

# Professional Competence in Light of the Intends of Islamic Sharia

Research in Islamic Sharia Specialization (Jurisprudence and its Principles)

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## Abstract:

Undoubtedly, all Sharia rulings have been legislated to bring about benefits and avert corruption to people. Stipulating competence in assuming positions has Sharia-based wisdom concerning benefit and corruption. Its presence benefits the people, and its absence opens doors to corruption. All of this falls under the intentions of Sharia; therefore, it was necessary to study this topic from an intentions-based perspective. I have divided this research into three sections as follows:

**First Section:** Introduction: in Islamic Sharia, we discussed the concepts of benefit (maslaha) and corruption (Masada).

**Second Section:** The wisdom of considering competence as a primary condition in jobs in light of the intentions of Islamic Sharia

**Third Section:** The consequences when a competent employee makes a mistake.

**Keywords:** Competence, Benefit, Corruption, Intention of Islamic Sharia, Destruction, Liability.

## First Section: Introduction

**First:** The Concept of Benefit and Corruption in Islamic Sharia

**Benefit (Maslaha) Linguistically:** Benefit refers to rectitude; "maslaha" is the singular of "masalih," derived from "salah," which is the opposite of corruption ("fasad"). "Istislah" (seeking benefit) is the antonym of corruption. Therefore, anything that contains benefit—whether by acquisition and attainment, such as obtaining advantages and pleasures, or by repulsion and avoidance, such as warding off harms and pains—is worthy of benefit.<sup>1</sup>

**Benefit (Maslaha) Technically, Imam Al-Ghazali<sup>2</sup> defined it as** “preserving the intention of the Sharia regarding the creation in five aspects: that it preserves for them their religion, their life, their intellect, their progeny, and their wealth.”

"Therefore, everything that involves preserving these five essentials is a benefit (maslaha), and everything that misses these essentials is a corruption (Masada), and repelling it is a benefit." Undoubtedly, this is a benefit intended by the Wise Lawgiver for His servants through preserving these five essentials. Benefit refers to pleasure or what leads to it, and repelling pain or what leads to it, either by acquisition or preservation. Acquisition means directly bringing about pleasure; conservation means maintaining it by repelling harm and its causes.<sup>3</sup>

**Corruption (Mafsada) Linguistically:** "mafsada" refers to the corruption or transformation of something. It is said: "fasada al-shay' yafsuwayafsidu" (the thing became corrupt or is corrupting).<sup>4</sup>

**Corruption (Mafsada) Technically:** "It is the opposite of benefit (maslaha); it is a description of an action that results in corruption, meaning corruption that occurs always or mainly, affecting the public or individuals."<sup>5</sup>

## Second: Types of Benefit (Maslaha)

Benefit is divided into two main types:

**1. General Benefit (Maslaha 'Amma):** This refers to what brings about the welfare of the entire nation or the public without considering the conditions of the individual except insofar as they are parts of the whole nation, for example, preserving wealth from burning or drowning because the survival of such wealth holds advantages and benefits.<sup>6</sup>

**2. Specific Benefit (Maslaha Khassa):** This pertains to the advantage of individuals based on the actions emanating from each of them so that by reforming themselves, the society composed of them becomes righteous. The initial focus here is on individuals, while the general benefit follows. This is part of what the Qur'anic legislation has brought and much of what is found in the Sunnah, such as preserving wealth from wastefulness by placing restrictions on the spendthrift during their period of foolishness. This benefits the owner of the wealth so that they find it when they reach maturity, or their heir finds it after them, rather than benefiting the public.<sup>7</sup>

## Third: Conditions (Controls) of Benefit (Maslaha)

There must be conditions for considering a benefit so that it is not applied according to whims or incorrect interpretation. Therefore, scholars have mentioned conditions for the benefit, which are:

**1. Alignment with the Intent of the Lawgiver (Al-Shari'):** The benefit must align with the intentions of the Lawgiver, being of the same kind of benefits that Sharia has prescribed and not foreign to it.<sup>8</sup>

**2. Relating to Preserving a Necessary Matter and Removing Unavoidable Hardship in Religion:** The benefit should pertain to preserving something essential and alleviating necessary hardship in the religion.<sup>9</sup> In this context, Imam Al-Ghazali says: "As for what occurs from appropriateness at the level of necessities (Daruriyyat) or needs (Hajjiyyat), we see that it is permissible to adhere to it, even if it aligns with the practices of Sharia."<sup>10</sup>

**3. Being a Real Benefit, Not Imaginary:** The benefit must be genuine and not imaginary. An imaginary benefit is one where an advantage is perceived, but upon reflection, it is harmful due to its hidden damage<sup>11</sup>.

