


UDC: 7203.01

LBC: 63.3(2)6-7; 65.497; 71; 71.1

MJ № 330

 10.33864/2617-751X.2025.v8.i5.398-413

## THE ELEMENTS AND CONDITIONS OF THE ENDOWMENT CONTRACT IN ALGERIAN LEGISLATION

**Faïçal Tahrour\***

**Abstract.** This article aims to clarify the elements and conditions of the endowment (waqf) in Algerian legislation. To this end, it seeks to answer the following research question: What are the elements and conditions of the endowment as set out in the Algerian Endowment Law? The methods employed include descriptive, analytical, and inductive approaches. The research concludes that the elements of the endowment include the endower (waqif), the subject of the endowment, the formula, the designated beneficiaries, and the formal requirement. The conditions relate specifically to each of these elements. The endowment (waqf) is considered one of the most significant types of donation, with direct and ongoing social and economic effects, in addition to its religious and spiritual dimensions. It is a deeply rooted social phenomenon in Algerian society, introduced through Islam. An endowment is defined as the dedication of a specific asset, removing it from commercial transactions and management and allocating its benefits for charitable, religious or social purposes, either permanently or temporarily. This is documented to verify and protect the endowment from encroachment or misdirection. The aim is to promote the social and economic development of the beneficiaries (the designated recipients of the waqf) and to earn rewards for the endower. The Algerian legislator has organised the waqf in various texts, the most important of which is Law 91-10 relating to endowments, as amended and supplemented.

**Keywords:** endowment, conditions, elements, Law 91-10, waqf

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**To cite this article:** Tahrour, F. [2025]. THE ELEMENTS AND CONDITIONS OF THE ENDOWMENT CONTRACT IN ALGERIAN LEGISLATION. *"Metafizika" journal*, 8(5), pp.398-413.

<https://doi.org/10.33864/2617-751X.2025.v8.i5.398-413>

**Article history:**

Received: 27.05.2025

Accepted: 04.08.2025




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## ЭЛЕМЕНТЫ И УСЛОВИЯ ДОГОВОРА ВАКФА В АЛЖИРСКОМ ЗАКОНОДАТЕЛЬСТВЕ

**Файсаль Тахрур\***

**Абстракт.** Данная статья направлена на разъяснение элементов и условий вакфа (эндоумента) в алжирском законодательстве. В этой связи автор ставит перед собой исследовательский вопрос: каковы элементы и условия вакфа, предусмотренные алжирским законом о вакфе? В работе используются описательный, аналитический и индуктивный методы. Исследование приходит к выводу, что элементы вакфа включают в себя вакифа (лица, совершающего вакф), предмет вакфа, формулу (выражение воли), назначенных получателей и формальные требования. Условия вакфа непосредственно связаны с каждым из этих элементов. Вакф считается одной из наиболее значимых форм пожертвования, оказывающей непосредственное и продолжительное социальное и экономическое влияние, а также обладающей религиозным и духовным содержанием. Это социальное явление имеет глубокие корни в алжирском обществе и было введено исламом. Целевой капитал определяется как передача определенного актива, вывод его из коммерческих операций и управления и распределение его выгод на благотворительные, религиозные или социальные цели, как на постоянной, так и на временной основе. Это документируется для проверки и защиты целевого капитала от посягательств или нецелевого использования. Целью является содействие социально-экономическому развитию бенефициаров (назначенных получателей вакфа) и получение вознаграждения для целевого капитала. Алжирский законодатель регламентирует вакф в различных документах, наиболее важным из которых является Закон 91-10 о целевых капиталах с изменениями и дополнениями.

**Ключевые слова:** вакф, условия, элементы, закон 91-10, waqf

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**Цитировать статью:** Тахрур, Ф. [2025]. ЭЛЕМЕНТЫ И УСЛОВИЯ ДОГОВОРА ВАКФА В АЛЖИРСКОМ ЗАКОНОДАТЕЛЬСТВЕ. Журнал «Metafizika», 8(5), с.398-413.

