

## 438581 - Ruling on ruqba, i.e., when the giver says: “If I die before you, then the house is yours”

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### the question

What is the ruling on this thing that my father did? He said to my mother that half of the house would be hers in the event that he passes away before her.

### Detailed answer

With regard to your father saying, “If I die before you, then half of the house is yours,” this is what is called ruqba.

Ruqba is an issue concerning which the jurists differed.

It says in *al-Mawsu'ah al-Fiqhiyyah* (10/36): It is invalid according to Abu Hanifah and Muhammad, so it does not grant ownership of the property in question; rather it is a loan and it is permissible for the lender to take it back and sell it at any time he wishes, because what he meant was to allow someone else to make use of that thing. Thus according to both of them [Abu Hanifah and Muhammad], it is a temporary deal, because it is like lending.

Ash-Shafa'i, Ahmad and Abu Yusuf regarded ruqba as permissible, because by saying “My house is yours,” a person is granting ownership of it, and if he says that the deal is ruqba, this is an invalid condition, so it is null and void. It is as if he is saying: I grant you use of my house as a ruqba. Thus in their view the ruqba is the same as 'umra [life-long gift; when the recipient dies, it goes back to the giver or his heirs] in terms of permissibility, so it is not a deal that is subject to a time limit. Ruqba is not permissible according to Imam Malik. End quote.

The ruqba becomes the property of the one to whom it is given according to the Shafa'is and Malikis, and the condition is null and void.

That is indicated by the report which was narrated by Ahmad (21650) and Abu Dawud (3559) from Zayd ibn Thabit, who said: The Messenger of Allah (blessings and peace of Allah be upon him) said: “Whoever gives something as a life-long gift [‘umra], it becomes the property of the one to whom it is given during his life and after his death. And do not give gifts to be kept by the last one alive [ruqba]; if someone is given such a gift, it is to be regarded as part of his estate.” Classed as sahih by al-Albani.

an-Nasa’i (3709) narrated from Ibn ‘Abbas that the Messenger of Allah (blessings and peace of Allah be upon him) said: “Do not give your wealth to be kept by the last one alive (ruqba), for whoever gives something as a ruqba, it belongs to the one to whom it was given on those terms.” Classed as sahih by al-Albani.

It says in *Sharh Muntaha al-Iradat* (2/435): If the giver stipulates to the recipient that the gift should go back – by stating that it is a ruqba and the like – to the giver when the recipient dies, or he stipulates that it should come back to him – namely the giver – if the recipient dies before him, or he stipulates that it should go back to someone else, such as the heirs of the giver, if he dies before the recipient, this comes under the heading of ruqba, which is so called because each of them is watching out (*yarqub*) for the death of the other. It was narrated from Ahmad that ruqba is when the giver says: “The gift is yours for the rest of your life, then when you die it will go to So-and-so or it will come back to me.” The ruling is the same. Or it is when the giver stipulates that it may go back to him at any time, without stipulating the condition of death or any other condition, or that it will go to his heirs, or to the last of them [the giver and the recipient] to remain alive. This condition is null and void, but the giving of the gift to the recipient is valid, and after he dies it goes to his heirs, as in the case of the issues mentioned above.

This is the view of Jabir, Ibn ‘Umar and Ibn ‘Abbas, because of the hadith of Jabir which says that the Messenger of Allah (blessings and peace of Allah be upon him) ruled that the life-long gift (‘umra) belongs to the one to whom it is given. Agreed upon.

And because it is a condition that is contrary to the nature of the contract [which is a gift], so it is null and void but the contract remains valid, like a sales contract that has an invalid

condition. End quote.

And Allah knows best.