

Islamic Legal Views on Organ Donation: A View from Fiqh Councils

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Objectives

Objectives:

- To explain the ethico-legal deliberation of Sunni scholars underlying the *Fatawa* (legal opinions) on organ transplantation
- To describe Sunni *Fatawa* on the living donation of autografts and allografts
- To describe Sunni *Fatawa* on cadaveric organ donation
- To describe Sunni *Fatawa* on receiving autografts, allografts and xenografts

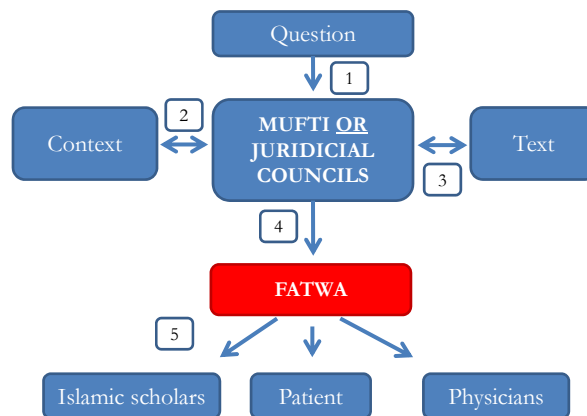


Background

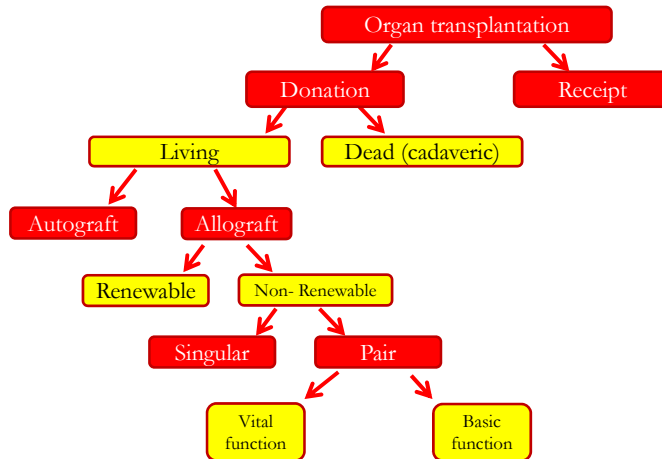
"Islamic Legal Views on Organ Donation: A View from Fiqh Councils"



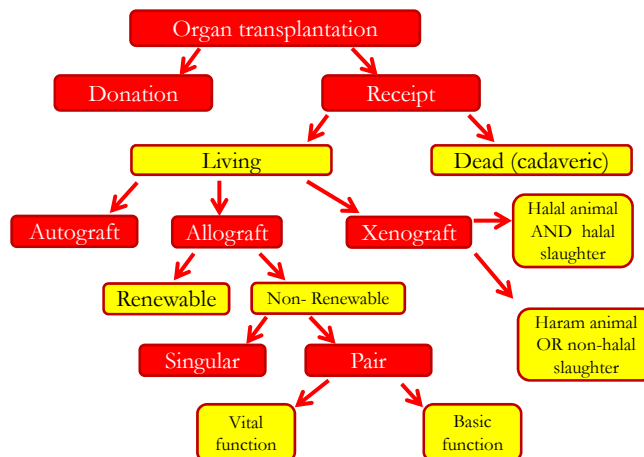
The fatwa



Specifying the question



Specifying the question



Research methods

- Fiqh Councils
 - Al-Azhar Academy of Egypt
 - European Council of Fatwa and Research (ECFR)
 - Islamic Fiqh Academy of India
 - Islamic Fiqh Academy of the OIC
 - UK Shariah Council
 - The Fatwa Committee of Kuwait
 - The Islamic Religious Council of Singapore



Research methods

- Islamic Medical Associations / Organisations
 - Islamic Organisation of Medical Sciences
 - Islamic Medical Association of North America
- Individual jurists
 - Mufti Muhammad ibn Adam al-Kawthari
 - Shaykh Yusuf al-Qaradawi
 - Shaykh Salih al-Muhajjid
- Academic publications



