

RULING ON THE RETURN OF THE GUARANTOR TO THE GUARANTEED FOR THE DEBT HE HAS PAID

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Introduction

Praise be to God, and prayers be upon my master, the Messenger of God, and after, One of the most important things that jurisprudence does is to cut off disputes between people in their financial dealings. Therefore, he had an advantage over all other Sharia sciences.

Perhaps the subject of bail or guarantee is one of the issues in which there are many disputes because man is innate to love money, so the jurists have devoted themselves to clarifying all the partial details related to this subject.

In this research, which is titled ((The ruling of the guarantor's return to the guaranteed on his behalf in the debt he has paid)), I shed light on the relationship of the guarantor with the guaranteed for him in the event that the guarantor performs what he guaranteed on his behalf, and the different cases in which the guarantor performed, in terms of the permission of the guaranteed to guarantee and performance. And the ruling of his return to fulfill his right.

- Judgment ⁽ⁱ⁾ the return of the guarantor ⁽ⁱⁱ⁾ to the guaranteed for the debt he has paid.

One of the effects of the guarantee is that the guarantor returns to the person sponsored for him to collect his right from him, and in the return of the guarantor to the person sponsored for him there are five cases in which there are many sayings of the jurists.

First case:

The guarantor's recourse to the person sponsored for him before the guarantor pays what he owes to the guarantor ⁽ⁱⁱⁱ⁾.

The second case:

If the sponsor paid as a donor, and this case is like the previous one, it is not unanimously returned ^(iv).

Third case:

If the suretyship is on the orders of the person sponsored and the fulfillment of the right is also on his orders, the jurists have two opinions in this case:

The first saying: He has the right to refer back to the original, which is the saying of Abu Yusuf from the Hanafi ^(v), Maliki ^(vi), Shafi'i ^(vii) and Hanbali ^(viii)

The second saying: He is not entitled to return unless his saying includes the word (on my behalf), as if he said guarantee on my behalf - guarantee on my behalf), which is the saying of Abu Hanifa and Muhammad ^(ix).

Jurists' evidence for their statements:

The owners of the first argument inferred

- The meaning of borrowing is not achieved without it, and if it was guaranteed without his command, it would not be returned to him ^(x).

The second opinion holders reasoned:

- The bail without express and clear permission is a donation of the money he gave ^(xi).

Fourth case:

If the guarantee is without his permission, and so is the performance, and there are two sayings in it:

The first saying: He is not entitled to return, and it is the saying of the Hanafis ^(xii) and the Shafi'is ^(xiii) and a narration on the authority of Ahmad ^(xiv).

The second saying: He has the right to return, which is the saying of the Malikis ^(xv) and the second narration on the authority of Ahmad ^(xvi)

Jurisprudence evidence:

The first team, who said that there is no return, inferred:

- What was narrated on the authority of Jaber, may God be pleased with him, who said: "A man died, so we washed him, embalmed him and shrouded him, then we came to the Messenger of God, may God bless him and grant him peace. He greeted to pray for him, and he made a mistake, then said: Does he owe a debt? We said: Yes, two dinars. He said: Pray for your friend, and he said: Abu Qatada: O Messenger of God, his religion is upon me, so the Messenger of God, may God's prayers and peace be upon him, said: You have the right of the debtor, and the dead is innocent. He said: Yes, so he prayed. Then he met him the next day and said: What did the two dinars do? He said: O Messenger of God, he died yesterday. Then he met him the next day and said: What did he do with the two dinars? He said: O Messenger of God, I have paid for them. Why was he flogged?" ^(xvii).

- What was narrated by Ali, may God be pleased with him, who said: When the Messenger of God, may God's prayers and peace be upon him, came to the funeral, he would not ask about any of the man's work, but would ask About his religion, if it is said: He owes a debt, he should stop praying for him, and if it is said: He does not owe a debt, then he should pray for him. A funeral was brought and when he got up to say the takbeer, the Messenger of God, may God's prayers and peace be upon him, asked his companions: Does your friend owe a debt? They said: Two dinars, so the Messenger of God was just. May Allah's blessings and peace be upon him, and he said: Pray for your companion, so Ali said: They are upon me, O Messenger of God. He is innocent of them. sol God, may God's prayers and peace be upon him, prayed for him, then said to Ali Ibn Abi Talib: May God reward you well, may God release your bet as I redeemed your brother's bet. There is no dead person who dies with a debt except that he is mortgaged by his debt, and whoever releases the bet of a dead person, Allah will release his bet on the Day of Resurrection. ^(xviii).