<https://doi.org/10.33864/2617-751X.2025.v8.i5.398-413>

**История статьи:**

Статья поступила в редакцию: 27.05.2025

Отправлена на доработку: 27.06.2025

Принята для печати: 04.08.2025




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UOT: 7203.01

KBT: 63.3(2)6-7; 65.497; 71; 71.1

MJ № 330

 10.33864/2617-751X.2025.v8.i5.398-413

## ƏLCƏZƏİR QANUNVERİCİLİYİNDƏ VƏQF MÜQAVİLƏSİNİN ÜNSÜRLƏRİ VƏ ŞƏRTLƏRİ

**Feysəl Tahrur\***

**Abstrakt.** Bu məqalənin məqsədi Əlcəzair qanunvericiliyində vəqf (waqf) anlayışının ünsürləri və şərtlərini aydınlaşdırmaqdır. Bu məqsədlə, aşağıdakı tədqiqat sualına cavab axtarılır: Əlcəzair Vəqf Qanununa əsasən vəqfin ünsürləri və şərtləri nələrdir? Məqalədə təsviri, analitik və induktiv yanaşmalardan istifadə olunur. Araşdırma göstərir ki, vəqfin əsas ünsürləri vəqf edən şəxs (waqif), vəqfin obyektı, ifadə forması, təyin olunmuş faydalananlar və rəsmi tələblərdən ibarətdir. Bu ünsürlərin hər biri ilə bağlı xüsusi şərtlər mövcuddur. Vəqf (waqf) cəmiyyətə birbaşa və davamlı sosial-iqtisadi təsir göstərən, eyni zamanda dini və mənəvi aspektləri olan mühüm ianə növlərindən biri hesab olunur. Bu, Əlcəzair cəmiyyətində İslam vasitəsilə formalaşmış dərin köklərə malik bir sosial hadisədir. Vəqf müəyyən bir aktivin ayrılması, onu kommersiya əməliyyatlarından və idarə edilməsindən kənarlaşdıraraq onun faydalarını daimi və ya müvəqqəti olaraq xeyriyyə, dini və ya sosial məqsədlər üçün ayırması kimi müəyyən edilir. Bu, ianəni təcavüz və ya yanlış istiqamətləndirmədən yoxlamaq və qorumaq üçün sənədləşdirilmişdir. Məqsəd benefisiarların (vəqf təyin olunmuş şəxsləri) sosial və iqtisadi inkişafını təşviq etmək və vəqf edənə mükafatlar qazanmaqdır. Əlcəzair qanunvericisi müxtəlif mətnlərdə vəqf təşkil etmişdir ki, bunlardan ən mühümünü vəqflərlə bağlı 91-10 sayılı qanundur, düzəliş və əlavələrlə.

**Açar sözlər:** vəqf, şərtlər, ünsürlər, 91-10 sayılı Qanun, waqf

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**Məqaləyə istinad:** Tahrur, F. [2025] ƏLCƏZƏİR QANUNVERİCİLİYİNDƏ VƏQF MÜQAVİLƏSİNİN ÜNSÜRLƏRİ VƏ ŞƏRTLƏRİ. *"Metafizika" jurnalı*, 8(5), səh.398-413.

<https://doi.org/10.33864/2617-751X.2025.v8.i5.398-413>

**Məqalənin tarixçəsi:**

*Məqalə redaksiyaya daxil olmuşdur:* 27.05.2025

*Təkrar işlənməyə göndərilmişdir:* 27.06.2025

*Çapa qəbul edilmişdir:* 04.08.2025



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## **1.Introduction**

This raises the question of the elements and conditions of the endowment. The question is:

What are the elements and conditions of the endowment contract in Algerian legislation?

To answer this question, analytical and inductive methodologies were employed. The article is divided into two sections: the first discusses the elements of the endowment and the second its conditions.

### **Section One: The Elements of the Endowment in Algerian Legislation**

According to Algerian legislation, an endowment consists of four elements: the endower, the subject of the endowment, the designated beneficiaries and the formula mentioned in Article 9 of the Endowment Law. Additionally, there is a formal requirement that is practically essential for the endowment contract. An element is something upon which the existence of the matter depends; it is part of its essence and reality. We will discuss these elements in the following sections.

#### **Subsection One: The Endower (Waqif)**

The endower is the owner of the asset who establishes the endowment through their unilateral will. This renders the asset unowned by anyone thereafter, with the intention of creating property rights for the beneficiaries. This aspect is organised according to the provisions of Islamic law.

The endower can also be defined as the person who owns the endowment and has designated the donated asset as a waqf. An endowment cannot exist without the person who created it.

This person may be a natural person or a legal entity. While the endower is usually a natural person, it is also possible for a legal entity, such as an association, company or institution, to own the endowment. However, this creates different conditions due to differences in legal nature regarding capacity to act and elements of existence.

#### **Subsection Two: The Subject of the Endowment**

The subject of the endowment is the second element of the waqf and its essential content. The subject of the endowment must be present and is referred to in the endowment contract as 'the endowed asset'. This refers to anything dedicated from ownership, the benefits of which are donated for charitable purposes. This is mentioned by the Algerian legislator in Article 9 of Law 91-10 on endowments, whereby the subject of the endowment is that which has been donated for dedication. However, the Algerian legislator did not define the subject of the endowment, merely listing the assets that can be designated as such in Article 11 of the Endowment Law [AbdelkaderKhairou, *The Legal System for Protecting Endowments Between Positive Law and Islamic Law*, PhD Thesis, University of Oran 2022-2023, p.31].