Ethico-legal deliberations

*“Islamic Legal Views on Organ Donation: A View
from Fiqh Councils”*



Arguments against permissibility

- Sanctity of Body
- Ownership
- Harming oneself
- Mutilation



Arguments for Permissibility

- Saving of a life
- Rebut concerns over Sanctity, Mutilation, and Ownership
- Legal Maxim: “Necessities make forbidden things permissible”
 - “But he who is driven by necessity, neither craving nor transgressing, it is no sin for him. Lo! Allah is Forgiving, Merciful” (2:173).



Limits of permissibility

- Areas of Agreement (conditions)
 - Necessity
 - Buying and Selling organs
 - Respect
 - Consent
 - Reproductive glands
- Areas for further research
 - How to prioritize recipients?
 - Is Brain death true (legal) death?
 - Use of reproductive organs permissible?



Sunni legal views on organ donation

"Islamic Legal Views on Organ Donation: A View from Fiqh Councils"

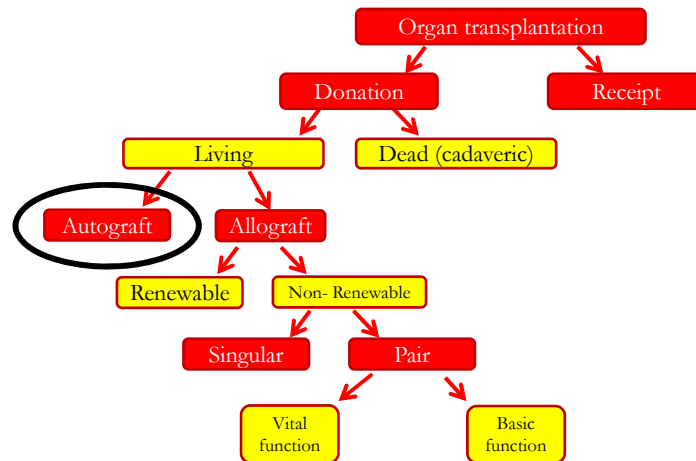


Groups of thought

1. Impermissible to give and to receive
2. Permissible to receive. Permissible to give if living, with conditions, but impermissible to give if cadaveric
3. Permissible to receive, permissible to give (both living and cadaveric), with conditions



Autograft donation



Autograft donation

- **Definition:** *an autograft is an organ or tissue obtained from the same individual to which it is being transplanted.*
Example: skin graft
- Widely permitted in Islam. The Islamic Fiqh Academy of India, 1989:

“it is valid to replace a part of a person’s body with another part of the same person if necessity so demands”

Islamic Fiqh Academy of India, 1989. Second fiqh seminar. 8-11 December 1989, New Delhi. <http://ifa-india.org/urdu/medical3.php> (accessed 10 September 2010)

Autograft donation

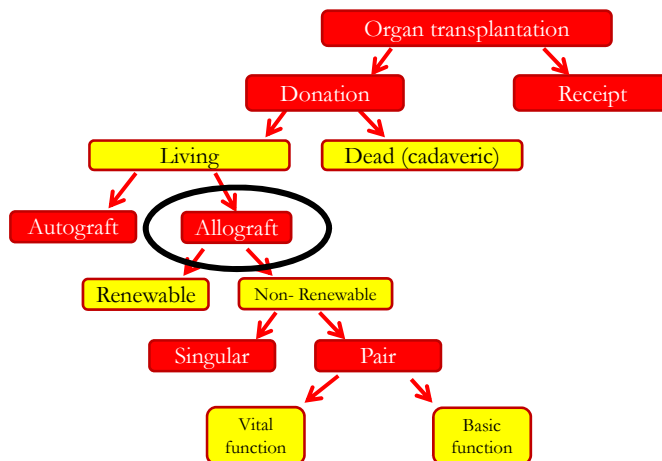
Conditions for the validity of the permissibility:

