

The returning of gifts between relatives in Iranian Civil Law; a comparative study in Egyptian Law

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ABSTRACT

In Iranian Civil Act, it is revocable or returnable gift as a rule even after the delivery (803 articles) that only in the particular cases is it recognized unreturnable as the gift between father, mother, and children without grandparents, grandchildren and other relatives have mentioned. Although the role of spouses in family-based strength is not less than the relationship between parents and children and On the other hand, the Prevailing view of Imamiyyeh jurisprudence know donation between spouses unrevocable or unreturnable; In contrast, Iranian civil law, donation between spouses can be similar to other people unrevocable or unreturnable. On the other hand, in cases where the donation between relatives such as parents and children is located that in Iranian civil law, it is revocable or returnable. May be the Donee to create important ingratitude or committee offence or crime concerning to the Donor. or Donor suffering from strong poverty that the usage, equity ,and justices to consider right-full to the donor that he revokes or returns from his gift entirely or partially. This research plans this problem and makes clear that with a comparative study of Egyptian Law and presents solutions for that.

Keywords: Gifts, donated to relatives, Civil Law.

Introduction

At present, according to the rationale and conceptualization of the articles (803) and (804) of the civil law, donations exchanged between the spouses, including the donor being the wife or the husband, and disregarding the donation being a distinct property, a general property or an interest to a property, can be retaken but the obliged donations (made to fulfill a debt) cannot be withdrawn as explicitly pointed out in the Article (806).

In c Jurisprudence, corresponding to the popular ideas, although it is generally held that donations can be taken back, the donations exchanged amongst the parents and children and spouses cannot be withdrawn. In Egypt's law, although, following the lead of Hanafi jurisprudence and similar to Imamiyyeh jurisprudence, the it is opined principally that

donations can be withdrawn, there are exceptions depriving the donor from the right of reclaiming the donations back; but, on the other hand, there are excuses taken into account in that country's law for repossessing the donations. According to Article (500) of Egypt's civil law^[1], first of all, the donor can withdraw the gifts donated to a beneficiary (donee) in case it is agreed by the latter (very much like rescission in sale contracts) and secondly, if the beneficiary expresses dissatisfaction regarding the return of the donated property, the donor can, for a good reason, request the retake from the court in absence of any barrier (such as the nonexistence of close kinship relationships). However, the possibility of reclaiming a donation has been totally revoked in Egypt's law for such reasons as the increase in the number of the retake cases and the excuses provided for withdrawing a donated property and the principle of non-recoverability of the donations holds therein. The present article aims at analyzing the foresaid issue after introducing general ideas in two sections pertaining to donation exchanges between the relatives in Iran and Egypt's civil laws to finally sum up and conclude with the proposition of certain solutions.

Chapter One: Overview (concepts)

In this chapter, the literal meaning of reclaiming is seminally given and then the extant regulations are investigated and the

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reclaiming a donation is jurisprudentially and legally is dealt with (in common terms).

Paragraph One: Literal Definition of Reclaim

The term “reclaim” and its Arabic equivalent “Roju’e”, derived of the root word “Raj’e”, present tense “Yarja’a” and infinitive “Roju’an”, means “return”^[2, 3] and there are examples mentioned for it like the return of birds from cold to tropical regions; the returning of a thing to a person; and, the return of a word to a person (meaning that the statement has influenced the person).

Paragraph Two: Jurisprudential and Legal Definition (Common Meaning)

Despite the repeated references made to the terms “reclaim” and “the right to reclaim” in the civil law and there are codified regulations in the law within the format of diverse discussions on “reclaim”, but a clear-cut definition is missing. But, some of the law writers have defined the term in their own books, including Dr. Langarudi in his law terminology defines “reclaim” in three paragraphs as stated below^[4]:

- A) Returning to a state before a distinct contract or before distinct unilateral acts of legally valid consequences in which case it is synonymous to revocation. Return is, in any case, a unilateral act of legally valid consequences and it is always compulsory and it can be rendered indispensable as ruled in common law and approved by the legislators.
- B) It can also be applied for divorce (Article 1148 & 1149 of the civil law) and that is in fact the revocation of a returnable divorce which is also a permissible unilateral act of legally valid consequences.
- C) It can also be utilized for donations in which case it means the reclaiming of a donation by the donor. But, according to the regulation investigations taken into consideration by the legislator regarding such various topics as properties and ownership, corporations, donations, wills, family affairs, citizenship and even the proofs of proving a claim all in respect to donations, the following definition might seem more comprehensive and more complete and know it an indicator of a right that encompasses different aspects of the term in the aforementioned discussions: “return includes unilateral acts of legally valid consequences that dismiss other legal acts (contract or unilateral acts) or grant the others with certain (financial or nonfinancial) rights”. This way, though return being per se a unilateral act of legally valid consequences but it can put an end to another unilateral act and even another contract like donation and statements of a will (which is in the ideas of the majority of jurists^[5, 6] and jurisprudents^[7] a possessory will contract) and, also, it might create for the claimer or the opposite party (the addressee of the return) a right, financial or nonfinancial. For instance in divorce at the instance of wife, the return can be suspended on the establishment of ransom which is a financial right (equal

to the dowry or lesser or more than that) for the wife and, subsequently, with the return of the wife in a divorce at the instance of wife and establishment of ransom, the husband is granted a nonfinancial right.