**4. Not Negating a More Important Benefit:** The benefit should not negate a benefit more important than itself. This involves considering its strength and comprehensiveness. Needs (Hajiyat) should not be given precedence over necessities (Daruriyyat), nor should improvements (Tahsiniyyat) be prioritized over needs, nor should a specific benefit be placed above a general benefit, and so on<sup>12</sup>. In this regard, Imam Ibn Al-Qayyim (may Allah have mercy on him) says: "The principle of Sharia and divine decree is to achieve the higher of two benefits even if the lesser one is missed."<sup>13</sup>

**5. Ensuring Legislation Based on Benefit Brings About Good or Repels Harm:** Legislation built upon benefit must bring about good or repel corruption and that the benefit for which a ruling is legislated is general, not partial. It must encompass the most significant number of people, bringing them benefits and repelling harm from them. It is not valid to legislate a ruling based on a benefit specific to an essential person in the state while disregarding the rest of the individuals.<sup>14</sup>

#### **Fourth: Sharia Evidences for Considering Benefit (Maslaha)**

**First Evidence:** Through inductive reasoning of Sharia texts, we find much evidence justifying what is better for the servants. For example, at the end of the verse on ablution (wudu), Allah Almighty says in His noble Book: "**Allah does not intend to make difficulty for you, but He intends to purify you and complete His favor upon you that you may be grateful.**"<sup>15</sup> (Quran 5:6)

Allah prescribed prayer (salah) and justified it by saying: "**Indeed, prayer prohibits immorality and wrongdoing, and the remembrance of Allah is greater; moreover, Allah knows what you do.**"<sup>16</sup> (Quran 29:45). He prescribed fasting (sawm) and concluded the verse by saying: "**That you may become righteous.**"<sup>17</sup> (Quran 2:183)

**Second Evidence:** The diligent scholars among the Companions (may Allah be pleased with them) acted upon matters merely due to the realization of benefit, without prior explicit evidence. For example, our master Umar ibn al-Khattab (may Allah be pleased with him) said to our master Abu Bakr (may Allah be pleased with him) when he suggested compiling the Quran: "**By Allah, it is good.**"<sup>18</sup> Similarly, our master Abu Bakr (may Allah be pleased with him) said to Zaid ibn Thabit (may Allah be pleased with him) when he ordered him to compile the Quran: "**By Allah, it is good.**"<sup>19</sup> There are many other such examples and situations. It indicates that it was established among them (may Allah be pleased with them) that the Sharia is built upon benefit (maslaha), and that there lies the law of Allah and His religion whenever benefit is found.<sup>20</sup>

**Third Evidence:** The foundational principles (usul) are finite, while events and incidents are infinite.<sup>21</sup> It is known that no incident lacks a ruling from Allah Almighty attributed to the Sharia of the Prophet (peace be upon him). Therefore, these incidents must be based on achieving benefits for people in a manner that aligns with the objectives (maqasid) of the Sharia and its overall goals. This ensures the timelessness of the Sharia and its perpetual suitability for every time and place.<sup>22</sup>

These were some pieces of evidence that support the benefits of Islamic Sharia. I limited myself to just three pieces of evidence to avoid lengthiness. Otherwise, there is much evidence to consider the benefits and their importance.

#### **Second Section: The Wisdom of Considering Competence as a Basic Condition in Jobs in Light of the Objectives of Islamic Sharia**

The intentions of Sharia (*Maqasid al-Sharia*) are defined as "the meanings and wisdom intended by the Lawgiver in all or most circumstances of legislation."<sup>23</sup>

Firstly, let us agree that all specializations and professions must require competence. Some professions and specializations, such as medicine, judiciary, and engineering, closely relate to human life. A specialization like accounting plays a vital role in preserving people's wealth. A teacher has an essential role in maintaining the mind's existence, similar to professions closely linked to all essential interests.

An ignorant doctor with little experience, who does not master his profession and lacks the required attributes of competence, may kill a person by mistake due to his ignorance. In this regard, Imam Ibn Aqil al-Hanbali<sup>24</sup> (may Allah have mercy on him) says: "Ignorant doctors are the world's plague, and handing over patients to nature is more beloved to me than handing them over to ignorant doctors."<sup>25</sup> He likened the ignorant among doctors to a dangerous plague that descends upon society and destroys it because the ignorant doctor may forfeit the objective of preserving life, which the Wise Lawgiver has undertaken to protect and has legislated all appropriate rulings to maintain this objective. Numerous medical errors in our present time may lead to the loss of life or the destruction of a limb of the body. Rulers and officials must monitor this type of doctor. In this context, Ibn al-Munassif<sup>26</sup> says: "It is obligatory upon every ruler to inspect these people, suppress them, and prevent anyone who practices medicine or the like from attending to people until he brings someone trusted among doctors and scholars. They test him in their presence, and it becomes clear he is qualified to engage in that field."<sup>27</sup>

There is no doubt that scholars have warned about the dangers of an ignorant doctor who lacks competence in his work. Due to his ignorance and lack of competence, he may cause the loss of people's lives or damage their organs. In doing so, he violates the laws of the Wise Lawgiver, which were established to preserve the people's lives.