1. The benefits of the operation must outweigh its harmful effects
2. The purpose must be to either:
 - replace a lost organ
 - reshape it
 - restore its function
 - correct a defect
 - remove a malformation which is the source of mental anguish or physical pain

Islamic Fiqh Academy of India, 1989. Second fiqh seminar. 8-11 December 1989, New Delhi. <http://ifa-india.org/urdu/medical3.php> (accessed 10 September 2010)



Allograft donation

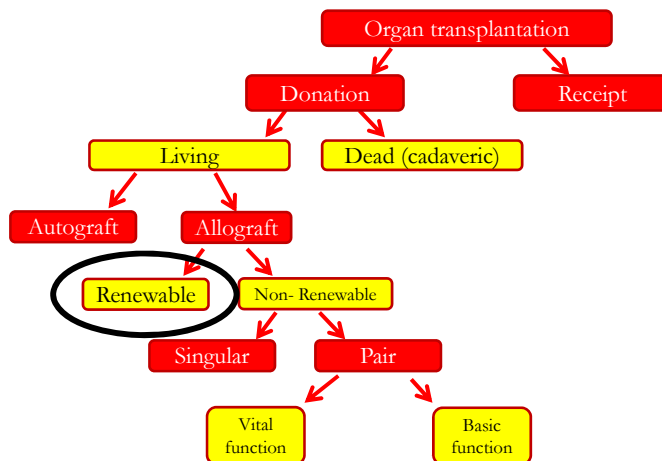


Allograft donation

- **Definition:** *Allografts are organs taken from one member of a species and received by a member of that same species. Example: from one human being to another*



Allograft donation - renewable



Allograft donation - renewable

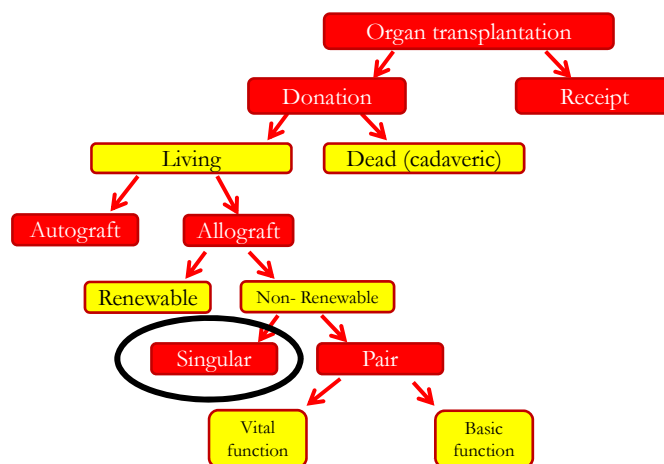
- **Renewable organs:** These are organs that regenerate once removed
- The donation of a renewable organ is generally **permissible**. The Islamic Fiqh Academy of Jeddah and the European Council for Fatwa and Research:

“(An organ) may be transplanted from the body of one person to the body of another person, if such an organ is automatically regenerated”

- In light of this ruling, bone marrow may be donated



Allograft donation - renewable

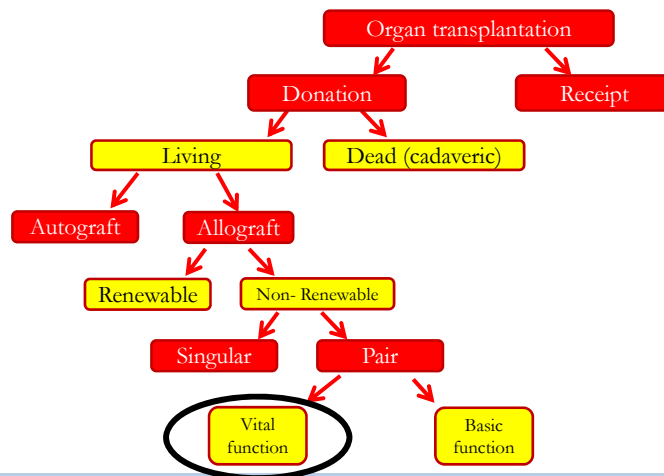


Allograft donation – non-renewable

- **The donation of singular organs:** Singular organs are organs that are congenitally unique (such as the tongue or the pancreas) or organs that have become one of a kind (like a patient who has lost an eye)
- Not allowed to donate singular organs in full: **its removal would cause an essential function to cease**
- Removing a section of the organ which will not result in permanent damage to the donor, such as the lobe of a liver, is permissible



