustee. The right to appoint a trustee is with donor, but he faces with time limit in applying this right. Only until the "delivery of endowment", donor can appoint a trustee.

Donor can independently or complexly place trusteeship for himself for a lifetime or for one or more persons other than himself. The donor can give the right to choose a trustee to another or mention the right to choose the trustees in a way that any trusteeship chooses trustee after him. (Ashuri 1999, p. 123). The famous jurisprudents of the Imamiyeh state that if donor uses the contract of endowment and does not interpret it, the girl's child is considered a beneficiary of

endowment, and in the endowment, given that the girl's descendants cannot be attributed to donor (their maternal grandfather), they do not consider beneficiaries of endowment (Tabibi Jabali, 2016, pp. 775-796).

Possession in the endowment properties.

The endowment properties do not have a special owner, so the use of this property and its possession requires special laws. In the jurisprudential view, any possession in endowment properties is not permissible and cannot be treated like the other property, but it is permissible under certain conditions and in certain cases (Rahimi, 2004, p. 68).

Possibility or refusal of enjoyment of donor from the endowment.

Endowment on soul.

One of the conditions of validity of endowment is the "Ekhray Nafse Anhe", i.e, donor exits himself from the case of endowment. In other words, "if endowment is on the soul, it is not correct, and if donor endows on himself and the other, if it is a partnership, it is void in his own right and it is correct to other, and if it is in order, i.e, endowment on the soul, then on another, it is located in the first interruption group, and it is false, if it was vice versa, it is last interruption, and if it is to another, then to self, then to another, it is an intermediate interruption" (Movahedi Lankari, 2003, p. 37).

Shahid Sani doesn't consider endowment on soul correct, even if he places endowment on himself with others"(Ameli, 2001, p. 361), the statement of correct endowment in other right is considered a weak statement (if donor is with other).

Emamiyeh jurists consider endowment of first interruption invalid, so they have said that donor cannot endow on what endowment is not correct on it and then endow other" (Mohaghegh Heli

1408, p. 224, Ameli, 2001, p. 329, Najafi 1404, p. 26, Korke Ameli, 1414, P. 21). In this statement, Allame Heli sentence among validity and invalidity in doubt (Alameh Hali, p. 299).

Sheikh Tusi by referring to the famous view of jurists considers non-permission based on the statement of non-permission of handclasp and because differentiates between permission of handclasp, he considers validity of this endowment (Al-Mabsut, 2010, p. 293) the view of Saheb Arve is as this (Tabatabayi Yazdi 1414, p. 317): "If endowment is done on something that endowment is not correct on it, then to other as endowment on soul or owned; then, to other that order is in it. The famous Imamiyeh jurists promise to void. Absolutely, Sheikh Tusi is promising its authenticity, and the strong promise is correct, and the difference is that the difference is that there is no difference between being placed in width or length, as the later order is considered from the endowment and it should not be said that the term "endowment" is in the lengthy series, it cannot be verified in some of the verdicts, and in some other cases it is void, because there is no difference between the order and the sum of the two, because in the sum, it may also be said that the purpose is total, so it cannot say that the verdict is on correct or void; Yes, if the will of donor is understood, the verdict to void is required, regardless of the length or breadth of the beneficiary of endowment". And then, accepting the validity of a part of endowment is not a problem, and even delayed and suspended in endowment is harmful at the time of contract, but when the contract is necessary, it is not a problem whether it is in some parts invalid and in some to be correct; such as sale that ignorant in the amount of price during contract is harmful in sale, but when contract was required, it is not harmful to contract.

In summary, whether we regard the validity of endowment in endowment on soul or we fully regard the endowment as inaccurate, it is void and the donor cannot place himself as beneficiaries of endowment, and paying debts is considered from endowment, this is statement of Emamiyeh jurists.