The point of evidence: If Ali and Abu Qatada were entitled to return what was implied, it would not be in their guarantee that the dead bet was released, and because he volunteered with the guarantee and the performance, so it became like someone who spent on the neck of others or fodder for his animals, he did not return what was spent for his volunteering ^(xix).

And they inferred from what is reasonable that the guarantee without the permission of the guarantor is a donation to spend on behalf of others, and it is not returned ^(xx).

While the second team reasoned

- It is a judgment exonerated from an obligatory debt, so it was from the guarantee of those who owe it, such as the ruler if he spent it on his behalf when he refused ^(xxi).

- That he spent a debt on his behalf that he was obliged to pay, and it is valid to delegate him in it believing to return to it, so he had the right to return to him with it, his origin if it was with his consent, and considering the imam if he was hired on the fool or on the one who refused to fulfill the right, and because Abu Hanifa agrees with us in the one who guarantees a usurper after his usurpation without his order, and he paid his value to the owner of the slave, that he returns to the usurper for that, and there is no difference between the usurper and others ^(xxii).

Fifth case:

If the guarantee was without his permission, while the performance was with his permission.

The first saying: He has the right to return, which is the saying of the Malikis ^(xxiii) and the Hanbalis ^(xxiv)

The second saying: The Shafi'is and Hanafis ^(xxv) said that the ruling differs according to the wording ^(xxvi).

Jurists' evidence for their sayings:

1- If he guarantees it without saying pay it back on my behalf, there is no going back

2- If he says, "Pay on my behalf what I guarantee to return it to me," then he has the right to return

3- And if he says, "Pay back on my behalf what I guarantee," then the two most popular views are that he does not return, and this is the opinion of the Hanafis ^(xxvii).

First argument:

1- They said that forgiving him the debt with his permission is as if he authorized him to bail him out ^(xxviii).

2- The obligation to guarantee him is to pay his debt, and not something else. When he pays it on his behalf with his permission, he is obliged to give him a replacement ^(xxix).

Evidence for the second saying:

- Because the reason for the obligation to pay is the guarantee, and he did not authorize it, so it was in the sense of the donor to fulfill the debt of someone else ^(xxx).

Sixth case:

If the guarantee was with his permission, while the performance was without his permission.

The first saying: He has the right of recourse, and it is the saying of the Hanafis ^(xxxi), the Malikis ^(xxxii), the Shafi'is against him ^(xxxiii) and the Hanbalis ^(xxxiv).

The second saying: He does not have the right to return, and it is the saying of the Shafi'is in the other way ^(xxxv).

Jurists' evidence for their sayings:

First argument:

- That the performance is due with the guarantee enjoined, so he became a performer of what was required by the command" ^(xxxvi).

Evidence for the second saying:

- That the performance took place without the permission of the person guaranteed for it, and it seems that the permission was not intended to document the guarantee only, so it is not returned." ^(xxxvii)

Second: When is a donation required?

The jurists differed whether it is necessary to take possession of the gift. There are two sayings:

The sayings of the jurists

The first saying: The gift is not proven except by taking possession, which is the saying of the Hanafis ^(xxxviii) and the Shafi'is ^(xxxix) and the Hanbalis in their well-known view ^(xl).

The Shafi'is and the Hanbalis added to this by saying that it is not obligatory and that it is not possessed except by taking possession.

The difference between their opinion and the opinion of the Hanafis is that the Hanafis said that if he takes it, then its owner has the right to return, so they do not say that it is necessary.

While the Shafi'is and Hanbalis said that the arrest is binding and possessing ^(xli).

The second saying: The gift is valid without taking possession of it, as it is owned by the contract and it is not required to take possession, which is the saying of the Malikis ^(xlii).

There are other sub-opinions of some scholars of the madhhabs that are not strong in the madhhabs, and there is not enough room to mention all of them. Therefore, I contented myself with mentioning the strongest sayings of the four schools of thought.

Jurisprudence evidence:

First team guides:

- What was narrated that the Prophet, may God's prayers and peace be upon him, said to Umm Salama: "I have given the Negus a robe and a shield of musk, and I do not see the Negus except that he has died, and I only see my gift returned to me, and if you return it to me, then it is yours." He said, and it was as the Messenger said. God, may God's prayers and peace be upon him, and his gift was returned to him, so he gave each of his wives an ounce of musk, and he gave Umm Salamah the rest of the musk and the suit ^(xliii).