Allograft donation – non-renewable



Allograft donation – non-renewable

- **The donation of vital organs:** A vital organ is an organ that performs a life sustaining function(s)
- The Islamic Fiqh Academy of Jeddah said
“It is forbidden to transplant from a living person to another, a vital organ, such as the heart, without which the donor cannot remain alive”

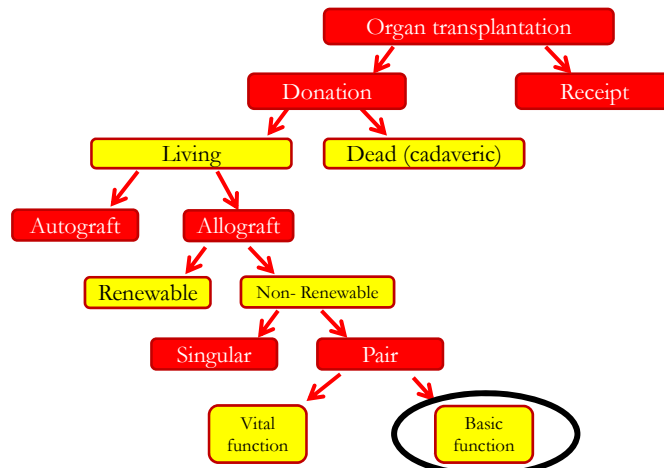


Allograft donation – non-renewable

- Live donation of vital organs is akin to **suicide**, which is a serious sin according to Islamic law
- Little significance in the UK / US as such operations are not carried out



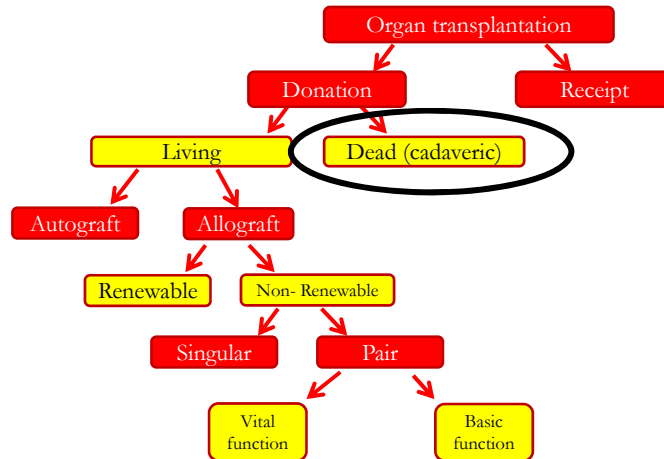
Allograft donation – non-renewable



Allograft donation – non-renewable

- Donation of an organ that performs a basic function:
 - Allowed to donate if:
 - Removing the live organ does not result in permanent damage to the donor
 - It will save the life of the recipient
 - High likelihood of success

Cadaveric donation



Cadaveric donation

- Cadaveric organ donation takes two forms:
 1. Donation after circulatory death (DCD)
 2. Donation after brainstem death (DBD)
- In both cases (DCD/ DBD) organs are retrieved only after an independent clinical confirmation of death

Cadaveric donation

- **Donation after circulatory death (DCD):**
This is the retrieval of a organ after asystole (the patients heart irreversibly stops beating)
- Traditional definition of death, generally accepted by Muslim scholars



Cadaveric donation

- **Donation after brainstem death (DBD):** This is the retrieval of an organ when the function of the donor's brainstem is permanently lost, leaving him or her irreversibly unconsciousness and incapable of breathing independently
- ***British and American law accepts this as a definition of death and the ECFR have agreed***