This matter also applies to engineers. An incompetent engineer may construct a building incorrectly, and it is possible for this building to collapse on the heads of its inhabitants. By doing so, he has caused a loss of lives and destruction of property, thereby forfeiting two essential interests for people: the preservation of life and the preservation of wealth. Those who follow current news and events find many incidents, such as a building collapse or a bridge falling, due to engineering errors during construction.

Even an incompetent judge who assumes his position through favoritism and nepotism is preferred over others despite his lack of competence—this happens in countries riddled with corruption, and it is prevalent in our lands. Such judges lack experience, wisdom, knowledge, and diligence. They may issue incorrect judgments that lead to the loss of rights that the Wise Lawgiver has guaranteed to preserve. In the next chapter, I will discuss the conditions set by jurists for assuming judicial positions due to the seriousness of this matter on the people's interests.

Teachers and professors in schools and universities have an essential role in preserving the mind from the aspect of existence, as well as in developing capabilities, knowledge, and acquiring skills. On another front, they play a role in raising the generation with proper upbringing. The teacher nourishes the intellectual aspect with expertise and the behavioral aspect with values, principles, and morals. Preserving the mind from the element of existence involves learning knowledge and directing it towards observation, thinking, and deduction because no value in an ignorant mind may be susceptible to superstitions and illusions.

So, what if this teacher or professor is the one who tries to feed his students indirectly with deviant and unacceptable ideas, mixing poison with honey, or conveys information incorrectly, leading students to misunderstand the intended meaning? Therefore, those who undertake teaching must possess the attributes of competence because, as I mentioned earlier, the teacher has a vital role in preserving the mind from the aspect of existence. Thus, the teacher must prioritize understanding over memorization, as indicated by many verses and traditions, including the saying of Allah the Exalted. **"We gave an understanding of it to Solomon, and to each [of them] We gave judgment and knowledge."**<sup>28</sup>(*Quran 21:79*)

Also, Allah Almighty praised those endowed with understanding and diligence by saying:

"And when information about [public] security or fear comes to them, they spread it around. However, if they had referred it back to the Messenger or to those of authority among them, then those who can draw correct conclusions from it would have known about it."<sup>29</sup>(*Quran 4:83*)

From the Sunnah, it is narrated from our Mother, the Mother of the Believers, our lady 'Ā'ishah al-Şiddīqah, daughter of al-Şiddīq (may Allah be pleased with them both), who said:

**"Indeed, the Messenger of Allah (peace and blessings be upon him) did not narrate hadith to you as you narrate now."**<sup>30</sup>

Regarding this matter, Al-Khatib Al-Baghdadi<sup>31</sup> also said: "I mentioned these verses and narrations to emphasize the importance of understanding. There is no benefit in memorizing knowledge without comprehending it. In the next chapter, Allah willing, I will discuss the conditions for a teacher in Islamic Sharia due to the importance of this role in educating and teaching future generations.

If the accountant in government departments and even private companies lacks competence, he may squander people's money and rights, intentionally or unintentionally. An accountant who deals with numbers is entrusted with people's wealth. If this specialist is not competent, he will forfeit the objective of preserving wealth, which the Lawgiver has committed to safeguarding.

These examples of some different specializations clarify the importance of considering competence in all jobs because all positions and professions are related to one of the essential, necessary, or improvement interests (masala) for people, which the Wise Lawgiver has undertaken to preserve in terms of existence and non-existence.

**Third Section: The Consequences When a Competent Employee Makes a Mistake**

Initially, it must be emphasized that the Wise Lawgiver considers errors in the rights of Allah as excusable if the person exerted effort (ijtihād) because they verified to the best of their ability. Therefore, the mistake becomes an excuse if the mufti (Islamic jurist) strives and errs or if someone praying faces the wrong direction of the qibla unintentionally.<sup>32</sup>

However, regarding people's rights, Islamic Sharia has legislated rulings known as the laws of Liability (ḍamān). These rulings aim to compensate the harmed individual for damage caused by a mistake, negligence, or transgression of their rights. They embody the justice of the Wise Lawgiver among His servants.