**Subsection Three: The Formula of the Endowment**

This is considered the means by which the endower's will is expressed, either explicitly or implicitly. Terms that convey the meaning of endowment are given the same legal status as explicit expressions of the endower's intent. Ideally, the endower's expressions should be direct and clear, such as "I endow" or "I dedicate" [Jamal al-Din Maimoun, Lectures on Endowments, University of M'sila, Algeria, p.28].

Article 9 of Law 91-10 addresses this issue, emphasising the necessity of the endowment contract and declaring it void if absent. The endowment formula is an expression of the endower's unilateral will, taking the form of an affirmative declaration. Article 13 of Law 91-10 specifies several forms that must be followed for the endowment to be valid. 'The formula of the endowment can be verbal, written or indicated, according to the methods determined by regulation, while considering the provisions of Article 2 above.' Clearly, the formula is based solely on the declaration, as acceptance is not required for this type of contract, in line with the provisions of Article 60 of the Algerian Civil Code concerning expressions of intent [Abdelkader Khairou, The Legal System for Protecting Endowments Between Positive Law and Islamic Law, PhD Thesis, University of Oran 2022-2023, p.31].

**Subsection Four: The Designated Beneficiary**

The designated beneficiary is the entity that benefits from the proceeds of the endowment; the endower may also be the designated beneficiary. Under Law 91-10 on endowments, the Algerian legislator did not mention the designated beneficiary specifically, as its provisions were amended to include public endowments rather than private ones. This is confirmed by the amended Article 13 of the same law, which states that 'the designated beneficiary, according to this law, is a legal entity that does not contradict Islamic law' [FentaziKhairEddine, "The Endowment System in Algerian Legislation," Master's Thesis in Real Estate Law, University of Constantine, Algeria, 2006-2007, p.43].

However, in light of this article, the term 'legal entity' is ambiguous due to the lack of clarity regarding its true meaning in relation to the law. If it implies that the designated beneficiary is a legal entity in the legal sense, including the specificity of legal personality, this does not align with the nature of the endowment, which can be directed towards entities that lack legal personality, such as endowments for scholars, the poor, or the needy. Such entities have no independent financial liability or specific legal representation, so it is impossible to conceive of such a scenario. Additionally, specific endowments are permissible by law, with no disagreement among scholars [Mohamed Kanazah, Public Endowments in Algerian Legislation, Dar Al-Huda for Publishing and Distribution, 2006, p.75].

### **Subsection Five: The Formal Requirement**

The endowment contract is subject to the same conditions as other contracts that adhere to the principle of formality, as indicated by Article 324 of the Civil Code. This states that a formal contract is one that is executed by a public official or a person who is entrusted with a public service.

Regarding endowments lacking a property contract, the Algerian legislator did not impose formality on contracts concluded prior to the Notary Law's issuance. Therefore, prior to that, there is no issue with whether the contract is drawn up formally or informally, taking into account the principle of consent in real estate transactions [Hamza Ahmed, The Endowment Contract in Islamic Law and Algerian Law, Heritage Journal, Volume 3, Issue 1, p.194].

Endowment property contracts are recorded in a manner similar to the execution of a will. The notary includes relevant information about the parties and the subject of the contract, and the contract is then registered. Article 41 of the Endowment Law states: 'The endowment must be recorded in a contract with the notary and registered with the relevant authorities.' It is worth noting that an endowment contract cannot be invoked against third parties unless it has been published, since an endowment contract relating to real estate is considered a property right. This is also stated in Articles 15-16 of Ordinance No. 75-74, dated 12 November 1975, which concerns the preparation of the general land survey and the establishment of the land registry.

The notary is responsible for publishing the endowment contract and must deposit it with the relevant land registry office within the legally specified time frame. The notary verifies that all the formal and substantive conditions required for acceptance or rejection of the deposit by the land registry official are fulfilled. If the deposit is rejected, the notary is notified and the deposited copy is returned for the necessary action, bearing the land registry office's stamp indicating the date of the rejection decision and the reason for it.

### **Section Two: Conditions of the Endowment**

In order for the endowment contract to be valid and effective against third parties, certain conditions must be met. These relate to the endower, the subject of the endowment, the designated beneficiary and the endowment formula.

