

Jurisprudence - al-m.ca/jurisprudence

- Please ensure to keep your mic muted and video off
- **To ask a question:**
 - Click on 'Participants' > 'Raise Hand'
 - You may unmute when requested, to ask your question
 - This is preferable over typing questions in chat
- **Notes are available to download at the above link**
 - link will only be available during the class time
- Ensure you are registered at the above link
- Email mahdi@al-m.ca for any questions or feedback

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Islamic Jurisprudence ♦ Financial Matters 4 ♦ 25 Jumadi I 1442 / 09 January 2020 2

Financial Matters

- ✓ **Dayn** (loan & debt).
- ✓ **Dhimān** (surety).
- ✓ **Rahn** (deposit or security).
- ✓ **Hawālah** (transfer of the debt).
- ✓ **Kafālah** (guarantee).
- ✓ **Wadi'ah** (trust, *amānat*).
- ✓ **Hajr** (debarment)
- ✓ **Habs** (restricting the usage)
- **Hibah** (gift)
- **Ta'min** (Insurance)

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Hibah (الهبية) Gift

What is hibah?

- **Hibah** (gift) means "to gift or give freely without anything in return."
- Examples of similar "givings": *hadiyya*, *nahla* and *sadaqah*.
- **Difference between hibah, hadiyya and sadaqah?**
 - *Hadiyyah*= giving s.t. out of respect or love for someone.
 - *Sadaqah*= giving s.t. for *qurbatan-ilal-lah*.
 - *Hibah*= giving s.t. without considering any of those motives.

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Hibah (الهبية) Gift (2)

- **Hibah** is a valid deal or transaction based on proposal to give and acceptance by the recipient.

وَآتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً
فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ نَفْسًا فَكُلُوهُ هَنِيئًا مَرِيئًا

**“And give women their dowries as a gift;
but if they themselves agree to give up
a portion of it to you,
then use it with enjoyment and palatability.” 4:4**

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Conditions of Hibah

Wāhib / the giver or donor:

- Bāligh; sane; have intention; free; not being bankrupt or foolish.

Mawhūb lahu / the recipient:

- The recipient should be legally allowed to own the gift. So, for example, a Muslim cannot be gifted intoxicant even from a kafir because he is not allowed to own such an item.

Mawhūb / the gift

- It should be an item and not just usage or benefit...

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Can you ask a gift back?

- If the gift still exists, then the giver can ask it back **except** in the following case:
 1. Those who are related by blood cannot ask the gift back from one another: parents & children; siblings; cousins...
 2. If the gift was given with the niyyat of qurbatan-ilal-lah.
- The above exception does not apply to the husband and the wife (unless they are also blood relatives, e.g., cousins).
- The giver can only ask for the actual gift and not its value if it is used up or perished or destroyed or sold...

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Types of Hiba

General Gift:

- A gift given without any condition of receiving a compensation.

Conditional Gift:

- A gift which is given with the condition of receiving a compensation in return.
- In case of a conditional gift, the giver cannot ask it back if the condition is fulfilled.

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Recommendation of Giving Gift to Relatives

- It is recommended to give gifts to those who are related to you by blood.
- The emphasis has been placed in case of gifting to the parents. And among the parents, more so to the mother than the father.
- It is permissible, but *makrūh*, to be preferential in giving gifts to your children. It might even become *harām* if it leads to conflict and hatred among the children.

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Insurance (التأمين)

- ***At-Ta'min*** is a contract in which the insured party **agrees to pay** a certain amount, monthly or annually or one time, to the insurer who **pledges to pay** a certain amount, gradually or one time, to the insured party or his beneficiary **in case of** occurrence of an incident or loss as specified in the contract.
- Most common types of insurance:
 1. Personal insurance: health or life.
 2. Property insurance: car, house, etc.

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Insurance (التأمين) (2)

- ***At-Ta'min*** / Insurance contract has 4 elements:
 1. Proposal by the insurer.
 2. Acceptance by the insured party.
 3. Specifying the insured entity: person or property.
 4. Beginning & end term of the insurance policy.
- It is also essential that the cause of loss for which the insurance is taken out must be specified: death, illness, drowning, sinking of the ship, fire or theft, etc.
- As well, the premium to be paid by the insured party should be specified: monthly or annually or one time.

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Conditions & Rules of Insurance

- Both parties must be:
 - baligh; sane;
 - have intention;
 - free;
 - not barred from contracting such an agreement such as bankruptcy or foolishness.
- Once the insurance agreement has been signed, it is binding and can't be cancelled except by agreement of both parties or as stipulated in the agreement.

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Rules Re: Insurance

- If the insurer does not fulfill his commitment, then the insured party can take him to the authorities to retrieve his loss or premiums as the case may be.
- If a group form a company with their shared resources and add a condition in the contract that if anyone of them suffers from loss (e.g., health, life or property), the company will compensate the loss from the capital – then it a valid and binding contract.

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A Brief Discussion on Legality of Insurance

- The Sunni scholars generally considered insurance to be invalid. See, for example, Dr. Yusuf Qaradhawi:
- Insurance: "This kind of transaction is far removed from either trade or partnership."
- The conditions of insurance: "The least one can say about this is that is, in the context of the Islamic legal system, an invalid condition."
- "The mutual agreement...has no validity in a transaction which is not based on justice and equity, and which is not devoid of any trace of ambiguity or exploitation...a transaction is invalid if it stipulates that in certain situations one party is to take all, with no benefits guaranteed to the other."

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A Brief Discussion on Legality of Insurance (2)

- "Furthermore, insurance is contrary to the whole concept of cooperation among people..."
- Interestingly, then he talks about modification to this view to bring it closer to the Islamic principle "by means of a contract of 'donation with a condition of compensation.'" Such a type of transaction is allowed in some Islamic schools of jurisprudence. If such a modification is affected, and if the company is free of usurious business, one may declare insurance against hazards to be a lawful contract. However, as far as life insurance is concerned, I see it as being very remote from Islamic business transactions." (Lawful & Prohibited in Islam, 139-140)

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A Brief Discussion on Legality of Insurance (3)

- Shi'a mujtahideen have looked at insurance through the existing transactional modules:
- Insurance is considered as "conditional gift" transaction:
- The insured party gives the premiums as gift with the condition that the insurer will help him or his beneficiary in case of a loss caused by illness, death, fire, etc., to him or his property.

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