**Liability (Ḍamān) Linguistically:** The term comes with surety, commitment, and indemnification meanings. A ḍāmin (guarantor) guarantees, commits, or indemnifies.<sup>33</sup>

This linguistic meaning closely aligns with the concept of Liability intended in this section. Anyone who causes harm through mistake, negligence, or transgression—intentional or unintentional—is obliged to provide compensation and is responsible for the damaged property.

Technically, Liability refers to several meanings: According to the majority, Liability applies to a person's suretyship and property.<sup>34</sup> Given this definition, most jurists from the Maliki, Shafi'i, and Hanbali schools use Liability (ḍamān) and suretyship (kafālah) interchangeably. Both terms refer to the guarantee of property, person, and demand. They also use the term liability broadly, encompassing general guarantees—whether by contract, damage indemnification, aggression, or otherwise.<sup>35</sup>

The Hanafis use kafālah for guarantees established through contracts, including the suretyship of person, property, and delivery. They apply ḍamān more broadly to include guarantees by contract and beyond. Thus, they agree with the majority in applying the term liability to what is more general than suretyship and property guarantee, among others.<sup>36</sup>

The Majallat Al-Ahkām Al-'Adliyyah (Article 416) states that Liability is: "To give the equivalent of the item if it is fungible, or its value if it is non-fungible."<sup>37</sup>

Perhaps the best technical definition of Liability (ḍamān) is: **"A commitment to compensate others for the damage incurred to their property, loss of benefits, or for partial or total harm occurring to the human self."**<sup>38</sup>

This definition perfectly applies to mistakes made by employees or officials in government departments, institutions, and private institutions. Administrative errors may cause people damage to their property, loss of benefits, or harm, whether partial or total.

Liability has causes, and the jurists (may Allah have mercy on them) have specified the causes that necessitate Liability; they are:

1. The Hanafis hold that the causes of Liability are usurpation (ghaṣb), aggression (‘udwān), destruction (itlāf), and causing destruction (tasabbubī'l-itlāf).<sup>39</sup>
2. The Malikis say that the causes of Liability are aggression (‘udwān), taking possession (waḍ‘ al-yad)<sup>40</sup>, destruction (itlāf), and causing destruction.<sup>41</sup>
3. The Shafī'is<sup>42</sup> state that the causes of Liability are three: contract (‘aqd), establishing possession (ithbāt al-yad), destruction (itlāf), and prevention<sup>43</sup>(ḥilūlah).
4. The Hanbalis have concluded that there are three causes of Liability: contract (‘aqd), destruction (itlāf), and taking possession (waḍ‘ al-yad).<sup>44</sup>

After understanding the causes that necessitate Liability as established by the jurists, we now know the conditions of Liability that must be met to designate a matter as necessitating Liability.

Liability is not obligatory unless the meaning of imposition (taḍmīn) is present, and imposition is only realized by the existence of two pillars: transgression (ta‘addī) or mistake, and harm (ḍarar).<sup>45</sup> This can be understood from the discussions of jurists on usurpation, destruction, and offenses. If transgression occurs without harm, there is no liability because the ruling is intended to compensate for and remove. Moreover, if there is no harm, then Liability does not exist.<sup>46</sup>

As for the connection between transgression (ta‘addī) or error (khaṭā‘) and harm (ḍarar), it is either direct (mubāsharah) or indirect causation (tasabbub). This connection is considered the third basis of Liability, but it does not align with the intended meaning of the essential pillar here, which is that upon which the existence of something depends. Instead, it requires the absence of any barrier to the cause.<sup>47</sup>

Scholars have specified that this link or connection must be through direct action or causation; there is no liability outside these two.<sup>48</sup>

Direct action (mubāsharah) involves creating the cause of destruction, such as killing, consuming, or burning. It brings about the offense by itself without an intermediary and was the cause of the offense. For example, slaughtering a person with a knife directly causes death and is simultaneously the cause of death.<sup>49</sup>

The Majallah al-Aḥkām al-‘Adliyyah defines direct destruction as " the Direct destruction of something, and the one who does it is called a direct doer (fā‘ilmubāshir)."<sup>50</sup>

Causation (tasabbub) creates something whereby destruction occurs due to another cause. It is what brings about the offense not by itself but through an intermediary, and it is the cause of the offense. For instance, digging a pit in the victim's path and covering it so that when he passes over it, he falls in and gets injured or dies.<sup>51</sup>

Causation is defined in the Majallah as: "Destroying something, meaning initiating an act that customarily leads to the destruction of something else, and the one who does it is called a causer (mutasabbib). For example, someone cuts the rope of a hanging lamp, causing it to fall to the ground and break. In this case, he has directly destroyed the rope and indirectly caused the lamp to break."<sup>52</sup>