#### **Subsection One: Conditions Specific to the Endower**

The endower is the central figure in the unilateral act that establishes the endowment. Consequently, the Algerian legislator has emphasised the conditions relating to the endower's status and validity, which we will outline below: [See Qanfoud Ramadan, Conditions of Endowments According to the Latest Amendments to the Endowment Law, Article from the Journal of Law and Human Sciences, University of Yahia Fares, Medea, Volume 3, No.2, p.40]

#### **First: Attaining the age of majority**

Maturity indicates the soundness and completeness of a person's mind, the maturity of their personality, and their ability to act wisely. For the endower, maturity is an essential condition for the endowment contract to be valid. The Algerian legislator established this condition to protect and stabilise the endowment and achieve its intended goals.

In order to validate the endowment, the endower must have reached the age of majority, which is defined as 19 years old in accordance with Article 10 of the Endowment Law. According to this article, the endower must be the sole owner of the asset intended for endowment and must be capable of managing their property without restriction due to incapacity or debt. Article 30 confirms this by nullifying the endowment of a minor, whether distinguished or not, as they are incapable of making donations. This aims to protect minors from actions that may harm their financial integrity.

### **Second: sanity**

Sanity forms the basis of legal capacity and is a prerequisite for the validity of legal actions. This ability fundamentally relies on the capacity to distinguish between benefit and harm, and right and wrong. As an insane person cannot distinguish between these things, their endowment is invalid, as stated in Article 31 of the aforementioned Endowment Law. For the validity of the endowment contract, it is presumed that the endower possesses full mental capacity, which is a general principle [FentaziKhairEddine, previous reference, p.13].

However, if a person suffers from intermittent insanity, the endowment is valid provided that they were in a rational state of mind at the time of making the endowment and this is documented. If they subsequently become insane, this does not affect the validity of the contract [Article 31 of Law 91-10: "*The endowment of a madman or an imbecile is invalid because the endowment is an act that depends on the ability to manage. However, the endowment of someone with intermittent madness is valid during their lucidity and full mental capacity, provided that this lucidity is established by a legitimate means.*"]. The Algerian legislator recognised this in Article 31 of Endowment Law No. 91-10 [Article 43 of Order No. 75-58 dated Ramadan 20, 1395, corresponding to September 26, 1975, concerning the Civil Code, amended: "*Anyone who has reached the age of discernment but has not reached the age of majority, and anyone who has reached the age of majority yet is foolish or imbecilic, is considered to have limited capacity according to the law.*"]. However, according to the Civil Code, the actions of an insane person are considered null and void, regardless of whether the insanity is total or intermittent [Article 43 of the Algerian Civil Code]. Thus, the two laws contradict each other on this point [Qanfoud Ramadan, The Endowment System in Islamic Law and

Algerian Law, Master's Thesis, University of Blida, Academic Year 2000/2001, p.43].

The legislator also stipulated that, for an endowment to be valid, it must be made before the spendthrift is declared legally incompetent. According to Article 107 of the Family Law, any endowment action taken by the endower after the symptoms of spendthrift behaviour become apparent is deemed invalid, as are transactions made by the legally incompetent if the grounds for incompetence were evident at the time of their occurrence [Law No. 84-11 dated May 4, 2005, concerning Family Law].

One issue raised in this context is the endowment made by a person with a terminal illness. Such an illness can significantly affect a person's actions, rendering their conduct comparable to that of an insane or spendthrift person. In modern times, advancements in medical knowledge have made it easier for relatives to ascertain whether an endowment was made while the endower was suffering from a terminal illness, even if they have not yet died from it. This contrasts with ancient times, when jurists could only confirm the endower's terminal illness if they died from it [Fentazi Khair Eddine Moussa, *Donation Contracts Related to Real Estate, Endowments, Part One*, Dar Zahran for Publishing and Distribution, 2012, pp.58-59].

Nevertheless, the Algerian legislator permits the endowment of a person with a terminal illness, provided it is carried out with the consent of the relevant parties, including the endower's heirs and creditors. Additionally, creditors may request the annulment of the endowment under certain conditions, as set out in Article 32 of the Endowment Law. This article specifies: 'Creditors have the right to request the annulment of the endowment of a person in a state of terminal illness if the debt encompasses all their assets [Endowment Law 91-10].'

From this article, we can see that there are two conditions for annulling an endowment made by someone with a terminal illness:

A. The debt must encompass all the endower's assets.

B. The endowment must be established concerning the assets while the person is in a state of terminal illness.

### **Subsection Two: Conditions Specific to the Subject of the Endowment:**

To ensure the endowment's validity, the Algerian legislator has established a series of conditions to guarantee its legality and the objectives stated in the endowment contract. The conditions that must be met regarding the subject of the endowment are as follows:

#### **Firstly, it must have financial value**

This means that the endowment must consist of something for which people are willing to pay. Non-valuable items include public resources such as grass in forests and water in wells and rivers, as well as things that can only be used



in non-harmful situations, such as carrion and blood. If the asset is not valuable, it cannot be endowed [Mohamed Ahmed Siraj, Provisions of Wills and Endowments in Islamic Jurisprudence: A Comparative Study, Dar Al-Matbu'at Al-Jami'iya, 1998, p.193]. Therefore, the subject of the endowment must consist of assets that are beneficial, as there is no advantage in endowing something that is neither useful nor legal.