Cadaveric donation

- Most scholars permit cadaveric donation under the conditions that the transplantation either:
 1. Keeps the beneficiary alive
 2. Restores a basic function
 3. Consent be given first



Cadaveric donation

Those in agreement with cadaveric include:

- The Islamic Fiqh Council of Jeddah
- The European Council for Fatwa and Research
- The UK Shariah Council, the National Fatwa Council of Malaysia
- The Islamic Medical Association of North America
- The Islamic Religious Council of Singapore
- The Fatwa Committee of Kuwait
- Al-Azhar Academy of Egypt



Cadaveric donation

- Some scholars deem cadaveric donation to be impermissible
- Islamic Fiqh Academy of India said in 1988:

'If someone expressed his wish that after his death, his organs may be used for transplantation purposes, [then] it cannot be considered as Wasiyah [a will] according to Shariah and is invalid.'

Islamic Fiqh Academy of India, 1989. Second fiqh seminar. 8-11 December 1989, New Delhi.
<http://ifa-india.org/urdu/medical3.php> (accessed 10 September 2010)



Cadaveric donation

- The Islamic Religious Council of Singapore in 1973 also held this view because one does not own one's body
- However in 1986 the fatwa in Singapore was revised based on the legal maxim that ***Necessities change the forbidden into the permissible***
- The dire need for organ donors and the paucity of available organs were sufficient reasons to allow cadaveric donation

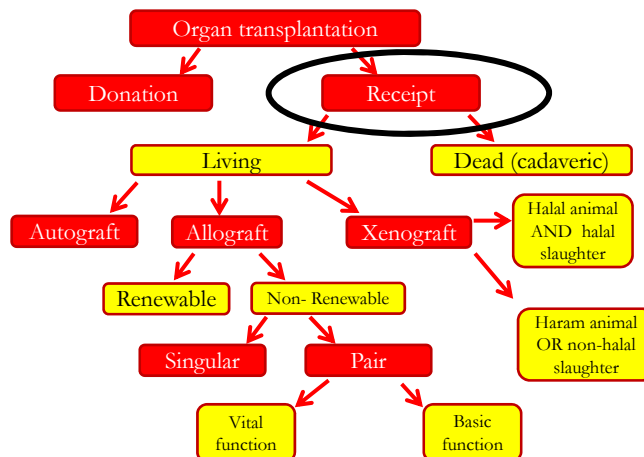
The Islamic Religious Council of Singapore. Organ transplant in Islam. The Fiqh or Organ Transplant and its application in Singapore. <http://www.mujs.gov.sg/cms/uploadedFiles/MuisGovSG/Religious/OOM/Resources/Muis%20kidney%20book%20ENG.pdf> (Accessed 11 September 2011).



Cadaveric donation

- The definition of death is a whole lecture in itself
- It is impossible to clinically determine whether total, irreversible brain tissue death has occurred (radioisotope scanning can help test for effective cerebral blood flow but not brainstem)
- The questions arise that from this are about whether clinical criteria for the diagnosis of death are acceptable in Islam

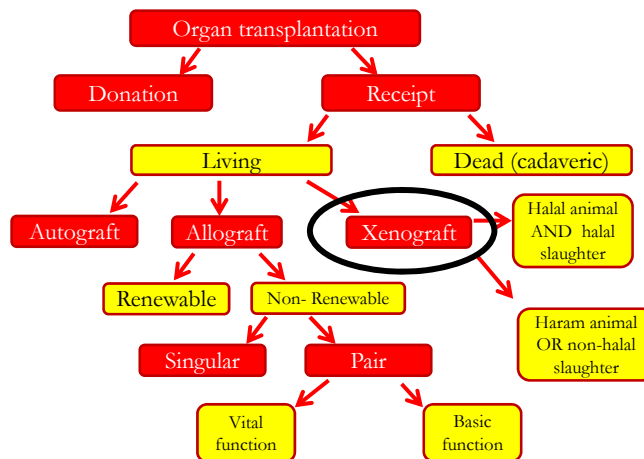
The receipt of organs



Receiving an organ donation

- It is permissible in Islam to receive an organ transplant under the following conditions:
 1. The patient has a Non-Functioning organ
 2. High risk of Morbidity or Mortality to Patient
 3. No other viable alternative
 4. Strong likelihood of a successful transplantation