Dr. Wahbah Al-Zuhayli confirms this: "There is no difference between destruction occurring directly or by causation, which is committing an act in a place that leads to the destruction of another's property."<sup>53</sup>

However, a question may arise: Upon whom is the responsibility placed? On the direct agent or the causer? The answer is that The jurists have stipulated the Liability of the direct agent and the causer if he was transgressive.<sup>54</sup>

In this regard, Ibn ‘Abidīn says: "The principle is that the causer is liable if he was transgressive; otherwise, he is not liable. The direct agent is always liable, as appears in the branches (of jurisprudence)."<sup>55</sup>

It becomes clear from the above—and Allah Almighty knows best—that the causer must be held liable and bear responsibility like the direct agent because he was one of the causes of the destruction and damage due to his negligence or transgression.

In summary of the above, we can outline the conditions of Liability as follows:

1. Liability is not obligatory unless the meaning of imposition (taḍmīn) is present, and imposition is only realized by the existence of two pillars: transgression (ta‘addī) or (error) and harm.
2. The connection between transgression (or error) and harm is either direct or by causation, which is the third basis of Liability.
3. Destruction occurs either directly or by causation.
4. There is no liability if no harm occurred, even if transgression happened, because the ruling is intended to compensate for and remove harm, and it did not occur.
5. The direct agent and the causer are liable if they were transgressive.

It is worth mentioning that the rulings of Liability in Islamic Sharia are extensive and multifaceted because our jurists have elaborated on them in all aspects of human transactions. However, I have summarized the liability rulings as needed in this section.

An employee or official, whether competent or otherwise, may, through his mistake, cause material or moral harm or the destruction of a limb and may infringe upon a right due to his error. He may have directly committed this harm himself or caused it due to poor judgment in his work.

Therefore, the justice of Islamic Sharia is that it did not suffice with merely setting conditions for assuming positions but also established the rulings of Liability if someone who meets the conditions errs or forgets because human beings by nature may err or be correct.

As we said before, His mercy may forgive the rights of Allah Almighty upon His servants, but the rights of people are not overlooked. Therefore, our just and equitable Sharia has established the rulings of Liability to compensate anyone who was harmed—whatever that harm may be—due to the mistake of an employee or official.

At the end of our discussion of Liability in Islamic Sharia, a vital issue caught my attention: If a competent doctor makes a mistake, is he liable?

During my research on this subject, I found that jurists from the Hanafi, Maliki Shafi'i, Hanbali, and Zahiri schools agree that doctors are not held liable if they are known for their skill in the profession and did not commit any wrongdoing, transgression, or negligence.

As for the ignorant doctor, the saying of the Messenger of Allah (peace and blessings be upon him) applies to him: "Whoever practices medicine<sup>56</sup> without being known for it, he is liable."<sup>57</sup>

It is because the claim of the unqualified practitioner to know about medicine when he does not is one of the gravest and most heinous offenses. By doing so, the doctor uses falsehood to treat the patient.

Key Findings:

1. Competence is a fundamental condition for assuming positions, and it is not permissible to neglect this condition.
2. The public interest takes precedence over the private interest.
3. If a competent employee makes a mistake, he is held liable if it is due to his negligence or transgression. If it is unintentional or without negligence, his situation is considered, and the harmed party is compensated to prevent injustice to either party.
4. The assessment of benefit and harm is conducted according to the guidelines set by Islamic Sharia.

## Endnotes References

<sup>1</sup>See: *Lisan al-Arab* by Muhammad ibn Makram ibn Ali Abu al-Fadl, Jamal al-Din Ibn Manzur al-Ansari al-Ruwayfi'i al-Afriki (d. 711 AH), published by Dar Sader—Beirut, 3rd edition, 1414 AH—1993 CE, vol. 2, p. 517.

<sup>2</sup> He is Abu Hamid Muhammad ibn Muhammad al-Ghazali al-Tusi, born in 450 AH and died in 505 AH. Among his works are: *Ihya'Ulum al-Din*, *Tahafut al-Falasifa*, *Shifa al-Ghalil fi Bayan al-Shubuhwa al-MukhilwaMasalik al-Ta'lil*, *Al-Mustasfa*, *Al-Wasit fi al-Madhhab*, and others. See his biography in *Al-Wafi bi al-Wafayat* by Salah al-Din Khalil ibn Aybak ibn Abdullah al-Safadi (d. 764 AH), edited by Ahmad al-Arna'ut and Turki Mustafa, published by Dar Ihya al-Turath—Beirut, 1420 AH—2000 CE, vol. 1, p. 277.