- What Aisha, may God be pleased with her, the wife of the Prophet, may God's prayers and peace be upon him, narrated, that she said: Abu Bakr Al-Siddiq was her beekeeper, twenty wasq of his money in the forest, and when death approached him, he said: "By God, my daughter, there is no one more beloved to me who sang after me than you, nor Poverty is dearer to me after I am away from you, and I was your bee of twenty wasq, so if you had renewed it and kept it, it would have been yours, but today it is the money of the heir, but they are your brothers and sister, so they divided it according to the book of God, Aisha said, so I said: O father, and God, if it was such and such, I would have left it They are names, but who is the other? He said Abu Bakr: The one with the belly of a Kharija girl, I see her as a slave girl^(xliiv).

- What Muammar narrated on the authority of Othman about a man who gave a gift to another, then he took it, then the donor returned it.

Evidence: From the aforementioned hadiths indicating that a gift is not obligatory unless it is received^(xlv).

- The gift is a contract of donation, if it was valid without receipt, the gifted person would have the mandate to ask the donor to hand it over to him, so it becomes a contract of guarantee by delivery. This is a change in the description of the contract as a donation ^(xlvi).

Second team guide:

What is authentic from the hadith of Ibn Abbas, may God be pleased with them, that the Prophet, may God's prayers and peace be upon him, said: "The one who returns to his gift is like a dog that returns to its vomit"^(xlvii).

The face of the evidence: "So the one who returns to the gift is likened to a dog and the one who returns from it to vomiting, and that is the purpose of alienation that necessitates prevention ^(xlviii)."

It is reasonable that it is a matter of removing a property without compensation, so it is required by mere contract, by analogy with endowment and manumission ^(xlix).

Sheikh Ansari's answer to the two issues

Through the answer of Sheikh Al-Islam regarding the return of the guarantor to the guaranteed on his behalf if the debt was paid to him, he adhered to the Shafi'i saying that it is permissible to return.

Likewise, he issued a fatwa not to prove the gift except by taking possession, which is the saying of the Shaafa'is and those with them among the jurists.

(i) Al-Hakam linguistically: prohibition, it is said that you have ruled against him: if you prevented him from opposing him, then he was not able to deviate from that.

Judgment also: and the judiciary, it is said: I judge between people: if I judge between them and separate. Al-Fayoumi, Al-Misbah Luminir, Scientific Library, Beirut, (1/145). Al-Fayrouz Abadi, Al-Qamous Al-Muheet, Al-Resala Foundation for Printing, Publishing and Distribution, Beirut, 8th Edition, (1/1095).

*- In the custom of the fundamentalists: the speech of God Almighty related to the actions of those charged with necessity, choice, or situation. Al-Shawkani, Irshad Al-Fahul, Dar Al-Kitab Al-Arabi, Damascus, 1st edition, 1999 AD, (1/5).

*- In the custom of jurists: the impact of the street's speech, such as obligating prayer and prohibiting adultery and usury. Islamic jurisprudence and its evidence, Wahba al-Zuhaili, (1/30). Zaidan, Al-Wajeez fi Usul al-Fiqh, p. 25.

(ii) Warranty Linguistically: guarantee and commitment to something. Morocco, Al-Matrazi, p. 285.

And idiomatically: the obligation of an established right in the responsibility of others, or to bring someone who is on it. The singer of the needy, the preacher

Al-Sherbiny (2/198).

(iii) Hashiyat Ibn Abidin, Ibn Abidin (5/314), Al-Dasuqi and Al-Dardir (3/336), Hashiyat Al-Qalyubi and Umairah (2/331), Al-Mughni with Al-Sharh Al-Kabir, Ibn Qudamah (5/86).

(iv) The same source.

(v) Look, Bada'i al-Sana'i', al-Kasani (6/19).

(vi) See, in the language of the traveler on Al-Sharh Al-Saghir, Al-Sawy (2/158)

(vii) See, Al-Hawi Al-Kabir, Al-Mawardi (8/114).

(viii) See, Al-Rawd Al-Murabba', Al-Bahooti (1/244)

(ix) See, Fath al-Qadeer, Ibn al-Hammam (7/188).

(x) See, Al-Kasani, Bada'i Al-Sana'i' (6/13)

(xi) See al-Sarkhasi, al-Mabsoot (19/178), Bidayat al-Mujtahid (2/294), Ibn Qudamah, al-Mughni (449/4).

(xii) Look, Bada'i Al-Sana'i', Al-Kasani (6/19)

(xiii) Look, Al-Hawi Al-Kabir, Al-Mawardi (8/114)

(xiv) Look, Al-Mughni, Ibn Qudamah (5/254).