The reasons that Ememiyeh jurists have argued that donor should remove: self from the endowment:

Narratives: 1. It is narrated that Ali ibn Soleyman wrote a letter to Abi al-Hasan (Imam Hadi) (peace be upon him), in which he does not have any child and heir, he decides for his properties and possessions, if something happens to me, what do I do, I want to dedicate or sell some of it to the poor, and give charity at my time when I live, that I am afraid that endowment my death doesn't affect, and if I endow it in the time of my life, can I enjoy it in life? or no? Imam (AS) writes the following answer: "... You should not be ashamed of the truth, but you have not fulfilled it ...". If you endow it, you cannot enjoy it and if you exploit it, it is not feasible". And if you endow it, you yourself avoid, as Imam Ali (as) did.

2 - Talhe bin Zayd from Abi Abdullah (peace be upon him) from his father: Someone has dedicated a house to him while he is living, in this regard, Imam (as) said: «Then get out of them» Now exit it [and deliver the property] (Sheikh Har Ameli, p. 297).

Two narratives can be damaged that don't include the forms of the subject; indicating Talha bin Zayd is clear that the narrative was only the departure of the house after being endowed on other, and it does not matter that endowment is not permissible on soul, but the first narrative seems to be the same as the previous one, and the purpose is that when something is dedicated to the poor, it cannot use it and it does not matter that it is not permissible to devote something for time of his life, it may be said that the opinion of someone who has argued this news is that the donor could not live in that house as beneficiary of endowment because endowment is realized for other, there is no doubt that in this case, he cannot seize, it is possible to say that the donor cannot endow on soul as the first one (Khansari, 1976, p. 8)

Status of ownership of the endowment property.

About the ownership of the property of endowment after the realizing endowment, there are numerous discussions in legal sources of jurisprudence. The question is whether, after the occurrence of endowment, is donor still the owner of the property of endowment or is the ownership transferred to beneficiary of endowment? After the realizing endowment, is an independent right personality created for ownership of the property of endowment? Here are some views that are referred: Some jurists believe that the object of endowment entails in the possession of donor because the "necessity of entailing object" is inconsistent by transferring it to another, then only the interests of the property reach to a beneficiary of endowment (Maleki, 1980, p. 71). In other words, "Tahbisolasl" means the preservation of object in the property of donor, which is in conflict with the transfer. Therefore, the only result to dedicate is that a beneficiary of endowment has the right of benefit.

According to that idea, the believers consider the condition of donor for selling licenses permissible if necessary. In rejecting this theory, it can be said, firstly, that the necessity of entailment of object does not conflict with the exit of it from possession of the donor because it can be regarded the object in the property of beneficiary of endowment and cannot be prevented from transferring it (Najafi 1404, p. 88) Secondly, there are reasons that essentially the survival of object is failed in the ownership of donor, including the fact that ownership is a rational credulity that arises between the person and the object; this rationale has the results as benefit of interests, interference with seizure, transfer. However, after endowment, the donor doesn't have any relationship with the object of property; all owned additions are disconnected between him and the object. It may also be said that in the will of benefiting in long-term leases, the same status exists, that is, while others use the interests of the property, but the ownership of the property belongs to the owner or landlord. The answer is that in the will of the interests or the lease, the tenant only owns the interests of property

and has no rights to the object of property, and the landlord owns the object of property; the ownership of object for them also has value. However, after realizing the endowment, the donor has no right to perform any legal action or change in relation to the property of the endowment.

Given the impossibility of carrying out any action (material or legal) against the property by the donor, he cannot be considered the owner of the property of the endowment and, after dedicating it, no property relationship will exist between the donor and the object of endowment. Article 61 of the Civil Code stipulates: "endowment after its occurrence, is necessary for the accuracy of the delivery, and the donor cannot refer from it, change it, or leave or endorse beneficiaries of endowment of someone or to be partner with them, if donor does not determine trustee while contract, he should place trustee after it or he himself interfere as trusteeship.

This material is used to: 1. the direct effect of the endowment of the "repudiation" is donor and the object of endowment goes out of ownership of donor and no longer returns to it, after the donor is prevented from reference and any changes in the property of endowment or use from its interests, which means expropriation of his ownership. As such, the owner cannot seize it and not even have the right to use the interest of the endowment property. Because after the entailment of endowment, he has rejected the property, his relationship with the property has been discontinued, and there is no authority for him to take possession of his property. 2. The condition against Article 61 is illegal and voids (Katouzin 2016, p. 236)

Ownership of a beneficiary of endowment.

