

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Series of Questions Addressed to Eminent Scholar Ata Bin Khalil Abu Al-Rashtah,
Ameer of Hizb ut Tahrir through his Facebook Page (Fiqhi)

Answer to Question

**The Coercion which Forces an Act to be Performed and the
Prohibition of Donating the Heart**

To: Saleem Eshaq
(Translated)

Question:

Assalamu Alaikum wa Rahmatullahi wa Barakatuh,

One of the aims of the Shariah is the preservation of the human being, and the aims do not mean a reason ('illah) for the rulings as a whole, nor are they a reason for any specific verdict. In Shariah, there is the rule: "الضَّرُورَاتُ تُبَيِّحُ الْمَحْظُورَاتِ" "The necessities allow what is forbidden", and the truth is that it is specific to the issue of food and drink in order to preserve the lives of people when the deadly famines occur.

The coercion which forces an act to be performed permits to utter the word of disbelief if it involves taking part of money or human life, or amputating part of the body, or threatening sodomy or fornication in incest.

In light of this understanding, is a heart transplant permissible for a person whom doctors told him that he needs a heart transplant, or else he will die to the best of knowledge, bearing in mind that donating a heart after death is forbidden (haram), as well as taking a donated organ is different from donating?

Please advise me, may Allah reward you.

Answer:

Wa Alaikum Assalam wa Rahmatullahi wa Barakatuh,

It is clear from your question that you are familiar with the subject of aims of the Shariah, necessities, the coercion which forces an act to be performed, and the prohibition of donating the heart after death. However, you are asking about the ruling on heart transplantation for a person who is most likely to die if he does not have a heart transplant, and you refer to the difference between donating an organ and taking a donated organ.

First: Before answering your question, I confirm to you some of what was mentioned in the answer to a question we issued on 23 Rabii' Al-Akhar 1440 AH corresponding to 30/12/2018 CE on the subject of organ transfer:

[... as for your question about organ transplants, it is clear that you have seen the evidences that indicate the prohibition of transferring organs from the dead person whose blood is sacred to the living as stated in the cloning booklet. It refers to two evidences for the prohibition of organ transfer from the deceased to the living and they are:

1- No one has the authority over the deceased's body after his death; neither the deceased nor his inheritors have authority over his body after his death, as stated in the Shariah evidences. Therefore, neither the deceased nor the inheritors have the right to donate an organ from body of the deceased because it is not in their possession, nor in their authority.

animal), blood, flesh of swine, and any animal which is slaughtered as a sacrifice for other than Allah. But if one is forced by necessity without willful disobedience and not transgressing, then there is no sin on him. Truly, Allah is Oft-Forgiving, Most Merciful.” [Al-Baqarah:173]

So the person who is in dire need can eat of what he finds from these prohibited foods that which is enough to keep him alive. If he does not eat from what is prohibited and dies, he is sinful, and he has killed himself. Allah (swt) said, ﴿وَلَا تَقْتُلُوا أَنْفُسَكُمْ﴾ **“And do not kill yourselves.”** [An-Nisa: 29] Based on what was mentioned of the rule of duress, can the same rule be applied to transferring organs from a person who is dead to another person who is in need of it to save his life by the rule of analogy?

The answer for this needs to be examined. The condition to apply the rule of analogy in this matter requires that the ‘illah (legal reason) in the subject being analogized (Maqis), transferring organs in this case, be common with the ‘illah of the subject which analogy is being derived from (Maqis ‘Alayhi), which is the case of duress for the one who does not have food. This has to be either in the essence (‘Ayn) or in the type (Jins). This is so, because analogy is to extend the ruling of an original case to that of a branch case, using the ‘illah of the original. If the ‘illah of the branch is not common to that in the origin then the ‘illah of the origin will not be existent in the branch and accordingly the ruling of the origin can’t be extended to the branch.

For the case of organ transfer, these organs are either essential ones, by which the life can be saved to the best of knowledge such as the heart, liver, kidneys, or lungs, or non-essential organs which include the eyes, the second kidney for the one who has a working kidney, the hand, the leg, and the like.

For the non-essential organs which life does not depend on, the ‘illah of the original case, which is saving the life, is not present here. Hence, the ruling of duress does not apply. So it is not allowed to transfer the eye, second kidney for one who has a working one, hand, or leg from a dead person to a living one in need of it.