(xv) Look, Al-Dasouki's footnote on Al-Sharh Al-Kabir (3/334)

(xvi) Look, Mask Scout, Al-Bahooti (3/434).

(xvii) Musnad Abi Dawood Al-Tayalisi, Hadith No. (1778) (3/253).

(xviii) Sunan Al-Daraqutni, Al-Daraqutni, Hadith No. (2984) (3/466).

(xix) See Al-Hawi Al-Kabir, Al-Mawardi (8/114), Al-Mughni, Ibn Qudamah (5/88).

(xx) Bada'i Al-Sana'i', Al-Kasani (6/19)

(xxi) Look, Al-Mughni, Ibn Qudamah (5/88).

(xxii) Look, Supervising Jokes Matters of Dispute, (2/602).

(xxiii) Look, in the language of the traveler, Al-Sawy (2/158), Hashiyat Al-Dasouki (3/334).

(xxiv) See Al-Mughni, Ibn Qudamah (5/88), persuasion in the jurisprudence of Imam Ahmad, Al-Hijjawi (2/188).

(xxv) Look, Bada'i Al-Sana'i', Al-Kasani (6/49), Fath Al-Qadeer, Ibn Al-Hammam (7/188).

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- (xxvi) See, Al-Hawi Al-Kabir, Al-Mawardi (8/115), Rawdat Al-Talibeen, Al-Nawawi (3/449)
- (xxvii) Look, Bada'i Al-Sana'i, Al-Kasani (6/49), Fath Al-Qadeer, Ibn Al-Hammam (7/188).
- (xxviii) Al-Furu', Ibn Muflih (6/294), Persuasion in the jurisprudence of Imam Ahmad, Al-Hijjawi (2/188).
- (xxix) Al-Mughni, Ibn Qudamah (5/89).
- (xxx) Look, Mustafa Alkhan and others, methodological jurisprudence on the doctrine of Imam Shafi'i (7/160).
- (xxxi) Look, Fath al-Qadeer, Ibn al-Hammam (7/88)
- (xxxii) Look, jurisprudential laws, Ibn Jizzi (1/214)
- (xxxiii) Look, Al-Iqna' by Al-Sherbiny (2/325).
- (xxxiv) Look, persuasion in the jurisprudence of Imam Ahmad, Al-Hijjawi (2/179)
- (xxxv) Look, Rawdat al-Talibeen, al-Nawawi (3/459)
- (xxxvi) See Al-Hawi Al-Kabir, Al-Mawardi (8/115), Al-Mughni, Ibn Qudamah (5/88).
- (xxxvii) Al-Majmoo', An-Nawawi (14/283)
- (xxxviii) Look, Ibn Abdeen's footnote, Ibn Abdeen (8/424), Explanation of Facts, Al-Zayla'i (7/535).
- (xxxix) See, Tuhfat al-Muhtaaj, Ibn Hajar al-Haythami (6/307).
- (xl) Look, Al-Insaf, Al-Mardawi (7/147).
- (xli) Look, Al-Insaf, Al-Mardawi (7/147).
- (xlii) Look, Al-Kharshi's explanation on Mukhtasar Khalil, Al-Kharshi (7/104, 107), Al-Dasouki's footnote on Al-Sharh Al-Kabeer, Al-Dasouki (4/101).
- (xliii) Musnad Ahmad, Imam Ahmad, Hadith No. (27276) (45/246) Al-Mustadrak on Al-Sahihayn, Al-Hakim (2766) (2/205), and Al-Hakim said: The chain of transmission is authentic, and they did not extract it, and Al-Dhahabi tracked it down and said: It is rejected by Muslim, the Negro is weak .
- (xliv) Al-Muwatta, Imam Malik, No. (40) (2/752).
- (xlv) Abd al-Razzaq's workbook, Abd al-Razzaq al-Sana'ani, Chapter on Donations No. (17742) (8/433).
- (xlvi) Bada'i Al-Sana'i, Al-Kasani (6/123).
- (xlvii) Sahih Al-Bukhari, Muhammad bin Ismail Al-Bukhari, The Book of Gifts and Its Virtues, Chapter: A man's gift to his wife and a woman to her husband, No. (2589) (3/158).
- (xlviii) Clarification in explaining the sub-al-Mukhtasar by Ibn al-Hajib, Daa al-Din al-Jundi, (7/330).
- (xlix) Judge Abd al-Wahhab, Supervising Jokes on Issues of Dispute (2/673). Rawdat al-Mustabin fi Explanation of the Book of Indoctrination, Ibn Baziza (2/1410).