<sup>3</sup> See: *Al-Mahsul fi 'Ilm al-Usul* by Fakhr al-Din al-Razi (d. 606 AH), edited by Dr. TahaJaber Fayyad al-Alwani, published by Mu'assasat al-Risala—Beirut, 3rd edition, 1997 CE, vol. 5, p. 158.

<sup>4</sup> See: *Mukhtar al-Sihah* by Zain al-Din Abu Abdullah Muhammad ibn Abi Bakr ibn Abdul Qadir al-Hanafi al-Razi (d. 666 AH), edited by Yusuf al-Sheikh Muhammad, published by Al-Maktaba al-Asriyya—Beirut, 5th edition, 1420 AH—1999 CE, vol. 2, p. 519.

<sup>5</sup>*Maqasid al-Sharia al-Islamiyya* by Ibn Ashur, edited by Muhammad al-Habib ibn al-Khuja, published by the Ministry of Endowments and Islamic Affairs—Qatar, 1425 AH—2004 CE, vol. 3, p. 201.

<sup>6</sup> See: the same source, vol. 3, p. 202.

<sup>7</sup> See: the same source.

<sup>8</sup> See: *Al-I'tisam* by Al-Shatibi (d. 790 AH), edited by Salim ibn Ubaid al-Hilali, published by Dar Ibn Affan—Saudi Arabia, 1st edition, 1412 AH—1992 CE, vol. 2, p. 316.

<sup>9</sup> See: the same source, vol. 2, p. 532.

<sup>10</sup>*Shifa al-Ghalil fi Bayan al-Shubuhwa al-MukhilwaMasalik al-Ta'lil* by al-Ghazali, edited by Dr. Hamad al-Kubaisi, originally a doctoral dissertation, printed by Matba'at al-Irshad—Baghdad, 1st edition, 1390 AH—1971 CE, p. 209.

<sup>11</sup> See: *Al-Masalih al-MursalawaAtharuha fi al-Mu'amalat* by Abdul Aziz ibn Abdullah al-Ammar, published by Dar al-KunuzIshbiliya—Saudi Arabia, 1431 AH—2010 CE, p. 119.

<sup>12</sup>See: *Dawabit al-Maslahah fi al-Sharia al-Islamiyya* by Muhammad Saeed Ramadan al-Bouti, published by Mu'assasat al-Risala, pp. 260–266.

<sup>13</sup>*I'lam al-Muwaqqi'in* by Ibn Qayyim al-Jawziyya (d. 751 AH), edited by Muhammad Abdul Salam Ibrahim, published by Dar al-Kutub al-Ilmiyya—Beirut, 1st edition, 1411 AH—1991 CE, vol. 3, p. 217.

<sup>14</sup>*Al-Masalih al-MursalawaAtharuha fi al-Mu'amalat* by Abdul Aziz ibn Abdullah al-Ammar, published by Dar al-KunuzIshbiliya—Saudi Arabia, 1431 AH—2010 CE, p. 118.

<sup>15</sup>Quran, Surat Al-Ma'idah, part of verse 6.

<sup>16</sup> Quran, Surat Al-'Ankabut, verse 45

<sup>17</sup> Quran, Surat Al-Baqarah, verse 183.

<sup>18</sup> Narrated by Al-Bukhari in his *Sahih*, Book of Tafsir, Hadith no. 4679.

<sup>19</sup> The same reference as above.

<sup>20</sup> See: *Al-Turuq al-Hukmiyya* by Ibn al-Qayyim, published by Maktabat Dar al-Bayan, 3rd edition, 2016 CE, vol. 1, p. 31.

<sup>21</sup> See: *Al-Mankhul min Ta'liqat al-Usul* by al-Ghazali, edited by Dr. Muhammad Hasan Hitu, published by Dar al-Fikr—Beirut—Damascus, 3rd edition, 1419 AH—1998 CE, p. 457.

<sup>22</sup> See: *Al-Fiqh al-Islami wa Adillatuhu* by Dr. Wahbah al-Zuhayli, published by Dar al-Fikr—Damascus, 4th edition, vol. 2, p. 43.

<sup>23</sup> *Maqasid al-Sharia al-Islamiyya* by Ibn Ashur, edited by Muhammad al-Habib ibn al-Khuja, published by the Ministry of Endowments and Islamic Affairs—Qatar, 1425 AH—2004 CE, vol. 2, p. 21.

<sup>24</sup> He is Abu al-Wafa Ali ibn Aqil al-Baghdadi al-Hanbali, born in 431 AH and died in 513 AH. Among his works are: *Kitab al-Funun*, *Al-Wadih fi al-Usul*, and others. See his biography in *Shadharat al-Dhahab* by Abdul Hayy ibn Ahmad ibn al-Imad al-Hanbali (d. 1098 AH), edited by Mahmoud al-Arna'ut, published by Dar Ibn Kathir—Damascus—Beirut, 1st edition, 1406 AH—1986 CE, vol. 6, p. 58.