Chapter Two: Reclaim of Donations Exchanged between the Relatives in Iran’s civil law

The chapter will be investigated in two chapters:

Paragraph One: Conditions of Reclaiming the Donation

Regarding withdrawing the donations in Iran’s civil law, disregarding the donations being exchanged between relatives or strangers, the following conditions can be mentioned in summary:

- 1) There are discrepancies in jurisprudence as to whether donations should be considered as unilateral acts of legally valid consequences or contracts, but the civil law, in article (759), explicitly realizes donations as following the rules of contracts and this is out of the scope of the present article but as for the discrepancies between the jurists and jurisprudents regarding the idea that donations, being of a contract nature, are either mutually precarious or obligatory, it has to be pointed out that^[8] “the civil law-makers, following the popular ideas, know donations reclaimable so long as the exact donated object exists (Article 803). But, the principle suffers from many exceptions while the other unilaterally precarious contracts can only be rendered indispensable via reaching agreements or by setting conditions and the unilaterally precarious contracts cannot be made indispensable by any means; moreover, a feature of the unilaterally precarious contracts is that they will be revoked by the death of a party, whereas the incident exerts an inverse effect on donations and the withdrawal option is dismissed upon the death of a party (Article 805). These verdicts and their differences from the rules governing the unilaterally precarious contracts have made some of the elder jurisprudents consider donations as binding contracts that are revocable in certain cases like the other binding contracts.

However, 1) according to article (805) of Iran’s civil law¹, regarding donations as obeying the rules of unilaterally precarious contracts or binding contracts does not serve dismissing the donation contracts with the death of one party and the donor’s right is lost upon the death of a party and, anyhow, it seems that the donation contract becomes indispensable after the object of donation being captured by the beneficiary in respect to him and hence irrevocable. In cases

¹ Article (805) of the civil law stipulates that the reclaiming cannot take place after the death of the donor or the donee

that the donation can be reclaimed, the donor, not the donee, has been previously endowed the right to retake the donation.

2) It can be understood from the top part of the Article (803) of the civil law² that the donor, whatever the case, can reclaim the exact object being donated before its being endowed and because reclaiming is not solely unique to the complete contracts and it can take place in incomplete contracts, as well [but the revocation can only be made in complete contracts] because in Iran's civil law the authenticity condition of the donation is its being captured by the beneficiary and the donation contract completes with the taking possession of the donation and before that it is considered as an incomplete and unfulfilled contract in the course of all of which the donor can withdraw and reclaim the donation. Article (802) of the aforementioned law stating that if the donor or the donee passes away before the capturing of the donated object, the donation will become invalid signifies the same issue that the contract can take place before taking the possession of the donated object but in an imperfect manner and the passing away of the donor or the donee before the capturing of the donated object brings about the condition for the invalidity of the donation because the invalidity or validity of a contract is a subsequent to its occurrence.

3) Due to the existence of discrepancies regarding the donations as to whether the reclaiming right should be considered as a mere right or as urged by a decree or an obligation in case of the former it can be dismissed and in case of the latter it is impossible to revoke it, thus for a better analysis of the issue, the question is raised here as to whether the deprivation of reclaim right in donations can be rendered feasible via an agreement being reached by the parties or not? Some of the law professors believe that^[8] "there is no doubt in that the inheritors have no right to reclaim a donated object and in this regard donations do not follow the financial rights rules but it cannot be concluded from such an introduction that the axiom of recoverability of a donation is in frangible so the contents of a donation contract cannot be changed in an agreement or via announcing it revoked. The option of reclaiming a donation aims at preserving the donor the right to recover an object or a thing donated in an injudicious and fully sensational manner and hence it has nothing to do with the public order. Ethically, retaking whatever the thing donated is envisaged discourteous; an impoliteness that is accepted by the legislator for a higher expediency. Therefore, the donor would find it ethically and socially flawless if he himself voluntarily wishes to give away his right and make the free-of-charge ownership of the donation indispensable. It seems that the lack of the right to reclaim a donation, for its being neither against the essential expediencies of the donation contract nor contradicting the verdicts pertinent to public order and also for the great many of the exceptions that are imposed thereon, reveals that the nature of donation is paradoxical to the right to reclaim a donation and because the lack of the reclaim is, per se,

an exceptional issue, not only the right to reclaim can be taken away along with the donation contract via setting certain conditions or, better said, make it indispensable, but also the donor can withdraw such a right through reaching an agreement with the donee or based on his will alone.