This principle is reflected in the first paragraph of Article 11 of the Endowment Law, which states: 'The subject of the endowment may be real estate, personal property, or benefits', which aligns with Maliki jurisprudential opinions on the matter.

### **Secondly, the endowment must be known and specified**

The subject of the endowment must be specified; an endowment of something unspecified is invalid. This condition exists to avoid errors arising from the subject of the endowment being identified imprecise. Accurate identification must be according to established criteria. If the endowment is real estate, for example, it must be clearly defined in terms of area, boundaries and nature.

The Algerian legislator has mandated that the subject of the endowment must be known, defined and lawful, as stated in the second paragraph of Article 11 of Law 91-10 on endowments: 'The subject of the endowment must be known, specified and lawful.' If the endowed property is joint property, the third paragraph of the same article [Clause 3 of Article 11 of Endowment Law 91-10: "*The endowment of common property is valid, and in this case, partition must be determined.*"] stipulates that it must be divided by the endower. Therefore, property that cannot be divided due to its nature is unsuitable for division and separation, and cannot be endowed.

### **Thirdly, the endowment must be owned by the endower**

The endower must have full ownership of the endowment asset; otherwise, the contract is invalid. According to the first paragraph of Article 10 of the Endowment Law, the endowed asset must be absolutely owned by the endower for the endowment to be valid. This aligns with Article 216 of the Family Law, which states that the endowed property must be free of disputes.

Disputes over the endowed property often lead to instability in transactions and create chaos in legal proceedings due to instability in legal positions. Notaries must verify ownership documents when drafting the official endowment contract according to the specific procedures related to the nature of the property [Qanfoud Ramadan, The Endowment System in Islamic Law and Algerian Law, previous reference, p.52].

Opinions differ among jurists regarding the issue of mortgaged property and its potential for endowment. Some scholars support the permissibility of endowing mortgaged property, while others deny it. This is a widely debated

matter of jurisprudence. Shafi'i scholars are strict in their prohibition of it, with some requiring the debtor to be solvent for the endowment to be valid. Hanbalis have made its validity contingent on the consent of the mortgage creditor. Meanwhile, Hanafi scholars permitted the endowment of mortgaged property on the condition that it would be invalidated if the endower failed to fulfil their debt. Conversely, Maliki scholars adopted a more moderate position, permitting the endowment of mortgaged property on condition that permission is obtained from the creditor and that the debtor is solvent [Fentazi Khair Eddine, *Donation Contracts Related to Real Estate*, previous reference, p.68].

Returning to the Algerian legislator, there is no explicit provision regarding this issue. However, this silence could be interpreted as rejecting endowments involving mortgaged property, since a mortgage is considered a secured interest which could result in the mortgaged property being sold to settle the secured debt. This would contradict the principle that prohibits dealing with endowed property through sale or any other legal action that affects the original purpose of the endowment.

### **Subsection Three: Conditions specific to the designated beneficiary:**

The designated beneficiary varies depending on whether the endowment is public or private. If the endowment is public, the beneficiary is a general charitable entity. If it is private, however, the endowment itself is considered the beneficiary. Article 13 of the Endowment Law addresses the issue of the designated beneficiary [Article 13 of Law No. 91-10 concerning endowments: *"The beneficiary is the entity specified by the endower in the endowment contract and can be a known natural or legal person; the eligibility of a natural person for the endowment depends on their existence and acceptance, while for a legal person, it is required that it does not have any elements contradicting Islamic law."*]. Accordingly, the conditions differ according to the designated beneficiary.

In the first paragraph of Article 13 of the aforementioned Endowment Law, the Algerian legislator specified that:

'The designated beneficiary is the entity specified by the endower in the endowment contract and must be a known natural or legal person.' Thus, the legislator distinguishes between natural and legal persons in the context of the designated beneficiary, a topic we will discuss below.

#### **1.Natural person:**

The law requires the designated beneficiary to be identified in order for the endowment to be valid. However, a natural person's entitlement to the endowment only arises if they exist. This has led to significant debate among jurists regarding the permissibility of making an endowment to someone who does not yet exist, or who may exist in the future, such as an unborn child. Some jurists argue that the endowment is valid regardless of the unborn child's

status, while others maintain that an endowment cannot be made until the child is born alive [FentaziKhairEddine, The Endowment System in Algerian Legislation, previous reference, p.62].