<sup>25</sup> *Al-Adab al-Shar'iyyah* by Muhammad ibn Muflih al-Maqdisi al-Hanbali (d. 763 AH), published by Alam al-Kutub, vol. 2, p. 452.

<sup>26</sup> He is Muhammad ibn Isa ibn Muhammad ibn Asbagh ibn al-Munasif al-Azdi al-Qurtubi, born in 620 AH and died in 620 AH. Among his works are: *Al-Mudhahhabah*, *Tanbih al-Hukkam 'ala Ma'akhidh al-Ahkam*, and others. See his biography in *Tarikh al-Islam* by Al-Dhahabi (d. 748 AH), edited by Bashar Awwad Ma'ruf, published by Dar al-Gharb al-Islami, 1st edition, 2003 CE, vol. 12, p. 638.

<sup>27</sup> *Tanbih al-Hukkam 'ala Ma'akhidh al-Ahkam* by Ibn al-Munasif, published by Dar al-Turki—Tunisia, 1988 CE, p. 354.

<sup>28</sup> Quran, Surat Al-Anbiya', part of verse 79.

<sup>29</sup> Quran, Surat Al-Nisa', part of verse 83.

<sup>30</sup> Narrated by Al-Bukhari in his *Sahih*, Book of Virtues, Hadith no. 3568.

<sup>31</sup> He is Abu Bakr Ahmad ibn Ali al-Khatib al-Baghdadi, born in 392 AH and died in 463 AH. He authored many works including: *Al-Bukhala'*, *Al-Kifayah fi 'Ilm al-Riwayah*, and others. See his biography in *Al-'Alam* by Khayr al-Din al-Zirikli (d. 1396 AH), published by Dar al-Ilmlil-Malayin, 15th edition, 2002 CE, vol. 1, pp. 171–172.

<sup>32</sup> See: *Al-Wajiz fi Usul al-Fiqh* by Abdul Karim Zaidan, published by Mu'assasat al-Risala—Beirut, 7th edition, 1997 CE, p. 115.

<sup>33</sup> *Tahdhib al-Lughah* by Abu Mansur al-Azhari (d. 370 AH), published by Al-Dar al-Misriyyah lil-Ta'lif wal-Tarjamah, vol. 12, p. 49; *Lisan al-Arab* by Ibn Manzur, vol. 12, p. 436; *Mu'jam Maqayis al-Lughah* by Ahmad ibn Faris al-Razi (d. 395 AH), published by Dar Ihya al-Kutub al-Arabiyyah—Cairo, vol. 2, p. 372.

<sup>34</sup> See: *Ghamz 'Uyun al-Basa'ir Sharh Kitab al-Ashbah wa al-Naza'ir* by Imam al-Nawawi, published by Dar al-Kutub al-Ilmiyya—Beirut, 1st edition, vol. 4, p. 6.

<sup>35</sup> See: *Al-Iqna' fi Hall Alfaz Abi Shuja'* by Al-Khatib al-Shirbini al-Shafi'i (d. 977 AH), published by Dar al-Fikr—Beirut, vol. 2, p. 312.

<sup>36</sup> See: *Durar al-Hukkam Sharh Gharar al-Ahkam* by Mulla Khusro (d. 885 AH), published by Dar Ihya al-Kutub al-Arabiyyah, vol. 2, p. 295; *Al-Lubab fi Sharh al-Kitab* by Al-Maydani al-Hanafi (d. 1298 AH), published by Al-Maktaba al-Ilmiyya—Beirut, vol. 2, p. 152.

*Majallat al-Ahkam al-Adliyya*, authored by a committee of scholars during the Ottoman Caliphate, edited by NajibHuwaini, published by Nur Muhammad—Karachi, vol. 1, p. 80.

<sup>37</sup>*Majallat al-Ahkam al-Adliyya*, authored by a committee of scholars during the Ottoman Caliphate, edited by NajibHuwaini, published by Nur Muhammad—Karachi, vol. 1, p. 80.

<sup>38</sup>*Nazariyyat al-Daman* by Dr. Wahbah al-Zuhayli, published by Dar al-Fikr—Damascus—Beirut, 9th edition, 1433 AH—2012 CE, p. 22.

<sup>39</sup> See: *Al-Mabsut* by Al-Sarakhsi (d. 483 AH), published by Dar al-Ma'rifah—Beirut, 1989 CE, vol. 1, p. 54.

<sup>40</sup> The meaning of "placing the hand": possessing and seizing something with the freedom to dispose of it. See: *Al-Qamus al-Fiqhi* by Sa'di Abu Habib, published by Dar al-Fikr—Damascus, 1st edition, 1982 CE, p. 104.