4) Reclaiming a donation, albeit with the formalities considered for the donation, for example a letter of donation for free-of-charge contribution an immovable property which is indispensable corresponding to the registration regulations of the country, is devoid of any formalities.

5) In article (795) of the civil law, the legislator excludes the distinct properties with his mentioning of the term "personal possession" and points out the donation can take place for any property that can be possessed; so, every personal possession that can become the subject of donation can be reclaimed and hence it has nothing to do with the property being a distinct one or otherwise.

Paragraph Two: Barriers to Reclaiming a Donation

Article (803) of Iran's civil law has allowed the donor to reclaim a donation, even after its being captured by the beneficiary, in case that the exact donated property is still existent for which there is not specified any temporal limitation. Of course, if the following barriers that are stipulated in four paragraphs in the aforesaid article³ are found existent, the donor's right to reclaim is revoked and the donation should be made. The followings are an explication and analyses of its paragraph one which is found connected to our discussion:

- 1) There are various notions in Imamiyyeh Jurisprudence regarding the idea that what class, what degree and, in fact, what kinship relationship between the donor and the beneficiary prevents the former from reclaiming a donation from the latter. Some, basing their documents on the news and AHADITH existing in this regard, have assigned the duty of the kinship degree identification to the common law rather than considering the time and place expediencies as well as the objectives sought by the holy lawmaker^[9].
- 2) It seems that the civil law, in its forbidding the reclaiming of a donation from the close relatives in Paragraph (1) of the Article (803) stating that the donations cannot be recovered from such donees as father, mother or children, has mainly focused on the corroboration and solidification of the kinship relationships and affiliations between the parties to a donation contract as reclaiming of a donation has been pinpointed as the factor tarnishing the relations between the donor and beneficiary. There is not even made talks of the wife and husband while a great many of the jurists, via inferring from the Holy Quran's AYAT and the news and AHADITH, emphasize on the prohibition of reclaiming a donated property from one's wife⁴ [9-12]. In some of the professors' minds^[8], "the civil

² Article (803) of the civil law stipulates that "after the beneficiary took possession of the donated object, the donor can take unilateral measure to reclaim the object from the beneficiary unless the followings hold ..."

³ Article (803) of the civil law has stipulated that "even after the donated object was possessed by the beneficiary the donor can take unilateral measures to reclaim the exact object being contributed unless one of the followings holds: 1) in case that the donee is the father, mother or the children of the donor, 2) ..."

⁴ Shahid Sani, "Masalek", v.1;

lawmakers have selected the ideas by Mohaqqueq (Saheb Shara'e'e, Mohaqqueq Helli) and Sheikh Tusi (Nihayah, v.2, p.619) and some others (who have all repudiated the reclaiming of a donation exchanged between the spouses) and a civil law writers (we mean Dr. Musa Amid, donation and will, no.182) have recounted the idea just and useful". Another civil law author is of the belief that⁵ [13] "the wife and husband are considered as strangers in the civil law and they both can reclaim donations from one another". The majority of the jurists have also agreed thereon. However, the lack of recoverability has been in practice realized in compliance to being cautious (Tahrir Al-Wasileh, v.2, p.58) and it seems right; because in some cases, the reclaim might harm the solidification of the family and weaken the premises of the family. Although there is not made any explicit reference to wife and husband in law, It seems that we, free of any specific idea and reasoning, should accept that the legislator has just intended to express a general idea and his silence regarding the other relatives as well as the wife and husband has been rather intentional and, thus, he just has intended to prevent the relatives specified by Paragraph (1) of the Article (803) including fathers, mothers and children from reclaiming their exchanges of donations. In other words, the legislator has found it exigent to prohibit the reclaiming of donations from close relatives and, in fact, in a vertical line, from father, mother and children in its specific sense (first degree) and the other more distant relatives and the ones who are in the vertical ascending line like the male and female ancestors or the ones on the vertical descending line like the children, (grandchildren and great grandchildren) and/or the ones on the peripheral line like siblings and their offspring and the uncles and the aunts and their offspring and the other kin a little more farther than the. In fact, the relatives have all been prohibited from reclaiming donations from one another and the affinities have also been prohibited from reclaiming donations from their own fathers, mothers and children (not their grandchildren).