In this section, it is examined what happens after the endowment of the ownership of the endowment? Who is owner or donor or trustee? Or a new personality is created by performing endowment that is called the endowment and is this the legal personality considered owner? Also, the question arises as to whether donor enjoys the right of interest of property from his own

endowment? Is his relationship disconnected in terms of ownership? Many jurists believe that the endowment is a kind of ownership of object to beneficiary of endowment², that is, after the creation of endowment, the object of endowment is transferred to the beneficiary of endowment (Mohaghegh Heli 1404, p. 270; Sheikh Tusi, *Almabsut*, p. 290; Allameh Helli, p. 270; Korke Ameli, 1414, P. 52; Najafi 1404, p. 29) and donor does not have the ownership relation. Proponents of this theory cite three reasons for confirming their opinion:

First reason: The benefit of property, that is, guarantee of loss of object, is at the object of endowment. According to the principle of finding from effect to effective, it is determined that the beneficiaries of endowment are the owner of the object of endowment. In other words, the ownership of the item follows the object property. On the other hand, the person who wastes the object of endowment will be its guarantor. There is a concomitance between the guarantee and the ownership. So, in the narrative «Whoever harms the property of others is a guarantor» The guarantor is the owner of the property", therefore, the ownership of beneficiary of endowment is fixed against the object of object of endowment (Mohaghegh Helli 1408, p. 270).

Second reason: Saheb Javaheri has argued for ownership of beneficiary of endowment to the object of endowment that endowment is a contract that needs to be accepted. For such an agreement, it is necessary that the object shall be exited from ownership of donor and entered in the ownership of beneficiary of endowment, if the issue of entry of object into the property of beneficiary of endowment is not raised, it is not necessary to accept this theory. In rejecting this theory have said that in many cases of endowment, accepting the beneficiary of endowment is canceled including general endowments that accepting beneficiaries of endowment is not condition, where we consider the acceptance of beneficiaries of endowment as a condition, in many contracts that include the

² Someone who endowment is dedicated to using him. The income of each endowment according to the opinion of the persons including: the poor orphans, etc., or the institutions and places such as schools, mosques, baths, bridges, cisterns, and the like. Each person of cases of using is called beneficiary of endowment. Or those endowments for their use are endowed.

need to accept, the absolute contract does not result in property, such as renting contract, attorney, and deposit. It is not as this that wherever there is acceptance, it is necessary to create a property. Therefore, with no acceptance of the condition, there is no way for the reason of Saheb Javaher (Abhari Ali Abad 2007, pp. 11-30).

Third reason: Some of the public jurists consider the beneficiaries of endowment to be the owner of the endowment. They believe that the notion of a property without owner and the survival of the donor's property are unreasonable. Therefore, with the fulfillment of the endowment, the object of endowment will be taken out of the ownership of the donor; therefore, it is necessary to add beneficiary of endowment to the property of the other party to be in their property (Abid al-Kabisi, 1985, 173). In rejecting this theory, it should be said: "Property on the realization of ownership is beneficiary of endowment." It is undeniable that the object of endowment is examples of "property," and the existence of property without owner is not a problem.

In principle, the public properties have a property aspect, property is paid for them but they don't have owner; or the property that their owners have turned away from them, until someone has mastered them, they are not in the ownership of anyone (Tabataba'i Yazdi 1414, p. 232). Some jurisprudents consider that because the capacity to possess is not in general endowments, it cannot consider ownership. The endowment is considered two parts by the validity of the type of exploitation:

- 1) Beneficiaries of endowment at the time of ownership of endowment own the interest of object and has the right to use the benefit in his own interest with the lease of object. So, if someone uses it without permission, the sponsor is quantum meruit.
2. In a kind of endowment, the beneficiaries of endowment have the sole right to benefit from the object, that is, only the repudiation is permitted and there is no ownership in it, such as endowment of the mosques, schools, etc.; therefore, if someone without any right stays in this place (for

example, several days without permission to be in the school), quantum meruit is not proved to his right. Although many jurists are advocates of this theory, it does not seem to be acceptable to import endowed property in the property of beneficiary of endowment because in any case the owner of the property has many powers that can apply it by interfering in it. This is while the beneficiaries of endowment have many limitations in the property of the endowment, and the only right that they have is the use of the endowment benefits. This right is also imaginable in some other contracts, such as a rented contract (entailment including life, rival, and residence). However, in these contracts, because of the use of individuals, it cannot be considered an ownership to the object.