The Algerian legislator's position is clear in amended Article 25 of the Civil Code, which states: 'A person's legal personality begins at the moment of live birth and ends at death, provided that the foetus enjoys the rights defined by law and is born alive [Civil Law No. 75-58].' Therefore, if a person makes an endowment for their children and has a foetus at the time, and the foetus is not included in the endowment, then if it is later born alive, it will be considered a legitimate beneficiary, being the living child of the person making the endowment. Thus, the legislator requires that the beneficiary must exist for the endowment to be valid [FentaziKhairEddine, The Endowment System in Algerian Legislation, previous reference, p.62].

Furthermore, the Algerian legislator requires the beneficiary to accept the endowment; a contract requires both an offer and acceptance. Due to the importance of acceptance, the legislator has made it integral to existence, meaning both conditions must be present for the endowment to be valid. Acceptance must come from the designated beneficiary personally, or from their guardian if they are a minor [Fentazi Khair Eddine Moussa, Donation Contracts Related to Real Estate, previous reference, p.92].

## **2.Legal person:**

A legal person is recognised as having the legal capacity to acquire rights and fulfil obligations as an entity that is distinct from its members. Therefore, it can own property, just like a natural person, provided that it is formed on legitimate legal grounds and adheres to public order and morals. This is stated in the second paragraph of Article 13 of the Endowment Law, which stipulates: 'As for the legal person, it must not be tainted by anything that contradicts Islamic law', as previously mentioned [Abdelrazak Ben AmmarBoudiaf, The Concept of Endowment as a Financial Institution in Islamic Jurisprudence and Legislation, Dar Al-Huda for Printing and Publishing, Algeria, 2010, p.81].

### **Second: Capacity to Own:**

The designated beneficiary must be capable of ownership at the time of the endowment, a condition agreed upon by Islamic law. Islamic jurists permit endowments even if the beneficiary is unknown or non-existent. Each school of thought has its own view on this matter. For example, Shafi'i and Hanbali scholars do not consider it problematic to endow an institution that will exist in the future. However, Maliki scholars insist that the beneficiary must exist, either naturally or legally, as discussed previously in this research [Nawariya Mohamed and Aissa Adel, Regulating the Elements of Endowment in Light of Islamic Law and Algerian Legislation, Journal of Legal and Political Science Research, Issue Three, June 2020, p.169].

The Algerian legislator has not addressed the issue of minors, the insane, the mentally disabled, the spendthrift and the heedless. This implies a reference to Islamic law, which does not prohibit a minor from benefiting from the endowment. The strongest evidence of the irrelevance of age concerning entitlement is the entitlement of a foetus to the endowment immediately upon being born alive. The same applies to spendthrifts and the heedless, as they are considered to have limited capacity, enabling them to enter into beneficial contracts. As for those who are insane, a guardian may act on their behalf if they are under guardianship [FentaziKhairEddineMoussa, Donation Contracts Related to Real Estate, previous reference, p.94].

#### **Subsection Four: Specific Conditions of the Endowment Formula:**

The endowment is established through the unilateral will of the endower, as set out in the formula. For the formula to be valid and create the endowment contract, it must meet certain conditions. Accordingly, the formula must be as follows:

##### **First: it must be absolute:**

This means that it should not be subject to a condition or deferred to a future time. Here, a condition is defined as linking the existence of the endowment to something else using any form of conditional expression that implies uncertainty. For example, stating that "I bequeath my land to so-and-so if my business profits by a certain amount" or using any other expression that implies uncertainty would invalidate the endowment [Nawariya Mohamed, previous reference, p.167].

However, if the condition is the death of the donor, the gift becomes akin to a will. If the condition relates to something that has already occurred, it is considered valid. There is also a "deferred formula", whereby the endowment is made immediately but its effects are postponed to a later time. The effect of this formula varies depending on when it is added. If the addition is made after the endower's death, the endowment is treated as a will, as previously mentioned.

According to Article 29 of the Endowment Law, the legislator clarified that an endowment is not valid if it is contingent upon a condition that contradicts legal texts. If such a condition occurs, it renders the condition void, but the endowment remains valid [Article 29 of Law 91-10: "*The endowment is not valid according to Islamic law if it is conditional on a stipulation that contradicts the legal texts; if it occurs, the condition is void, and the endowment is valid*".]. However, the article does not address the issue of suspending the endowment based on a permissible condition, as discussed previously.