Chapter Three: Reclaiming Donations in Egypt's Law

Paragraph One: Conditions of Reclaim

In discussions on reclaiming donations, the Egyptian civil law is apparently closer to the Hanafi Creed's jurisprudence that has, similar to Imamiyyeh jurisprudence and Iran's civil law, based its foundation on the principle of recoverability of the donations by the donor from the donee unless there are barriers preventing him from doing so. Of course, the principle has

been violated in Egypt's law to some extent but the stipulation of reclaiming a donation according to the proposition of a justifiable excuse has led to the increase in the number of the reclamation cases. In such cases, the Egypt's law draws on Hanafi creed in which there is considered a broader extent of the right for reclaiming the donations according to two HADITH from the great apostle of Islam (may Allah bestow him and his sacred progeny with the best of His regards) but the reclamation cases have also been extended to what is included by the close kinship relationships. The first of these two HADITHs states that "**The donor is entitled to his gift unless he proves it**" [14], meaning "the donor has more right to the thing s/he donates unless otherwise is proved", and the other states that "**If the gift to the uterus is forbidden, it is not returned**" [14], meaning "if a donor bestows something to a close kin, s/he is prohibited from reclaiming it".

The gist of the creed's opinions indicating its difference from the other three foresaid religions regarding the reclamation of donations and the Egyptian law has been drawn thereon and we are incumbent to elaborate the aspects considered in the adoption of such a theory is that the Hanafi Creed believes that the intention and the motivation of the donor in granting something to a beneficiary is fourfold: it is either because the donee is one of the donor's relatives or s/he might have requested something in return for the donation or it is done to strengthen the affections or gain the otherworldly blessings. So, in case that the donor's intention is fulfilled whether it has been for family reunion or a financial exchange for another thing or for an otherworldly blessing, then s/he is prohibited from reclaiming the donation. The exchange of donations between the spouses follows the same decree (prohibition of reclamation). And, hence the rest of the cases also should adhere to this general decree that essentially states that the donor can reclaim a donation s/he has bestowed. So, if it is found out by the donor that his purpose of the donation has not been actualized then he can reclaim the donation. However, in case of finding out the opposite, the donor cannot reclaim what s/he has donated and this, like the donor's intention and purpose, is hidden from the others and it is up to him to make the final decision unless the reclamation right is found contradicting another superior right barring him from reclaiming the donation and depriving him from his right to retake the donation [14].

In this case, the Egypt's civil law in article (500) stipulates that "1) the donor can reclaim the donation in case it is agreed by the beneficiary; and, 2) in case of the beneficiary's disagreement, the donor can, for a good reason and in case of the absence of any superior barrier, request the court for the reclamation [1].". Although the Iranian law takes a silent position regarding the paragraph (A) of the Article (500) of the Egyptian law, such a reclamation right can be authenticated in Iran's law according to the generalities and also the straightforwardness of the issue. But, there is also missing another statutory provision from Iran's civil law as pointed out in the Paragraph (2) of the article (500) of the Egyptian civil law and, generally, in Iran's law, corresponding to article (803) of the civil law, the donor has

⁵ Dr. Habibullah Tahery, "civil law", v. 4, p.251, while, as investigated by the author of the present research, the majority of the Imamiyyeh Jurisprudents, contrarily, believe in the non-recoverability of the inter-spouse donations.

complete right of reclamation in case of the absence of the barriers specified in the foresaid article without him being required to provide justified excuses or otherwise; in terms of the ability to provide justified excuses, the Egyptian law grants the donor the right to reclaim what s/he has donated and their reclamation cases have gone up in number and the Egyptian law has found itself distancing away from the laws of the other Islamic religions like Malekiyyeh, Shafe'ei and Hanabeleh, however, the non-recoverability principle is still somehow exercised in the Egyptian law and it is in this regard different from Iran's law. Due to the same reason that the non-recoverability principle still holds in Egyptian law, the cases of reclamation in the absence of legal barriers have been specified therein. Although the article (501) calls these cases the special excuses or cases, it can be perceived that the excuses other than what is specified in the article are likely to be accepted by the court. Article (501) of the Egyptian civil law stipulates that "the following cases are specifically considered as justified excuses for the reclamation of a donation: a) when the beneficiary fails to fulfill his duties in respect to the donor a relative thereof and such a default is considered as ingratitude by the donor; b) whenever the donor is found incapable of preserving his own tools of sustenance, for such a reason as his social situation, or if he is found incapable of supplying the alimony he is obliged to pay by the law; and, c) in case that the donor becomes the parent of a child after making the donation and be alive at the time the reclamation is requested and/or if the donor has had a child when making the donation and he thought he has been dead but he was not ^[1]." Therefore, in Egyptian law, reclamation can be negotiated in case of the absence of legal barriers in two forms:

A) Agreed Reclamation:

The parties (donor and donees)' agreement for reclaiming a donation is indeed considered an instance of unilateral act of legally valid consequences and, in this regard, donation does not differ from the other contracts that are also envisaged as unilateral acts of legally valid consequences except for the idea that the Egyptian law has stipulated such a unilateral act meaning that besides the Paragraph (1) of the article (501) of the Egyptian civil law, which was mentioned above, the Paragraph (1) of the article (503) of the same law stipulates that "1) reclaiming a donation as agreed or as ordered by the court causes the revocation of the donation". But, as for the Paragraph (2) of the same article indicating the benefits of such acts, the beneficiary has been solely made liable for the returning of the benefits since an agreement was reached. Thus, taking unilateral acts cannot deprive the beneficiary of the rights acquired from the donation before the action was taken unless the otherwise has been found agreed while taking the unilateral action or in separate actions taken as agreed by the parties and, in general, the beneficiary has the right to demand his incurred costs as well as costs of profit he has spent on the donated property or object. In fact, any sort of donation can be reclaimed via taking unilateral acts through agreements whether be it the donation of the type barring the donor, like a father's gifting of a child, or

be it a donation given to a kinsman of the donor or whether the donor can provide acceptable excuse for reclaiming the donation or not.

B) Requested Reclamation:

Besides the donor's reclamation of the donation through offering acceptable excuses being stipulated in Paragraph (1) of the Article (501) of the Egyptian civil law, as it was mentioned, the court is allowed to ordain in favor of the reclamations featuring one of the two following conditions: 1) the absence of legal barriers and 2) the justification of the excuses deemed acceptable by the court (as stipulated in article 501 of the Egyptian civil law); or if the judge finds these excuses acceptable. It can be observed that the difference in agreed reclamation and the requested reclamation is in that the court is faced with limitations in granting the agreed reclamation first of all because the reclamation case should not be the one legally prohibited by the law like the donation to children or donation to a kinsman and secondly it has to be based on the excuses specified by law or be proved before the judge with an extension of offering proofs and then judge's verification of it being sufficiently acceptable while in agreed reclamation these two limitations are nonexistent. As for the returning of the benefits, the Egyptian civil law knows the donor's entitlement as being essentially validated since the initiation of the judicial trial and it usually takes place through filing a lawsuit and the date the lawsuit has been offered to the court is the origin of the donor's entitlement. Paragraph (2) of the article (503) of the Egyptian civil law states that "the beneficiary is only liable for returning the benefits since the date an agreement has been reached or since the judicial trial has been held. The beneficiary has the right to demand the required costs incurred as well as the costs of profits that he has spent to the extent of the increase in the price of the exact donated object ^[17]."

Paragraph Two: Reclamation Barriers

The donations that are legally prohibited are also known as the irrevocable donations and, of course, are envisioned similar to the mortgage contract that is irrevocable by the mortgager and permissible for the mortgagee. In these types of the donations, as well, the donation contract cannot be revoked by the donor who is legally barred from doing so, but, yet permissible in regard of the donee or the beneficiary. The legal text specifying the prohibition cases of the reclamation is the materials given in Article (502) of the Egyptian civil law. The article stipulates that "the reclamation request is rejected in case one of the following barriers exists: a) if the exact donated object possesses connected accessories that have brought about an increase in its price. But, the reclamation right is granted in case the barrier is removed; b) whenever one party of the donation contract passes away; c) when the beneficiary is found having donated the exact donated object in absolute (perfect) terms. However, the conveyance of the donation being carried out partially, the donor can reclaim what is left; d) if the donation has been made by one of the spouses even if the donor has made the reclamation request after the dissolution of the marriage bond; e) whenever the donation is made in favor of a kinsman (to a

relative) to whom s/he cannot marry; f) whenever the exact donated object is destroyed at the hands of the beneficiary whether be it a result of the beneficiary's own deeds or be it a result of an accident out of the beneficiary's discretion, however, if the loss is partial, the donor can reclaim the rest; g) if the beneficiary has exchanged something in return for the donation; and, h) if the donation is of the alms type or a charitable act. Inter alia the abovementioned cases, the ones related to the present study will be investigated next:

A) Inter-Spouse Donations:

The donations exchanged between the spouses, making no difference that the donor is the husband or wife, are indispensable and unrecoverable because the intention in donating a gift to a spouse is having him or her as one's spouse as it had been the case when the donation was made whether special marital relations have been established or not. Of course, during the course of marriage proposal in which donations and gifts are exchanged for the sole purpose of getting married later on, the parties can reclaim whatever they have donated in case that their intention, marriage, is not actualized but, of course, corresponding to the proposal-specific regulations. But, the donor has no reclamation right if donations are made during the course of marital life and then the beneficiary passes away or gets divorced. In fact, the important issue here is the marital bond between the spouses when donations are being made and the donations made after and before marriage do not have any effect on the donor's lack of reclamation right^[15]. And, as it is observed, the Egyptian law differs from the Iranian example that realizes the spouses' donations equal to strangers' donations and the spouses enjoy absolute rights to reclaim unless there is a barrier to do so as specified in Article (803) of Iran's civil law. But, in Imamiyyeh jurisprudence, it is popularly held that the spouses have no right to reclaim what they have donated and hence it is envisaged more appropriate if the Egyptian's law instance is adopted by the Iranian law for its being in accordance to the popular ideas opined in Imamiyyeh jurisprudence. That is because it has been seen that the reclamation by any of the spouses has, at its minimum adverse effects, led to the collapse of the marital lives and occurrence of divorcement!

In the meanwhile, as specified in common law as well as in Iran's civil law the majority of its articles have been derived of Imamiyyeh Jurisprudence, any of the spouses can inherit the properties, divided into three classes, of the other. In other words, the mere state of being a spouse, a wife or a husband, does not denote proximity but each can be the origin of a kinship or affinity between the children and the others and the expediency that exists in the spouses' reclamation of the donations exchanged between them is no less important than the expediency that exists in prohibiting the reclamation of the donations made between the parents or the children and this latter case has been well established in article (803) of Iran's civil law.

B) Donations to Non-Marriageable Kinsmen:

Donations granted to the non-marriageable kinsmen are considered non-recoverable by a donor because the intention in donating a gift to one's kinsmen is family reunion and the intention is fulfilled at the very beginning of the donation, hence the Egyptian law knows it un-recoverable and the premise upon which this reasoning has been laid is a HADITH attributed to the great apostle of Islam (may Allah bestow him and his sacred progeny with the best of his regards) stating that "If the gift that he gave to him is haraam, he does not return it"^[15], meaning that "if a person bestows a gift to one of his or her own kinsmen to whom s/he cannot marry then s/he cannot reclaim it". The important point in this regard is the association of the two adjectives "being one of the kinsmen" and "being non-marriageable" in the beneficiary otherwise the donor can reclaim the property in case that any of the two adjectives is found nonexistent. Thus, in case, for instance, that the beneficiary is one of the donor's kinsmen but lacks the quality of being non-marriageable, presumably a daughter or a son of an uncle or an aunt or others of the like, then the donor's reclamation right is preserved because they are not non-marriageable kinsmen of the donor. On the contrary, if the beneficiary features only being a non-marriageable person lacking the kinship relation or if s/he is the milk-kin of the donor, the donor can reclaim the donations s/he has made to them because they are amongst the non-marriageable kin of the donor but not close relatives of him or her.

Paragraph Three: Acceptable Excuses of Reclamation in Egyptian Law

The Egyptian law on donations is getting closer to the other Sunni creeds and getting gradually distant from the Hanafi creed to consider an exceptional reclamation right for the donor and the generally accepted principle is now the impossibility of reclaiming a donation; however, in cases that there are barriers to the actualization of reclamation right, the donor has been granted the right to reclaim in two cases: one is when an agreement is reached with the beneficiary (Paragraph (1) of the Article 500 and paragraph (1) of the Article (503) of Egyptian civil law) and the other is when it is ordered in a court's verdict. The agreed reclamation is out of question and it instantaneously happens upon an agreement reached by the parties but in order to have a court sentenced the reclamation right or revocation of a reclamation right there is a need for certain justified excuses to be offered to the court. Based on Article (501) of the Egyptian civil law (translation)^[1]: the followings are special excuses justifying the reclamation of a donated object: "a) whenever the beneficiary fails to fulfill his duties before the donor or a relative thereof and such a default signifies a great act of ingratitude; b) whenever the donor is found in capable of guarding his means of sustenance due to some social situations or when he cannot afford the provisioning of the alimony he is obliged to pay to another person by law;

and, c) in case that the donor becomes the parent of a child after making the donation and be alive at the time the reclamation is requested and/or if the donor has had a child when making the donation and he thought he has been dead but he was not".