In the endowment, due to the "right to use property for beneficiary of endowment", it cannot be extended to the right of ownership, and entered ownership in the right of beneficiary of endowment.

(Abhari Ali Abadi, 2007, pp. 11-11)

Having rights of easement in endowment.

If the donor, while contract of endowment makes condition that in the endowment of rights of easement including home to have the right of residence or has the right through the garden of endowment, is the endowment correct?

To answer this question, we have to examine the nature of the endowment in terms of ownership and whether the endowment is property or profit? If it is profitable, it conflicts with right of benefit of other and if it is owned, it can be belonged for a certain period of time to other and not endow to the property of the endowment; and if we say that the endowment remains in the possession of donor, in the case of extinction of beneficiaries of endowment returns to the heirs of donor.

If we say that the beneficiary of endowment is the owner of endowment, by this assumption after extinction, they reach the heir of donor, and if we say that it does not have owner, it belongs to Imam including "Kol Arz La Rab Laha". However, it seems that the property is out of ownership of

donor and becomes the property of the endowment as an independent legal personality, and it is confirmed by Article 3 of the Law on the Authorities of Organization of Endowments that the legislator by accepting the legal personality for the endowment considers property for endowment: "Each endowment has a legal personality, and the trustee or organization is its representative", and now ownership documents are issued in the name of the endowment. Therefore, in the endowment, the transfer of ownership is done, so it can be given to another for a certain period of time, if the rights of easement belong to someone else before the endowment or while contract, there is no problem in accuracy of endowment and there is no problem in pillars of endowment.

Endowment could allocate these rights and have this right with their permission and consent (Kelini, 2009, p. 39). Also, if a third party has peace rights of easement after having endowed it, the endowment is not considered on soul and donor can benefit from the interests in the remained period.

Payment of debts and costs of donor from the endowment.

If paying the costs and fulfill obligations to be in responsibility of endowment by donor, there will be three assumptions: First, in the endowment, he makes condition that he first fulfills the interests of the endowment of debts and his obligations, then the remainder to be reached the beneficiary of endowment. Second, in the contract of endowment on beneficiary of endowment, he makes condition that the expense and debts of donor to be paid from the benefits of the endowment. Third: If donor makes condition on trustee to pay the right of trusteeship of debts and certain expenses from the donor.

In the first case, unquestioningly, an endowment is considered on soul, and the endowment is void, and in the second case, as condition is on beneficiary of endowment when they are owned, they can have any legitimate capture in their possessions; therefore, the stronger promise is that they can pay

their debts and expenses of donor from their property and endowment is not considered on soul and it is correct (Mousavi Khomeini, p. 67), but the third one, because the debts and expenses are paid from the right of trusteeship (which belongs to the trustee) because it is not deductible from the right of beneficiary of endowment, it is not examples of endowment on soul.

Endowment contract is set up for the dismissal of ownership of donor and if the property remains in the ownership of donor, it is opposed to the inherent nature of the contract (Maleki, 1422, p. 20); therefore, the condition of participation with the beneficiary of endowment is a condition contrary to the requirement of the essence of the contract; both the condition and the contract are void. In the payment of expenses, there is no difference between current expenses, debts, payment of khums, zakat, taxes and so on during life and can be exited from the endowment on soul.

Exception from endowment.