<sup>41</sup> See: *Al-Furuq* by Al-Qarafi (d. 684 AH), published by Alam al-Kutub, 1st edition, vol. 2, p. 206.

<sup>42</sup> See: *Al-Ibhaj fi Sharh al-Minhaj* by Al-Subki and his son (d. 771 AH), published by Dar al-Kutub al-Ilmiyya—Beirut, 1416 AH—1995 CE, vol. 3, p. 124; *Al-Ashbahwa al-Naza'ir* by Al-Suyuti (d. 911 AH), published by Dar al-Kutub al-Ilmiyya—Beirut, 1st edition, 1411 AH—1990 CE, p. 362.

<sup>43</sup> "Obstruction": preventing the disposal of something. See: *Al-Ashbahwa al-Naza'ir* by Al-Suyuti, published by Dar al-Kutub al-Ilmiyya—Beirut, 1st edition, 1411 AH—1990 CE, pp. 362–363.

<sup>44</sup> See: *Al-Qawa'id fi al-Fiqh al-Islami* by Ibn Rajab al-Hanbali (d. 795 AH), published by Dar al-Kutub al-Ilmiyya, 2008 CE, p. 204.

<sup>45</sup> See: *Al-Darar al-Ma'nawiwaTa'widhuhuWifqAhkam al-Qanun al-Madani* (Comparative Study), Master's Thesis by Ibrahim al-Jazzazi, University of Jordan, 1993 CE, p. 57.

<sup>46</sup> See: *Nazariyyat al-Daman* by Dr. Wahbah al-Zuhayli, pp. 18–26.

<sup>47</sup> See: *Mas'uliyat al-Atibba'* by Muhammad Muhammad Abdul Aziz al-Zaini, published by Mu'assasat al-Thaqafah al-Jami'iyyah—Alexandria, 1993 CE, pp. 108–109.

<sup>48</sup> See: *Nazariyyat al-Daman fi al-Fiqh al-Islami* by Muhammad FawziFayd Allah, published by Dar al-Turath—Kuwait, 1st edition, 1983 CE, p. 88; *Al-Nazariyyah al-'Ammahlil-Mawjabatwa al-'Uqud* by Subhi al-Mahmasani, published by Maktabat al-Kashshaf—Beirut, 1948 CE, vol. 1, p. 180.

<sup>49</sup> See: *Al-Tashri' al-Jina'i al-Islami* by Abd al-Qadir Awdah, published by Dar al-Kitab al-Arabi—Beirut, vol. 1, p. 451; *Al-Jinayah 'ala al-Abdan* by Al-Mursi al-Samahi, published by Maktabat 'Alam al-Fikr, 1st edition, 1985 CE, p. 105.

<sup>50</sup>*Majallat al-Ahkam al-Adliyya*, Article 887, vol. 1, p. 171.

<sup>51</sup> See: *Al-Wajiz fi Fiqh al-Imam al-Shafi'i* by Imam al-Ghazali, edited by Ali Mu'awwad and Adel Abdul Mawjoood, published by Shirkah Dar al-Arqam ibn Abi al-Arqam—Beirut, 1st edition, 1418 AH—1997 CE, vol. 1, pp. 204–205; *Al-Jinayah 'ala al-Abdan* by Al-Samahi, p. 155; *Al-Tashri' al-Jina'i al-Islami* by Abd al-Qadir Awdah, vol. 1, p. 455.

<sup>52</sup>*Majallat al-Ahkam al-Adliyya*, Article 888, vol. 1, p. 171.

<sup>53</sup>*Al-Fiqh al-IslamiwaAdillatuhu* by Dr. Wahbah al-Zuhayli, published by Dar al-Fikr—Damascus, 4th edition, vol. 6, p. 4825.

<sup>54</sup> See: *Daman al-'Udwan fi al-Fiqh al-Islami (DirasahMuqaranah)* by Muhammad ibn Ahmad Siraj, published by Dar al-Thaqafah—Cairo, 1409 AH, p. 316.

<sup>55</sup>*Hashiyat Ibn Abidin*, published by Dar al-Fikr—Beirut, 2nd edition, 1412 AH—1992 CE, vol. 6, p. 603.

<sup>56</sup> "Man taṭabbaba": meaning, one who practices medicine and treats a patient. See: *Lisan al-Arab*, vol. 1, p. 553.

<sup>57</sup> Narrated by Abu Dawud, Book of Blood Money, Hadith no. 4586; Ibn Majah, Book of Medicine, Hadith no. 3466; Al-Nasa'i, Book of Qasamah, Hadith no. 4830.