##### **Second: perpetuity**

The endowment formula must indicate perpetuity. It is inconceivable for someone to establish a charitable endowment for a limited time. The majority of scholars agree on this, except for the Maliki and Hanafi schools, which permit endowments for a specified period. After this period, the endowment reverts to the endower or another party. This is evident when reviewing Article 3 of the Endowment Law, which defines an endowment as follows: ‘The holding of an asset from ownership in a manner of perpetuity.’ Therefore, any endowment formula that indicates a time limit is deemed invalid and the entire endowment is consequently voided, according to Article 28 of the same law which states: ‘The endowment is invalid if it is limited by time.’ This aligns with the opinion of the majority of jurists, and the Algerian legislator explicitly addresses the perpetuity of endowments, whether public or private [Fentazi Khair Eddine Moussa, *Donation Contracts Related to Real Estate*, previous reference, pp.74-75].

Referring to Law No. 90-25, issued on 18 November 1990, concerning real estate guidance, we find that Article 31 defines endowment properties as follows: ‘Endowment properties are real estate that the owner has set aside of their own free will for permanent enjoyment by a charitable or public benefit association.’ Here, the legislator has altered the description of the endowment formula; while the previous definition used the term ‘perpetuity’, this one employs the term ‘permanent’, which can be considered valid [Real Estate Guidance Law No. 90-25 dated November 18, 1990, amended by the correction published in the Official Gazette No. 55, p. 1743, amended by Order No. 95-26 dated September 25, 1995].

### **Thirdly, it must be definitive**

The endowment cannot be established if the formula is merely a promise, since a promise is not legally binding. The endower must demonstrate that they have moved beyond contemplation and hesitation, and are determined to create the endowment based on sound principles that meet the aforementioned conditions. The most indicative elements of definitiveness and obligation in contracts are the requirement for them to be formalised by a notary and for the endowment contract to be registered with the relevant authorities, as stipulated by the legislator in Article 41 of the Endowment Law: ‘The endower must formalise the endowment through a contract with a notary and register it with the land registry authorities, who are required to provide proof of this and send a copy to the endowment authority.’

The Algerian legislator has imposed obligations on the endower, and if these are not fulfilled- such as failing to formalise the endowment with a legally authorised entity, namely a notary- this could invalidate the endowment. Notaries are legally authorised to formalise actions that must be documented according to the aforementioned civil law provisions and in accordance with

Notary Law No. 06-02. The practical benefit of documenting the endowment contract is that it carries legal authority, which is recognised by law. Additionally, the endowment must be registered [Rammoul Khaled, *The Legal and Regulatory Framework for Endowment Properties in Algeria: A Comparative Study with the Provisions of Islamic Law Supported by the Latest Legal Texts and Jurisprudence*, Dar Al-NashrHoma, 3rd Edition, 2013, p.98] by the notary with the registration and stamp authority within the legally specified timeframe. Failure to do so may result in disciplinary penalties from the relevant authority.

### **Conclusion**

This article has shown that, under Algerian law, for an endowment contract to be valid and effective and to produce its effects towards third parties, certain elements and conditions must be fulfilled.

The essential elements are:

- 1.The endower: this can be a natural or legal person.
- 2.The subject of the endowment: This is the beneficiary of the endowment.
- 3.The formula: This expresses the endower's will.
- 4.The designated beneficiary: This is the person who will benefit from the endowment.
- 5.The formality: This gives the endowment its official status and the necessary legal protection. This is usually carried out by a notary.

The conditions relate to the elements of the endowment itself:

- Conditions related to the endower: the endower must have reached the age of majority and have sound mental capacity.
- Conditions related to the subject of the endowment: The endowment must have financial value, be owned by the endower and be specified and defined.
- Conditions related to the designated beneficiary: The beneficiary must be identifiable and accept the endowment, thereby fulfilling the offer and acceptance requirements of the endowment contract. This applies whether the beneficiary is a natural or legal person. Additionally, the beneficiary must have the capacity to own.
- Conditions related to the formula: The formula must be definitive and unconditional.

### **REFERENCES**

1. Abdelkader, K. (2023). *The legal system for protecting endowments between positive law and Islamic law* (PhD thesis, University of Oran), p.31.
2. Ahmed, H. (n.d.). The endowment contract in Islamic law and Algerian law. *Heritage Journal*, 3(1), 194.