Donor can except a part of the benefits of the endowment for payment of debts and expenses from endowment (Har Amoli, p. 178), which can be done in the following ways: First, assume that a person wants to devote a store, and its revenues are two million tomans a month, and also wants to pay a million tomans for the expenses of his life. In this case, at the time of concluding the contract, endowment says: I endowed revenues of this store with the exception of one million tomans its rent in a month, then he can take a million tomans per month. This contract is not on soul or, for example, a garden is dedicated, in this case, that I endowed this garden with the exception of five pomegranates and two pears that I use every year for myself and my family, then what is the exception will not be the endowment and endowment is not on soul (Tabataba'i Yazdi 1414, p. 190).

Second: Sometimes, for the donor to be able to benefit from some of the benefits of the endowment during his lifetime, he can first lease property for ten years or twenty years, then he immediately

dedicates this property, which is for rent, of course, in the contract of rent should have the right of option of cancelation when the endowment was realized and delivery was taken place, the rent would be canceled and the benefits would remain for that period, that is, the donor would thus be the owner of the benefits of that period (Tabataba'i Yazdi 1414, p. 192) which is not considered as examples of endowment on soul, and is an exception to endowment revenues.

Third: donor can make exception the interest of a given period or the benefits of his lifetime from the endowment, this dedication is correct, the unknown of the lifetime has no effect on the authenticity of the endowment, because the endowment is a contract of tolerance and this tolerance does not harm it (Jafari Langroudi 2009, p. 223).

Endowment on alimony, relatives entitled to alimony.

As it is used from language of the jurists, if donor conditions that relatives entitled to alimony use the endowment, the condition is correct. The Prophet (pbuh) has considered this condition from his endowments for Hazrat Zahra (SA) (Shahid Aval 1417, p. 267; Allameh Helli 1414, p. 390).

If donor endows a property as the alimony of marriage in a permanent marriage, that endowment is not correct because donor has endowed what he is legally obliged to pay, and the result is endowment on soul. However, if the donor endows a property for the spouse absolutely, not as alimony of the marriage in the permanent contract, endowment is correct and, in addition to what is given to wife from endowment, the husband must pay the alimony (Shahid Aval 1417, p. 268).

Donor considers himself a trustee and determines the right of trusteeship for self.

In the assumption that donor considers himself as the trustee of endowment and determines a share for his right of trusteeship from its revenues, this is not an example of endowment on soul, but the

right is for the work for the administration of the endowment (Shahid Aval 1417, p. 191). However, percent of it from endowment revenues is high.

According to the publicity of the narration, "Stand by what is stopped by its people" (Tabatabai 1412, p. 346), donor can mention conditions upon the contract of endowment that is not in contravention of the essence of contract and the nationals are obligated to do so. If donor considers himself / herself trusteeship while contract of endowment and considers the right of trusteeship to ninety percent from revenues of endowment, despite the fact that most of his endowment revenues is due to him, this contract is accurate and the problem created in the delivery of endowment is removed because donor considers trusteeship to himself and, according to the famous Imams' jurists, he does not need any other delivery³ (Mousavi Khomeini, p. 65).

Endowment on the directions and public interests.

Endowment on public interests is among profitable endowments such as endowment on mosques, passages, cisterns, the poor and others. Sometimes a person may devote his property to such affairs, if endowment on the soul is void, donor cannot exploit it.

The jurists of the Imamiyeh distinguished between the endowments granted to the public interests as Mohagheh Korke has described: (Korke Amoli 1414, p. 27). The profit of the donor in the general endowment (such as the dedication to the poor if he himself was poor) not means endowment on soul, because endowment is not on the poor and ... on individuals, but in fact endowment is on a particular direction (poverty, foolishness, etc.) and that is why, in the correctness of endowment, accept them or some of them, if possible, it is not a condition, and the property is not transferred to individuals, and the income for all persons in that class is not a condition. Seyyed Ali Tabatabai, the owner of book Riyaz Al-Masael, explains the subject (Tabataba'i 1412, p. 355): "the purpose of this sentence (donor should exist self from endowment) is that he should not intent

³ **Civil Code, Article 63.**

to endow for himself, as he should not intent with other people to be in beneficiaries of endowment (the primary intention), and if he has not intended, endowment is correct; for example, it is endowed to the scholars, he is also learned or endowed to the poor, he is also poor, in this case he can participate with the beneficiaries of endowment he cannot enter in beneficiaries of endowment. This allocation is subject to the condition that it does not intend to enter and contribute to the endowment. If obtained, endowment will be invalidated in general. "Sometimes the issue, where a place is created for the public benefit (for the public interests), comes out of the general (inaccuracy of endowment on self) ruling; like mosques, cemetery of Muslims, and so on. This is like where the expressed attribute may be attributed to that attribute and there is no problem that donor will use this place, and endowment is correct in this regard".