In the case of essential organs, by which life can be saved to the best of knowledge there are two cases:

First, the ‘illah, which is saving the life, is not certainly existent, like the case of eating the forbidden for necessity. Eating from what is prohibited of food will certainly save the life. On the other hand, transferring the heart, liver, lungs, or kidneys does not certainly save the life of the person to whom they were transferred. Saving the life may occur and it may not occur. Numerous incidents have occurred when organs were transferred which prove this. So, the ‘illah here is not complete.

The second case relates to another condition for qiyas (analogy): The desired (Far‘ah) case has to be void of any outweighing objection that contradicts the outcome of the ‘illah of the analogy. In this case of transferring organs, a clear outweighing objection is present which contradicts the result of the ‘illah of the qiyas. This objection is the forbidding of violating the sanctity of the dead body, hurting, or mutilating it. This outweighing text contradicts using the ‘illah to permit transferring organs.

Based on these two cases, it is not allowed to transfer essential organs, by which life can be saved, such as the heart, liver, kidneys, or lungs from a dead person who has a protected blood, whether he is a Muslim, a Dhimmī (a citizen of the Islamic State), Mu‘ahid (from people who have a treaty with the Islamic State) or Musta‘min (any individual entering the State via permit), to another person whose life depends on transferring these organs.] End quote from the [Cloning booklet](#).

Second: It is clear from what is mentioned under the subtitle “first” that the transfer of the heart (and other organs, by which life can be saved, such as the liver, kidneys, and lungs) from a person who has a protected blood is forbidden according to Sharia, and this means that donating a heart by a person who has a protected blood to others is not permissible, and it also means that taking the donated heart from a person who has a protected blood is not permissible, because the meaning of the forbidden transgression also exists when taking the donated heart of the person who has a protected blood. So what is forbidden in the matter of transferring the heart is not only the donation of the person who has a protected blood or his guardian with his heart, but taking the donated heart of the person who has a protected blood and implanting in the body of another person is also forbidden, because the meaning of transgression on the body of the deceased takes place in the case of donation, that is, in the case of the removal of the heart from the body of the person who has a protected blood, and it occurs when the heart of the person who has a protected blood is placed in the body of another person. The duty in such case, i.e. in the case of extracting an organ from the deceased’s body of a person who has a protected blood is to bury the organ extracted from the body of the donor person who has a protected blood, not using it to treat another person. Abu Dawud extracted on the authority of ‘Aisha, may Allah be pleased with her, that the Messenger of Allah (saw) said: **«أَنَّ رَسُولَ اللَّهِ ﷺ قَالَ: كَسْرُ عَظْمٍ كَسْرُ حَيٍّ»** **“Breaking the bone of a dead person is just like breaking it when he is alive.”** In “Awn Al-Ma’boud Sharh Sunan Abi Daud”: Al-Suyuti said in the explanation of the revelation of the Hadith, from Jabir (ra) that he said: we joined the Prophet in a Jinaza. The Prophet (saw) sat on the edge of a grave, and we sat with him. A grave digger took out a piece of bone (of an arm or leg) and he was about to break it, then, the Prophet (saw) said: **«لَا تُكْسِرْهَا فَإِنَّ كَسْرَكَ إِيَّاهُ مِيتًا كَكَسْرِكَ إِيَّاهُ حَيًّا، وَلَكِنْ دُسَّهُ فِي جَانِبِ الْقَبْرِ»** **“Do not break it. Breaking the bones of the deceased is like breaking his bones when he is alive, so bury it by the side of the grave.”**

That is, the Prophet (saw) ordered, according to this hadeeth, to re-bury the bone of the deceased and we understand from it that the body part of the dead person which is separated from him must be buried.

The conclusion is that it is not permissible to take the organ on which life depends, such as the heart, from the living person who has a protected blood, and it is also not permissible to donate it even if it is to save another. And it is not permissible to take it after death, because a person does not own his body after his death, and also his inheritors do not have possession except their share of the money, but they do not own the body of the deceased, and therefore they cannot donate any part of the deceased’s body because it is transgress against him and is prohibited.

I hope that this clarification is sufficient, and Allah is the Wisest and He Knows Best.

Your brother,

Ata Bin Khalil Abu Al-Rashtah

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The link to the answer from the Ameer’s Facebook page:

<https://web.facebook.com/HT.AtaabuAlrashtah/posts/2830641367181869>