Therefore, in Egyptian civil law, the donor can refer to a court and prove the excuses in a justified manner based on the three abovementioned cases to reclaim the object of donation if he faces the beneficiary's rejection to return the item which is predominantly the case. But, it has to be noted that the aforementioned cases are not exclusive rather they are put forth as some examples, so the donor can request the reclamation of an item of donation from the court in any cases other than the foresaid ones if he has justifiable excuses^[15]. The posited excuses as specified in three paragraphs in Article (501) of the Egyptian law are investigated below:

A) Denial and Breach of the Donor's Right and Expression of Ingratitude to the Donor:

This title encompasses the cases of attempted murdering, murdering, life, financial or honor offences, insulting or slandering or similar abuses to the donor or a close relative of him by the beneficiary or donee without it being dependent on the specification of a punishment for any of the abovementioned crimes in the Egypt's criminal law. Conversely, if the beneficiary perpetrates an unintentional crime to the donor or a close relative of him such as battery or murdering by mistake or negligent homicide, albeit punishments specified for it by the law, these crimes are not considered as denying the donor's right by the Egyptian legislator thus they are not considered as justifiable excuses for granting the right to reclaim an item of donation and even it is stated that if the beneficiary's act is proved to have been a legitimate defense against the donor or his relatives, then it cannot be considered as a justifiable excuse for denying him the right to reclaim the object of donation^[15].

B) The Donor's Inability of Providing Livelihood to Himself and Others Entitled to his Maintenance:

In case that the donor suffers a financial alteration due to a donation made by him or afterwards the donation in such a manner that he is rendered incapable of affording his own expenditures and sustenance according to his own social position and also fails to provide substance to the ones entitled to his maintenance by alimony as ruled by the law, he can offer it as a justifiable excuse to the court. Therefore, it is not necessary for the donor to become poor in its specific meaning to claim for the returning of the item of donation. It only suffices him to become needy corresponding to his own social position or become financially constrained. Of course, it is stated that in case that the beneficiary financially assists the donor in such a way that he can meet his financial hardship based on his social position he might be denied the right to

reclaim the donation and the acceptance of the excuse and its denial are the duty of the judge^[15].

C) The Donor's Becoming the Parent of a Child:

It is occasionally the case that besides such intentions as donating a gift, the purpose of a donor, having no child, of donating a property of a kind to a beneficiary be expressing affection and showing kindness to another person. Presumably, he might have thought that his child has been dead at the time of granting the donation but later on he has found that his child has been alive or if the donor had not had a child but later on becomes the parent of a child in which case the donor can claim the reclamation of the donation in a court for such a reason as sustenance of his child, male or female, and this also considered as a justifiable excuse by the court. Of course, if the donor had had a child and then becomes the parent of other children or if it becomes clear that the second or the third and other children have been alive then it cannot be offered at a court as a justifiable excuse. In fact, the excuse can only be laid upon the foundation of having no children at the time of making donation and the birth of a child afterwards. However, the child who has been alive at the time the donation was being made and the child who has been born afterwards should be alive at the time of reclamation and if the child dies in the interval between getting aware of his or her being alive or birth to the reclamation date the donor will be lost of his right to reclaim the item of donation and, indeed, the offered excuse for justifying the reclamation becomes devoid of effect. These three abovementioned excuses, even if being actualized, do not provide for the granting of reclamation right to the donor rather they are to be offered at a court and in fact it is the judicial revocation that can enable the reclamation of the donation.

It can be seen that Iran's civil law has no verdict in these cases and, to the best of the author's knowledge, the issue has not been sufficiently investigated and analyzed also in Imamiyyeh jurisprudence. But, considering the fact that it has been occasionally observed that the donor has been ill-treated or maltreated by the beneficiary, particularly in regard of the spouses and the relatives in which case the donor is prohibited from reclaiming the item of donation and also cases of disrespecting the donor or perpetrating crimes in respect to him has also been documented and such an ingratitude has been considered so abhorrent by the common law that it has considered the reclamation right of the donor as its absolute right. Or, there are also cases seen that the donor has undergone exacerbation after making a binding and irrevocable donation so that he has become economically poor and in need of the others. It seems that the solution as applied in Egyptian law can also be adopted in Iran's law, of course through making revisions and amendments thereto.

Conclusion and Corrective Suggestions:

From the constellation of the materials presented so far, according to the exclusiveness of the contents of article (803) of the civil law and considering the idea that the principle is laid on the foundation of the recoverability of the donated object, even after its being captured by the beneficiary, it can be concluded from Iran's civil law, at present, that, in the article's text, in regard of the relatives, only the reclamation of the donations between fathers and mothers and children is revoked and in regard of the other kinsmen, including the close relatives to whom marriage is prohibited, like brothers and sisters and their children, and the ones who cannot marry to one another but are not close enough like mother-in-law, father-in-law, and the ones who are close relatives but are not amongst the non-marriageable group, like the uncles and aunts' children as well as the spouses who are present the sources of the other affinities and kinship relationships to the others, the donations made by them all are considered as donations made between the strangers hence recoverable. Thus the donor, even after the donation has been captured by the beneficiary and in case there is not any barrier to it as specified in the Article (803) of the aforementioned law, can reclaim the donation and, in this regard, the ideas and notions opined by some of the law professors in favor of the non-recoverability of the donations between the fathers and mothers with their non-immediate children (grandchildren) cannot be considered solid and authentic⁶ [8]. That is because, if we, in spite of the exclusiveness of the contents of article (803) of the civil law, expand the common meaning of children to grandchildren then it will lead to the outcome that we would have to, in a longitudinal kinship relationship, on the opposite side, automatically and compulsorily consider the donations by the ancestors (grandfather and grandmother) as unrecoverable because it is senseless to consider the donations made to another party on the one side of a mutual relationship as non-reclaimable, i.e. the donations made to the grandchildren, but then consider the donations made by the grandchildren to the ancestors as unrecoverable?! And, considering the idea that the terms "father" and "mother" cannot, as ruled in common law, be extended to the male and female ancestors, none of the civil law authors, except one⁷ [7], has opined such a disputable and questionable opinion (meaning that the donations to the grand fathers and mothers are not at all unrecoverable), so we do not have any other choice in regard of the status quo of the affairs and with the present regulations, especially the Paragraph (1) of the Article (803) of the civil law, to only consider the donations between fathers and mothers and their immediate children (excluding the grandchildren) as well as the donations between the spouses as non-reclaimable, which, in case of the

latter, is no less important in the common law than the donations between the children and fathers and mothers and might even be the cause of some resentments and the filing of a great many of the lawsuits to the judicial authorities. Thus, it seems that it is necessary to, in this regard, make amendments or annexations to the paragraph (1) of the aforementioned article so as to render the reclamation of donations between the relatives unrecoverable at least in a direct line, both ascending and descending, that encompasses fathers, mothers and ancestors and higher forerunners, on the one hand, and the children, grandchildren and their offspring towards the lower end, on the other. Moreover, a paragraph can be added to the foresaid article announcing the inter-spouse donations as non-reclaimable in which case there is a need for amending the Article (803) of Iran's civil law as a result of which the civil law approaches the popular Imamiyyeh Jurisprudence ideas and also the likely discriminations will be revoked in regard of the reclamation rights and consequently more compliance to the common law will be created. On the other hand, according to the regulations and in adherence to the more up-to-date verdicts that can be in some of the cases extracted from the jurisprudential ideas opined in the four religions, particularly from the Egyptian law, it is necessary to enact well-thought rules and regulations in preventing the wastage of the rights of individuals who donate a property under certain conditions to another person, kin or non-kin, and, subsequently, become needy due to financial crisis or as a result of events out of their control or find the donation contract conditions changed or are maltreated and occasionally suffer ingratitude or become the victims of crime by the opposite party (beneficiary) so that they can through proving their own excuses in a qualified court reclaim the whole or part of the property they have donated; furthermore, also because donations are made based on acts of benevolence and not on keeping on mentioning and re-mentioning them, the beneficiary has been granted the right to return the donation to the donor without it being agreed by him in case he finds it a cause of pestering and psychological irritation.

References

1. Muhammad Ali Noory, translation of Egypt's civil law, p.147
2. Muhammad Bandar Rigi, "Monjed Al-Tullab Dictionary" (Arabic to Persian), p.182;
3. Muhammad Mo'ain, "Mo'ain Dictionary", (1984), Tehran, p.1640 all have offered the same meanings for the term.
4. Dr. Muhammad Ja'afar Ja'afary Langarudi, "law terminology", p.329
5. Dr. Naser Katouziyan, "making a will in Iran's civil law", pp. 45-52.
6. Mustafa Adl, "civil law", by the efforts of Muhammad Reza Bandarchi, p.405
7. Sayyed Ali Ha'ery Shah Bagh, "explication of the civil law", v.2, p. 727

⁶ Dr. Naser Katouziyan, "distinct contracts", v.3, p.95 and "civil law in the current law order", p.503, paragraph (3), annotations underneath the article 803 of the civil law

⁷ Sayyed Ali Ha'ery Shahbagh, "an explication of the civil law", v.2, p.702, he is the only person who has opined the non-recoverability of the donations to the ancestors.

8. Dr. Naser Katouziyan, "distinct contracts", v.3, pp.35&36& 84
9. Sayyed Muhammad Kazem Tabataba'ei, "Orwatulvosqa (Molheq)", v.6, p.171
10. Mohaqqueq Sani, "Jame'e Al-Maqased", v.1, p. 533
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13. Dr. Habibullah Tahery, "civil law", v. 4, p.251
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15. Dr. Abdulrazzaq Ahmad Al-Sanhoury, (2011) "al-Wasit fi Sahrh Al-Qanun Al-Madany Al-Jadid (9)", v.1, 3rd ed., Beirut, Manshoorat Al-Halabi Al-Hoqugiyyeh.