3. Ben Ammar Boudiaf, A. R. (2010). *The concept of endowment as a financial institution in Islamic jurisprudence and legislation*. Dar Al-Huda for Printing and Publishing.
4. Fentazi, K. E. (2007). *The endowment system in Algerian legislation* (Master's thesis in Real Estate Law, University of Constantine), p. 43.
5. Fentazi, K. E. (n.d.). *The endowment system in Algerian legislation*, p. 62.
6. Fentazi, K. E. (n.d.). *The endowment system in Algerian legislation*, p. 62.
7. Fentazi, K. E. (n.d.). *The endowment system in Algerian legislation*, p. 13.
8. Fentazi, K. E. (n.d.). *The endowment system in Algerian legislation*, p. 62.
9. Fentazi, K. E. M. (2012). *Donation contracts related to real estate: Endowments* (Part 1). Dar Zahran for Publishing and Distribution, pp.58-59.
10. Fentazi, K. E. M. (2012). *Donation contracts related to real estate: Endowments*, p.68.
11. Fentazi, K. E. M. (2012). *Donation contracts related to real estate: Endowments*, p.92.
12. Fentazi, K. E. M. (2012). *Donation contracts related to real estate: Endowments*, pp.74-75.
13. Jamal al-Din, M. (n.d.). *Lectures on endowments*. University of M'sila, Algeria, p. 28.
14. Kanazah, M. (2006). *Public endowments in Algerian legislation*. Dar Al-Huda for Publishing and Distribution, p. 75.
15. Batache K., Bouzitouna L. (2025). Legal Liability of Real Estate Developers in Blueprint Sales Contracts under Algerian Law. *Science, Education and Innovations in the Context of Modern Problems*, 8(5), 405-414; doi:10.56352/sei/8.5.40.
16. Law No. 91-10 of April 27, 1990, corresponding to Shawwal 16, 1411, concerning endowments.
17. Law No. 91-10. (1990). *Endowment Law*.
18. Boussena B. (2025). The Relationship between Divine Laws (Sunan Ilahiyyah) and Civilizational Revival – The Principle of Divine Support as a Model. *Science, Education and Innovations in the Context of Modern Problems*, 8(5), 264-271; doi:10.56352/sei/8.5.28
19. Law No. 75-58 of September 26, 1975 (Ramadan 20, 1395), concerning the Civil Code (as amended).
20. Law No. 84-11 of May 4, 2005, concerning family law.
21. Mohamed, N., & Adel, A. (2020). Regulating the elements of endowment in light of Islamic law and Algerian legislation. *Journal of Legal and Political Science Research*, (3), 169.
22. Slimani, A.A. (2025). The Problematic Nature of Legal Drafting and Terminological Precision in Algerian Legislation: The Family Law as a

- Case Study – A Comparative Study between Sharia and Statutory Law. Science, Education and Innovations in the Context of Modern Problems, 8(8), 150-164; doi:10.56352/sei/8.8.15.
23. Mohamed, N. (2020). *Previous reference*, p. 167.
24. Qanfoud, R. (2001). *The endowment system in Islamic law and Algerian law* (Master's thesis, University of Blida), p. 43.
25. Derbale M., Bensabeur F., Noureddine H. (2025). Organization of Real Estate Seizure in Algerian Procedural Law. Science, Education and Innovations in the Context of Modern Problems, 8(6), 476-485;
26. Zerrouk N. (2025). Industrial Real Estate for Investment in Algerian Legislation. Science, Education and Innovations in the Context of Modern Problems, 8(6), 161-167; doi:10.56352/sei/8.6.17.
27. Qanfoud, R. (n.d.). Conditions of endowments according to the latest amendments to the endowment law. *Journal of Law and Human Sciences, University of Yahia Fares, Medea*, 3(2), 40.
28. Qanfoud, R. (n.d.). *The endowment system in Islamic law and Algerian law*, p. 52.
29. Rammoul, K. (2013). *The legal and regulatory framework for endowment properties in Algeria: A comparative study with the provisions of Islamic law supported by the latest legal texts and jurisprudence* (3rd ed.). Dar Al-Nashr Homa, p. 98.
30. Elbordj Kh. (2025). Protection of Personal Data in Cyberspace in Light of Algerian Legislation. Science, Education and Innovations in the Context of Modern Problems, 8(6), 615-621; doi:10.56352/sei/8.6.67.
31. Real Estate Guidance Law No. 90-25 of November 18, 1990, as amended by Order No. 95-26 of September 25, 1995, and published in Official Gazette No. 55, p. 1743.
32. Bouhadda S. (2025). Issues of Compensation for Arbitrary Divorce and Divorce consolatory benefit in Algerian Family Law and Islamic Sharia. Science, Education and Innovations in the Context of Modern Problems, 8(8), 219-230; doi:10.56352/sei/8.8.21.
33. Siraj, M. A. (1998). *Provisions of wills and endowments in Islamic jurisprudence: A comparative study*. Dar Al-Matbu'at Al-Jami'ia, p.193.