So, in the way of reasoning, it can use as this: if a person devotes his property to a public interest with the intention of expulsion from endowment, if he devotes for a trait like a poor person, and himself is attributed to the trait, that is, a poor person, by attracting the opinion of the trustee of the endowment, can benefit from it and share it with the beneficiaries of endowment; and if the endowment is dedicated to the direction (public interest), such as the mosque, bridge, caravanserai and ..., it can benefit from it and contribute to other beneficiaries of endowment.

CONCLUSIONS.

The enjoying of donor from the endowment is apparent in two ways:

1) Donor places himself in the row of beneficiaries of endowment, or put his expenditures, expenses or debts on responsibility of endowment; in this case, the endowment is on the soul and, according to all the jurists, the endowment is void, unless it is accompanied by other intentions of endowment, in which there is a controversy between the void of endowment (absolutely) or the corrupt part.

2. Although, by concluding endowment, the property is exited from the ownership of the donor, and donor has not placed himself in the row of beneficiaries of endowment (the exploiters of the endowment), but he can benefit from the conditions of the endowment. These conditions are as below:

(A) As it is possible to have rights of easement in property of other, it is also possible to have rights of easement in endowment; therefore, donor can benefit it by imposing rights of easement (during the contract of endowment), including the right to live or residence. Or, before contract of endowment, he can consider the right to reside for his wife during his lifetime and dedicate his home, in which case he can also benefit from it with the consent of the rightful owner. Or if a third party makes peace the rights of easement in the property of the endowment to donor (after the endowment), it is beyond the scope of the endowment on the soul and the donor can benefit from the interests of remaining term, even a third party can make peace the right of ownership of his interests to donor.

B) Donor can make condition payment of debts and costs to the beneficiaries of endowment or the donor.

C) If donor makes except part of the benefits of the endowment to pay his or her debts and expenses from endowment, he can benefit from it and it is not considered endowment on soul.

D) If donor makes condition relatives entitled to alimony while contract of endowment, it is non-problematic although he is exempted from payment of his expenses and somehow causes profitability of donor, but donor cannot consider paying his wife's alimony in the responsibility of endowment because alimony of relatives is by the condition of their poorness. Paying endowment to wife is obligatory so the condition of paying alimony of wife causes void of endowment.

E) If donor considers self a trustee and imposes a right of trustee to himself, this condition is non-problematic for observing and respecting the general principle of "Stand by what is stopped by its

people". "Believers are committed on their oaths" (even if ninety percent of the revenues is as right of trustee). In addition, the delivery of endowment by donor is sufficient and does not require re-delivery.

F) If the endowment is on the public interests and directions including endowment on mosques, Muslim cemetery, or the poor, donor may well benefit from it, some of the jurists (on a precautionary basis) in endowment on the public interest say that the donor should not have the intention of using the endowment before the contract, but if, after endowment, he was attributed in the endowment, such as "poverty", the use of the endowment revenues is without problem for him; however, the donor in any case of endowment can benefit in public directions..

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DATA OF THE AUTHORS.

1. Mostafa Narimani. Ph.D student, Department of Jurisprudence and Islamic Law, Damghan branch, Islamic Azad University, Damghan, Iran.
2. Mahdi Zolfaghari. Assistant Professor, Department of Islamic Jurisprudence and Islamic Law, Damghan branch, Islamic Azad University, Damghan, Iran. Email: mzolfaghari@damghaniau.ac.ir
3. Amir Khajeh Zadeh. Assistant Professor, Department of Privet Law, Damghan branch, Islamic Azad University, Damghan, Iran.

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