Receiving a xenograft



Receiving a xenograft

- **Xenograft:** *An organ or tissue obtained from different species such as pigs*
- Many scholars state Xenografts are permissible, under two conditions:
 1. They come from permissible animals
 2. The animal is slaughtered according to Islamic standards



Receiving a xenograft

- Islamic Fiqh Academy of India state there are exceptions to these two conditions if:
 1. No other alternative
 2. Person's life is in danger
 3. An organ is at risk of being completely damaged

Islamic Fiqh Academy of India, 1989. Second fiqh seminar. 8-11 December 1989, New Delhi. <http://ifa-india.org/urdu/medical3.php> (accessed 10 September 2010)



Historical Fatwas

Chronological Summary of Official Fatwas Regarding Organ Transplant Treatment

Year	Jurist/Organization	Position	Country	Summary of Ruling		Comments
				Prohibited	Permissible	
1959	Hasan Mamun	Grand Mufti	Egypt		See comment	Corneal transplants are permissible
1966	Abd al-'Al Haridi	Grand Mufti	Egypt		x	Organ trading is prohibited
1967	Muhammad Shafi Uthmani	Grand Mufti	Pakistan	x		
1969	Islamic International Conference	International Conference	Malaysia		x	
1972	Algiers Supreme Islamic Council	National Council	Algeria		x	
1973	Muhammad Khatir Muhammad al-Shaykh	Grand Mufti	Egypt		See comment	Harvesting skin from unidentified corpses is permissible
1977	Supreme Council for Fatwas	National Council	Jordan		x	
1978	Senior Ulama Council	National Council	Saudi Arabia		See comment	Corneal transplants are permissible
1979	Gad al-Haq Ali Gad al-Haq	Grand Mufti	Egypt		x	
1980	Fatwa from Ministry of Endowment	National Council	Kuwait		x	
1981	1st Internat'l Conf. on Islamic Medicine	International Conference	Kuwait		x	Transplants involving injuring to donor are permissible
1980	Religious Affairs Supreme Council	National Council	Turkey		x	
1982	Senior Ulama Council	National Council	Saudi Arabia		x	
1985	IFA-MWL - 8th Session	International Conference	International		x	
1986	Council of Islamic Jurisprudence	International Conference	Amman		See comment	Brain death equals actual death in Islamic law
1986	IFA-OIC - 3rd Session	International Conference	International		See comment	Brain death equals actual death in Islamic law
1987	Muhammad Sayed Tantawi	Grand Mufti	Egypt		x	Selling organs is prohibited
1988	IFA-OIC - 4th Session	International Conference	International		x	
1989	IFA-India	National Council	India		See comment	Live donation is permissible, cadaveric donation is prohibited
1994	University of al-Azhar	National Council	Egypt		x	
1994	Ahmad bin Hamad al-Khalili	Grand Mufti	Oman		x	
1996	Indonesian Council of Ulama	National Council	Indonesia		x	
1995, 1998	Yusuf al-Qaradawi	Independent Mufti	Egypt/Qatar		x	Brain death equals actual death in Islamic law

Rasheed, S. (2011); *Organ Donation among Muslims: An Examination of Medical Researchers' Efforts to Encourage Donation in the Muslim Community*



Evaluation

- Fatwas are missing textual references
- Lack of context to fatwas
- Outdated
- Grading of legal ruling unclear: mubah vs wajib?
- Is there a need for an updated fatwa?



Summary

- Ethico-legal argument against organ donation include issues of human sanctity, ownership, harm and mutilation
- Ethico-legal arguments for organ donation include the saving of a human life, rebuttal of the arguments against, and the maxim of darurah
- Controversy remains amongst Muslim scholarship



Summary

- Sunni scholars have argued against transplantation but more argue for
- Some of those in support of some types of organ donation have argued against cadaveric donation



Thank You

Any Questions?

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